

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

U.S. ELECTION ASSISTANCE COMMISSION  
PUBLIC MEETING

Taken at the offices of the U.S. EAC  
1225 New York Avenue, N.W., Suite 150  
Washington, D.C.

Taken on the date of:  
Tuesday, December 7, 2006

21 Start time: 10:02 o'clock, a.m.  
22 Taken by: Catherine B. Crump, court reporter

1 PRESIDING:

- 2 PAUL DeGREGORIO, Chairman
- 3 DONETTA DAVIDSON, Commissioner
- 4 GRACIA HILLMAN, Commissioner

5 STAFF PRESENT:

- 6 JULIE THOMPSON-HODGKINS,  
7 Commission Counsel
- 8 THOMAS WILKEY, Executive Director

9 REPORTS PROVIDED BY:

- 10 DR. WILLIAM JEFFREY
- 11 JULIE THOMPSON-HODGKINS
- 12 BRIAN HANCOCK AND GAVIN GILMOUR
- 13 THOMAS WILKEY

14 PANEL PARTICIPANTS:

15 PANEL ONE:

- 16 DEBORAH MARKOWITZ
- 17 KEVIN J. KENNEDY
- 18 R. DOUG LEWIS
- 19 ELIZABETH ENSLER

20

21 --continued--

22

1 PANEL PARTICIPANTS: (cont)

2 PANEL TWO:

3 MARY G. WILSON

4 JOHAH GOLDMAN

5 MARK HEARNE II

6 DAN SELIGSON

7 PANEL THREE:

8 JOHN S. GROH

9 - 0 -

10 I-N-D-E-X

11 AGENDA ITEM: Page:

12 I. Call to Order and Pledge of Allegiance..... 4

13 II. Roll Call..... 5

14 III. Adoption of Agenda..... 5

15 IV. Welcoming Remarks..... 6

16 V. Old Business..... 7

17 VI. New Business..... 15

18 VII. Assessing the 2006 Election..... 88

19 VIII. Closing Remarks.....282

20 - 0 -

21

22

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

2 I. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

3 CHAIRMAN DeGREGORIO: Good morning,  
4 everyone. My name is Paul DeGregorio, and I'm the  
5 Chairman of the U.S. Election Assistance Commission,  
6 and I'm calling this meeting to order.

7 I'd like to welcome everyone who have  
8 come today. I see many of our friends and  
9 stakeholders in the audience. I appreciate you  
10 coming.

11 I'd ask that you please turn off your  
12 cell phones or put them on silence. We're recording  
13 this meeting today and we'll be broadcasting it on  
14 our web by next week.

15 I'd ask for all of you to stand for the  
16 Pledge of Allegiance.

17 I pledge allegiance to the flag of the  
18 United States of America and to the Republic for  
19 which it stands, one Nation under God, individual  
20 with liberty and justice for all.

21 CHAIRMAN DeGREGORIO: I'd like to ask  
22 for the roll call, Ms. Thompson-Hodgkins.

1 II. ROLL CALL

2 MS. THOMPSON-HODGKINS: Thank you, Mr.  
3 Chairman.

4 Members, please respond by saying here  
5 or present when I call your name.

6 Paul DeGregorio, Chairman.

7 CHAIRMAN DeGREGORIO: Present.

8 MS. THOMPSON-HODGKINS: Donetta  
9 Davidson, Commissioner.

10 COMMISSIONER DAVIDSON: Present.

11 MS. THOMPSON-HODGKINS: Gracia Hillman,  
12 Commissioner.

13 COMMISSIONER HILLMAN: Here.

14 MS. THOMPSON-HODGKINS: Mr. Chairman,  
15 there are three members present and a quorum.

16 CHAIRMAN DeGREGORIO: Thank you.

17 III. ADOPTION OF AGENDA

18 CHAIRMAN DeGREGORIO: The first order of  
19 business is the adoption of the agenda that you see  
20 before you. It's quite a vicious agenda for today.

21 There is going to be one change in the  
22 agenda, fellow commissioners, on old business. We

1 recognize that there was some delay in us getting  
2 the minutes from the October 22nd meeting and,  
3 therefore, we're going to move that item towards the  
4 end of the meeting to be brought up after we've had  
5 some time, perhaps during the break or lunch time,  
6 to review, have a little more time to review the  
7 minutes.

8       So with that change, I'd like to move  
9 the adoption of the agenda as stated.

10       COMMISSIONER HILLMAN: So moved.

11       COMMISSIONER DAVIDSON: Second.

12       CHAIRMAN DeGREGORIO: It's been moved  
13 and seconded. All those in favor, signify by saying  
14 aye.

15       MEMBERS IN UNISON: Aye.

16       CHAIRMAN DeGREGORIO: Opposed, no.

17       [No response.]

18       CHAIRMAN DeGREGORIO: The ayes have it.  
19 The agenda is adopted.

20       IV. WELCOMING REMARKS

21       CHAIRMAN DeGREGORIO: Again, I want to  
22 welcome everyone who has come today to this meeting,

1 our last meeting of the year and my last meeting as  
2 chairman of the EAC. I appreciate your coming  
3 today.

4 V. OLD BUSINESS

5 CHAIRMAN DeGREGORIO: Our first report  
6 under Old Business is the report of our Executive  
7 Director on the considerable work that the EAC has  
8 accomplished.

9 Mr. Wilkey.

10 MR. WILKEY: Thank you, Mr. Chairman.

11 Certainly, we know that as we approached  
12 the November 7th election that we had several  
13 monumental tasks with the Election Administrators  
14 across the country. You will hear quite a bit about  
15 that today. We know that we had to meet two  
16 deadlines. One-third of voters were using new  
17 voting equipment and many were operating under new  
18 State laws that were enacted last year.

19 Election officials, poll workers, and  
20 voters successfully met these challenges, and  
21 election day went smoothly in most cases. As  
22 reported, of the 6700 jurisdictions, only, we were

1 able to determine about 102 reported problems, less

2 than two percent of election jurisdictions in the  
3 country, and the election officials that we spoke to  
4 prior to the election had many contingency plans in  
5 place, extra paper ballots, battery backups,  
6 extending poll hours, and extending training for  
7 poll workers and poll coordinators at our polling  
8 sites. And we were pleased that one of the national  
9 polls that was taken on election day reflected that  
10 88 percent of the voters who went to the polls were  
11 confident that their votes would be counted  
12 accurately.

13       Under HAVA funding, we continue our  
14 efforts to identify how much of the HAVA Section 102  
15 funds, those funds that were given for the buyout of  
16 punch card and lever voting replacements, must be  
17 returned by the 30 States that received these funds  
18 but failed to replace all of the punch card and  
19 lever machines. We have all of our reports in from  
20 the States, I believe except for one. We have  
21 requested information from these States regarding  
22 the number of precincts, and we anticipate that we

1 will begin recouping these funds in February of  
2 2007. This will be based upon the responses that



3 the States gave us as well as other information we  
4 have available to us.

5       We hope that by the beginning of next  
6 summer, we expect to make the returned funds  
7 available to all of the 55 States and territories as  
8 Title II requirements have authorized by HAVA. We  
9 are still reviewing all of the reports thus far from  
10 the States regarding HAVA Title I 101 and 102 funds  
11 and Title II requirements payments, and within the  
12 next two weeks, we will send letters to States  
13 requesting corrections and clarifications where  
14 needed, and these have to be individualized letters  
15 because every State was different in terms the  
16 problems that were discovered in reviewing these  
17 reports.

18       We will ask the States to respond within  
19 three weeks. We are hopeful that if timely  
20 responses are received, we will be able to get all  
21 of the information that we need. Then we will send  
22 a report to Congress in March of 2007 that provides

10

1 a good picture of how States have used these funds  
2 from 12-31-05 to 9-30-05, and we will then turn our  
3 attention to the reports covering -- that will be

4 due on February 28, 2007, which covers the period of  
5 January 1st of '06 through December 31st of '06.

6       We also continue to respond to numerous  
7 inquiries from the States regarding the permissible  
8 use and proper reporting of HAVA funds. Our Office  
9 of Inspector General, who is responsible for  
10 auditing the use of HAVA funds, is currently  
11 conducting audits in Maryland, South Carolina, Ohio,  
12 Indiana, and Virginia.

13       In terms of our research and  
14 clearinghouse activities, our research contracts  
15 that have been awarded are up and operational.  
16 These include first-time voters who registered by  
17 mail studies, a review of the HAVA electronic voting  
18 study, pre-absentee ballot postage study, a study of  
19 the use of Social Security numbers in the voter  
20 registration process, an alternative voting method  
21 study, a voter hotline study, ongoing implementation  
22 of voter registration data base, and the election

11

1 day survey, which has gone out to the States and  
2 will be due in March of next year.

3       Many of these projects will involve the  
4 administration of national surveys with the election

5 offices during the months of December and January.

6 Several of the projects will also produce drafts of  
7 their best practice case studies in March 2007. We  
8 are reaching near the end of a number of projects  
9 that are due and will be presenting some of these in  
10 future public meetings we will be conducting during  
11 2007.

12       Our college poll worker recruitment and  
13 training and retention manual project ends December  
14 31st. Our general poll worker recruitment training  
15 and retention manual will end in January of 2007.  
16 The effective ballot and polling place designs  
17 project ends March 31st. Our vote count-recounts  
18 will end also January 31st. Our legal clearinghouse  
19 website project also ends January 31st, and our  
20 voter information website best practices project  
21 ends February 28th of '07.

22       Today, we are hopeful that the

12

1 Commission will adopt the certification manual.  
2 This is the first time the Federal Government has  
3 ever certified voting equipment. The program will  
4 be rigorous, thorough, and transparent, as you will  
5 hear today. The program will begin operations in

6 January 2007. We will continue working to make sure  
7 the voting system guidelines are updated and keep  
8 pace in the developing world of election  
9 administration and continuing to work with our  
10 partners at the National Institute of Standards of  
11 Technology and Technology and the Technical  
12 Guidelines Development Committee. We will get  
13 regularly updates on this certification program as  
14 we move forward.

15       As always, we put out a monthly  
16 newsletter every month on our website, and to sign  
17 up, you can call us or send us an E-mail to  
18 HAVAINFO@EAC.gov.

19       Mr. Chairman, that is my report for this  
20 month.

21       CHAIRMAN DeGREGORIO: Thank you, Mr.  
22 Wilkey.

13

1       Commissioners, do you have any  
2 questions?

3       COMMISSIONER DAVIDSON: I do have one,  
4 whether it's a question or a statement to make sure  
5 I understand.

6       I gave a speech last week, and I

7 reported that we only had 39 problems that was  
8 reported by the media and the information that we  
9 had gathered on the election day problems. Is that  
10 because we're continuing to receive in information  
11 of issues and problems throughout the --

12 MR. WILKEY: We have staff and,  
13 Commissioner or Madam Chairman, Chairman  
14 DeGregorio's special assistant with us to gather  
15 information from a variety of sources, and we were  
16 able to determine that.

17 COMMISSIONER DAVIDSON: So just as we  
18 get it in, it changes?

19 MR. WILKEY: Yes.

20 COMMISSIONER DAVIDSON: Thank you.

21 COMMISSIONER HILLMAN: Just a follow-up  
22 question on that: When you refer to 102, are those

14

1 local jurisdictions or is any State included in the  
2 102 count?

3 MR. WILKEY: I would assume that -- this  
4 was not broke out, but I would assume that all of  
5 them were local jurisdictions because they report on  
6 various activities, many that you will probably hear  
7 about today.

8 CHAIRMAN DeGREGORIO: Mr. Wilkey, I just  
9 have one question. With these reports, the  
10 financial reports that the States provide us in the  
11 coming months, will we then be able to give some  
12 read to Congress on the expenditures of the \$3.1  
13 billion that has been distributed thus far?

14 MR. WILKEY: Absolutely, Mr. Chairman,  
15 that, I think, is why we are being so very careful  
16 about the evaluation of these reports. We saw  
17 numerous problems, both minor and major, in some of  
18 the reporting on those forms. So what we're doing  
19 is sending individualized letters to each of the  
20 States pointing out the problems, but also making  
21 sure that we give them examples of how to do it so  
22 that we don't have to continually be calling back

15

1 and forth. We want to get this taken care of as  
2 soon as possible. We'd like to get this report up  
3 to Congress as soon as possible.

4 CHAIRMAN DeGREGORIO: Thank you, Mr.  
5 Wilkey.

6 VI. NEW BUSINESS

7 CHAIRMAN DeGREGORIO: Now on to new  
8 business of the Commission, and this is always an

9 item that we reserve for our December meeting, that  
10 is the election of officers for the next year.

11       It gives me great pleasure to open up  
12 nominations for chairmanship of the EAC and use my  
13 prerogative as chairman to place a nomination of  
14 Commissioner Donetta Davidson as the next chair of  
15 the Election Assistance Commission. Commissioner  
16 Donetta Davidson was nominated by President Bush and  
17 confirmed by unanimous consent by the United States  
18 Senate on July 28, 2005 to serve on the EAC.

19       She has formally served as Colorado  
20 Secretary of State. Commissioner Davidson came to  
21 the agency with experience in almost every area of  
22 election administration, everything from County

16

1 Clerk to the Secretary of State. Commissioner  
2 Davidson began her career in election administration  
3 when she was elected in 1978 as the then County  
4 Clerk and Recorder in Colorado, a position she held  
5 until 1986. Later that year, she was appointed  
6 Director of Elections for the Colorado Department of  
7 State where she supervised County Clerks in all  
8 election matters and assisted with the recall issues  
9 for municipal special district and school district

10 elections in Colorado.

11 In 1994, she was elected Arapaho County  
12 Clerk and Recorder and re-elected to a second term  
13 in 1998. Let me just say there are very few people  
14 in America that have been elected County Clerk in  
15 two different counties. Commissioner Davidson is  
16 one of those few people.

17 In 1999, Colorado Governor Bill Owens  
18 appointed Commissioner Davidson as the Colorado  
19 Secretary of State to fill a vacancy. She was  
20 elected to the office in 2000 and re-elected in 2002  
21 to a four-year term. She has served on the Federal  
22 Election Commission Advisory Panel and the Board of

17

1 Directors of the Help America Vote Foundation. In  
2 2005, she was elected President of the National  
3 Association of Secretaries of State. She's the  
4 former President of the National Association of  
5 State Election Directors.

6 Prior to her EAC appointment,  
7 Commissioner Davidson served on the EAC's Technical  
8 Guidelines Development Committee. Throughout her  
9 career, Donetta Davidson has shown an incredible  
10 ability to lead. From her time as a County official



11 where she was elected to State-level administration  
12 boards to her time as Secretary of State where she  
13 was elected as President of NASS, Commission  
14 Davidson has always been seen as a leader by her  
15 peers. This has certainly held true from her time  
16 on the EAC. From day one, Commissioner Davidson had  
17 grasped the reins of leadership, stepping up as the  
18 EAC leader for issues regarding the voting system  
19 guidelines.

20       It is with this background that she will  
21 take over the chair of the EAC and lead this great  
22 agency.

18

1       Is there a second for this nomination?

2       COMMISSIONER HILLMAN: Yes, there is a  
3 second.

4       CHAIRMAN DeGREGORIO: We have a second  
5 for the nomination for Donetta Davidson to be the  
6 Chairman of the EAC.

7       COMMISSIONER HILLMAN: And unless  
8 Ms. Davidson is opposed, I don't know that we need  
9 to vote on it.

10       CHAIRMAN DeGREGORIO: All of those in  
11 favor of Donetta Davidson being the 2007 chair of

12 the Election Assistance Commission signify by saying  
13 aye.

14 MEMBERS IN UNISON: Aye.

15 CHAIRMAN DeGREGORIO: Opposed, nay.

16 [No response.]

17 CHAIRMAN DeGREGORIO: The ayes have it.

18 Congratulations.

19 COMMISSIONER DAVIDSON: Thank you.

20 COMMISSIONER HILLMAN: Congratulations.

21 [Applause.]

22 COMMISSIONER DAVIDSON: Well, I look

19

1 forward to 2007. It definitely is an honor and a  
2 privilege to serve as chair in the future year for  
3 the Election Assistance Commission, and I think  
4 we'll accomplish a great deal. As you can see by  
5 Mr. Wilkey's report, we have a lot of reports coming  
6 out next year. So it look like we're going to have  
7 a very busy year, but I think it very beneficial  
8 year.

9 So thank you very much. I appreciate  
10 it.

11 CHAIRMAN DeGREGORIO: Thank you.

12 Normally, we would elect the Vice Chair

13 at this meeting, but I think, as Madam Counselor has  
14 informed us, that neither Commissioner Hillman or  
15 myself are eligible to be Vice Chair because we've  
16 already served and are serving still in a term. So  
17 someone else will be Vice Chair. So we will not  
18 have a Vice Chair until one is selected that's  
19 eligible.

20 So thank you.

21 Our next order of business --

22 COMMISSIONER HILLMAN: Mr. Chairman, it  
20

1 might be useful to indicate when the new term  
2 begins. Sometimes when someone is elected, they  
3 take over right away, but our process has been that  
4 the chair begins the first of the year.

5 CHAIRMAN DeGREGORIO: Yes.

6 COMMISSIONER DAVIDSON: January 3rd.

7 CHAIRMAN DeGREGORIO: The Chair-to-be  
8 Davidson will be inaugurated on January 3rd, I  
9 believe. I'll talk about that at the very end, but  
10 January 3rd, I believe, is the date we're going to  
11 swear her in as Chair.

12 We will now turn to a report on the  
13 Technical Guidelines Development Committee by its

14 Chairman, Dr. William Jeffrey. Dr. Jeffrey is the  
15 thirteenth director of the National Institutes of  
16 Standards and Technology. He was nominated by  
17 President Bush on May 25, 2005 and confirmed by the  
18 Senate in July of 2005. As Director of NIST, Dr.  
19 Jeffrey oversees an array of programs that promote  
20 U.S. innovation and industrial competitiveness by  
21 advancing measurement science standards and  
22 technology in ways that enhance economic security

21

1 and improve the quality of life for all of us.

2       Before we get to Dr. Jeffrey's report, I  
3 think it's important to note the close relationship  
4 that NIST and the EAC have had since our beginning.  
5 Since the inception of the EAC and the distribution  
6 of funds, we've given out \$8 million now to NIST to  
7 help the EAC with our work. For Fiscal Year 2007,  
8 the EAC has requested nearly \$5 million for NIST,  
9 which is about 30 percent of our requested budget.

10       The EAC appreciates all the hard work  
11 that NIST has done and looks forward to working with  
12 NIST more as the EAC's testing and certification  
13 program gets underway. We know that the TGDC held a  
14 two-day meeting earlier this week and would

15 appreciate any thoughts that Dr. Jeffrey has on the  
16 meeting in our work with NIST and the TGDC.

17 Dr. Jeffrey.

18 DR. JEFFREY: Mr. Chairman,  
19 Commissioners, thank you very much for the  
20 opportunity to brief you this morning. As you said,  
21 I'm Dr. William Jeffrey, Director of the National  
22 Institute of Standards in Technology and under the

22

1 Help America Vote Act of 2002 also the Chairman of  
2 the Technical Guidelines Development Committee.

3 The TGDC advises the EAC. In July of  
4 2007, the TGDC will deliver to EAC a new version of  
5 the Voluntary Voting System Guidelines referred to  
6 as the VVSG 2007, a cumbersome but very important  
7 product.

8 COMMISSIONER HILLMAN: Excuse me, Dr.  
9 Jeffrey. I think you might need to move the  
10 microphone a little closer. Thank you.

11 DR. JEFFREY: Thank you. That's  
12 definitely better.

13 The TGDC, as you mentioned, just  
14 completed a two-day meeting, and I'll be providing  
15 you with a brief update on that work and on actions

16 being taken. First, however, some recent news  
17 accounts regarding one of the reports discussed at  
18 the TGDC raised the question of whether the report's  
19 recommendations on the electronic voting system  
20 represented the official position of NIST. This  
21 draft report was prepared by staff at NIST, working  
22 with the Security and Transparency Subcommittee of  
23

1 the TGDC at their request. It was specifically to  
2 serve as a point of discussion in the meetings.

3       The report was a discussion draft and  
4 did not represent a consensus view or a  
5 recommendation for either NIST or the TGDC, and I  
6 just wanted to make sure that that was clear.

7       The VVSG 2005 contained new material in  
8 usability, accessibility, and security, but much of  
9 the remaining material was taken from the 2002  
10 voting systems standards. VVSG 2007 will be a  
11 complete rewrite of VVSG 2005. The new requirements  
12 will be more precise, directly testable, and clearer  
13 to voting system vendor and test laboratories, thus  
14 we expect an overall improvement in voting system  
15 quality and testing.

16       In the area of usability and

17 accessibility, usability performance benchmarks are  
18 currently being researched. These benchmarks will  
19 result in more accurate and realistic usability  
20 performance metrics and thus voting systems that are  
21 easier to use. Accessibility requirements also are  
22 being updated. Finally, there are updates to

24

1 requirements for alternative languages,  
2 documentation, plain language, and voter and system  
3 response timing.

4 In the area of security, VVSG 2007 will  
5 require new voting systems to be software  
6 independent. This means that the accuracy of the  
7 system's electronic records will be able to be  
8 independently audited against a voter-verified  
9 record. The only systems that do this currently are  
10 paper based; however, the TGDC is including a  
11 provision for researchers or developers to create  
12 new and innovative, possibly paperless, voting  
13 system approaches that would still be independently  
14 auditable and conform to 2007 guidelines. This may  
15 include graphic-based systems that potentially  
16 promise greater usability and accessibility as well  
17 as security.

18           There also will be requirements to  
19 improve the accessibility of paper-based systems and  
20 requirements to improve the reliability and  
21 usability of voter-verified paper audit trail  
22 systems. In the 2007 guidelines, radio frequency

25

1 and wireless will no longer be permitted for use on  
2 voting systems. There will be requirements for test  
3 labs to conduct open-ended vulnerability testing on  
4 voting systems. Set-up validation requirements also  
5 are being updated to permit inspection of whether a  
6 voting system's installed software is the correct  
7 version.

8           Finally, other securities areas being  
9 updated include access control, auditing,  
10 cryptography, event logging, and physical security.  
11 In the core requirements, voting system quality,  
12 reliability, and accuracy requirements are being  
13 written to improve voting system design and testing  
14 techniques for ensuring that voting systems are  
15 robust and work properly. To promote quality  
16 systems, requirements for vendors to comply with ISO  
17 9000 and 9001 are being examined.

18           With respect to commercial off-the-shelf



19 software or hardware, both requirements and testing  
20 issues such as whether to exclude certain kinds of  
21 products from in-depth source code reviews are being  
22 examined. Finally, conventions for software coding

26

1 also are being examined, including requirements for  
2 software languages that contain improved integrity  
3 and security constructs. Lastly, the VVSG itself  
4 will be written to be more readable and usable to  
5 all audiences.

6       Now, there have been seven TGDC meetings  
7 over the past two years, the most recent being on  
8 December 4th and 5th. The TGDC is divided into  
9 three subcommittees. Since the last TGDC meeting in  
10 April, there have been a total of 47 subcommittee  
11 teleconferences. This staff supports the  
12 subcommittees through research, developing draft  
13 material, and then the subcommittee members  
14 subsequently make recommendations to the TGDC as a  
15 whole.

16       The recent meeting was perhaps the most  
17 important to date and resulted in major  
18 recommendations, including some of the ones that I  
19 discussed, such as requiring the software

20 independence of future voting systems, creating a  
21 process to include new and innovative voting systems  
22 with greater usability, accessibility, and security,  
27

1 prohibiting RF wireless in future voting systems,  
2 improving the methods for measuring reliability and  
3 accuracy, improving and updating usability and  
4 accessibility, and improving the requirements for  
5 the overall reliability of VVPAT voting systems.

6       The TGDC has seven months left to  
7 complete the research that will be embodied in the  
8 VVSG 2007. We are planning one or two additional  
9 TGDC meetings and roughly 40 teleconferences before  
10 we are complete. VVSG 2007 will be delivered to you  
11 in July of 2007.

12       From a NIST perspective, let me say that  
13 after delivery of that product to you, NIST is  
14 prepared to assist the EAC in vetting the VVSG with  
15 other organizations, including the EAC Standards  
16 Board, the Access Board, other voting-related  
17 organizations, such as the National Association of  
18 State Election Directors and the National  
19 Association of Secretaries of State. The EAC will  
20 conduct a public review of the VVSG and NIST will be

21 happy to assist you in any way possible, if

22 requested, to perform research in response to any

28

1 comments you receive.

2 Thank you very much for the opportunity

3 to testify, and I'd be happy to address any

4 questions you may have.

5 CHAIRMAN DeGREGORIO: Thank you,

6 Dr. Jeffrey.

7 Questions?

8 COMMISSIONER DAVIDSON: I have one, and

9 I think it's also important to mention before I ask

10 the question that this is a draft that comes to us

11 from the TGDC and it is delivered in July, and from

12 that time, I think it's important to kind of tell

13 the audience we go into a period of preparing it and

14 getting it ready to put on the Register, Federal

15 Register, for 90 days, and then we take comments.

16 The last time, we received over 6,500 comments. We

17 have no idea -- because this is far more detailed

18 this time. It may be a lot more comments.

19 So I don't want the public to feel that

20 this is something that's going to be done

21 immediately. After that, we even find and complete

1 guidelines, then at that point, our manufacturers  
2 will have to develop and build and then certify. So  
3 this is not something that's going to be done  
4 immediately, and I do feel it's important that the  
5 public understand that.

6       But the question I have for you,  
7 Dr. Jeffrey, is do you feel that you've got enough  
8 and complete direction from the committee to move  
9 forward in the development? As you say, there's  
10 only seven months left, and they can't come back in  
11 March and have you go in a different direction. Do  
12 you feel that you've got the correct and enough  
13 information from them?

14       DR. JEFFREY: Thank you very much,  
15 Commissioner. Yes. I think that this last meeting  
16 was incredibly important in terms of providing  
17 guidance on some of the very large issues that would  
18 have required different paths that we would pursue,  
19 and I think the guidance from the TGDC members was  
20 quite, quite clear on that.

21       There is a lot of work to be done, as I  
22 mentioned, at least 40 teleconferences and probably

1 two more TGDC meetings to help clarify pieces, but I  
2 think in terms of the large direction, we've got a  
3 very good idea as to the direction to go.

4 COMMISSIONER DAVIDSON: Thank you.

5 COMMISSIONER HILLMAN: Dr. Jeffrey, I do  
6 have a question, and I want to go back to the  
7 comment you made at the beginning of your remarks  
8 regarding the article that hit the front page of  
9 "The Washington Post", and if memory serves me  
10 correctly, it was probably on the top half of the  
11 fold, which is a very strategic and important place.  
12 If 10 percent of the people who saw that article  
13 know about your statement to clarify and correct,  
14 I'm probably being generous so that most of people  
15 who saw that article won't know the follow-up. I  
16 didn't see the correction from "The Washington Post"  
17 on either the top or the bottom half of the front  
18 page or any other page.

19 Without anything to get in the way of  
20 the work of the TGDC or impede the process, as we  
21 move forward with this work and with the intense  
22 interest in how voting systems are going to be

1 developed over the next several years, what can we  
2 do to make certain that when these discussion papers  
3 and other draft documents are made available, that  
4 on the one hand, NIST can continue to honor its  
5 commitment to transparency; on the other hand, not  
6 have the public believing that this is NIST official  
7 statement, particularly since we know at least one  
8 member of the U.S. Senate? And perhaps one member  
9 of the House of Representatives made statements that  
10 they're ready to take action based on what they  
11 believed was NIST's position on the issue.

12 DR. JEFFREY: Absolutely. First, in  
13 terms of the specific incident, we're working very  
14 hard to clarify to the relevant parties exactly what  
15 position was, what that paper was, and we have  
16 contacted all of the major press outlets and have  
17 disclaimers on the documents. In terms of moving  
18 forward to prevent that, we are being very, very  
19 careful in the future. Clearly, the transparency  
20 and openness is an incredibly important component of  
21 all of the work that TGDC does and all of the  
22 technical support that we provide.

1           However, until the TGDC votes on the  
2 product, it is not an official position of TGDC and  
3 NIST is not in a role to make any official  
4 recommendations. It's not our job. We provide some  
5 technical background. So none of the documents that  
6 you ever see going forward will have a NIST moniker  
7 on it or logo. It will always be very clear that it  
8 is either a working draft of the subcommittee of the  
9 TGDC or if it's an approved, voted-on resolution,  
10 then it is a product of the TGDC. We will be very,  
11 very careful to ensure that. This time, we were not  
12 so careful and it caused confusion.

13           COMMISSIONER HILLMAN: Thank you. I  
14 appreciate that.

15           CHAIRMAN DeGREGORIO: Dr. Jeffrey, this  
16 document that Commissioner Hill noted that became  
17 public last Thursday, which was just a little over  
18 three weeks from the election, contained some  
19 language in there that suggested that your staff  
20 bases its conclusions and its recommendations on the  
21 fact that few problems were noted with the VVPAT  
22 usage in the November 7, 2006 election, and I just

1 want to know how does your staff gather information  
2 like that and how are they interacting with election  
3 officials and with the visibility of the community  
4 before they make conclusions like that. I'm aware  
5 of some problems of paper jams, ink jams, poll  
6 workers having problems putting paper in, some that  
7 I saw myself and that I read in the newspaper. So I  
8 just want to know what are you doing to gather  
9 research in a way that at least when you come out  
10 with this kind of research, that election officials  
11 in the visibility of the community can have greater  
12 faith.

13 DR. JEFFREY: Thank you very much.  
14 Again, thank you for the opportunity to elaborate on  
15 one of my clarifications, that the results of that  
16 paper are obviously based upon deliberations from  
17 the subcommittee, and what this did was assemble a  
18 dialogue and some of the recommendations that added  
19 research components to that. So a lot of the inputs  
20 that were in there came from a variety of sources,  
21 including TGDC members who are members of the  
22 subcommittee. It included dialogue with members of



1 actually some of the EAC Standards Boards, some  
2 numerous election officials, as well as press  
3 reports that were coming out after the election.

4       In terms of the underlying assumption as  
5 to where a lot of the data comes from, let me take a  
6 step back and say, first of all, that TGDC is very  
7 aware of some of the problems that occur with paper  
8 systems, paper jams, some readability and  
9 accessibility issues, and what you'll see in the  
10 VVSG 2007 are much tighter requirements on the  
11 performance and usability and accessibility of the  
12 systems. Clearly, there were issues that cropped  
13 up, and there was a significant amount of discussion  
14 at the recent TGDC meeting on some of the problems  
15 that do pop up in the paper systems.

16       So I think that we will be addressing  
17 pretty strongly in the VVSG 2007 a lot of the things  
18 that make the future systems, including paper  
19 systems, more useable and more reliable.

20       CHAIRMAN DeGREGORIO: Thank you,  
21 Dr. Jeffrey. Thank you for your report. I  
22 appreciate your work and your leadership on the

2 DR. JEFFREY: Thank you very much and  
3 thank you for your leadership, Mr. Chairman and  
4 Commissioners.

5 CHAIRMAN DeGREGORIO: Our next item of  
6 business on the agenda is the adoption of the fraud  
7 and intimidation report. One of the more intense  
8 and ongoing debates circles around the issues of  
9 fraud and intimidation in elections. There seems to  
10 be little consensus of the existence and even types  
11 of voting fraud and intimidation that exists and are  
12 present in elections.

13 We at the EAC understand that these are  
14 complex issues that are not easily studied; thus  
15 over the past year, as required by the Help America  
16 Vote Act, the EAC staff and consultants began  
17 initial research on these issues. The purpose of  
18 the study was to develop a working definition of  
19 voting fraud and voter intimidation and to propose  
20 methods for conducting a more comprehensive  
21 nationwide analysis of these issues. Their work is  
22 accumulating today with the proposal on the Report

36

1 on Voter Fraud and Voter Intimidation.

2 I'll ask our General Counsel, Julie

3 Hodgkins, to explain the research and the project  
4 and the report before us.

5 MS. THOMPSON-HODGKINS: Thank you, Mr.  
6 Chairman, and I think you're correct. One can  
7 scarcely generate a more heated debate than by  
8 posing the question of whether fraud or to what  
9 extent frauds impacts our elections. While this  
10 topic has been studied and written about by many  
11 different groups and individuals in the past, there  
12 appears to be little consensus on what even  
13 constitutes voting fraud and voter intimidation.

14 So in 2005, EAC along with its Board of  
15 Advisors decided that voting fraud and voter  
16 intimidation were important topics to be studied,  
17 but just so you know, EAC did not enter this initial  
18 review lightly. A great deal of thought was put  
19 into how to study this issue given its obvious  
20 hurdles.

21 First, what is voting fraud and voter  
22 intimidation? Second, how do we measure the

37

1 presence of these problems in our elections? One  
2 obvious problem is that we can only measure  
3 accurately that which is reported, complaints that

4 are filed, and then accessing information to those  
5 complaints can oftentimes be difficult because of  
6 the fact that cases are very seldom reported at the  
7 District Court level.

8         So rather than embarking on a full and  
9 complete study of what voting fraud and voter  
10 intimidation impacts our elections, EAC decided to  
11 take an initial look at what information was already  
12 out there amount these topics with an eye towards  
13 developing a working definition of the terms and  
14 toward recommending methodology for future research  
15 in this area. To conduct this review, EAC hired two  
16 consultants: Jobe Sarvo and Toba Wang. These  
17 consultants represented different parties and  
18 different ideological positions and ensured that our  
19 review would be conducted in a bipartisan manner.

20         These two consultants did a tremendous  
21 job of culling through the mountains of paperwork  
22 out there on this particular topic, including

38

1 reviewing articles, books, reports, news clips, and  
2 cases. In addition, they compiled a list and  
3 interviewed experts in this area, including persons  
4 who are involved in the administration of elections,

5 persons who are on the front line actually  
6 prosecuting these types of elections, and others  
7 that have studied this topic in the past.

8       The consultants' findings were presented  
9 to a working group of advocates, election officials,  
10 prosecutors, and other experts on elections fraud.  
11 The consultants and the EAC collaborated on a final  
12 report, that which has been presented to you for  
13 consideration today. That report summarizes the  
14 work performed by the consultants. Their research  
15 showed that while there have been many studies and  
16 reports on this topic, there has never been a  
17 comprehension nationwide study of voting fraud and  
18 voter intimidation.

19       It also showed that there is no real  
20 consensus on what types of fraud are out there or  
21 how big of a problem that it may be. Similarly,  
22 there is not consensus on what is meant by the

1 phrases voting fraud and voter intimidation.

2       Even though this report is a summary of  
3 the consultants' work, the entire summaries created  
4 by the consultants of all of their interviews and  
5 the reviews of articles, books, reports, and cases

6 are made available as appendices to this report.

7 From this review, staff determined that EAC should

8 focus on the study of elections crimes. The

9 colloquial definition of voting fraud and voter

10 intimidation is much broader than just criminal

11 activity or just acts of fraud. Some feel that

12 civil wrongs or bad acts can be considered

13 intimidation. Similarly, there are some that feel

14 that the lawful application of procedures can result

15 in the impermissible voter suppression.

16 Criminal activity and civil wrongs are

17 handled in very different ways. Criminal acts are

18 prosecuted by government agencies while civil acts

19 are generally prosecuted by individual plaintiffs

20 and the government agencies only become involved

21 when things such as civil rights are violated.

22 Further, criminal activity is readily defined by the

40

1 various State and Federal statutes. What is an

2 actionable civil wrong, though, can vary from case

3 to case.

4 Last, we believe that EAC can study

5 election crimes to ensure that we are evaluating all

6 forms of criminal activity that is election related,

7 not just focusing on issues of fraud or just issues  
8 of intimidation, but any types of crimes that are  
9 election related. There are a few exceptions that  
10 we've carved out and those exceptions are things  
11 such as campaign finance violations, ethical  
12 violations, and violation of the Hatch Act.

13       Staff has also made recommendations for  
14 future EAC study of election crimes. The report  
15 detailed the 16 recommendations that were made by  
16 the consultant or members of the working group. The  
17 staff accepted all or parts of many of these  
18 recommendations, and the recommendations that we  
19 have future study are as follows:

20       We believe that the EAC should conduct a  
21 survey of chief election officers to review and  
22 assess their administrative complaint, that is to

41

1 find out how many complaints have been filed with  
2 the chief election officers with regard to issues of  
3 voting fraud or voter intimidation. Perhaps we  
4 should change to using our new terminology, and that  
5 is election crimes. That review would be a little  
6 broader, actually, than their administrative  
7 complaint procedures because, as you will recall,

8 HAVA required States to adopt an administrative  
9 complaint procedure in order to take in complaints  
10 related to HAVA violations. Now, we believe that  
11 many States have probably also received complaints  
12 that are outside of those limits, some of which they  
13 may have taken and adjudicated and others which they  
14 may not have, but we would like to get some  
15 information on both complaints that were filed as  
16 part of that administrative complaint procedure as  
17 well as outside of that procedure.

18       The second phase is that many State  
19 election offices have started developing their own  
20 election crimes investigation units. We'd like to  
21 find out from those units what types of complaints  
22 that they have received and of those complaints,

42

1 which ones referred to law enforcement for  
2 prosecution.

3       The third element is to survey law  
4 enforcement and prosecutorial agencies regarding  
5 complaints and charges of voting crimes. So we  
6 would go out to the District and County Attorneys,  
7 certainly to the U.S. Attorneys and ask them to  
8 provide us with information with regard to



9 complaints that were filed, charges that resulted,  
10 prosecutions that followed, and any convictions that  
11 they may have obtained. Once we have all this  
12 information, the staff recommends that we analyze  
13 the survey data in light of the State laws and  
14 procedures that are out there. There's been a great  
15 deal of debate as to whether or not laws such as  
16 voter ID actually impact voter fraud. Well, with  
17 this data, we could actually start taking a look at  
18 whether or not voting fraud exists in places that  
19 have a voter ID law, whether or not it's a greater  
20 amount or a lesser amount.

21       We could also look at the existence of  
22 voting fraud in various regions of the country to

43

1 see if it is centralized in one area or what the  
2 exact geographic dispersion of that is.

3       Mr. Chairman and Commissioners, this is  
4 the final report which is before you today. The EAC  
5 staff recommends that you adopt this report as  
6 final, including the working definition of election  
7 crimes and the recommendations for future EAC  
8 studies of election crimes. I'll be happy to answer  
9 any questions that you may have regarding this

10 report.

11 CHAIRMAN DeGREGORIO: Okay. We have the  
12 recommendation by staff on this issue. We can have  
13 discussion once we have a motion to adopt the  
14 report. So is there a motion to adopt the election  
15 crimes report presented by General Counsel as EAC's  
16 final report on the initial review of voting fraud  
17 and voter intimidation?

18 COMMISSIONER DAVIDSON: So moved.

19 COMMISSIONER HILLMAN: Could you just  
20 read it? I'm sorry. Just read it again, because  
21 you said something about final report, and that  
22 confused me.

44

1 CHAIRMAN DeGREGORIO: Okay.

2 COMMISSIONER HILLMAN: Can you read what  
3 the motion is again, please?

4 CHAIRMAN DeGREGORIO: It is moved that  
5 the EAC adopt the election crimes report presented  
6 by our General Counsel as EAC's final report on the  
7 initial review of voting fraud and voter  
8 intimidation.

9 COMMISSIONER HILLMAN: Okay.

10 CHAIRMAN DeGREGORIO: So the final

11 report on the initial review.

12 COMMISSIONER HILLMAN: I'll second that  
13 motion.

14 CHAIRMAN DeGREGORIO: All right. Now we  
15 can have discussion of the issue. Questions for Ms.  
16 Hodgkins?

17 COMMISSIONER HILLMAN: I do have a  
18 couple of questions. In your presentation, Julie,  
19 you referred to one of the things we would not be  
20 looking at would be ethical violations, and I think  
21 I understand that, but ethical violation of what?

22 MS. THOMPSON-HODGKINS: State laws,  
45

1 Federal laws, or regulations with regard to ethical  
2 behavior in campaigns with regard to ethical  
3 behavior for election officials, those sorts of  
4 things, things that would no fall into the  
5 administration of elections, but strictly follow  
6 along their ethical duties.

7 COMMISSIONER HILLMAN: Okay. Our  
8 comprehensive study, do we know if the information  
9 I'm about to ask already exists or are we going to  
10 have to explore this in the comprehensive study; and  
11 is in how States collective information about

12 complaints that have been lodged at the local level,  
13 local jurisdiction, particularly if that complaint  
14 is being investigated at the local level, how will  
15 we know if those complaints have made their way up  
16 to the State office and, therefore, would be  
17 factored into our study?

18 MS. THOMPSON-HODGKINS: I think I  
19 understand your question, and I'll try to answer it.  
20 So if I don't answer it exactly what your question  
21 is, ask me again; I'll try again. We are going to  
22 be studying those complaints that the State office

46

1 has received. So we will be getting information  
2 with regard to, like I said, either complaints filed  
3 directly through the administrative complaint  
4 procedure or other complaints that are filed outside  
5 of that procedure. In addition, we can certainly  
6 compare those to complaints that are filed with the  
7 local law enforcement agency in that particular  
8 county to see whether or not we captured both pieces  
9 of that.

10 Does that answer your question?

11 COMMISSIONER HILLMAN: Well, it might.

12 Here we go. Let me just use an example. If

13 somebody files a complaint, lodges a complaint, with  
14 the County Clerk and the County Clerk passes it on  
15 to the County Sheriff and the County Sheriff is  
16 looking into it, how we will know if that complaint  
17 has been -- the information shared with the State  
18 office so that when we look at the data at the State  
19 office, how are we going to know whether we're  
20 capturing complaints that have been lodged at the  
21 local jurisdiction level, whether it's city or  
22 county?

47

1 MS. THOMPSON-HODGKINS: Okay. I think I  
2 understand, and because we would be capturing  
3 information about the complaints that have been  
4 provided to the State, regardless of their source,  
5 and because we will be capturing information with  
6 regard to those complaints that have been referred  
7 by the local official to the County Police  
8 Department or to the County Attorney, then we can  
9 compare those two pieces of information and assure  
10 that -- or determine whether or not that information  
11 that was referred to the County Attorney has, in  
12 fact, been also transferred to the State.

13 COMMISSIONER HILLMAN: Do you think

14 we'll also be able to capture complaints that may  
15 have lodged at the local jurisdiction that were not  
16 referred for further investigation?

17 MS. THOMPSON-HODGKINS: That's certainly  
18 something that we can consider as to whether or not  
19 we want to expand. I mean, initially the way the  
20 staff has proposed this is that we would survey just  
21 at the State level, but, you know, we could  
22 certainly consider whether or not we should expand

48

1 the survey of complaints filed with election  
2 officials to a County level that would certainly  
3 significantly expand the scope of the survey.

4 COMMISSIONER HILLMAN: And one more  
5 question. It may be more of a comment than a  
6 question, but it's a rub that I expect is going to  
7 occur a little bit and I think EAC will need to  
8 address this as clearly as we can. A lot of  
9 non-governmental agencies set up hotlines or  
10 otherwise receive complaints from citizens alleging  
11 some form of fraud or intimidation, and most of the  
12 time, that sort of remains as anecdotal in the sense  
13 that we don't know whether that person then also  
14 filed the complaint with appropriate authority,

15 whether that's the election official or some other  
16 authority.

17       And so people are concerned about the  
18 seemingly thousands of complaints that are lodged  
19 which we refer to as anecdotal because they're not  
20 captured in anybody's data. They're not officially  
21 lodged, and the extent to which, because of our  
22 limited time and resources, as I understand it, is

49

1 the reason why we are having to narrow our research  
2 down to what we call hard data, what's been  
3 officially lodged, what's been either followed  
4 through or referred to, you know, the prosecuting  
5 authority or otherwise. And I know that there has  
6 been some discussion about this, but I would  
7 appreciate it if you could just address a little bit  
8 what EAC believes it can or cannot do with all those  
9 other kinds of complaints that we know exist.

10       MS. THOMPSON-HODGKINS: Well, I actually  
11 think you covered it quite well, but I think you're  
12 absolutely correct. Many of these complaints that  
13 are made to hotlines do remain rather anecdotal in  
14 that there's very little understanding of what sort  
15 of follow-up is done on those to determine whether

16 or not the complaints were truly complaints of  
17 fraud; they were complaints of mistake that were  
18 made or other issues that may not be criminal in  
19 nature, but that affected certainly that person's  
20 experience in the voting process.

21           You are correct that the EAC does not  
22 possess the resources to be able to follow up on

50

1 each and every one of those complaints, and that is  
2 why we have recommended, the staff has recommended,  
3 to you that we limit our study to the information  
4 that we believe we can obtain a little bit more  
5 readily with regard to the complaints that have been  
6 officially lodged.

7           COMMISSIONER HILLMAN: I don't have any  
8 questions at this time, but I do want move back  
9 before we take a vote after you all have a chance to  
10 ask questions.

11           CHAIRMAN DeGREGORIO: Commissioner  
12 Davidson.

13           COMMISSIONER DAVIDSON: Just to follow  
14 up on that theme when you say you're going to the  
15 States initially for the information and talking  
16 about the complaints that might be filed with the



17 county and making sure we get as much as we can,  
18 will you ask the Secretaries of State and, you know,  
19 make them aware, the Secretaries of State and the  
20 Directors of Commissions in States that have boards  
21 and commissions, will you be asking them to have  
22 their counties report any problems to them? You

51

1 know, maybe they don't right now initially, but will  
2 we be asking that from the Secretaries of State and  
3 the boards?

4 MS. THOMPSON-HODGKINS: Well, I think  
5 the initial survey would be to gather the  
6 information that is already out there that they  
7 have. Certainly, that may be something that we want  
8 to address in the future with those States and  
9 counties, is trying to get a better collection of  
10 that information so that we can continually take a  
11 look at this issue and see whether or not progress  
12 has been made and whether or not the number of  
13 reports has increased or decreased and various types  
14 of things.

15 So it's quite possible that that would  
16 be the case. I think it's very important in a study  
17 like this to develop relationships. Certainly we

18 have a relationship with the Secretaries of State  
19 and State Elections Directors, and we want to  
20 continue to foster that relationship so we make sure  
21 we get the best information that is out there, but I  
22 think we also need to foster some relationships with

52

1 those prosecutorial agencies that are out there too  
2 so that we can get them to help us understand this  
3 issue.

4 MS. DAVIDSON: Thank you.

5 CHAIRMAN DeGREGORIO: Ms. Hodgkins, a  
6 lot work has gone into this. I realize it's an  
7 initial report, but just looking through it, there's  
8 three pages that list articles and reports on this  
9 topic, and that will be made available, as you said,  
10 as an attachment to this on our website, all these  
11 articles.

12 MS. THOMPSON-HODGKINS: Correct.

13 CHAIRMAN DeGREGORIO: There are some  
14 significant articles here that discuss this issue  
15 and also the work and you and our staff and the  
16 consultants have put in, particularly your work in  
17 the definition of election crimes. There's three  
18 pages here, and that covers a lot of detail on what

19 might constitute an election fraud. A lot of work  
20 has gone into that, and I appreciate that kind of  
21 work too, because I do think that it's going to be  
22 helpful as the EAC moves forward for a future study

53

1 that this initial body of work has instructed EAC on  
2 what to do next.

3       So I commend you and our staff and the  
4 consultants for the work that you've done in this  
5 area.

6       MS. THOMPSON-HODGKINS: Well, thank you,  
7 Mr. Chairman. As you stated, there's just a  
8 tremendous body of work that has already been done  
9 in this area, and I really have to give the credit  
10 where the credit is due. The consultants did a  
11 tremendous job of trying to -- of getting a hold of  
12 that information and synthesizing it and giving us a  
13 lot of information to work with.

14       COMMISSIONER HILLMAN: Mr. Chairman, I  
15 think at this time, there is a statement that I want  
16 to read. I think it's probably appropriate that I  
17 read the statement before we take the vote. The  
18 statement is in support of the report, but it is  
19 something that I feel important that I share with

20 you, my colleagues.

21 "Our vote today will mark our acceptance

22 of the core recommendation that voting fraud and  
54

1 voter intimidation deserve more than just anecdotal  
2 assessment. We have encountered difficulties of  
3 getting past this first phase of our study, but I am  
4 very pleased that we are now moving toward the next  
5 steps.

6 EAC will soon undertake the first  
7 nationwide comprehensive study of election crimes  
8 based on hard data. It is a huge project, and we  
9 have agreed that the findings will be released to  
10 the public by the end of 2007, and I know that we  
11 are all committed to keeping this timeframe. It is  
12 my expectation that based on the findings of the  
13 comprehensive study, EAC will have useful data that  
14 can inform future discussions and debates about  
15 voting fraud, voter intimidation, and other election  
16 crimes. It is my hope that based on the data, EAC  
17 will move forward early in 2008 to release suggested  
18 standards and/or best practices that will be useful  
19 to election officials and prosecuting authorities as  
20 they collect and assess claims and acts of election

21 crimes and bring offenders to justice. I also hope

22 EAC will continue to collect and assess data on

55

1 election crimes from future Federal election cycles.

2       While I am pleased with the direction

3 that we are taking on this important topic, I am

4 also aware that some have voiced their concerns and

5 raised questions about the delay the EAC encountered

6 in releasing today's report. As we have previously

7 explained, EAC's process to review the consultants'

8 findings took far longer than anticipated.

9 Hindsight is always 20-20 vision, and we at the EAC

10 now understand that we should have handled the delay

11 differently. The resulting situation from the delay

12 was both personally and professionally embarrassing

13 for me, and I truly hope this is the one and only

14 time EAC will ever experience this type of difficult

15 circumstance."

16       Thank you.

17       CHAIRMAN DeGREGORIO: We've had a motion

18 and a second to adopt the election crimes report

19 presented by our General Counsel as the EAC's final

20 report and initial review of voting fraud and voter

21 intimidation. All those in favor of adopting this

22 report, signify by saying aye.

56

1 MEMBERS IN UNISON: Aye.

2 CHAIRMAN DeGREGORIO: All those opposed,

3 nay.

4 [No response.]

5 CHAIRMAN DeGREGORIO: The ayes have it.

6 The report is adopted.

7 MS. THOMPSON-HODGKINS: Thank you, Mr.

8 Chairman.

9 CHAIRMAN DeGREGORIO: The next order of

10 business is the adoption of the Administrative

11 Manual for Policy and Procedures.

12 Mr. Wilkey, this is your jurisdiction.

13 Would you please discuss this issue and present it

14 to us for adoption?

15 MR. WILKEY: Thank you, Mr. Chairman.

16 One of the first briefings I had when I arrived at

17 the EAC was with the then Chair of the Commission,

18 Commissioner Hillman, and she was, as you know,

19 actively involved as the Commission was starting and

20 took on some of the responsibility for -- you know,

21 we had no office, not much staff and trying to

22 assemble everything that we needed to know to start

57

1 a new agency, and she said to me at that time, You  
2 know, you came from a big State and probably when  
3 you started a new agency in the State Government,  
4 you would go to a, you know, variety of sources and  
5 pull a manual out and say here is how to start a new  
6 agency. That wasn't always the case in the Federal  
7 Government.

8       So we have spent quite a lot of time in  
9 developing from a variety of sources an  
10 administrative manual that covers a large number of  
11 issues for our staff, standards of conduct, hours of  
12 work, flex hours, absence and leave policy,  
13 temporary duty and travel, our compensation policy,  
14 our disciplinary and adverse action policies, our  
15 administrative grievance system, our Federal Equal  
16 Opportunity Recruitment Plan, and most importantly,  
17 one of more comprehensive pieces of this is our  
18 performance management system which was recently  
19 approved after much work with OPM by OPM and which  
20 will go in place in January of next year. OPM is  
21 working with us right now to identify a resource  
22 that we can use to do the training not just on the

1 content of the manual, but also work with us in  
2 helping to develop the necessary performance plans  
3 that go into effect early next year.

4       We are also hopeful that if things are  
5 good to us after we get out of our continuing  
6 resolution along with other Federal Agencies, that  
7 we will be able to hire a permanent human resources  
8 person to work with us on this.

9       Other issues that will be covered are  
10 awards programs in government and the use of  
11 government office equipment, parking policy,  
12 security and emergency management, all of the other  
13 issues related to emergency and employee emergency  
14 information, everything here that we need to  
15 function as an agency. Let me also say as an aside  
16 that we are privileged now to have a full-time  
17 Office of Inspector General staff. Some people  
18 would look at that as a nuisance. I come from a  
19 different feeling on that. The Office of Inspector  
20 General will be working with us as we move from  
21 still an agency in infancy, so to speak, in  
22 identifying other critical issues throughout next



1 year that we have additional procedures put in place  
2 for.

3           But I'm very pleased with this first  
4 step. I want to recognize the hard work of our  
5 Administrative Director, Diana Scott, our counsel,  
6 Julie Hodgkins, and Lucy Anton from the Office of  
7 Personnel Management who worked very carefully in  
8 making lots of suggestions as we worked through a  
9 number of drafts of this document, and I offer it to  
10 you and ask for your approval.

11           CHAIRMAN DeGREGORIO: I would like to  
12 move that the EAC adopt the Administrative Manual  
13 Policies and Procedures presented by our Executive  
14 Director as the EAC's official administrative  
15 manual. Do I have a second?

16           COMMISSIONER HILLMAN: Second.

17           CHAIRMAN DeGREGORIO: We have a second.  
18 Do we have discussion?

19           COMMISSIONER HILLMAN: I just want to  
20 add to what Mr. Wilkey said. I mean, when we were  
21 first appointed, Paul, on the one hand, little did I  
22 think we would be involved in the details of all the

1 administrative and human resource activities that go  
2 into setting up a Federal Agency. On the other  
3 hand, I think it probably is a useful exercise for  
4 commissioners and others to really understand what  
5 the Federal Government requires of agencies no  
6 matter how small.

7       We have to go through the same  
8 requirements with our little EAC as do the  
9 Department of Human Services and the Department of  
10 Labor, and so it gets to be very, very intense, and  
11 the fact that, you know, we are operating on a  
12 manual that's probably two or three inches to be  
13 built on, more things to be added, it's been an  
14 incredible labor, and I know, Mr. Chairman, that you  
15 did say that one of the things you hoped would be  
16 finished before your term as Chair ended was the  
17 administrative manual, and I'm pleased that we were  
18 able to get that done.

19       And I think that perhaps when Congress  
20 set up the EAC, the thing they never factored in was  
21 that we do have to comply with a myriad of rules and  
22 regulations, particularly as it pertains to

1 administrative and financial procedures in human  
2 resources and all that it takes for the work to be  
3 done on this when you don't have either the people  
4 or the money or the resources and certainly the  
5 time, because we had to start operating. We didn't  
6 have the luxury of a year of startup. We had to  
7 start operating the day we were put together.

8       So I just want to thank the staff for  
9 seeing this through. It would have been so easy to  
10 ditch this and wait until OPM or somebody called us  
11 on it, but we did follow it through to make sure  
12 that we were ahead of the curve, and I appreciate  
13 that.

14       COMMISSIONER DAVIDSON: I just want to  
15 add to the Commissioner's statement that I think our  
16 staff is thrilled too, because they have the  
17 information that they need at hand, and any time we  
18 have someone new join, it will be very helpful to be  
19 able to give it to them. So it's a guidance for the  
20 staff and I think they're very thrilled that it's  
21 been accomplished and we can move forward.

22       CHAIRMAN DeGREGORIO: I just want to

1 echo my colleague's comment on this manual, because

2 a lot of work has gone into it. I know that  
3 Commissioner Hillman and I talked about it the very  
4 first day, and there's been a lot that's gone into  
5 it that I had no idea, none, of things that you have  
6 to go through in the Federal Government to get  
7 something like this adopted. It's finally here, and  
8 it's an honor to have this done at my last meeting  
9 as Chair.

10       So we have a motion. We have a second.  
11 All those in favor of adopting the Administrative  
12 Manual on Policies and Procedures for the EAC  
13 signify by saying aye.

14       MEMBERS IN UNISON: Aye.

15       CHAIRMAN DeGREGORIO: Opposed, nay.

16       [No response.]

17       CHAIRMAN DeGREGORIO: The ayes have it.

18       Mr. Wilkey, thank you.

19       COMMISSIONER HILLMAN: Super.

20       MR. WILKEY: Thank you, Mr. Chair.

21       COMMISSIONER HILLMAN: I'm about as  
22 excited on this as I am on the certification and

1 testing of the VVSG. I mean, you know, election  
2 officials may not appreciate it, but it's been a

3 long time coming.

4 CHAIRMAN DeGREGORIO: Thank you.

5 Well, our next order of business is an  
6 important order of business for the EAC and one of  
7 those milestones that's going to be looked as the  
8 history of the EAC is written. So this is an  
9 important day for us, not just for everything else  
10 we're discussing today, but this particular matter  
11 regarding the testing and certification program that  
12 we're going to adopt.

13 Today marks the completion of a very  
14 important process for the EAC and the voters of  
15 America. Today we are voting on the adoption of the  
16 EAC's and the Federal Government's first voting  
17 system certification program. Adoption of this  
18 important HAVA mandate has been our top priority for  
19 2006, and EAC staff and numerous experts around the  
20 country have worked very hard this year to produce  
21 the best program possible for the American people.

22 The adoption of this program presents a

64

1 landmark step in the Federal oversight of the  
2 Administration of Elections. The EAC certification  
3 program began to take shape at the adoption of the

4 Voluntary Voting System Guidelines in December of  
5 '05. These guidelines provide a comprehensive set  
6 of requirements against which voting systems can be  
7 tested to determine if the systems provide all the  
8 basic functionality, accessibility, and security  
9 capabilities required of these systems.

10 Today we take the next step by adopting  
11 the certification program. Though the program is  
12 voluntary, we fully expect that the program will be  
13 utilized by a vast majority of the States. This  
14 certification program will ensure that the voting  
15 systems used in our elections live up to the  
16 standards of the voting system guidelines. If a  
17 vendor misrepresents a product or violates our  
18 certification policy, we have the options of  
19 decertifying their product. Also, if a State calls  
20 the EAC and says there's a problem with the  
21 equipment that we certified, we'll go in and  
22 investigate.

65

1 It is this continued monitoring of the  
2 voting systems even after certification that creates  
3 such a high level of accountability. Voting system  
4 manufacturers have never been held to such a high

5 degree of accountability and transparency by the  
6 Federal Government. In addition to holding the  
7 manufacturers accountable, the EAC in conjunction  
8 with NIST will be holding the testing labs  
9 accountable through NIST's National Voluntary  
10 Laboratory Accreditation Program. This program will  
11 provide recommendations to the EAC regarding  
12 laboratory accreditation. After the EAC receives  
13 the recommendations for NVLAP, the agency's  
14 Executive Director will make the final determination  
15 regarding test lab accreditation. Therefore, the  
16 EAC and NIST will work together to hold the  
17 manufacturers of the equipment and the labs that  
18 test the equipment accountable.

19       It's also important to note that this  
20 whole process is transparent to the public with the  
21 EAC making all information available consistent with  
22 Federal law. After posting the draft manual of

66

1 testing and certification program in the Federal  
2 Register on October 2nd and conducting a hearing on  
3 the draft on October 26th, the EAC received over 400  
4 comments and suggestions on the draft manual. The  
5 EAC carefully reviewed each of those comments and

6 made changes it deemed necessary to further improve  
7 the testing and certification program.

8 Before voting on the adoption of the  
9 certification program, we will hear testimony from  
10 Brian Hancock and Gavin Gilmour about the  
11 certification program in its final form and the  
12 public comments that we received about the draft  
13 program. Before we have discussion, I need to make  
14 the motion. So I'm going to move that the EAC adopt  
15 the Voting System Testing and Certification Manual  
16 as presented and cause it to be published in the  
17 Federal Register.

18 Do I have a second?

19 COMMISSIONER HILLMAN: Second.

20 CHAIRMAN DeGREGORIO: We have a second.

21 Now we'll have a discussion on the manual itself by  
22 Brian Hancock. Brian Hancock is the EAC's Director

67

1 of the Voting System -- will be the Director of the  
2 EAC's Voting System Testing and Certification  
3 Program. He has over 20 years of experience in the  
4 field of election administration and voting system  
5 certification. This gentleman knows more about this  
6 stuff than anybody else in the country in my view.



7 Mr. Hancock will have the responsibility of managing  
8 this program, and he has been assisted in helping to  
9 develop this program with able assistance by our EAC  
10 Deputy Counsel Gavin Gilmour who provides legal and  
11 policy counsel for the full breadth of our programs  
12 and legal issues. He's also the EAC's designated  
13 ethics official. He's one of the authors of this  
14 program, and we're pleased to have both gentlemen in  
15 front of us to discuss with us how we came from the  
16 draft to the final report.

17       So, gentlemen, it's yours.

18       MR. HANCOCK: Thank you, Mr. Chairman.

19       First of all, please let me personally  
20 thank Gavin for his assistance on this document.  
21 The document would certainly not be in its final  
22 format without his detailed assistance. Thank you.

68

1       As you noted, Mr. Chairman, and by way  
2 of introduction to this, I'd like to say a few  
3 things about the results of the public comment  
4 process and some of the things that we have done  
5 since the EAC hearing on this topic at the end of  
6 October, as you noted. Again, you are correct.  
7 During this process, we received over 400 comments

8 during the 30-day open public comment period. Once  
9 the comment period ended on the 31st of October, EAC  
10 staff reviewed each of the comments and incorporated  
11 many of the comments into the final draft document.

12 These actually added six additional pages to the  
13 draft that we had at our public hearing in October.

14       After final review by senior staff, this  
15 draft was provided to each commissioner for your  
16 review as well. Let me say that most of the  
17 comments that we incorporated into the document  
18 clarified the previous language in the draft  
19 document. Comments that were not accepted were  
20 generally either non-specific commentary on the  
21 process or more appropriately addressed via future  
22 changes that will be coming to the VVSG document,

69

1 which we heard from Dr. Jeffrey very recently, or  
2 were simply outside the scope of the document  
3 itself.

4       In addition to all of this work, the  
5 manual and accompanying forms that we will be using  
6 have received their initial approval from the Office  
7 of Management and Budget under the Paperwork  
8 Reduction Act of 1995. We will now briefly outline

9 the program manual with a very broad discussion of  
10 the highlights of each chapter of the document.

11 COMMISSIONER HILLMAN: These are not the  
12 highlights, are they?

13 MR. HANCOCK: No. We're taking a second  
14 to warm up. There were go.

15 COMMISSIONER DAVIDSON: It's like a  
16 voting machine.

17 MR. HANCOCK: We hope not.

18 MR. GILMOUR: We're just going to take a  
19 quick moment to outline this document chapter by  
20 chapter.

21 Chapter One of the program serves as a  
22 general overview for the entire manual itself. It

70

1 sets forth EAC's authority, scope, and goals under  
2 the program and provides administrative information  
3 and definitions.

4 The next chapter in the manual, Chapter  
5 Two, Manufacturer Registration, requires the  
6 manufacturers to register with the EAC before they  
7 can submit a voting system for certification. This  
8 registration process provides the EAC with needed  
9 administrative information, but more importantly, it

10 serves as a tool to ensure two things: One, that  
11 manufacturers have the necessary program in place to  
12 participate in the program. For example, they need  
13 to show that they have quality control and aversion  
14 control programs in place; and secondly, that the  
15 manufacturers are aware of and will follow all of  
16 the procedure requirements of this manual at the  
17 very outset of the program. This basically makes  
18 sure they understand the program itself and that  
19 they're committing to following this process.

20       Ultimately, in the end, a manufacturer  
21 who does not meet the requirements of EAC's program  
22 will have their registration subject to suspension

71

1 and ultimately a manufacturer who has a suspended  
2 registration will not be able to submit voting  
3 systems for certification and will not be able to  
4 maintain their voting systems and will not be able  
5 to submit modifications to their systems.

6       MR. HANCOCK: Chapter Three of the  
7 document discusses when voting systems must actually  
8 be submitted for testing in order to obtain or  
9 maintain an EAC certification under our program.  
10 The chapter highlights when certification is

11 required. It describes the significance of the EAC  
12 certification and the effect of the EAC  
13 certification. Under this chapter, systems will  
14 usually be submitted to the EAC when: One, they are  
15 new to the marketplace; two, they've never been  
16 before received an EAC certification; three, when  
17 they're modified; or, four, when the manufacturer  
18 wishes to test a previously certified system to a  
19 newer set of standard or guidelines. This chapter  
20 also sets the requirements and procedures for  
21 receiving approval for making a de minimus change to  
22 a voting system and sets out the detailed and very

72

1 narrow requirements for receiving provisional  
2 pre-election emergency modifications to a voting  
3 system.

4 Chapter Four of the document discusses  
5 certification testing and technical review.  
6 Manufacturers must submit a voting system for test  
7 and review and they will need to do a number of  
8 things. Through a form that we will have on our  
9 website, an interactive form, they must submit an  
10 application to have their system tested. They must  
11 through the VSTL submit have accepted a test plan

12 for their submission, and they, of course, must test  
13 the voting system by an EAC accredited test  
14 laboratory. And, finally, the test report must be  
15 submitted, reviewed, and approved by the EAC.

16       Additionally, this chapter also requires  
17 test labs to notify the EAC directly and  
18 independently of any test anomalies or failures  
19 during testing and ensures that all anomalies or  
20 failures are addressed and resolved before testing  
21 is completed. All test failures, anomalies, and  
22 actions taken to resolve such failures will be

73

1 documented by the test lab in an appendix test  
2 report submitted to the EAC.

3       Chapter Five of the manual sets forth  
4 the steps a manufacturer must take prior to  
5 receiving its final grant of certification for any  
6 voting system. These steps will include the voting  
7 system's test lab performance of a trusted build of  
8 the software, the test lab's deposit of software in  
9 an approved repository, and the creation and  
10 documentation of system identification tools. It  
11 also describes procedures the EAC will take to  
12 document and publish certification information and

13 it requires that all certified voting systems post a  
14 mark of certification on their product.

15 MR. GILMOUR: Chapter Six of the program  
16 deals with the denial of certification. Chapter Six  
17 outlines the process EAC will use to deny a  
18 certification to a voting system. This chapter will  
19 apply to voting systems, one, after they have been  
20 tested by an accredited laboratory and after they've  
21 been reviewed by EAC technical reviewers and are  
22 then determined by the Executive Director not to

74

1 meet Federal voting systems standards. The program  
2 provides the manufacturer certain rights in the  
3 process, and these include an opportunity to cure  
4 defects that serve as the basis for the denial and  
5 an opportunity to be heard, essentially an  
6 opportunity for reconsideration and ultimate appeal  
7 to the Commission.

8 Chapter Seven deals with  
9 decertification. It sets our the procedure the EAC  
10 will follow to decertify a voting system. This is  
11 an important part of the process we've already  
12 discussed because ultimately it brings  
13 accountability to the process. This is our tool for

14 enforcing the program. Any certified voting systems  
15 that is, one, shown not to meet Federal voting  
16 systems standards or has been altered without  
17 following the requirements of the program, meaning  
18 it had some change that did not go through the  
19 process, or whose manufacturers have not followed  
20 the procedural requirements of the manual such that  
21 their voting system's quality configuration or  
22 compliance is questionable will be decertified.

75

1 This decertification action happens after there's  
2 been an investigation and an opportunity for the  
3 manufacturer to be heard. Once a system has been  
4 decertified, it may only be re-certified if  
5 resubmitted for full testing. In other words,  
6 there's no special process. That system must be  
7 retooled and ultimately resubmitted as a brand new  
8 system and tested from scratch.

9 MR. HANCOCK: Chapter Eight discusses  
10 the EAC's quality monitoring program. This chapter  
11 highlights the importance of quality in the design  
12 and production of voting systems and, personally, to  
13 my way of thinking, this is one of the most  
14 important new additions that we will have on this



15 program. The purpose of the EAC quality monitoring  
16 program is to provide an additional layer of quality  
17 control by things such as the ability to do  
18 manufacturing site reviews by doing additional  
19 review and testing of fielded voting systems to make  
20 sure that those systems are, in fact, the same  
21 systems that the EAC certified. Finally, another  
22 very important component of the program is the EAC

76

1 receiving reports of anomalies found in the fielded  
2 voting systems during actual elections.

3 MR. GILMOUR: Chapter Nine is entitled  
4 "Requests for Interpretation". It sets out the  
5 procedures that will allow manufacturers and EAC  
6 accredited test laboratories an opportunity to  
7 request official EAC interpretations of applicable  
8 voting system standards. These will probably be  
9 found, most likely, in the VVSG or potentially the  
10 VSS. This is an important program in that it will  
11 serve to ensure that voting systems standards are  
12 properly applied in testing and that the testing  
13 process is more efficient and effective. It does  
14 this by allowing a mechanism and tool to address the  
15 issues and concerns at the very beginning of a

16 process rather than at the end or in the midst of  
17 testing.

18       A library of EAC interpretations will be  
19 made publicly available on our website. This  
20 collection of opinions will be useful for  
21 manufacturers and EAC labs in applying an  
22 understanding of Federal Voting System Standards

1 and, of course, will also be available to the  
2 public.

3       Chapter Ten, Release of Certification  
4 Program Information, informs manufacturers of EAC  
5 policies and procedures regarding the release of  
6 certification program information. It also  
7 discusses their responsibilities in the event the  
8 information as proposed should be protected under  
9 law. EAC's policy in general is to make as much  
10 information available as practical and consistent  
11 with Federal law. The chapter does a number of  
12 things, but one of the things it does is provide a  
13 number of examples of the types of information EAC  
14 not only wants to make available, but actually wants  
15 to affirmatively publish on its website. This  
16 information includes information concerning

17 manufacturer registration, VSTL test plans, VSTL  
18 test reports, agency decisions, denials of  
19 certifications, issuance of certifications,  
20 information on certified voting systems operation  
21 components, features, and capabilities, information  
22 on appeals, reports of investigation and notice of

78

1 non-compliance, decertification actions,  
2 manufacturer facility review reports, and official  
3 interpretations of the VVSG or the VSS. This is not  
4 meant to be a full and complete listing of  
5 everything we would affirmatively publish, but  
6 rather is put forth to give the public an idea of  
7 what we're trying to accomplish and how we're trying  
8 to make this program as transparent as possible.

9 MR. HANCOCK: And finally, Mr. Chairman,  
10 Commissioners, the EAC staff recommends that the  
11 Commissioners vote to adopt the Voting Systems  
12 Testing and Certification Program manual as  
13 presented and to cause the manual to be published in  
14 the Federal Register. Mr. Chairman, I should also  
15 note that should this document be adopted today, we  
16 are ready to put the manual up on our website  
17 tomorrow.

18 CHAIRMAN DeGREGORIO: Okay. Thank you.  
19 Commissioners, you've heard the  
20 recommendation. Do we have a motion and a second  
21 before we have a discussion of this issue?  
22 Comments?

79

1 COMMISSIONER HILLMAN: I have some  
2 questions.

3 CHAIRMAN DeGREGORIO: Questions?

4 COMMISSIONER HILLMAN: Which chapters of  
5 the manual received the most comment during the  
6 comment period? Was there any one particular issue  
7 that received more attention than another?

8 MR. GILMOUR: Interestingly enough, it  
9 was actually Chapter One that received the most  
10 comments.

11 MR. HANCOCK: Absolutely. Chapter One  
12 is the overview of the document, and it does touch  
13 on the highlights of the rest of the document. In  
14 some instances, it actually appeared that people  
15 maybe read Chapter One more closely than they  
16 actually read some of the other chapters because  
17 some questions actually were answered later in the  
18 documents, to some of the comments, but I would say

19 Chapter One.

20 COMMISSIONER HILLMAN: Okay. It is my  
21 understanding that right now, about 37 or so States  
22 require systems that are used in that State be

80

1 nationally certified, and understanding that this is  
2 a voluntary program, my question is whether any  
3 State has given us feedback that says in order for  
4 us to participate in the program and require a  
5 system used in our State be nationally certified, we  
6 would need X, Y, or Z in your certification program.  
7 Is there anything about our certification program  
8 that we know today would prevent a State or  
9 discourage a State from participating?

10 MR. HANCOCK: No, Commissioner. To my  
11 knowledge, we have not received any information like  
12 that from any State, any Secretary of State or State  
13 Election Director. You're correct. Those numbers  
14 are approximately correct. We did receive comments  
15 from State officials, but none of them said that  
16 they would have any problems or that we needed to  
17 include any additional information in the document  
18 before they might be able to adopt the program.

19 COMMISSIONER HILLMAN: Do we have any

20 indication as to whether more States are planning to  
21 participate?

22 MR. HANCOCK: We don't have that  
81

1 indication. Certainly it's our hope that as many  
2 States as possible sign up. I think the program  
3 adds many additional new features that will assist  
4 State certification and make elections better. You  
5 know, where the rubber meets the road is the local  
6 election offices. That's certainly our hope.

7 COMMISSIONER HILLMAN: I would agree,  
8 and, Mr. Chairman, I would hope that the EAC will be  
9 able to formulate some kind of strategy to get the  
10 other States to at least talk with us about why  
11 they're not participating in the program and see if  
12 there isn't some way that we can address exactly the  
13 value that Mr. Hancock stated, which is that this is  
14 an additional level of assessment security, testing,  
15 and certification that would, of course, in no way  
16 impede in which system they use or their own testing  
17 and certification program; but this is a voluntary  
18 program, but we would still hope that all States  
19 would receive the benefit of participating in this,  
20 and if they don't, I certainly would like to be

21 informed as to why; you know, is it a cost issue or  
22 is it some other issue.

82

1           And my last question is can you sort of  
2 walk me through how does EAC implement this program?  
3 Do you sit in your office and read lab reports? I'm  
4 being a bit facetious, but how do we implement this  
5 program at the EAC?

6           MR. HANCOCK: Commissioner, certainly it  
7 will be a challenge to implement the program, but we  
8 do have the resources set aside next year. The  
9 Commission has asked for additional FTEs to assist  
10 with the implementation of this program. We have  
11 also gone out recently through the USA Jobs Website.  
12 We have asked for additional help in our technical  
13 review of the process. We have received a number of  
14 applications for that process. I'm very confident  
15 that we have a number of technical reviewers, very  
16 qualified reviewers at that, that will be able to  
17 assist us in the process.

18           COMMISSIONER HILLMAN: Thank you.

19           CHAIRMAN DeGREGORIO: Commissioner  
20 Davidson.

21           COMMISSIONER DAVIDSON: I have just a

1 EAC implementing this and it ultimately being a  
2 first time the Federal Government has been involved  
3 in testing and certifying of voting systems, how  
4 will that benefit our voters?

5 MR. HANCOCK: Commissioner, it will  
6 benefit our voters in a number of ways. As you  
7 know, it's the first time that the Federal  
8 Government has dedicated resources to do this work.  
9 Certainly there will be more accountability through  
10 documented procedures, registration requirements  
11 that Gavin spoke of, and through decertification.  
12 It's going to increase transparency, which we also  
13 touched on, through Federal information law. Again,  
14 I can't stress enough the importance of the quality  
15 management program. Again, it's going to allow us  
16 to go in and look at the manufacturer's production  
17 facilities, look at the voting systems that may have  
18 problems out there in the field, and not only, as I  
19 mentioned, will we be receiving anomaly reports from  
20 election officials, but the registration part of our  
21 program requires the manufacturers to affirmatively  
22 send information to us when they encounter a problem



1 with a system out there, so in a number of ways.

2           COMMISSIONER DAVIDSON: So as kind of a  
3 follow up to Commissioner Hillman's question about  
4 the States, I'm curious as a former Secretary of  
5 State, how many comments did you receive from State  
6 officials?

7           MR. HANCOCK: We received a number,  
8 probably a half dozen or so, comments from Chief  
9 State Election Officials. I would say that  
10 generally the comments were very positive.  
11 Certainly they varied as the interest of the States  
12 vary from time to time. The one area in which I  
13 would say the comments all came together to form  
14 sort of a cohesive comment among all the States were  
15 that the EAC notify the States and election  
16 officials when we're dealing with issues within  
17 their State. You know, that would be any time we'd  
18 want to go in to look possibly at voting systems on  
19 the ground and that type of thing, but I think their  
20 main concern was that we coordinate with them and  
21 make them aware of what we are doing, and I think  
22 that's a very valid concern.

1 COMMISSIONER DAVIDSON: Thank you, Mr.  
2 Chairman.

3 CHAIRMAN DeGREGORIO: Mr. Hancock, I  
4 just have one question about a very important  
5 component of this program, and that is the testing  
6 labs. Where are we with the testing lab program,  
7 the NVLAP program, and what's the prospects for the  
8 next few months for future labs being certified in  
9 this form?

10 MR. HANCOCK: Thank you, Mr. Chairman.  
11 Actually, when I was out at NIST for a TGDC meeting  
12 Monday, I spoke with some of the folks out there,  
13 and they have told me that they're prepared to make  
14 their first recommendation to the EAC this month of  
15 a lab that has gone through their process fully and  
16 they will recommend to us for EAC accreditation.  
17 Over the next several months, in 2007, they're also  
18 completing the review of two additional testing  
19 laboratories which they will send to us as soon as  
20 that process is complete.

21 So it looks like by the end of next  
22 year, we would have probably three test labs that

1 were accredited through that process.

2 CHAIRMAN DeGREGORIO: Yes, Commissioner  
3 Hillman.

4 COMMISSIONER HILLMAN: A follow-up  
5 question: Is that for both hardware and software or  
6 all three, do you know?

7 MR. HANCOCK: Yes, ma'am. The current  
8 concept is that it's a lead lab concept whereby the  
9 labs that are being accredited will be responsible  
10 for all of the testing, both hardware and software.  
11 While they may use other labs, we'll have one  
12 responsible lab for all of the testing and the final  
13 reports.

14 COMMISSIONER HILLMAN: Thank you.

15 COMMISSIONER DAVIDSON: I just have a  
16 comment that you can verify if I'm correct. My  
17 understanding is that NVLAP has been in and done  
18 their pre-assessment on the other labs and told them  
19 what they need to do to be able to meet the  
20 qualifications that they have put in place. Am I  
21 correct on that and they're waiting for the labs to  
22 finish their work before they go back for their next

1 assessment?

2 MR. HANCOCK: Yes, that's correct. The  
3 two additional labs that I was speaking of, they  
4 have been in and they're just waiting for some  
5 additional information, clarifying information, from  
6 those labs. There are some other labs, two or three  
7 others, that applied later on to the NVLAP process,  
8 and NVLAP will be taking those labs on later in 2007  
9 as well.

10 COMMISSIONER DAVIDSON: Okay.

11 CHAIRMAN DeGREGORIO: Well, we have a  
12 motion and we have a second to adopt the  
13 recommendation of the staff that we adopt the Voting  
14 System Testing Certification Manual as presented by  
15 the staff and cause it to be published in the  
16 Federal Register. All those in favor of this  
17 motion, signify by saying aye.

18 MEMBERS IN UNISON: Aye.

19 CHAIRMAN DeGREGORIO: Opposed, nay.

20 [No response.]

21 CHAIRMAN DeGREGORIO: The ayes have it.

22 Gentlemen and staff and consultants that

1 supported you, thank you for your hard work. Good  
2 luck in the next phase.

3 MR. HANCOCK: Thank you, Mr. Chairman.

4 CHAIRMAN DeGREGORIO: Members of the  
5 audience, we are going to take a seven-minute break.  
6 We want to keep on time today. We have three  
7 distinguished panels that are going to talk about  
8 the 2006 election and present us with some excellent  
9 information about that election. So we ask that you  
10 please take a seven-minute break and come back.  
11 We'll start at that time.

12 Thank you.

13 [Recess.]

14 CHAIRMAN DeGREGORIO: Okay. Welcome  
15 back. Thank you for coming back, and I also want to  
16 give thanks to our transcribers and interpreters for  
17 this meeting. They always do a great job for us,  
18 and we appreciate the work that they do, and they  
19 have asked me to remind myself and others to speak  
20 into the microphone so they can make sure that  
21 they're getting every word that we say, not just for  
22 the transcriber, by for the interpretation that's

1 going on. So thank you.

2 VII. ASSESSING THE 2006 ELECTION

3 CHAIRMAN DeGREGORIO: We will now begin  
4 the portion of our meeting, and that portion is a  
5 hearing to assess the 2006 election which just took  
6 place. Before we get to our panelists today, I  
7 would like to take a brief moment to discuss the  
8 2006 election from the EAC's vantage point.

9 HAVA and election reform efforts by the  
10 State brought sweeping change to our election  
11 infrastructure, making 2006 a year of change,  
12 challenge, and progress, yet despite having to  
13 introduce new equipment, comply with the new laws,  
14 and educate voters about the changes, every one was  
15 able to meet these challenges and made the 2006  
16 election a success. Were there scattered glitches?  
17 Yes, but elections are a human process involving the  
18 dedication of millions of Americans. The bottom  
19 line is that elections just don't have happen.  
20 Holding an election in America is an enormous  
21 undertaking.

22 There are 183,000 polling places and  
90

1 6800 election jurisdictions. On election day, we  
2 need 1.2 million poll workers. On November 7th, we

3 had about 1.2 million poll workers who served 78  
4 million voters who went to the polls on November  
5 7th. To make a complicated process even more  
6 complicated, in 2006, at least one-third of voters  
7 used new voting equipment and dozens of States  
8 implemented new statewide data bases for the time  
9 first time not to mention the new State and local  
10 mandates to election administration, such as new  
11 voter I.D. laws.

12        Election officials and voters have seen  
13 more change in the election administration process  
14 in the past six years than they say in previous 200  
15 years of American history. Given this enormous  
16 challenge and change, there were relatively few  
17 problems that cropped up, and only one Federal  
18 contest out of 469 is in litigation.

19        While turnout was high, most Americans  
20 had a pleasant experience on election day. As a  
21 matter of fact, exit polls showed that 88 percent of  
22 voters were confident that their votes were being

91

1 counted accurately. While that number is  
2 encouraging, we'd of course like to see that figure  
3 at 100 percent.

4 Thanks to the resources provided by HAVA  
5 and the EAC and careful, articulate preparation by  
6 election officials, we had a safe, accurate, and  
7 reliable election, and nearly every State, New York  
8 being a major exception, was in compliance with the  
9 Help America Vote Act, but there is much more work  
10 to do. We need to continue to work with local  
11 election officials to shore up the details that are  
12 so vital to running an election. One of the biggest  
13 difficulties that remains is the challenge of  
14 recruiting, training, and retaining poll workers.

15 Today, we're going to hear from a  
16 variety of experts who are closely connected with  
17 the administration and evaluation of elections.  
18 First you will hear from the election officials from  
19 both State and local governments who will give their  
20 firsthand account of the administration of the 2006  
21 election. Then we will hear from several panelists  
22 from various organizations who closely monitor the

92

1 administration of elections across the country.  
2 Finally, we will receive testimony from a member of  
3 the election technology community who will evaluate  
4 how the new voting systems used throughout the



5 country worked and what problems were encountered.

6        On our first panel of this session and  
7 this morning, we are pleased to have with us the  
8 Honorable Debra Markowitz. Secretary Markowitz is  
9 the Vermont Secretary of State and has served in  
10 that position since 1988 and most recently  
11 re-elected to her fifth term. Secretary Markowitz  
12 is the constitutional officer responsible for  
13 Vermont's election and providing educational  
14 assistance to Vermont's local election officials.  
15 She's been a leader in election reform in her State  
16 and in the Nation and was the first women elected  
17 Secretary of State in Vermont and she serves as the  
18 president of the National Association of Secretaries  
19 of State and is an important stakeholder to the EAC.

20        Our second speaker today will be Kevin  
21 Kennedy. Kevin Kennedy is the Executive Director of  
22 the Wisconsin State Election Board and has served in

93

1 that position since 1983. He's seen a lot of  
2 election reform himself in his years. In that  
3 capacity, he serves as the Chief Election Officer  
4 for the State of Wisconsin and is president of the  
5 National Association of State Election Directors.

6 He also serves as the co-chair of the National Task  
7 Force on Election Reform established by the Election  
8 Center.

9         Speaking of the Election Center, our  
10 third speaker this morning will be the Honorable  
11 Doug Lewis, the Executive Director of the Election  
12 Centers and has been such since 1994. The Election  
13 Center is a national non-profit organization serving  
14 the elections and voter registration profession.  
15 Doug developed and authored the professional  
16 education program for election registration  
17 officials, the most extensive professional training  
18 program in the world for election officials which  
19 leads to the status of Certified Election  
20 Registration Administrator, CERA. Going to many  
21 election conferences across the Nation, I've seen  
22 many proudly display the CERA pins.

94

1         Mr. Lewis is one of the fathers of HAVA  
2 and of the EAC and the first chair of the EAC's  
3 Board of Advisors.

4         Last but not least is a friend of mind I  
5 met through IACREOT. IACREOT is the International  
6 Association of Clerks, Records, Election Officials

7 and Treasurers. Elizabeth Ensler is the  
8 Director-At-Large for the Election Officials  
9 Division of IACREOT and she's the Election  
10 Commissioner for Shawnee County, Kansas, the  
11 jurisdiction for Topeka, Kansas. She was first  
12 appointed to that job in 1992 and was appointed four  
13 more times by two different Secretaries of State.  
14 She's distinguished herself with IACREOT in the  
15 election field.

16 Fellow Commissioners, we are pleased to  
17 have four distinguished people give us their views  
18 on the 2006 election. We'll start with Secretary  
19 Markowitz.

20 SECRETARY MARKOWITZ: Well, thank you.  
21 Mr. Chairman, Commissioners, thank you for your  
22 invitation to speak here today on behalf of the  
95

1 Secretaries of State.

2 As president of the National Association  
3 of Secretaries of State, I'm honored to represent my  
4 fellow chief state election officials. I'm happy to  
5 report that this year's midterm elections went well  
6 overall for many of my colleagues nationwide. Legal  
7 challenges have not be filed in large numbers as

8 predicted. Election officials have been working  
9 over the last few weeks to verify vote totals in  
10 close races and determine the outcomes in a fair and  
11 impartial manner. In fact, we're in the middle of  
12 the statewide recount in Vermont in our auditor's  
13 race where it rested on a 138-vote difference in  
14 that State.

15       Unfortunately, not every jurisdiction  
16 enjoyed the same level of success. We saw  
17 differences across the country. In some  
18 jurisdictions, there were votes that were lost.  
19 Some of new electronic voting equipment  
20 malfunctioned. Not every statewide voter  
21 registration data base worked as expected, and a  
22 handful of voting equipment vendors failed to

96

1 provide promised support. Where problems did occur,  
2 State election officials worked quickly to resolve  
3 them as best they could, and their focus is now on  
4 preventing those problems from happening again in  
5 the future.

6       It's important to recognize, though,  
7 that in general, the predictions of election day  
8 chaos and problems were overblown. Before election

9 day, many academics and pundits and election  
10 specials predicted widespread voting problems that  
11 did not materialize. There were sporadic voting  
12 equipment malfunctions. The majority of voters  
13 didn't have trouble understanding the new  
14 identification requirements that cropped up around  
15 the country. They by and large didn't have trouble  
16 using the new voting equipment or finding their  
17 polling places.

18       Poll workers for the most part managed  
19 their polling places well on election day despite  
20 the fact that, as has been mentioned here today,  
21 that in many of these polling places there was new  
22 technology in place. There were fewer calls than

97

1 expected to special interest groups's voter trouble  
2 hotlines which are toll free numbers intended to be  
3 used by voters to ask questions or to report  
4 problems, and twice as many people visited the NASS  
5 voter education website canIvote.org on election day  
6 as called all of the voter hotlines combined. In  
7 fact, most of the voter confusion predicted was  
8 avoided thanks to proactive voter education efforts  
9 conducted by the States and National Association of

10 Secretaries of State as well as other organizations.

11       The NASS voter education website helped  
12 prepare voters to cast their ballot on election day  
13 by answering their questions about voter I.D.  
14 requirements and helping them to locate their  
15 polling places and to find out whether or not they  
16 were registered to vote.

17       Voters nationwide demonstrated their  
18 confidence in the system by turning out in larger  
19 numbers than during 2002, more than 40 percent,  
20 according to the Center for Study of the American  
21 Electorate, and according to the non-partisan group  
22 Young Voter Strategies, turnout among 18- to

98

1 29-year-olds increased by 25 percent. After casting  
2 their ballot, voters expressed a high level of  
3 confidence in the way the election was administered.  
4 According to a CNN exit poll, 87 percent of voters  
5 reported that they were confident that their votes  
6 would be counted accurately.

7       For the most part, jurisdictions that  
8 encountered setbacks dealt with them quickly and  
9 effectively. Local election officials in Georgia,  
10 Illinois, Indiana, Pennsylvania, and South Carolina

11 kept polling places open late to compensate for  
12 minor delays caused by new voting equipment. In  
13 Denver, Colorado, voters encountered long lines  
14 after a power outage and equipment malfunction, but  
15 everyone who was in line to vote before the polling  
16 places closed had the opportunity to cast a ballot.

17         In Washington, a State that experienced  
18 a lengthy recount in 2004 in the gubernatorial  
19 election, the elections were virtually problem free  
20 despite the fact that State and local election  
21 workers were responsible for implementing 351  
22 election-related rule changes. Many of the voting

99

1 equipment glitches we saw this year were the result  
2 of election workers' inexperience with brand new  
3 high-tech equipment. The technology and training  
4 must be fine tuned with help from the vendors in  
5 order to avoid problems in future elections. Each  
6 State will work with their vendors to determine the  
7 best way to improve the machines and the processes,  
8 and the NASS Elections Committee will also address  
9 the issue at future NASS conferences.

10         Speaking of future challenges, an  
11 overwhelming majority of the States fulfilled the

12 Help America Vote Act's mandate before this year's  
13 midterm election despite the fact that Congress has  
14 still not appropriated \$800 million of the money  
15 promised to the States to pay for election reforms,  
16 but the outstanding 800 million really didn't have  
17 an impact. If HAVA is not fully funding, its soft  
18 expenditures like voter education initiatives and  
19 poll worker training programs are the areas that  
20 likely suffer the most. This morning, you,  
21 Commissioner DeGregorio, Chair DeGregorio, mentioned  
22 that that really is a challenge, making sure our

100

1 poll workers get the training they need.

2       The States may be forced to rely on  
3 outside groups like NASS and other nonprofit and  
4 nonpartisan organizations to continue these efforts,  
5 but really it should be institutionalized by the  
6 States through adequate funding. In the absence of  
7 federal funds, financing for the work has to come  
8 from other philanthropic groups and other grant  
9 programs.

10       So in conclusion, back in February of  
11 2006, the Secretaries of State reaffirmed our  
12 determination and commitment to ensure that all



13 eligible voters can register and vote and that all  
14 votes are counted accurately and fairly in each and  
15 every election. Reports of this year's election  
16 administration successes confirm overall that we  
17 have fulfilled our promise to administer free and  
18 fair elections although there is still more work to  
19 be done.

20       In the coming weeks and months, we'll  
21 continue to direct election administration and  
22 reform in our States in the manner in which we

101

1 resolved to do so with respect to ensuring the fair  
2 administration of elections. Practices will be  
3 examined at the State level and within the States,  
4 not the Federal Government, and there will be a  
5 determination of what solution makes sense for that  
6 particular State. The States will decide how to  
7 balance security and transparency requirements with  
8 their ability and the laws related to the conduct of  
9 recounts in those States.

10       Elections were arguably run more  
11 effectively this year than they've been in some  
12 time, but better elections aren't good enough. The  
13 Secretaries of State will continue to improve

14 elections to make the system the best that it can be  
15 and we look forward to working with our staff  
16 members, local election officials, and the U.S.  
17 Elections Assistance Commission to continue to  
18 improve elections administration across the country.

19       Mr. Chairman, Commissioners, thank you  
20 for giving me the opportunity to represent NASS here  
21 today and thank you for your work to help us to  
22 continue to improve the elections in the United

102

1 States.

2       CHAIRMAN DeGREGORIO: Thank you,  
3 Secretary Markowitz. We appreciate the work that  
4 you and NASS do and the support that you have given  
5 the EAC, and certainly Leslie Reynolds, your  
6 Executive Director, is always in constant  
7 communication with our office. We appreciate the  
8 support that she gives us to help us do our work.

9       Thank you.

10       Mr. Kennedy, and I know the others, some  
11 of you, will be summarizing your testimony. Please  
12 be assured that your complete testimony will be  
13 published on our EAC website.

14       Mr. Kennedy.

15 MR. KENNEDY: Thank you, Mr. Chairman,  
16 Commissioner Hillman, Commissioner Davidson.

17 In a twist on some of the words of  
18 Shakespeare, I come prepared to praise the work of  
19 the election officials, not to bury it as was  
20 prematurely done prior to the conduct of the  
21 election. I think that it can best be summed up in  
22 the evaluation of this election by saying that in

103

1 2006, more properly registered voters were able to  
2 participate privately and independently using better  
3 voting equipment. With confidence, their votes were  
4 accurately voted than ever before. That doesn't  
5 mean that there isn't significant room for  
6 improvement, but the focus for us today, as you  
7 heard from Secretary Markowitz is really to  
8 recognize the positive aspects of this program, and  
9 in doing that, we have to look not just at November  
10 2006, but starting with the primaries that were  
11 conducted beginning in March of this year. We have  
12 run-off elections that continue this week. I just  
13 came from Louisiana where Saturday we had the final  
14 run-off election.

15 So we're not done yet, but we can all

16 visit measures by what happened in November and we  
17 saw tremendous improvement from the issues that  
18 popped up in some of our elections in March. We saw  
19 the tremendous learning from that. Those of us who  
20 had September primaries had a little bit less time  
21 from our initial rollout of that, but we have to  
22 look at where were we in 2000 and where are we now

104

1 to say that there is a very positive means of  
2 assessing this and still much further for us to go.  
3       When we look at the success of the 2006  
4 elections, we look at what I think was the most  
5 challenging aspect of this, which was to develop a  
6 single uniform statewide voter registration system,  
7 and I use my State as an example, as I think was the  
8 most challenging outcome where we had 1500 of our  
9 1850 municipalities that had no voter registration,  
10 no voter records. As I was telling them, we can no  
11 longer run our elections out of shoe boxes. There's  
12 much more accountability in terms of how we run  
13 elections, and every State, I think was able to  
14 demonstrate improvement on that, and there's a wide  
15 variety of approaches. I think HAVA recognized  
16 different approaches in the States, and when we look

17 at the type of statewide systems we had in place  
18 2000, there were really only two or three,  
19 effectively, in the country, and we've now built it  
20 up where nearly every State has fully functioning  
21 system.

22 We also see with those fully functioning  
105

1 systems we're now paying attention to uniform  
2 procedures in those States. Groups are looking at  
3 how are we disenfranchising voters, how are we  
4 notifying them when they're no longer eligible, and  
5 so we moved to the next step only that once we got  
6 the infrastructure built. So there's so much more  
7 than can be done with this, that we've come so far  
8 in terms of ensuring that people are properly  
9 registered and there's one place to find out who's  
10 properly registered in the State.

11 We're continuing to look at the  
12 performance of those things. That's a highly  
13 technical infrastructure. Probably the most visible  
14 aspect as opposed to what I consider the challenging  
15 is the deployment of voting equipment. As a result  
16 of the Help America Vote Act and the dispersment of  
17 funds from the U.S. Election Assistance Commission,

18 we no longer have any significant amount of punch  
19 card or lever voting machines in this country. That  
20 has been replaced, so a tremendous infrastructure.  
21 The news reports indicate 35 percent of voters are  
22 voting on different equipment than was voted on in

106

1 2000.

2       So significant changes in the aspect of  
3 removing equipment was inherently after the 2000  
4 election suspect, but what needs to happen with that  
5 equipment? I think the U.S. EAC is taking a  
6 tremendous step today to build on that confidence.  
7 We saw that while HAVA thought that employing one  
8 DRE in every polling place was presumptively going  
9 to provide more accessibility, some of the issues  
10 that arose out of this cast a cloud on this, and I  
11 think that the EAC is taking steps with the  
12 institution of this program to ensure that we can  
13 dissipate that cloud with future voting equipment  
14 and with future discussion.

15       I do think that we need to find some way  
16 of focusing on vendors with the delivery of so much  
17 new voting equipment this time around. In the State  
18 of Wisconsin, we saw equipment arriving in the month

19 of August for our September primary, that vendors  
20 need to approve their product and there needs to be  
21 some incentive for that. I think the new standards  
22 are going to do that.

107

1 More importantly, the customer service  
2 needs to be improved, the ability to provide ballot  
3 printing, equipment programming, and maintenance  
4 services in a timely manner. I think what we saw  
5 this time around was that understaffed and  
6 overcommitted vendors left many election officials  
7 without the ability to provide voting options to the  
8 electorate because of late or non-delivery of valid  
9 support services. Fortunately, I think that the  
10 local election officials and the State election  
11 officials worked feverishly to ensure that, but I  
12 know that there were lots of last minute discussions  
13 in my States with vendors, including us drawing a  
14 line in the sand and saying that the proposed  
15 solutions were unacceptable.

16 This is going to require resources.  
17 Secretary Markowitz referred to the unfunded money  
18 that has not been distributed and pointed, I think  
19 very remarkably, to what is really going to happen.

20 HAVA was an infrastructure investment. The States  
21 are left with continuing maintenance of this, but  
22 the key elements of success are training of our  
108

1 election officials, not just our poll workers, but  
2 they need a very solid amount of training by our  
3 local elections officials, and they need support. I  
4 think all Counties in Wisconsin, municipalities, are  
5 struggling to find the funds to maintain the  
6 investment we put in with HAVA funds with the new  
7 voting equipment and new voter registration system,  
8 and that's going to be a continuing challenge.

9 I think that looking back to where we  
10 were, where we are now, and where we want to be,  
11 it's been a long journey. The public and the media  
12 learned more about the administration of elections,  
13 have come to expect more and now closely scrutinize  
14 the process. We have learned there are not enough  
15 financial and other resources devoted to this  
16 fundamental element of the democratic process. We  
17 have learned, certainly, there is one set of  
18 solutions that can be applied to all States and  
19 local jurisdictions to address the election-related  
20 issues identified during this time. Again, I come



21 back to looking at where we are today and can still

22 safely say that more registered voters were able to

109

1 participate privately and independently, using

2 better voting equipment with confidence that votes

3 were accurately counted than ever before.

4 Thank you very much.

5 CHAIRMAN DeGREGORIO: Thank you, Mr.

6 Kennedy. I believe you have, what, over 1800

7 election jurisdictions under your umbrella in

8 Wisconsin?

9 MR. KENNEDY: 1851 municipalities and 72

10 counties.

11 CHAIRMAN DeGREGORIO: That alone

12 represents over 25 percent of the election

13 jurisdictions in the Nation. You've done this for

14 23 years and you've survived. So that says a lot

15 about who you are. So we appreciate your testimony.

16 Thank you.

17 And somebody who is also involved in

18 helping election officials throughout his career is

19 Doug Lewis.

20 Mr. Lewis.

21 MR. LEWIS: Thank you, Mr. Chairman,

1 That huge sigh you heard right after the  
2 election was over with was the elections officials  
3 breathing easier because the election came out  
4 pretty well in America. This was probably the most  
5 stressful election for election administrators that  
6 any of them have ever had in their working lifetime.

7 So from their standpoint of trying to  
8 make massive change all happen within two years and  
9 come together this year, both from a Federal level  
10 and then from about half of the States, a little  
11 more than half of the States, actually adding on  
12 additional requirements. So it was a challenging  
13 year for anybody in this profession, and yet at the  
14 same time, the profession demonstrated that it  
15 handled it very, very well. Preparation, the Help  
16 American Vote Act, the money that came from the Help  
17 America Vote Act, the fact that people were looking  
18 at and working on this process all the time, I think  
19 paid off handsomely. Certainly if you look at the  
20 voter confidence that returned as a result of it,  
21 the voter confidence in any figure I have ever seen  
22 in my 30-something years in this profession, I have

1 never seen a number higher than 88. So 88 seems to  
2 me to be pretty much the top mark that can be  
3 achieved.

4       In terms of what we do for all of this  
5 from the future seems to me is that we can't assume  
6 that we're there yet. Obviously, elections is an  
7 evolving process. Obviously, we end up doing a  
8 whole lot more of this each and every time. We  
9 learn as we do elections. We learn from mistakes.  
10 We learn from our own mistakes. We learn from  
11 others' mistakes, and we make the process better.

12       My point to all of this, though, is  
13 we've got to quit beating up on the process. This  
14 is important to America. It absolutely should  
15 transcend partisan politics. It should be at the  
16 point where regardless of how you lost the election,  
17 whether you're a Republican or a Democrat, that you  
18 don't continue to quibble that the process is part  
19 of that. If we lose, if Americans lose, fundamental  
20 faith in this process, then they loose faith in the  
21 government that results, and in that case, democracy  
22 gets lost. So I think we have to start assuming

1 that we're on the right track and to begin to at  
2 least ameliorate some of those criticisms that have  
3 become unfounded.

4       As we go through it, yes, there were  
5 some real problems, and I think we need to admit  
6 that there are going to occasionally be some  
7 problems, and when we look at those, we need to  
8 dissect those. Right now, I will say to you I have  
9 asked all the States to give us a rundown of what  
10 was reported versus what actually happened in their  
11 State. We're going to try to at least build a  
12 compendium before the Congress comes in because some  
13 of these get played up as being reasons for doing  
14 certain kinds of things, and so we're asking the  
15 States at this point to give us real information on  
16 what really happened, what the outcome was, what  
17 they're doing to fix it, if it was a real problem or  
18 if it was a misinterpreted problem.

19       One of the things we learned very much  
20 from Election 2000 forward, if you rely only on news  
21 stories, very often those are incorrect in the final  
22 analysis. So it's one of those things we're asking.

1           Hopefully, for the future of the EAC, I  
2 hope you all take on this responsibility. It is  
3 something that I think is so vital to America that  
4 it is necessary to have you and your staff pursuing  
5 this information and getting officially from the  
6 States and from the locals as to what happened so  
7 that we can then take those and transform those into  
8 the best kinds of teaching and procedures and  
9 policies to make sure that we don't create those  
10 problems additionally in the future. I would say  
11 that we end up needing to understand that we are  
12 expecting too much from poll workers. We've gotten  
13 to the point that we expect them to know frontward  
14 and backwards 80- to 200-page manuals on how to  
15 conduct an election. We expect them to know how to  
16 be election technicians to be able to repair or set  
17 up or maintain equipment while it's in the polling  
18 place. We're working them for 14 to 16 hours a day.  
19 We expect them to be nice every minute of that day  
20 even when some of the people who come into the  
21 polling place both as voters or as partisans  
22 observing the process are not always nice to the

1 poll workers.

2           And so we've gotten to the point that  
3 somehow we belittle the fact that this folks are 65  
4 and older and sometimes don't know the job very  
5 well. For every one of those poll workers that  
6 probably does have a weakness, we've got four who  
7 are really pretty good people and have really done  
8 remarkably. And, quite frankly, I don't know how  
9 we'd run elections currently without them.

10           If you look at what we are expecting of  
11 them, we also want them to know secondary languages  
12 to be able to help voters in secondary languages.  
13 This has gotten to the point that we're going to  
14 have to redesign this process. We're going to have  
15 to re-think how we do all of this. As a result of  
16 that, the Election Center is going to form this year  
17 a national task force on training. A part of that,  
18 and only a part of it because we're also looking at  
19 training of staff, training of technicians, training  
20 of lawyers, training of everybody that's involved in  
21 this process, including voters, but part of that  
22 will be poll worker training to see if we cannot

1 come up with some additional learning tools that  
2 will help all the jurisdictions to do this. That  
3 problem is really beyond us. We'll be able to do  
4 this over the next year. I don't expect that we're  
5 going to solve that problem in a year, and it's  
6 probably going to be a longer term problem, but  
7 we're also going to have to figure out how to do  
8 with fewer poll workers. We need to look at the  
9 process to see if we cannot come up with  
10 methodologies into which do not have to have as a  
11 growing society and a growing population these huge,  
12 huge numbers in large jurisdictions of poll workers;  
13 and, quite frankly, in large jurisdictions, we have  
14 a very difficult time recruiting them and  
15 maintaining them.

16       In terms of voting systems standards, I  
17 think what you all have done already in this is  
18 remarkable. I know that you have taken some  
19 criticism for not moving fast enough, but you folks  
20 have done a remarkable job of laying this in in a  
21 methodical, cautioned, reasoned approach of how we  
22 do this and make this work for all Americans and

1 make it work for the future. At the same time,

2 we've probably got a little problem of figuring out  
3 what is that area that is regulation versus too much  
4 regulation, how do we get to the point -- we can't  
5 continuously update standards and expect the voting  
6 system industry to survive. We cannot be changing  
7 the design every two years and be able to end up  
8 with a product that the jurisdictions can afford and  
9 the vendors can afford and support. So we need to  
10 look at that.

11 I'm also troubled, quite frankly, by the  
12 notion that we've taken on the voting systems  
13 industry as being part of an evil empire and evil  
14 doers. I don't see that at all, and so I think we  
15 need to have a little different attitude about that,  
16 and that's not your fault. That's really a general  
17 society problem that we've now begun to punch at  
18 these folks, and, quite frankly, I think on the most  
19 part, they've been our partners over these many,  
20 many years of trying to make this process work for  
21 America.

22 I think we need to recognize money in

1 the process, but there are some groups and  
2 organizations nationally that have asked for the



3 Federal Government to continue to fund this process  
4 throughout. I'm not one of those. I think  
5 continuous Federal funding means eventually more  
6 Federal regulation in this process. I trust the  
7 genius of the States and the locales to do this.  
8 They're a perfect laboratory for a creation and  
9 environment of innovation, and the States do this  
10 exceedingly well, and if we leave it to them, I  
11 think they'll get even better. Yes, there were some  
12 problems with statewide voter data bases. Yes, some  
13 vendors didn't come up with the right answers that  
14 actually worked on this, and if we give the States  
15 long enough on this, they'll get it right. I trust  
16 them in every way.

17       Finally, I'm really, really glad you  
18 folks are here right now. I am. I thank you, Mr.  
19 Chairman, for I think incorrectly attributing to me  
20 being the father of the EAC, but I'll accept that  
21 mantle at this point and say to you you folks have  
22 such an incredible role to play in this, it is

118

1 remarkable. Washington in the last few years has  
2 been probably the most bitterly partisan place I  
3 have known in my working lifetime, and if that

4 continues, if the two sides cannot find a way to be  
5 bipartisan rather than bitter partisan, they're  
6 going to need your advice and guidance, the calm  
7 rational, reasoned kind of guidance that you can  
8 give that's based on real world experience, and I'm  
9 appreciative that each you is here.

10       So it seems to me without you, this may  
11 evolve into something that would have serious  
12 unintended consequences for elections in America.  
13 So I am proud that you're here. I'm glad to be  
14 associated with you in any way, shape, or form, and  
15 I thank you for inviting us to come and to  
16 participate.

17       CHAIRMAN DeGREGORIO: Thank you, Mr.  
18 Lewis. I appreciate your comments and your support.

19       Libby.

20       MS. ENSLER: Thank you, Commissioners,  
21 for allowing me to make this presentation. In the  
22 interest of time, you do have my testimony in front

119

1 of you. I'd like to touch on some of the  
2 highlights, and I would like to say that I applaud  
3 Mr. Lewis' comments.

4       Your local election officials are your

5 front line of the election administrators. We're  
6 dealing directly with the voters, and I think we  
7 have a little bit different point of view than what  
8 has been stated so far and in addition to what has  
9 been stated so far. I don't disagree with anything  
10 that's been said.

11 I think one of the real successes -- I  
12 need to take the word "I" out of there. We actually  
13 queried members of IACREOT at the International  
14 Association of Clerks, Recorders, and Election  
15 Officials, and the response is the written testimony  
16 I've given you is really a synopsis of 58 pages  
17 worth of responses that came back from those  
18 election officials. It is not just my experience,  
19 but election officials' experiences, and the real  
20 success of the election was private voting for those  
21 people who are disabled, sometimes voting privately  
22 for the first time in their entire life.

120

1 As one official said at a meeting of  
2 some people who were visually impaired, it was  
3 almost a life-changing experience for them, and this  
4 certainly should be applauded. Also, the  
5 opportunity for voters to vote a provisional ballot

6 and to find out if that ballot actually counted in  
7 the election is the correct way to handle a problem  
8 on election day, and many voters did make use of  
9 this; however, I do need to mention that this is new  
10 for many jurisdictions and they are still working  
11 through training, staffing, the logistics of  
12 handling one, two, and three percent of vote in a  
13 very brief period of time prior to a statutory  
14 certification deadline. It's also adding  
15 significant costs to the running of the election.

16       Prior to the election, the distrust of  
17 electronic equipment was a great concern with the  
18 well-publicized fear of fraud and lack of faith in  
19 the voting systems. Now, election officials should  
20 always be held to the fire. They should always be  
21 able to answer questions regarding legitimate  
22 security of the systems, but I'm discussing

121

1 accusations that ranged really with a lot of  
2 ignorance of how the equipment is used and where it  
3 is used to some people who purposely seem to  
4 misrepresent the facts about the software and the  
5 hardware.

6       Your local election officials are the

7 front line, as I said, and although the electronic  
8 voting systems are, in effect, mandated by the Help  
9 America Vote Act, there really was no help for local  
10 officials in answering some of the claims against  
11 the system. Overall in the 58 pages of comments  
12 that were sent to me, most of them began with the  
13 fact that the election proceeded fairly smoothly for  
14 them, and this is exceedingly impressive considering  
15 that they were putting into effect new equipment as  
16 well as new software in many cases. Most voters  
17 found the equipment easy to use and all of this was  
18 accomplished at great cost to local officials.

19       The expense of new equipment purchased  
20 through the Help America Vote Act is only a fraction  
21 of the ongoing cost to maintain the equipment  
22 required. Additional expenses for warehousing,

122

1 training, employing additional board workers,  
2 programming, maintenance, transportation, audio  
3 files and supplies have in some cases doubled the  
4 cost of running the election. Budget-busting  
5 programming costs, a severe hardship on any  
6 jurisdiction, is a particularly hard on small or  
7 poor jurisdictions that do not have the money to

8 purchase programming software. They don't have the  
9 I.T. staff to support the software, nor do they have  
10 the election staff to run it. Therefore, they're  
11 completely reliant on election support companies to  
12 program memory cards and packs and create audio  
13 files for electronic equipment. In many cases, this  
14 added cost for the primary election alone took the  
15 entire year's budget for the election.

16       Future costs for replacing electronic  
17 equipment cannot be overlooked either, and I believe  
18 we need to look into that now. It will be an  
19 expensive endeavor. Local jurisdictions will not  
20 have any more money in the future to replace,  
21 repair, or acquire equipment than they did to  
22 purchase it in the first place. Federal assistance  
123

1 will be needed then too.

2       The implementation timeframe and the  
3 production deadlines for HAVA were basically  
4 unrealistic. I just hope this is borne in mind for  
5 future legislation, that we need time to implement  
6 laws and make sure that they are done correctly and  
7 time for the creation of equipment and software.  
8 Long lines at the voting place continue to plague

9 many locations across the country, and it would be  
10 helpful to hear recommendations as to the number of  
11 machines needed per registered voters to get a more  
12 realistic estimate of how many machines are needed,  
13 and the requirements for ballot requests that they  
14 remain active through two November general elections  
15 is irresponsible and creates a disservice to the  
16 military personnel with unrealistic expectations  
17 regarding the local officials' ability to track  
18 their movement. In many cases, fully one-third of  
19 these ballots were returned as undeliverable. More  
20 seriously is a security issue. Even a larger number  
21 of ballots are unaccounted for. They did not get to  
22 the person that they were intended to. They are not

124

1 returned as undeliverable, and we do not believe  
2 they got to the person they were intended to.

3       The quick start management guides have  
4 some very good ideas on them and will be very  
5 helpful for future elections. They were a bit late  
6 for this particular -- for this series of elections.  
7 Election worker training as well as continuing to  
8 research alternative forms of elections, such as  
9 all-mail ballot and other forms of elections should

10 continue to be researched for benefits to the  
11 voters, and the court-ordered changes to the  
12 election procedures well after an election has  
13 already begun causes confusion among voters and  
14 election workers and difficulties for  
15 administrators. This was directly reported in  
16 several jurisdictions in regards to the voter  
17 identification requirements, but is also a  
18 consistent problem throughout the years.

19       And thank you very much for your time  
20 and consideration.

21       CHAIRMAN DeGREGORIO: Thank you,  
22 Ms. Ensler, and thank you for that very important  
125

1 perspective.

2       Commissioners, now we have some time to  
3 question our panel here, and I think we have about  
4 five to seven minutes each for questions if you'd  
5 like to.

6       Commissioner Davidson.

7       COMMISSIONER DAVIDSON: I can begin.  
8 Thank you.

9       First of all, some of you stated, you  
10 know, that the problems that you saw and actually,



11 especially the election officials, either the  
12 Secretary of State or the Directors of Elections,  
13 did you survey your people in getting your  
14 information? Because some of the things that you  
15 mentioned in your talk, I think is very important,  
16 and if you have information in that area, if you  
17 actually got good information, that would be very  
18 helpful of what kind of problems you saw, you know,  
19 where were the problems with, you know, maybe the  
20 manufacturer or the vendor that didn't meet the  
21 needs for the officials. That type of information  
22 would be very helpful.

126

1 Have you done a survey?

2 MS. MARKOWITZ: I don't believe the NASS  
3 has done a formal survey, but at our February  
4 meeting, there will be an opportunity for us to get  
5 the concrete information. You know, when problems  
6 arise, the NASS office knows about them because of  
7 our constant interaction with the Secretaries of  
8 State. So there may be unreported problems as well  
9 with, for example, vendors and so forth; but we are  
10 aware of a number of them across the country.

11 COMMISSIONER DAVIDSON: Okay. So it was

12 really actually taken by the information from the  
13 States and not from a news media or something like  
14 that?

15 MS. MARKOWITZ: By and large, the  
16 information in my testimony is from the States, but  
17 I can refer back to Leslie to give you more  
18 information if you'd like.

19 COMMISSIONER DAVIDSON: She's shaking  
20 her head yes if that helps you.

21 MS. MARKOWITZ: Yes. She's behind me.  
22 That's why I need her here.

127

1 MS. MARKOWITZ: Kevin.

2 MR. KENNEDY: What I would say is that  
3 one of the challenges that we're seeing this time is  
4 that everybody is asking, and it's not very focused,  
5 for exactly what you're asking for. As Doug  
6 mentioned, he's just asked the States. I've gotten  
7 several requests. It's almost a veil threat, if you  
8 don't respond, we'll have to rely on the media  
9 reports on this.

10 COMMISSIONER DAVIDSON: That ought to  
11 scare them. Huh? Is that what it's intended to do?

12 MR. KENNEDY: Well, that's the

13 unfortunate part, because the media, of course,  
14 focuses on what didn't work as opposed to what did,  
15 but we need to have a good way of a tracking that.  
16 The HAVA administrative complaint procedure, I've  
17 seen reports that have come in from the HAVA  
18 attorneys that track this and they're getting very  
19 few administrative complaints that are going through  
20 that procedure. They're glad to have that process  
21 there, and it works. They see it more as a vetting  
22 process for the individuals, but what I've noticed

128

1 in the last -- in the period after the election was  
2 the constant demand for so many sources, some which  
3 you want to bend over backwards to honor, for  
4 exactly the kind of information you want, and I  
5 think that's one of the challenges. We're in midst  
6 of compiling the data for the EAC survey which is  
7 being refined, but we're trying to identify the  
8 hiccups in the process both before and after.

9       As the commissioner pointed out, I look  
10 primarily to my State for comments, and I know that  
11 I'm not aware of every vendor-election official  
12 interaction. It was only when they said help us, or  
13 sometimes they wanted to work it through themselves,

14 but it's that -- you know, that's one of the things  
15 we have to change a little bit, is to get them  
16 better documented and in a way that we can respond,  
17 because so many people are asking for that  
18 information.

19           COMMISSIONER DAVIDSON: You know, one of  
20 the reasons why I ask is that you understood when we  
21 were talking about some of the programs that we  
22 talked about prior to your speaking today, the

129

1 certification program and the fraud program that we  
2 will be getting information from you, and how we go  
3 about trying to gather that is when you -- it's  
4 really quite important to work with both groups,  
5 obviously, in seeing how we best achieve the goals  
6 that we have; and as Doug mentioned, we need to do  
7 more in the future. So how we do this and do it  
8 right, I think is going to be very important.

9           The other question I have for you is do  
10 you feel that some of the problems that occurred in  
11 the State and in the counties or whatever, some of  
12 those problems that occurred, is it because their  
13 State law doesn't give them enough direction or  
14 maybe it's not in tune with what HAVA is, that they

15 still haven't caught up with that? Is there any  
16 issues there with their State law that maybe hasn't  
17 quite caught up?

18 I know I was in a State and I did learn  
19 that provisional ballots -- I was doing a study on  
20 how many provisional ballots are done. It won't be  
21 the same throughout States because they all view  
22 provisional ballots differently. So I wondered if

130

1 any of you think some of maybe the lines that was  
2 formed could be improved because of some State laws  
3 being changed.

4 MR. LEWIS: Certainly, Commissioner, I  
5 think Libby hit on it exceedingly well, is that when  
6 you look at long lines, long lines, quite frankly,  
7 are a product of money. Legislators within States  
8 and county budget authorities will not fund the  
9 numbers of units that are required in order to  
10 adequately take care of voters during peak voting  
11 periods. What we do is we average those numbers  
12 out, and the budget authorities all look at it and  
13 say, Well, okay, so many voters showed up, you know,  
14 that means that you only need X, Y, Z number of  
15 machines because you can handle so many people per

16 hour.

17           Without recognition, the people don't  
18 show up in the same numbers all day long. They show  
19 up in the two peak hours in the morning and the two  
20 peak hours right around lunch and the two peak hours  
21 at the end of the day, and we don't have enough  
22 voting equipment. The truth of the matter is when

131

1 we say we need spares -- Libby will tell you when  
2 you need spares and you tell budget authorities you  
3 need spares, they don't give you spares. You know,  
4 and no matter what it is in the way of voting  
5 devices, if you're scattering enough of them out,  
6 some of them are not going to function like they  
7 ought to in terms of being able to use them  
8 immediately. They probably work, but it's being  
9 able to use them immediately.

10           So you need spares to be able to pull  
11 these in and out and make this happen, but that  
12 isn't the way budget authorities do this, and until  
13 we solve that problem, I don't think we're going to  
14 solve long lines.

15           Secondly, legislators have got to quit  
16 putting on 40 issues in long ballot years. I mean,

17 you just can't do this. It absolutely kills the  
18 election process in terms of being able to have an  
19 adequate throughput in terms of voters.

20       So, yes, we have maybe made some  
21 mistakes in terms of the way we allocate machines,  
22 but I will tell you if you get into it, more often

132

1 than not it's not the misallocation. It is the fact  
2 that you don't have the machines to allocate.

3       COMMISSIONER DAVIDSON: Well, and I  
4 agree with you. I think that throughout the Nation,  
5 the elections went very well. You know, I think the  
6 election officials did a tremendous job. I mean, we  
7 had reports right before the election, the week  
8 before the election, that there were judges needed  
9 so many places, and, you know, how many of the  
10 precincts were short on election day with judges, we  
11 don't know. You know, we know there was probably  
12 before the election, but now we're not sure what  
13 happened on election day, you know, if they were  
14 actually, and that makes for long lines too if you  
15 don't have the personnel there that you really need  
16 to help move the voters through.

17       MR. LEWIS: Well, Commissioner, I will

18 tell you after the events in Montgomery County,  
19 Maryland in terms of the primary, there were some  
20 groups there suggesting that they criminalize not  
21 showing up as a poll worker. Now, the way we  
22 guarantee to make sure we don't have any poll

133

1 workers is to do that kind of thing. So we've got  
2 to recognize that we do end up with shortages, and  
3 if they don't show up, no matter what we've done --  
4 we overrecruit. We try to do everything we can to  
5 recruit more than we need, but if they don't show  
6 up, you don't know that they don't show up until  
7 they don't show up.

8           COMMISSIONER DAVIDSON: Well, I think  
9 your advice is don't overreact to issues. Is that  
10 what I'm hearing?

11           MR. LEWIS: Yes, ma'am.

12           COMMISSIONER DAVIDSON: Libby, do you  
13 have anything to add to any of the questions I've  
14 asked?

15           MS. ENSLER: Well, particularly about  
16 the lines, it is going to vary over times of the  
17 day, but also the questions that are on the ballot,  
18 and the questions on the ballot is just part of the



19 election. You know, we have to be prepared for it.  
20 They need to take it into consideration when they're  
21 purchasing equipment as well.

22 A voting machine does add to long lines  
134

1 because you cannot vote on that machine as long as  
2 somebody else is voting on it, and we are using more  
3 in the way of DREs, and so that is going to  
4 contribute to longer lines, and we need to face the  
5 fact we need to purchase adequate numbers of  
6 equipment, which is expensive, and they need  
7 assistance in being able to purchase them.

8 COMMISSIONER DAVIDSON: Thank you very  
9 much. I'll quit. I know you have questions.

10 CHAIRMAN DeGREGORIO: Ms. Hillman.

11 COMMISSIONER HILLMAN: Thank you.

12 My first question, I think is for  
13 Secretary Markowitz. It gets to the issue of what  
14 we all recognize that, for the most part, generally  
15 speaking, elections ran well in 2006. For those  
16 communities where it didn't run well, it doesn't  
17 matter how well it ran in the rest of the country;  
18 it didn't work very well here. And there also is a  
19 belief that the problems that did occur still

20 continue to be disproportionate to minority and low  
21 income communities, and I'm wondering if NASS has  
22 any observation on that and how we wrap our arms  
135

1 figuring out is it true, are the kind of problems  
2 that are happening today still disproportionate to  
3 minority and low income communities and, if so, why.

4 MS. MARKOWITZ: Well, that's a great  
5 question, Commissioner. I think that we don't know  
6 yet. You know, I think that reports are coming in  
7 and the analysis is being made, especially by the  
8 organizations like the NAACP that have been focusing  
9 on these kinds of challenges.

10 Once we see the hard evidence, then the  
11 Secretaries of State will respond, and we do know  
12 that in the past, the minority communities were  
13 particularly challenged by having the old outdated  
14 equipment that routinely lost votes and were  
15 problematic. Well, that means that they have new  
16 equipment today because of the Help America Vote  
17 Act, but the question is how is the training, how is  
18 the voter education, how is the performance of that  
19 technology in those communities. We have to wait  
20 until we see the data and then, first of all, know

21 if it's true that the problems -- and there's two

22 different kinds of -- a bunch of different problems

136

1 we can talk about. You know, there's problems of  
2 voter intimidation, voter fraud, problems of long  
3 lines, problems of equipment failures, and we can  
4 probably think of more problems, and I think it's an  
5 appropriate inquiry to say, Okay, are there  
6 communities that are suffering greater from these  
7 issues, and if so, what's the solution.

8 I do know that the Chief Elections  
9 Officials and those, of course, Secretaries of State  
10 that I deal with it particularly really focused on  
11 those issues and tried to -- for example, in  
12 Pennsylvania, Pedro Cortez, the Secretary there,  
13 really took a look at where there were problems in  
14 the past in his State to try to make sure they  
15 didn't recur in those particularly low and minority  
16 communities.

17 COMMISSIONER HILLMAN: Thank you. I  
18 appreciate that.

19 Mr. Kennedy, we have probably less than  
20 15 months to go before the next Federal election  
21 cycle starts. So, you know, get your big sighs in

1 ready, and there really isn't a lot of time in the  
2 sense of the kind of planning and execution of  
3 assessing data and best practices and so on and so  
4 forth; but I'm wondering if there are specific  
5 things that you can think would be most useful that  
6 the EAC can do to help States be ready for 2008 from  
7 the HAVA perspective, knowing that, like I said, in  
8 15 months we'll probably see the first Federal  
9 primary happening in 2008.

10 MR. KENNEDY: That's right. We'll be  
11 seeing those in February of 2008 as far as the  
12 primaries go, but I think this is our time, 2007, to  
13 take everything that we've learned, and we may have  
14 breathed a sigh of relief, but I think people rolled  
15 their sleeves up too right after that because they  
16 know that 2007 is their time for preparation, and  
17 some States have statewide elections to deal with.  
18 My next election is February 2007 for our statewide  
19 local and judicial races, but I think it's in 2007  
20 where we need to lay the groundwork for planning in  
21 terms of a lot of the guidance that you have. I  
22 think we need to re-emphasize that information.

1 One of the concerns that we had, and I  
2 think it was noted by Libby, was that was great  
3 information, but it came a little bit too late, and  
4 many of us were able to say done that, done that,  
5 good, Oh, I wish I would have thought about that,  
6 and I think that's really the value of the EAC, and  
7 you've done a lot of that work already. So the  
8 point is can we build on that to remind people of  
9 this, and I think it needs to be a message not just  
10 to the election officials. It needs to be a message  
11 that is conveyed to our legislators and to the  
12 public, that this is the preparation time, this is  
13 where you get more comfortable with that type of  
14 voting equipment. Local election officials can go  
15 back and know their voting patterns so that they can  
16 plan, because 2008 will be a challenge. It will be  
17 a much higher turnout than we saw with the midterm  
18 elections, but we'll have a lot to build on, and I  
19 think EAC's contribution is to continue with a lot  
20 of the toolkits and the voting guides that you've  
21 put out and look at that, because we're not going to  
22 make significant changes in voting equipment between

1 now and 2008, particularly as your system gears up.  
2 All of your labs won't be ready in 2007, but there  
3 will be a need for some changes, but it's really  
4 that importance of let's get the information out to  
5 our local election officials so that they can really  
6 be prepared.

7       COMMISSIONER HILLMAN: Thank you. I  
8 appreciate that.

9       Mr. Lewis, I appreciated the comments  
10 that you made about the EAC. I know that we've  
11 arrived because we now heed increasingly more  
12 criticisms and negative comments than we do  
13 statements of appreciation. So that's always the  
14 indication that you have arrived.

15       You made a statement, something to the  
16 words of we can't assume we are there yet, and my  
17 question for you is from your perspective where is  
18 there?

19       MR. LEWIS: We're in pretty good shape.  
20 We're not in absolutely perfect shape. Going back  
21 to, for instance, your question in terms of are the  
22 minority areas still having some difficulties in

1 some of this, you know, no matter what anybody says  
2 and no matter what we all do, this process always  
3 has to be fair to every segment of the voting  
4 population, and even in some instances where it may  
5 not yet be proven that there is lack of resources to  
6 some of this, it seems to me the perception that  
7 there is lack of resources is something we've also  
8 got to work on, because we need to make sure that  
9 people have a fundamental faith in this process.

10       In every poll that I've seen for the  
11 last 10 years on this says, quite frankly, that  
12 African Americans and Hispanic Americans are not  
13 quite as sure as the rest of America that it works  
14 for them, and that to me is not a healthy place for  
15 us to be. So we're going to need to do some things  
16 to look at this and begin to bring closer to reality  
17 both perception and what is actually going on, and  
18 that's an education process in instances.

19       In terms of what we do in elections and  
20 election administration, we train a thousand  
21 election officials a year at the Election Center  
22 through conferences and workshops. We are

1 constantly trying to get better and better and  
2 better at this, but the process involves so many  
3 people and so many factors that we don't have  
4 control over that it just -- you know, it is always  
5 a unique challenge of how to make this work.

6       We seek perfection. As a profession, we  
7 seek perfection. I'm going to tell you that most of  
8 the folks that are in election are overachiever  
9 types, control freaks of the first order, and  
10 perfectionists like you wouldn't believe, and they  
11 are frustrated when something is not perfect.

12       COMMISSIONER HILLMAN: I think your  
13 colleagues take exception. They said, no, they're  
14 not.

15       MR. LEWIS: This is just one of those  
16 places where it works, and so we've got a lot of  
17 work yet to do. Just what you pointed out earlier,  
18 that if it doesn't work in a community for most  
19 folks, their perception is not quite as great as the  
20 rest of the Nation, and when those instances occur,  
21 we need to learn from them, but to learn from them  
22 means we've got to be able to get the correct story,



1 because let me tell you one of the analyses in  
2 Tennessee was that there was a voting system problem  
3 because there were power outages and the power  
4 outages used battery backups, and, gee, that was  
5 provided in voting systems guidelines, that all of  
6 these units have battery backups. So was it a  
7 problem with voting equipment or was it a problem  
8 that the power wasn't there to begin with and the  
9 voting equipment did exactly what it was supposed to  
10 do?

11       So we've got to separate out fact from  
12 fiction so that we can work on real problems and  
13 solve those.

14       COMMISSIONER HILLMAN: Thank you very  
15 much.

16       Ms. Ensler, my last question: Election  
17 administration is not a very sexy issue. I mean,  
18 it's much more interesting for people to pile on,  
19 you know, suspicions about the voting machines  
20 aren't accurate or they're pre-programmed to do  
21 something other than what the voter intended, but I  
22 have observed during my three years on the

1 Commission that there still continues to be a

2 disconnect between what the local groups who work on  
3 voting and election-related issues, the  
4 non-governmental groups, know about the  
5 administration of elections, how elections are put  
6 together and run, everything from voter registration  
7 to certifying the vote and what actually goes on.

8       I mean, I've come to appreciate how  
9 complex the job is and the notion of the numerous  
10 details and the amount of work that has to be done.  
11 So I'm wondering what can be done to really get --  
12 and I'll just for generic sake call it advocacy  
13 group, the activism in the community. What can we  
14 do to get them to understand that they need to just  
15 slow down for a minute and spend some time with the  
16 election officials, invited or uninvited, to see how  
17 the operation goes, meet the people there, see where  
18 the equipment is stored, learn the security  
19 protocols, see how the voter registration forms are  
20 done, appreciate the process that an election  
21 official goes through to design and develop a ballot  
22 and all of the other details that, in fact, turn out

144

1 to be sources of discomfort and sometimes suspicion  
2 from the outside community of was this ballot

3 designed this way on purpose to confuse voters, to  
4 suppress votes in certain areas.

5 MS. ENSLER: You're right on target on  
6 your comments. A lot of it is a case of disconnect.  
7 People just are not familiar with the administration  
8 of elections. I don't know that I have an easy  
9 answer on that. I think that's what election  
10 officials are constantly trying to do. When I'm  
11 speaking with groups or when people are upset and  
12 they contact me, by the time I finish explaining all  
13 of the various steps and safety procedures, the fact  
14 that we have two people of an opposite political  
15 party and things are done in the open, not hidden  
16 away in a tunnel somewhere and that there are  
17 backups and such and then invite them to the public  
18 test of the equipment, I haven't had anybody show up  
19 at a public test yet.

20 But it is getting there. It's trying to  
21 get that information out to people, and I don't know  
22 that there is an easy way just to do that, because

145

1 there are so many groups and they don't always think  
2 of asking, and I suppose it would probably be up to  
3 us to try to seek them out, but we're also trying to

4 put on an election at that point. But I think do  
5 think that most of the time being able to invite  
6 people in and show them and explain to them what's  
7 going on is very helpful.

8           COMMISSIONER HILLMAN: I love to give  
9 ideas to people, and maybe, Secretary Markowitz,  
10 NASS could undertake designating a month in 2007 in  
11 which local election officials will be asked to plan  
12 to invite community leaders in. It will be not  
13 voter education week in the sense of educating  
14 individual voters, but educating people about this  
15 is where the system works, what are your issues, and  
16 this is how we address your issues, something that  
17 calls national attention to this versus, you know,  
18 7,000 individual efforts to reach out to the folks  
19 in the community who could benefit. Their work  
20 could benefit from knowing more about what happens  
21 with election administration.

22           SECRETARY MARKOWITZ: Thank you.

146

1           CHAIRMAN DeGREGORIO: Thank you.

2           You know, I had the opportunity this  
3 year to visit about 10 States in the primaries in a  
4 lot of jurisdictions and three States on election

5 day itself. So I got to see up close and personal  
6 many of the things that you described and I know,  
7 Kevin, you've described in more detail in your  
8 testimony in the statewide data base, and I was  
9 there in Wisconsin to see how you and your 1800-  
10 plus election officials dealt with that.

11 Secretary Markowitz, you talked about  
12 Washington State and what Sam Reed and his folks had  
13 to deal with, 351 election changes, code changes,  
14 since 2004. It's just incredible to even imagine  
15 something like that.

16 Libby, you have, you know, great  
17 testimony here about the cost of elections and the  
18 impact that really has had at the local level, the  
19 cost of elections, and I heard that too from  
20 election officials, that this never used to cost  
21 anything near this and we blow our whole year budget  
22 just on the primary election.

147

1 Of course, Doug, you talked about these  
2 long ballots that people are having to manage in  
3 their elections. I was in Chicago when they had 95  
4 decisions for voters to make when they were in that  
5 voting booth, and the way that the folks in Chicago

6 had to manage that process was just mind boggling.

7           And we can talk about any one of those  
8 individually, but I'm not. I think what I want to  
9 focus on in this last question to you, this panel,  
10 is about future. From what I can judge, there's  
11 going to be about 20 percent of election officials  
12 around this country in 2007 that are going to be  
13 new. Certainly, Secretary Markowitz, we have a new  
14 class of election officials that are coming in in  
15 January, and you all you know you have State  
16 Election Directors. You have certainly local  
17 officials around the country. Many people quit or  
18 retired. Some have been defeated and held  
19 accountable for some of the problems that they have  
20 brought about themselves.

21           So how are you going to handle that?  
22 What is in place in 2007 to help new election

148

1 officials, some of whom, many of whom maybe, have  
2 never been involved in this business before, but  
3 then have to get in this business of management and  
4 managing elections and facing 2008, and how are you  
5 going to address that issue and should there be any  
6 State requirements that make election officials have

7 to go through some kind of training that the State  
8 certifies to ensure that they have at least some of  
9 the important skills necessary to be election  
10 officials?

11 We'll start with you, Secretary

12 Markowitz.

13 SECRETARY MARKOWITZ: Well, you know,  
14 one of the important roles that a professional like  
15 the National Association of Secretaries of State  
16 plays is -- it creates an environment where  
17 mentoring becomes pretty easy and also it's a forum  
18 for education. So, of course, in the February  
19 meeting and as we do in our July meeting, we devote  
20 at least one or two days simply to elections and  
21 election administration.

22 You know, as a practical manner, in many  
149

1 States, the elections division staff is not  
2 changing. So the leadership is changing, but not  
3 necessarily the people who are actually designing  
4 ballots and actually making decisions about  
5 machinery or about procedures. That tends to be  
6 stable State by State, although we do see, as I  
7 think we're seeing maybe in Colorado now, that as

8 people leave, other people -- you know, there's  
9 retirements and people are going on to other jobs.  
10 So you have a greater turnover, and that's of course  
11 a particular concern.

12       But given the fact that at the Secretary  
13 of State level we're very often dealing principally  
14 with leadership, the association does try to support  
15 the new secretaries in helping give them the  
16 historical perspective. You know, obviously anyone  
17 coming in as a chief election official right now is  
18 coming in midstream in the middle of a very  
19 important evolution in how we run elections in the  
20 country, and in order to go forward, you really have  
21 to understand where we came from and how we got to  
22 the place we are in today.

150

1       One of the things that we do in the  
2 association is we do have a mentoring program where  
3 we try to pick secretaries who have similar  
4 functions in similar -- sort of similar kinds of  
5 States and match them up, and we actually try to do  
6 it -- this year, we're focusing on trying to make  
7 sure it's inter-partisan so that it bolsters the  
8 association as a non-partisan association of



9 election officials.

10 MR. KENNEDY: I'm glad you asked that  
11 question, because in Wisconsin, like Washington, we  
12 had about 48 pages of changes and several different  
13 bills, including changes to our voting equipment,  
14 but one of the changes that was put in and resulted  
15 from a task force that I served on, which is what we  
16 call a Legislative Council Study Committee, was that  
17 in the beginning of 2007, we will have mandatory  
18 State-approved training for our 1850 municipal  
19 clerks, which given the anticipated 20 percent  
20 turnover of those people -- many of them get elected  
21 in April on a non-partisan ticket or there's a  
22 change in their -- because the villages and towns

151

1 and cities elect their presiding officers, and so  
2 we're already gearing up for that, and that's  
3 actually where we see the need for sustained  
4 investment.

5 I think everyone I've talked to at the  
6 local level recognizes the need for training. We  
7 saw 72 County Clerks, which they have sort of a  
8 facilitating role in the elections, they often will  
9 help coordinate things, but it really requires you

10 to be responsible for County, State, and Federal  
11 ballot printing and notices and programming, to do a  
12 lot of the management. Because they are the elected  
13 officials, they'll take the leadership role. We're  
14 seeing with those 72 county clerks, there's going to  
15 be at least 12 new individuals there. So we want to  
16 make sure that they get trained.

17       We have with our statewide voter system,  
18 because we have so many users, a thousand users on  
19 that system, we have a lot of exchange, weekly  
20 updates between them, and they have -- our local  
21 election officials have a network which we are able  
22 to monitor to a certain extent, and we can get a

152

1 sense of where some of their frustration points are,  
2 where the problems are. It's actually a very  
3 helpful process that in many cases that they have a  
4 chance to vent what they've gone through in this,  
5 and that helps; but as frustrating as it is,  
6 sometimes they complain about performance issues or  
7 what the State told them to do next, they're  
8 realizing, Well, here's where the message didn't get  
9 and how can we fine tune it. It also is our ability  
10 then to help focus that training, and I think with

11 the new State requirement that that is going to go a  
12 long way and something we recognized with the type  
13 of turnover we're getting.

14 CHAIRMAN DeGREGORIO: Okay. Mr. Lewis.

15 MR. LEWIS: This is one of the -- I'm  
16 glad you really asked this question. Training is  
17 the one area in this whole process that is the most  
18 difficult to get local governments to support. They  
19 won't even support it by in-state training within  
20 the State. I can't tell you how often local  
21 officials -- Tommy has been around for all these  
22 years, Donetta too -- of where they want to go to

153

1 training. They would like to go to training, but  
2 their local jurisdictions won't fund the training,  
3 won't fund for them to go, whether it's at the State  
4 level or the national level, and that is a huge  
5 challenge.

6 In addition to developing the testimony  
7 for this, I just had to write a piece for the  
8 Council of State Governments on which I spent a good  
9 deal of time on training. States have to mandate  
10 this so that local jurisdictions cannot say they're  
11 not going to fund it. They have to mandate it.

12 In some cases, we have States like  
13 Washington State, and now Kevin has joined that  
14 crew, but Washington State, North Carolina, Ohio,  
15 who have their own certification programs. We have  
16 other States where they're contracting with outfits  
17 like us to come in and do that. We do Delaware,  
18 Virginia, and California already, and we're looking  
19 at doing a whole bunch more where we come in and  
20 train to State law, State specific stuff, and the  
21 State puts them through a program and then they're  
22 certified within their State.

154

1 Those are the things that, it seems to  
2 me, long term are going to pay off. This is a  
3 career-long education kind of thing. The Election  
4 Center, of course, has the national certification  
5 program for elections officials, and we reach into  
6 25 to 30 percent of the jurisdictions with that, but  
7 again, you've got local jurisdictions. You know, in  
8 some instances, I will tell you out of all the  
9 people who have graduated in the program or have  
10 participated in the program, and that's right at  
11 1100 people who have participated in the program,  
12 more than half of them have paid at least some or

13 all of their own training costs -- it's incredible  
14 -- simply because the jurisdictions won't fund it.  
15       So that's where we are, and it's one  
16 that is necessary. When States mandate it, then  
17 jurisdictions don't have any choice. They have to  
18 fund it. So I'm glad to see Kevin saying that  
19 they've done that in Wisconsin, because this will  
20 pay off long term.

21       CHAIRMAN DeGREGORIO: Thank you. I've  
22 had some questions from a few charitable trusts and

155

1 what they can do because they're going to spend  
2 millions of dollars next year or so on election  
3 reform, and one of the areas I told them on the top  
4 of my list is to give grants to local election  
5 officials to get better management training. That  
6 would help the process, I think.

7       Ms. Ensler.

8       MS. ENSLER: I'm trying to think of a  
9 better way to say what Mr. Lewis has just said.  
10 People do need the training, and the International  
11 Association of Clerks, Recorders, Elections  
12 Officials, and Treasurers provide training as well  
13 at our summer conferences. It is good to get

14 election officials together even from various  
15 States, and they can always come up with the idea,  
16 learning from other people, as to how they handled  
17 other situations. Most of our speakers are actually  
18 from our membership and areas that they have had a  
19 particular experience where most of the other  
20 officials have not yet had to deal with it, and so  
21 it is very helpful, but trying to get the local  
22 jurisdictions to be able to send people, it's

156

1 expensive; and, yes, I'm one of those officials who  
2 has paid for quite a bit of my own training, as a  
3 matter of fact, and that's just part of what's out  
4 there.

5       CHAIRMAN DeGREGORIO: I appreciate your  
6 answers to my question. It's really an important  
7 issue that we need to -- the country needs to focus  
8 on upon and certainly focus upon at the local level.

9       I'd like to ask Mr. Wilkey if you have  
10 one quick question for our panelists. I'm going to  
11 ask Ms. Hodgkins the same thing.

12       MR. WILKEY: One of the things that  
13 happens when you go last in this questioning is  
14 there is always the risk of one of them, one of the

15 questions that you wanted to ask, has been  
16 previously asked. Usually it's Commissioner  
17 Davidson. Before it was Commissioner Martinez.  
18 Today it was Commissioner Hillman who zeroed in on  
19 something that I wanted to pursue, and that was I've  
20 spent half of my life in this business, you know,  
21 more than half my life. I understand the hard work  
22 you all go through, the hard work that every

157

1 election official in the country went through to get  
2 ready for this election, but I think Commissioner  
3 Hillman made a good point and something that I  
4 wanted to pursue also, was that there are certainly  
5 a lot of organizations out there, organizations that  
6 represent all the spectrum from far right to far  
7 left and in between, organizations that represent  
8 minority voters and language minority voters who are  
9 so dedicated to their issues, and I think that we  
10 need to have a greater dialogue.

11       We need to find a way to bridge that gap  
12 so that they have a better understanding of how hard  
13 you work, where you're coming from, and you need to  
14 have a greater understanding of some of their issues  
15 that affect their constituents. I don't know how

16 you go about that, but if you could give me a quick  
17 comment of what you see as the leaders in your  
18 particular organizations, because I think it's so  
19 vital.

20         SECRETARY MARKOWITZ: From the  
21 perspective of the Secretaries of State, in our  
22 States, the Help America Vote Act was the first time  
158

1 that required as part of the planning process  
2 bringing many stakeholders to the table, and that  
3 was -- if that alone was all that HAVA did, that  
4 would have made a big difference, you know, alone to  
5 how we run our elections, and I know for many of  
6 colleagues, it was the very first time they actually  
7 sat around the table with some of these individuals  
8 representing the important stakeholders to the  
9 process.

10         So, you know, that was the beginning of  
11 a conversation in many States, which I think  
12 continues to be productive. On the national level,  
13 you know, at our conferences, that's the opportunity  
14 for secretaries to meet with and talk with people.  
15 There are many different forums for that, and many  
16 of the advocacy groups have actually made it a



17 commitment to come to those sessions, and there's  
18 two benefits from that. One is for us to get to  
19 really see what their perspective is so that as  
20 we're making resource decisions or making policy  
21 decisions, we're taking those realities into  
22 account, but it also gives them an opportunity to

159

1 get a sense of our big picture and how their  
2 interests might fit in to the overall challenge and,  
3 in fact, in some cases be a reality check about how  
4 the election systems work.

5       Now, I've been Secretary of State for  
6 eight years. I would say it's only since the  
7 adoption of the Help America Vote Act and all these  
8 changes that we're putting in place that we really  
9 have had such an active participation from the  
10 advocacy groups, and there's also more formal ways  
11 for them to do presentations and so forth, but I  
12 think the real work gets done just by being present,  
13 by being at the social events, hearing the same  
14 information other secretaries are hearing, and  
15 having an opportunity to have real conversations,  
16 and I think that's already made some difference and  
17 I think we'll see that continue -- we'll see that it

18 will continue to make a difference.

19 MR. KENNEDY: I would echo that in the  
20 sense that through the State Election Directors  
21 Association and through the U.S. EAC providing a  
22 forum for that exchange of ideas, it has been

160

1 essential with HAVA sort of jump starting it by  
2 requiring that balance in our HAVA planning  
3 committees, but that's also made us have more public  
4 exchanges, and that's very good, but I also think  
5 that as Chief Election Officers, and I speak for  
6 both Secretary Markowitz's organization as well as  
7 mine, that we really need to work with the local --  
8 at the local level, because some of the points that  
9 were made like having that one day for the process  
10 for the advocacy groups, I think that applies  
11 equally as well when you're dealing with groups that  
12 are working primarily for minority individuals. I  
13 think you can built on that, and I think most of the  
14 issues that come in this area tend to be local, and  
15 from our standpoint, I think we have to make sure  
16 that we can facilitate that. In many cases, that's  
17 where the issues surface, and we're at the stage you  
18 have to have a sense of that and I think step in.

19           So I would say it goes beyond just the  
20 national and the opportunities to mix with the  
21 leaders. It also has to go the other direction,  
22 down to the grassroots, and I see our role either  
161

1 through the Secretaries of State or the State  
2 Election Directors as having to be able to  
3 facilitate that and I think communicating that to  
4 our local election officials.

5           MR. LEWIS: Tom, one of the things we do  
6 in terms of Election Center training, and I'm sure  
7 Libby's group does also, is we remind folks that  
8 advisory councils are really useful for selection of  
9 polling places, for going over issues of concern,  
10 for training opportunities, for introduction of new  
11 equipment, right on down the line, and we remind  
12 them constantly about this, because it is something  
13 that the jurisdictions who have done it say pays off  
14 handsomely for them.

15           The problem gets to be in some of the  
16 jurisdictions. In the overwhelming number of  
17 jurisdictions in America, it's a one- or a  
18 two-person shop. They don't have enough people and  
19 enough time to keep up with their own work flow. I

20 mean, my god, you know, they're working overtime all  
21 the time for which they don't get paid in most  
22 instances. They're supposed to take comp time, and  
162

1 if they took the comp time, they'd be out of  
2 business.

3       So this is one of those deals of how do  
4 you stretch the resources to get -- and so some of  
5 our folks are -- in more than half of our  
6 jurisdictions, they struggle just to get the job  
7 done let alone add to it, and so that sounds like an  
8 excuse, but it's not. It's reality. It's where we  
9 are. The jurisdictions that don't do it, I think  
10 lose out in terms of particularly the urban  
11 jurisdictions, because there is a wealth of  
12 resources here that as people become more educated  
13 about why do we do what we do and how we do what we  
14 do and they're able to participate in sharing ideas  
15 with us about that, which helps to eliminate, in  
16 many instances bury us, you know, it also tends to  
17 educate and folks on both sides of the aisle learn  
18 something from each other about why this works the  
19 way it does.

20       So it's important that we do it, and yet

21 we don't do it enough, and so I'm glad you bring the  
22 question up. It is one in which we really need to

163

1 be thinking about this. I love the Commissioner's  
2 idea of not maybe a voters education week, but a  
3 voting education week, and we would only be able to  
4 do this, probably, in odd numbered years, not in  
5 even numbered years, but certainly we can start  
6 looking at how to do that a call attention to it and  
7 welcome folks in and have these discussions; but  
8 that's not enough. It's got to be that ongoing  
9 involvement, that ongoing participation because  
10 that's what makes this work together for all of us.

11 MS. ENSLER: He keeps stealing my  
12 thunder. I want to sit on the other side of the  
13 room next time.

14 Actually, I was thinking as we were  
15 discussing bringing in the stakeholders, I was  
16 thinking of IACREOT and its role, and I had  
17 mentioned that we do use a lot of our own members as  
18 leaders in some of our meetings, and at the same  
19 time, we also do bring in many of the stakeholders  
20 as speakers for discussing many issues, whether it's  
21 disabilities and accessibility of the voting place

1 things. Now, we do make use of those, but, of  
2 course, we, as we mentioned before, still need to  
3 encourage people to be able to get that training for  
4 local election officials. I was very pleased to  
5 hear Kevin say that he thought the Secretary of  
6 State's office probably needs to facilitate that,  
7 and I agree with him. It probably needs to be the  
8 State and local government working together. We  
9 aren't always aware of who some of the leaders are  
10 in some of these areas and to be able to get people  
11 together, I think would do a lot to try to allay  
12 suspicion of the equipment or the success of the  
13 election and such and would be very helpful.

14 MR. WILKEY: Thank you, Mr. Chairman.

15 CHAIRMAN DeGREGORIO: Thank you.

16 Madam Counsel.

17 MS. THOMPSON-HODGKINS: I have no

18 questions.

19 COMMISSIONER HILLMAN: She wants to go

20 to lunch.

21 CHAIRMAN DeGREGORIO: Well, I want to

22 thank all of you on behalf of the Commission for

1 your oral and your written testimony and your honest  
2 and forthright answers to our questions. We  
3 appreciate the work that you do to make democracy  
4 work in America, and we appreciate what you  
5 represent because you represent a lot of folks that  
6 are not here today.

7       So we appreciate all of this, and I want  
8 to tell everyone we're going to take a break here  
9 for 30 minutes because we want to stay on time this  
10 afternoon. We have some of our panelists this  
11 afternoon who have planes to catch. So we're going  
12 to take a 30-minute lunch break, and we have two  
13 more panels coming up, one that will follow this one  
14 at 1:45. Organizations will talk about their  
15 perspective of the 2006, and we'll have a  
16 representative from the vendor community to talk to  
17 us too.

18       So we're look forward to having you back  
19 here at 1:45. Thank you. Thank you very much.

20       [Whereupon, at 1:13 p.m., a lunch recess  
21 was taken, to reconvene at 1:45 p.m. this same day.]

22

1       AFTERNOON SESSION

2                       [1:54 p.m.]

3       CHAIRMAN DeGREGORIO: Thank you all. I  
4 think, Commissioner Hillman, you had a question or a  
5 statement.

6       COMMISSIONER HILLMAN: I do and, in  
7 fact, Commissioner Davidson is going to join me.

8       Earlier in the agenda when we did the  
9 election of the 2007 Chair, Commissioner Davidson  
10 and I wanted to make an appropriate presentation to  
11 thank you so much for your service as Chair during  
12 the last past year. Unfortunately, the little  
13 presentation we had wasn't here at that moment. So  
14 we would just like to present you a little holiday  
15 cheer as a token of our appreciation for the  
16 wonderful stewardship you provided during 2006.

17       CHAIRMAN DeGREGORIO: Thank you.

18       [Applause.]

19       CHAIRMAN DeGREGORIO: And I'm used to  
20 being among women with my four daughters, my wife,  
21 and granddaughter. So it's very nice. Thank you.  
22 Thank you for your kind comments and the gift.



1 Panel 2 this afternoon, we're going to  
2 continue our discussion of assessing the 2006  
3 election. Certainly, this morning we've heard from  
4 election officials and those representing election  
5 officials their perspective of the 2006 Election,  
6 and this afternoon, this panel we have, we're going  
7 to get another perspective of people who are  
8 involved in the election process and not in  
9 conducting elections, but representing organizations  
10 that are actively involved and engaged in the  
11 election process for the voters of America.

12 The first speaker this morning -- this  
13 afternoon -- I'm sorry -- is going to be Mary  
14 Wilson. Mary is the seventeenth president of the  
15 League of Women Voters of the United States and  
16 Chair of the League of Women Voters Education Fund.  
17 During her 20 years of service with the League,  
18 Ms. Wilson had held leadership positions at the  
19 national, State, and local levels. In 2004, she was  
20 elected to a two-year term on the League Board and  
21 the Education Fund Board. A resident of New Mexico,  
22 Ms. Wilson is an attorney with 30 years of

1 experience in diverse fields of practice.

2           Our second panelist will be Jonah  
3 Goldman. Jonah is Director of the National Campaign  
4 for Fair Elections and the Lawyers Committee for  
5 Civil Rights on New Laws Voting Rights Project. I  
6 believe that was started by President Kennedy in  
7 1963, if I understand right. Jonah is responsible  
8 for implementing the campaign's mission of  
9 developing policy and strategy to reform the  
10 administration of Federal elections at the Federal,  
11 State, and local level. His responsibilities  
12 include leadership in the Election Protection  
13 Coalition, the National Network for State Election  
14 Reform, and the Lawyers Committee for Election  
15 Reform Advocacy and Litigation Docket.

16           Our third panelist is somebody I've  
17 known for a long time, since he was a very, very  
18 young man, in fact, because he's from St. Louis  
19 where I'm from, and he's one of the Nation's most  
20 experienced election attorneys. Thor Hearne served  
21 as National Election Counsel to President Bush's  
22 re-election campaign and in 2000 was Missouri

1 counsel to the Bush-Chaney Campaign. Thor was  
2 appointed by the Missouri Secretary of State as an  
3 advisor to the Missouri Help America Vote Act  
4 implementation task force. He has testified before  
5 the House Administration Committee hearings in March  
6 2005 to the conduct of the 2004 Presidential  
7 election and the implementation of HAVA. Mr. Hearne  
8 served as an academic advisor to the bipartisan  
9 Commission on Federal Election Reform, which is also  
10 known as the Carter-Baker Commission.

11       Last, but certainly not least, is our  
12 friends at Electionline. Dan Seligson is the editor  
13 of electionline.org, and he's covered election  
14 reform for stateline.org before joining the Election  
15 Reform Information Project. He has covered Congress  
16 and the Federal Agencies for planet.gov and Virginia  
17 politics for the Journal Newspapers. He attended  
18 Columbia University School of Journalism and  
19 Connecticut College, and we certainly appreciate the  
20 work that electionline has done and continues to do  
21 in the election reform area.

22       So thank you all for coming, and we'll

1 start with Ms. Wilson.

2 MS. WILSON: Thank you, Mr. Chairman.  
3 It's a privilege to be here this afternoon, and I  
4 appreciate the invitation. As you know, the League  
5 of Women Voters has been an active supporter of the  
6 Help America Vote Act and the implementation of that  
7 Act, and we certainly would like to thank the  
8 Election Assistance Commission for all of the work  
9 that you have done in making that implementation  
10 move along so successfully.

11 The question that we're here to talk  
12 about today, of course, is how did it go, and,  
13 unfortunately, we all wish the answer to that  
14 question was as simple as the question itself.  
15 After all the hard work leading up to the 2000  
16 election, we'd like to be able to say that there was  
17 significant improvement in the voting process and  
18 the way that we vote. We feel from the League of  
19 Women Voters' perspective that the answer really is  
20 it depends.

21 The answer to the question of how did it  
22 go really depends on a number of factors. There's

1 been quite a few comments this morning about the  
2 fact that voter confidence was very high according

3 to the polling, exit polling, that was done. That's  
4 good news. That's a wonderful way to measure our  
5 system of voting. It's not the only measure, and we  
6 need to look at that question and that answer, how  
7 did it go, and it depends.

8         From the League's perspective, and I am  
9 speaking this afternoon based on having talked a  
10 week after the election to all 50 of my State League  
11 presidents and asking that same question, how did it  
12 go in your State. That's one of the ways that we  
13 all get information about the specifics of it, and  
14 that may be a tragedy in the system that we actually  
15 have to collect our data that way. It would be  
16 awfully nice if we had some real hard system to  
17 track information like your Commission adopted this  
18 morning with respect to taking a look at real  
19 evidence with respect to fraud and other issues in  
20 the election process.

21         Right now, we're all kind of left to  
22 that anecdotal information to tell us how it went,

172

1 and the reason that we say it depends, we say first  
2 it depends on where you were living. It depends on  
3 who you are, and it depends on how you voted, and by

4 how you voted, I mean the means by which you voted.

5 First let's look at where you live.

6 Voters in most communities had a fairly easy time of

7 it in November thanks to a lot of effort on the part

8 of election officials and voter advocacy groups to

9 get out the vote, to get information to the voters

10 about the process of voting, but there were reports

11 of serious problems with long lines, ballot

12 shortages, equipment malfunctions, and other issues

13 in Sarasota, Denver, and elsewhere that really do

14 reflect a need for improvement. It should not

15 depend on where you live as to how you felt about

16 your election experience.

17 Second, the answer of how the election

18 went is who you are. That's already been touched on

19 a little bit this morning. Countless numbers of

20 voters across the country were asked for photo I.D.

21 when it was not really required by law. We don't

22 have any way of measuring whether they were asked

173

1 for that I.D. because of the color of their skin,

2 for example. There were verified stories in

3 Virginia of voter intimidation and elsewhere also

4 around the country, voter misinformation given out.

5 That shouldn't be in this country of ours. Everyone  
6 should have the same opportunity to cast their vote  
7 without being asked unnecessary questions, without  
8 feeling as if they are being intimidated from going  
9 to the polls and casting their ballot.

10 Third, lastly, the concept of how you  
11 voted, the means by which you voted, was the ballot  
12 design proper, what kind of machine did you vote on,  
13 did you vote early, those are factors that really  
14 seriously went into play as to how the election went  
15 for you as a voter. The fact that voter experiences  
16 depended on these factors suggests that we have a  
17 great deal of work to do in order to achieve the  
18 real promise of American democracy. Does this mean  
19 that we need to consider another major revamping of  
20 elections before 2008? I believe it's too early to  
21 answer that question. What is clear, however, is  
22 that the Election Assistance Commission must

174

1 continue to play a critical role in ensuring that  
2 uniform nondiscriminatory effective implementation  
3 of election reform measures are implemented across  
4 the country.

5 As I said, I spoke with all of my State

6 League presidents, and during those conversations as  
7 well as tours that I made in five States prior to  
8 the election, I did hear a lot about the need for a  
9 voter verifiable paper ballot that records the votes  
10 cast. This is a topic that our league members are  
11 greatly concerned about, they care greatly about,  
12 and at our convention in June, the delegates adopted  
13 a resolution calling for all election systems to  
14 have a voter verifiable paper ballot or record that  
15 could be randomly audited.

16       The EAC, of course, will be hearing more  
17 from the League on that subject, but today I really  
18 and truly want to highlight another issue that  
19 really has kind of dominated some of the discussion  
20 this morning even, and that's the whole issue of how  
21 well election officials, election workers, are doing  
22 their job is the key, is really very critical to how

175

1 people feel about the elections. I'm very glad that  
2 this morning's panel was made up of election  
3 officials and they too were looking at that very  
4 issue, because from the League of Women Voters'  
5 perspective, when we say we feel there should be  
6 more election worker training, we don't want to be



7 seen as if we're casting a disrespect upon our poll  
8 workers, for example. I always quickly say that our  
9 members are poll workers. We have a lot of poll  
10 workers out there.

11 But the fact of the matter is that  
12 elections have become more complex and there are  
13 crucial issues in the polling place about how a  
14 polling place should be organized, how it should be  
15 administered, how the election workforce should be  
16 recruited and trained and managed. Those are the  
17 issues that the Commission can and should be looking  
18 at over the next two years leading up to the '08  
19 election.

20 Most of the problems that my State  
21 presidents reported to me during this election  
22 season really were those kinds of management issues,  
176

1 the issues related to long lines, poor ballot  
2 design, paper ballot shortages. Those kinds of  
3 issues are management, election management, issues,  
4 and you as a Commission play a very powerful role in  
5 assessing why these problems happen, in sharing best  
6 practices across the country, and in offering  
7 guidance to election officials about making the

8 system work better. Through investments in  
9 research, we can begin to understand that the  
10 election process is a system and we can look at the  
11 pieces in that system and make an impact on the  
12 problems that we see in pieces of that system.

13       From the League's perspective, the one  
14 issue that must be a priority for the EAC between  
15 now and 2008 is poll worker management and election  
16 official training. If we examine the overall issues  
17 of election management, we can see that many of  
18 those problems arise because of inadequate support  
19 or inadequate preparation for the job, and that's  
20 not poll worker's fault, not by any means. They  
21 simply have not been provided with the tools or the  
22 training, and the Election Assistance Commission is

177

1 to be strongly commended for the work that you have  
2 done in this particular area, and we on the League  
3 of Woman Voters are very proud to have been a part  
4 of that team working together with you to create  
5 that first of a kind guidebook, if you will, on poll  
6 worker recruitment and training, and we certainly  
7 look forward to continuing that collaboration.

8       Thank you very much for the opportunity

9 to address you this afternoon.

10 CHAIRMAN DeGREGORIO: Thank you,

11 Ms. Wilson.

12 Mr. Goldman.

13 MR. GOLDMAN: Thank you, Mr. Chairman,

14 and members of the Commission. My name is Jonah H.

15 Goldman, again, and I'm the Director of the National

16 Campaign for Fair Elections Lawyers Committee, and

17 as Chairman DeGregorio pointed out, the Lawyers

18 Committee was started 43 years ago, actually, by

19 President John F. Kennedy with the purposes of

20 making sure that all Americans have an equal

21 opportunity to participate in the American

22 experience.

178

1 The Lawyers Committee is proud to serve

2 as the lead legal organization in the Election

3 Protection Coalition, which is the largest national

4 coalition of organizations dedicated to voter

5 protection in our Nation's history, and one thing

6 that we've found, just to pick up on a theme that

7 President Wilson was talking about that I just want

8 to make sure we preface this discussion with and any

9 discussion with is that we really are advocates for

10 the rights of voters or advocates for a meaningful  
11 change in the election reform administration to make  
12 it more responsible to the will of eligible voters  
13 recognize that right now, we're doing a pretty good  
14 job, and the only reason why we're doing such a good  
15 job is because of the commitment of election  
16 officials and pole workers and, of course, of all of  
17 you as Commissioners.

18       But I want to talk a little bit, as we  
19 were called here today to do, to talk about the  
20 experience of election protection and the experience  
21 in the 2006 election cycle. Many commentators, some  
22 not just media commentators, but political

179

1 commentators and pundits quickly proclaim that the  
2 election of November 7th moved forward without any  
3 structural problems or at least dismissed the  
4 obstacles that voters saw as insignificant because  
5 electoral catastrophe was really limited to a few  
6 races; however, if you expand the diagnostics of  
7 success from those that are purely partisan to those  
8 that form our fundamental democratic identity as  
9 Americans, I think that we demand a different  
10 conclusion about this year's election.



12 honest assessment of what happened in this election  
13 so we can concentrate on ensuring real meaningful  
14 reform. I'll focus my remarks today on five  
15 problems that were especially pronounced this  
16 November: Number one, problems with polling place  
17 administration, including voting machines; number  
18 two, problems caused by restrictive voter  
19 identification procedures; number three, deceptive  
20 practices and voter intimidation; number four,  
21 problems caused by underperforming registration  
22 systems; and finally, problems with absentee

181

1 ballots. They'll be brief comments on each. So  
2 it's not going to take all day.  
3       First, problems with polling place  
4 administration and voting technology, in multiple  
5 States, Election Protection received reports of  
6 people waiting in line for hours on end because of  
7 machine failures, poll workers who didn't know how  
8 to operate the machines, insufficient number of  
9 voting machines, and general poor administration  
10 election systems. In Tennessee, for example, too  
11 few machines in one jurisdiction led to a waiting  
12 time of five and a half hours. In Prince George's



14 effectively safeguard the integrity of the electoral  
15 process, over the last two years, partisans have  
16 successfully restricted the franchise by  
17 implementing discriminatory voter identification  
18 policies. On November 7th, these policies  
19 disenfranchised eligible citizens in two ways:  
20 First, in States like Arizona where restrictive  
21 voter requirements were operable, eligible  
22 Arizonians were prevented from casting a ballot

183

1 because they did not have the requisite  
2 documentation; but second, in over a dozen States  
3 across the country that Election Protection received  
4 complaints, the poll workers were asking for voter  
5 identification that was not required by law, that  
6 voters were wrongfully forced to cast provisional  
7 ballots because of identification-related issues,  
8 and, otherwise, voters misinterpreting the voting  
9 rules to prevent eligible voters from casting  
10 ballots.

11 For instances, Representative Steve  
12 Chabot in Ohio was wrongly turned away from the  
13 polls because his driver's license did not have a  
14 current address. Representative Chabot, of course,



15 was able to come back to the polling place and cast  
16 a ballot, but many ordinary Ohioans who were  
17 suffering a similar type of treatment were unable to  
18 afford that luxury. In Missouri, Secretary of State  
19 Robin Carnahan reported that she too was asked for  
20 identification falsely and that she received  
21 numerous complaints at her office that reported  
22 similar activity.

184

1 Third, deceptive practices and voter  
2 intimidation, voters complained to Election  
3 Protection of cynical and fraudulent activity of  
4 both campaigns and individuals. In Orange County,  
5 California, a Congressional campaign sent 14,000  
6 voters with Hispanic surnames a letter providing  
7 erroneous and intimidating information suggesting  
8 that immigrants who have become citizens will be  
9 penalized for voting. In Colorado, it was reported  
10 that Hispanics were getting phone calls telling them  
11 they were not registered and that they may be  
12 arrested if they voted. In Arizona, the  
13 intimidation was even more overt with gunmen  
14 standing at polling places threatening Latino voters  
15 with severe ramifications for casting a ballot.

16 In Virginia and elsewhere, Election  
17 Protection received reports of voter receiving  
18 E-mails, and I think this was the first year we  
19 actually got reports of E-mails, telling voters  
20 falsely that their polling places were changed and  
21 telling them to go to the wrong precinct. In  
22 heavily Democratic Maryland, materials were  
185

1 distributed statewide that suggested Republican  
2 candidates actually represented the Democratic  
3 Party, causing widespread confusion.

4 Voters were also disenfranchised by poor  
5 performing registration systems. Over the past two  
6 years, States have imposed unnecessarily high  
7 hurdles to registration, making it more likely that  
8 voters will be left off the rolls, including  
9 impossibly strict matching criteria between voter  
10 registration information and information in existing  
11 data bases, onerous and unnecessary citizen  
12 requirements and regulations making it exceedingly  
13 difficult for civic organizations to register  
14 voters.

15 Voters from Georgia to California who  
16 were eligible to vote and submitted a timely voter

17 registration form were turned away at the polls  
18 because their names did not show up on the  
19 registration lists. In some situations, these  
20 voters complained that they were not provided a  
21 provisional ballot.

22 Finally, voters across the country were  
186

1 disenfranchised for problems with the absentee  
2 balloting process. From Maryland to Ohio to  
3 California and in dozens of States in between,  
4 voters who were eligible and applied for absentee  
5 ballots on time never received the ballots or  
6 received them too late to cast them.

7 Of course, Americans deserve better than  
8 this. The infrastructure that supports the voting  
9 system should be strong and responsive to the will  
10 of the voters. We must treat the issue that prevent  
11 eligible citizens from exercising their right to  
12 vote as a national problem that demands serious and  
13 apolitical policy solutions. Many of these problems  
14 will be solved by ensuring that our election  
15 administrators have the resources they need to  
16 respond to the demands of the election.

17 HAVA's voting machine experiment is

18 clearly not working as intended. We must instead  
19 demand that the priority of the companies in  
20 producing these machines is the electorate, not the  
21 bottom line. We need to make sure that there are  
22 sufficient penalties for deliberately deceiving

187

1 voters and preventing eligible citizens from  
2 exercising their rights through intimidation and we  
3 cannot succumb to partisan pressure to supplant  
4 reform with policies that rationalize restricting  
5 access of eligible voters to the polling place with  
6 scare tactics that rely on unproven and impossible  
7 premises.

8       Real reforms together with providing  
9 necessary resources to our election administrators  
10 will strengthen citizen confidence in the system and  
11 expand access to all eligible Americans, making our  
12 democracy the model for the world.

13       Thank you.

14       CHAIRMAN DeGREGORIO: Thank you, Mr.  
15 Goldman.

16       Mr. Hearne.

17       MR. HEARNE: Mr. Chairman, let me add my  
18 own words of commendation to your leadership here,

19 and I know that before we spoke, I think you have  
20 dignified this Commission since you joined it, and  
21 certainly many of us in election law feel  
22 appreciative of your sacrifice and service on this  
188

1 Commission.

2 As I've indicated, I have been involved  
3 in the election process and watched the election  
4 process as an election attorney for a number of  
5 years. What I have prepared is a bio as well as  
6 some specific testimony, and I will not reiterate  
7 that background, but what I will do is first note I  
8 know this morning the Commission voted on to receive  
9 the report and to accept further study of election  
10 crimes. I had the privilege of serving on that  
11 working group, and I know just as recently as this  
12 October the U.S. Supreme Court noted how important  
13 that project is that this Commission is going to do  
14 when they wrote in the Gonzalez v. Arizona decision  
15 that confidence in the integrity of our electoral  
16 process is essential to the function of our  
17 participatory democracy. Voter fraud drives honest  
18 citizens out of the democratic process and breeds  
19 distrust of our government. Voters who fear their

20 legitimate votes will be outweighed by fraudulent  
21 ones will feel disenfranchised and the right of  
22 suffrage can be debased or diluted by the way to a  
189

1 citizens vote being cancelled out by an illegally  
2 cast vote.  
3       Voter fraud is a very serious concern of  
4 many people, Mr. Chairman, member of this  
5 Commission, throughout the country. It is a concern  
6 that Supreme Court itself has recognized as a very  
7 serious concern and a compelling State interest.  
8 Equally, voter intimidation, voter depression, as  
9 this study also looks at are very important points  
10 to eliminate to the greatest extent we possibly can  
11 from our electoral system. In this country, no one  
12 should ever fear having to go and exercise their  
13 right to vote at a polling place no matter where  
14 their polling place is, no matter who they vote for,  
15 no matter what their ethnic heritage might be.  
16 Everybody should have the confidence too that when  
17 their vote is cast, it is counted and it is counted  
18 accurately, and that's why I commend again this  
19 Commission the report and the work of the working  
20 group members that were involved in that election

21 crimes report, particularly Mr. Don Santo and his  
22 recommendations that those be incorporated at the  
190

1 Department of Justice as well as so many others on  
2 that working group, the good ideas about how we  
3 address the very real problem of absentee ballot and  
4 fraud in this country.

5       Voter impersonation fraud, sometimes  
6 voting by ineligible people who are not eligible to  
7 cast a vote, votes cast in the name of dead  
8 individuals, as well as a problem that affects many  
9 voters, and that's voter registration fraud. That  
10 brings me to my topic of what we have before us  
11 today, which is the 2006 election, Mr. Chairman.  
12 When we look back on that, we have seen certainly  
13 immense progress, and a lot of those who have  
14 testified, testified to that. A lot of us before  
15 this election when we looked at this being the first  
16 year in which the Help America Vote Act imposed a  
17 number of requirements, such as a single statewide  
18 voter roll and new voting technology, many of us had  
19 grave concerns across the political spectrum, across  
20 whatever background we had. Those of us who had  
21 followed elections looked at what was going on, and

1 potential meltdown in the election process just  
2 because of so many new features of our election  
3 process.

4       It was fortunate that that largely did  
5 not happen and that largely didn't happen because a  
6 lot of individuals worked very hard and a lot of  
7 election officials worked very hard, and I add to  
8 voice to the chorus, Mr. Chairman, of those who  
9 commend, as President Wilson did, the election  
10 officials who work hard to inspire confidence in our  
11 election process.

12       I had the privilege of serving as an  
13 academic advisor to the Carter-Baker Commission.  
14 That was a tremendous experience for me and for  
15 those associated with that because it was truly a  
16 bipartisan commission. Two of the key individuals  
17 you're hearing a lot about right now, which would be  
18 Secretary Baker and Lee Hamilton, are two men of  
19 just unquestioned integrity as well as many of the  
20 other members on that commission. That commission  
21 came up and adopted a host of recommendations that I  
22 thought represented a high water point in the



1 election process. For Republicans and Democrats to  
2 come together on such a broad series of  
3 recommendations is something that I think reflects  
4 very well not only on the commission members, but on  
5 the country as a whole, and we can find that even  
6 though we may have different partisan points of  
7 view, that we also have some interest in a fair and  
8 honest election that transcends an individual's  
9 partisan interest.

10       My own perspective on that, I provided  
11 in my remarks. So I will not reiterate that other  
12 than note three very basic points and particularly  
13 looking at what's happened in the '06 election and  
14 looking forward to the work of this commission on  
15 where this commission can be most helpful in trying  
16 to increase even further American confidence in our  
17 electoral system. As it's been said not just in the  
18 U.S. Supreme Court that I just quoted, but studies  
19 by professors such as John Lott when you have an  
20 increased level of confidence on the part of a voter  
21 that they will be allowed to participate, that their  
22 vote will be fairly and accurately counted, you also

1 have an increased level of participation, and that's  
2 what we all want, is for more voters to participate  
3 because they believe their vote counts. We live in  
4 a period in our country where we experience more  
5 close elections, as we just witnessed even with  
6 several Senate elections and potentially the control  
7 of the United States Senate was decided by thousands  
8 or tens of thousands of votes in the aggregate.  
9 When we are deciding such matters of consequential  
10 importance in races as we did in the 2000  
11 Presidential race by such narrow margins of  
12 electoral votes being cast, we have a duty, and  
13 every official does, the parties, the candidates,  
14 all of us as citizens in this country to participate  
15 and do so in a way that inspires the confidence.  
16 Even when you have a close election, the voters  
17 should believe that they are the ones that chose  
18 that candidate.

19           It undermines the election and  
20 undermines the confidence of the citizens of this  
21 country if they believe that the election is decided  
22 by lawyers and judges and activists gaming the

1 system, and so when we have such close elections,  
2 that's why it is such an important task that this  
3 commission has in setting standards and making  
4 recommendations and working with the election  
5 officials and the election officials themselves  
6 administering elections in that way.

7 I mentioned three particular points.

8 Point one, current and accurate voter rolls, the  
9 most likely reason an eligible voter is denied the  
10 right to vote is because when he appears at the  
11 poll, he's not on the list, not on the voter roll.  
12 That is the most fundamental requirement for a fair  
13 and honest election, is a current and accurate voter  
14 roll where every eligible person has an opportunity  
15 to be on that roll at the right location, but only  
16 eligible voters are allowed to be on that roll at  
17 the proper location.

18 This year, as you know, was HAVA's first  
19 year requiring and mandating a single statewide  
20 voter roll. This commission has the opportunity to  
21 conduct a study of how that was, in fact,  
22 implemented in the '06 election and particularly not

1 so much how it was implemented and if there was any  
2 flaw in that, but let's look forward. How are we  
3 going to do it better in '08? You have the  
4 situation in which the Carter-Baker Commission  
5 identified the man with two watches when you have  
6 two voter rolls. When you have a voter roll by  
7 which a provisional ballot's eligibility is  
8 determined, by which an absentee ballot's  
9 eligibility is determined, by which any  
10 after-election disputes or recounts are measured,  
11 you have that as a single statewide voter roll under  
12 HAVA, but, in fact, many local election officials  
13 are still using as a practical matter a separate  
14 independent list. It may be very similar in some  
15 cases, but it is not always the same.

16       So again, you have the situation with  
17 the man with two watches. You have an election  
18 being administered with the voter rolls that is  
19 different from the official legal voter roll under  
20 HAVA. That's not done by malice in most cases.  
21 It's done by necessity because the technology wasn't  
22 or the list wasn't properly developed. The

1 statewide list wasn't functioning fast enough or  
2 didn't have the technical bandwidth to be able to  
3 allow these election officials to do what they  
4 needed to do.

5       All of that is just simply a way of  
6 saying we need to assess that on a uniform basis  
7 around the country and try to help these States to  
8 develop the right kind of statewide voter roll that  
9 is, in fact, accurate, that is, in fact,  
10 interoperable. Our own Secretary of State, Robin  
11 Carnahan, should be commended for entering into a  
12 pact with some Missouri's surrounding States, Iowa,  
13 Kansas, and others, so that somebody when they move,  
14 we can track that voter registration so that we can  
15 interact with those other State voter rolls. That's  
16 similar to the Carter-Baker recommendation. We're  
17 trying to have the statewide voter rolls  
18 interoperable and developed from the top-down not  
19 the bottom-up, because otherwise you're going to end  
20 with up these duplicates.

21       But related to that is the experience we  
22 had in Missouri. It was a very unfortunate one, Mr.

1 Chairman, and that was one where it led in just

2 weeks before the election to the U.S. Attorney in  
3 the Western District of Missouri returning with a  
4 Federal Grand jury four indictments issued against  
5 operatives submitting fraudulent voter registration  
6 forms. The Columbia Missourian Newspaper -- I'm  
7 picking on Missouri because it's my home State --  
8 they did a survey of the Missouri voter roll, and  
9 they found 10,000 deceased people still on the voter  
10 roll. The shocking thing was that they indicated  
11 that 250 or more of them had been voting even after  
12 they were dead.

13       This is not inspiring confidence.  
14 Missouri is subject to a Federal lawsuit by the  
15 Justice Department for having one of the worst rolls  
16 in the country in terms of the number of duplicates.  
17 Some counties have 150 percent of their voting age  
18 population on the voter roll. My point is simple.  
19 I'm not trying to be concerned about what's happened  
20 in the past. I want in the future, and this  
21 commission has the unique role that it has because  
22 of your stature, because of this commission's role

198

1 nationwide, to assist States in getting the voter  
2 rolls accurate and current. Every voter should have

3 the confidence when they register that their  
4 registration is processed or added to the roll  
5 accurately, and when they go to their polling place  
6 to vote, that they, in fact, do get to vote.

7         Similarly, you have, as I mentioned,  
8 concerns about voter fraud. Those are legitimate  
9 concerns. The study that this commission is taking  
10 and taking further study on is a very important  
11 study to quantify, to find out where those concerns  
12 are in terms of vote fraud. One of the uniform  
13 concerns that many of the people in the working  
14 group had was the role of absentee ballot fraud. We  
15 can't really assess that now in the 2006 election.  
16 The data just isn't in, but that is something that's  
17 been a consistent concern, absentee ballot fraud as  
18 well as other types of voter fraud that I mentioned,  
19 the illegal voting in different segments.

20         Finally, we want to make sure that  
21 voters in this country deserve to have their votes  
22 accurately counted. They need to have the

1 confidence that when they go in, if the machine  
2 doesn't work, there's an opportunity to cast a paper  
3 ballot. One of the things that I found as very

4 positive in my jurisdiction and where I vote in St.  
5 Louis County is that we had the option of voting  
6 when you went in not just on a touch screen, if you  
7 so chose, but you also had the ability to use a  
8 paper ballot or an optiscan. Having that option,  
9 particularly for older voters who may not have been  
10 as confident or comfortable using the technology was  
11 something that, again, increased voter confidence.

12 I think the Supreme Court got it right  
13 when they said when we look at our elections, what  
14 we need to be about is to have the objective, which  
15 is one also identified by the Carter-Baker  
16 Commission, the objective of having an election  
17 system that inspires voter confidence even and in  
18 particular when we have these close elections.

19 So, Mr. Chairman, if I had to leave this  
20 commission with one particular recommendation from  
21 my perspective on the election, I would say that  
22 helping to move every State to have a current,

200

1 accurate, correctly designed, correctly functioning  
2 single statewide voter roll as mandated by HAVA is  
3 probably one of the most important things that can  
4 be done. That will eliminate concerns about people



5 showing up who are not on the list and that will  
6 also assist the State in making sure that  
7 duplicates, eligible voters, those who should not be  
8 on the list or who are on the list multiple times or  
9 fraudulent registrations are not on that voter list  
10 so voters have confidence in the election process.

11 Thank you very much.

12 CHAIRMAN DeGREGORIO: Thank you, Mr.  
13 Hearne.

14 Mr. Seligson.

15 MR. SELIGSON: Thank you, Mr. Chairman,  
16 and Commissioners for the opportunity to speak from  
17 Electionline.org's perspective on what happened  
18 during the 2006 election.

19 Electionline, previously known as the  
20 Election Reform Information Project, was established  
21 after the 2000 election by a few charitable trusts  
22 as a nonpartisan and, most importantly, non-advocacy  
201

1 clearinghouse of news analysis data on election  
2 reform information. We're solely funded by the few  
3 charitable trusts and a grant administered by the  
4 University of Richmond.

5 Electionline produced a post-election

6 report a few weeks ago, which we have --

7 CHAIRMAN DeGREGORIO: Can I ask you to  
8 get a little closer to the mike?

9 MR. SELIGSON: Sure. We have a report  
10 that is at the entrance here that we produced a few  
11 weeks ago that offers some State-by-State summaries  
12 from on and around the November vote. While it's  
13 not intended to be a comprehensive analysis of what  
14 happened that day, it is nonetheless a pretty good  
15 compilation of news and anecdotal incident reports  
16 from reputable. What I'm going to talk about today  
17 is largely based on what was in that report.

18 In the weeks and months leading up to  
19 the election, many people, including our  
20 organization, predicted widespread problems in the  
21 2006 vote. An estimated third of all voters living  
22 in jurisdictions with new machines, new rules in  
202

1 some States concerning voter I.D., new registration  
2 systems, and polling place check-in procedures  
3 combined with a divided electorate casting ballots  
4 in the high stakes vote for control of Congress, all  
5 the ingredients for chaos appeared to be in place.  
6 Would it be a meltdown or would it be a successful

7 vote showing the evolution of the American electoral  
8 system since the 2000 contest? We found elements of  
9 both.

10 We had clear winners in most areas, and  
11 chaos was really not the order of the day, but  
12 imagine how differently we might have perceived  
13 November 7th if partisan control of the House of  
14 Representatives hinged on the outcome Florida's 13th  
15 Congressional District where 18,000 non-votes in the  
16 races befuddled observers, experts, and auditors or  
17 if control of the Senate hinged on the outcome of  
18 the race in Ohio in where Cleveland's Cuyahoga  
19 County had an estimated 12,000 people cast ballots  
20 without ever having been signed in.

21 I'm going to focus on three areas. I  
22 think other panelists have as well, but: First,  
203

1 voting systems; second, voter identification; and  
2 third, voter registration and/or check-in procedures  
3 at polling places. First, on voting systems, like I  
4 said, November marked the first general election in  
5 which every polling place was required to have at  
6 least one voting machine accessible for people with  
7 disabilities. Many more DRE, or direct recording

8 electronic, systems were deployed as replacement for  
9 older systems and election data services reported as  
10 a result of all of this that -- I'm sorry -- that  
11 before the election, 63 percent of the country's  
12 voting jurisdictions had changed equipment since  
13 2004, which represents the largest shift in the  
14 Nation's history.

15       First, on the good, I think Maryland  
16 recovered quite nicely from the September primary to  
17 having what many consider to be an almost  
18 trouble-free general election. Connecticut and New  
19 York ran elections on lever machines, which whether  
20 or not they can continue to be used going forward is  
21 a question right now, but most jurisdictions in  
22 those States ran elections without a hitch even with

204

1 the scrutiny of a recount in one Connecticut  
2 Congressional jurisdiction, but success is not  
3 universal.

4       Sarasota County's 18,000 non-votes in  
5 the race to replace Catherine Harris once again has  
6 placed that State, one county's ballot design, and  
7 the opaque nature of paperless electronic voting in  
8 the public eye. The high number of missing ballots



10 be looked at in a number of ways. Certainly the  
11 spotlight was brighter on that day than perhaps on  
12 any day than any vote in our Nation's history, and  
13 certainly growing pains can be expected as poll  
14 workers, voters, and election administrators learned  
15 how to adapt to new technology and new challenges;  
16 but every voter should be able to count on being on  
17 a precinct roster if they registered on time. They  
18 should be able to assume access in a reasonable  
19 amount of time to a well-functioning, accurately  
20 calibrated and secure voting system, and they should  
21 be fairly certain that their vote will be counted  
22 accurately, but that was not the case in a number of  
206

1 areas in the country.

2       On voter I.D., new rules and  
3 pre-election court challenges to new voter I.D. laws  
4 in Indiana, Ohio, and Georgia did not cause  
5 significant problems in the polls. Indiana's new  
6 photo-only voter I.D. law did not hinder those  
7 voters that showed up at the polls, at least  
8 according to Indiana's Secretary of State, and an  
9 independent organization that ran hotlines for  
10 voters reported that only a small percentage, under

11 seven percent, of election day complaints focused on  
12 voter I.D. issues.

13       The most significant incident occurred  
14 in St. Louis, as mentioned earlier, where according  
15 to press reports, the local board chairman  
16 instructed poll workers to ask voters for I.D. when  
17 they checked in despite a decision by the State  
18 Supreme Court blocking the photo I.D. law. Some  
19 Georgia voters were asked -- I'm sorry. Some voters  
20 and poll workers were apparently confused by a court  
21 decision in that State that barred the State's photo  
22 I.D. law. In Decatur County, poll workers were  
207

1 unnecessarily requesting photo I.D. while in other  
2 parts of the State, some voters brought no  
3 verification of their identify because they thought  
4 the court decision meant that nothing would be  
5 required at all. Scattered issues aside and not  
6 straying into the debate about whether voter I.D.  
7 secures the vote or blocks access to it, voter I.D.  
8 requirements did not seem to pose a stumbling block  
9 on election day to those voters who came to polling  
10 places.

11       Finally, on registration data bases, the

12 debut of the statewide list went largely unnoticed  
13 by the general public, and that would indicate the  
14 transition at least from a consumer end was  
15 relatively seamless. Once assembled and if  
16 assembled correctly, good registration rolls are the  
17 gatekeeper of a good election. There were pre- and  
18 post-election reports that good list were not  
19 universal with reports of dead voters on the rolls  
20 in some States, concerns about matching procedures  
21 in others, and well-documented problems with  
22 electronic poll books, particularly in Denver,

208

1 Colorado, which through that election into chaos.  
2 When workers in Denver attempted to sign in voters  
3 at most centers, the poll books froze or slowed.  
4 That led to waits of at least a few hours, and for  
5 those who decided not to walk away, they cast  
6 provisional ballots. Some decided to wait it out.  
7 Similar problems were reported in some parts of New  
8 Mexico using a similar system similar system.  
9 At this early junction with the election  
10 just a month behind us, we can only focus on the  
11 published reports of troubles. We do not have  
12 access to State or locally produced reports of



13 election successes, which there were likely to be  
14 many around the country. Clearly, there were  
15 significant problems on election day, particularly  
16 in the area of voting systems, but also with  
17 check-in procedures and other aspects of election  
18 administration. I think as the Commission focuses  
19 on successes in many parts of the country, it's  
20 important not to overshadow some failures in others.  
21 In other words, a lot of work remains to be done.

22 Thank you.

209

1 CHAIRMAN DeGREGORIO: Thank you very  
2 much.

3 I'll start off the line of questioning  
4 here, if you don't mind. I have a general question  
5 for all of you, but there's one specific  
6 clarification I need from Mr. Goldman, which you  
7 said in your testimony and it's written here about  
8 Representative Steve Chabot in Ohio in which you say  
9 here and you said was wrongly turned away at the  
10 polls because his Ohio driver's license did not have  
11 a current address. The question is this term  
12 "wrongly turned away". I just want to understand  
13 what you mean by that, because as I understand Ohio

14 law, it requires you to have identification with the  
15 current address that have to show, and was he  
16 wrongly turned away by the poll workers, is this a  
17 wrong policy issue, because it suggests that he was  
18 wrongly turned away by the poll workers. If they  
19 were just doing their job, they were just doing  
20 their job and he was not wrongly turned away by the  
21 polls.

22 MR. GOLDMAN: Ohio law, this is actually  
210

1 -- this created confusion across Ohio largely  
2 because Ohio implemented in the intervening years  
3 since 2004 a pretty large scale omnibus  
4 election-related bill, and one of those pieces in  
5 that bill was the identification provision.

6 What the bill requires is that if you  
7 have a current driver's license, that that is  
8 appropriate proof of identification regardless of  
9 what the address is on the driver's license. If  
10 you're not using a driver's license and you're using  
11 a different type of identification, then depending  
12 on what type of identification you use, then there  
13 has to be a current address on it; but what  
14 Representative Chabot -- what happened to

15 Representative Chabot is he came with a driver's  
16 license that had a different address.  
17       That was the point of contention. It  
18 happened in a couple of counties, specifically in  
19 Franklin County and also in Hamilton County where  
20 there were a number of polling places, and that  
21 actually led to post-election discussions about how  
22 to treat what became largely provisional ballots

211

1 that shouldn't have been cast provisionally, and  
2 that was the issue specifically.

3       CHAIRMAN DeGREGORIO: Okay. That's  
4 helpful to met to understand what that means.

5       For all of you, because you've all  
6 identified problems whether reported by the  
7 hotlines, whether reported by newspaper, whether you  
8 heard it yourself, your legal counsel told you, how  
9 do you get to the core of these problems and to  
10 identify which ones really were real? Does your  
11 people in your organizations work with election  
12 officials to try to separate sometimes reported  
13 problems that really were not problems from reality  
14 and some real problems that actually occurred, and  
15 how do you work with election officials to see how

16 they're going to solve some of these issues for  
17 future elections?

18       You've heard testimony from election  
19 officials this morning, and I've heard it myself,  
20 that a lot of these problems that are reported, when  
21 you get to the details, they really weren't problems  
22 at all. So I'm just trying for my own self to  
212

1 understand how these problems are quantified and the  
2 details are researched to make sure that they really  
3 were some kind of problem, and how do you react when  
4 election officials bring it to your attention, not  
5 just us, but to locals?

6       We'll start with you, Ms. Wilson.

7       MS. WILSON: Yes. From the League of  
8 Women Voters perspective, we do have 850 leagues,  
9 local leagues, across the country, and each one of  
10 them -- actually, I have a lot of members who are  
11 election officials and county clerks and so forth.  
12 So we have intimate knowledge, if you will, about  
13 how elections work, but we certainly do encourage  
14 all of our local League presidents and our voter  
15 service Chairs in those local leagues to talk with  
16 their election officials before elections so that we

17 can get out the proper word about what voters are  
18 going to be facing in that particular election from  
19 a process standpoint.

20       And we do send out a weekly message to  
21 our local Leagues across the country. Prior to the  
22 election, one of the things that we always emphasize

213

1 is that fact that they really and truly need to talk  
2 with their election officials after the election and  
3 see how it went from the election official's  
4 perspective, and the first thing I always tell our  
5 League leaders to say to the election officials is  
6 how can we help you make it better.

7       CHAIRMAN DeGREGORIO: Thank you.

8       Mr. Goldman.

9       MR. GOLDMAN: And, similarly, our  
10 organization, The Election Protection Coalition, and  
11 I'll just speak to it specifically as opposed to the  
12 Lawyers Committee, because we have relationships on  
13 our own with election officials, but part of the  
14 program with Election Protection which starts months  
15 and months before the election day is organizing a  
16 group from our perspective, a group of attorneys and  
17 law students in the jurisdiction to specifically

18 reach out to election officials, work with election  
19 officials to do a number of things, number one,  
20 solve the problems that come up before election day.

21 As we know, so many of the problems are either  
22 identified -- so many of the problems that do happen

214

1 are either identified or can be solved before  
2 election day. So we train them on how to do that.  
3       And then we also encourage them to get a  
4 direct line of communication with election officials  
5 so during election day when we start hearing about  
6 these problems, we can actually talk to election  
7 official to see if they've heard about it and to  
8 jointly investigate to make sure that the problems  
9 are, in fact, real problems and not -- as you say, a  
10 lot of reports turn out to be not problems. A lot  
11 of reporters turn out to be problems.

12       CHAIRMAN DeGREGORIO: All right.

13       Mr. Hearne.

14       MR. HEARNE: I think that certainly a  
15 lot of the stories we all hear about the election  
16 turn out to be unfounded anecdotes, but there's  
17 always going to be a significant component of that.  
18 A lot of activity when you have a Nation of 300

19 million going to the polls largely on the same day  
20 or the same early voting period, you're going to  
21 have a lot of opportunity for someone who  
22 particularly doesn't vote as frequently to believe  
215

1 that the system didn't work as they understood it  
2 should and report that.

3       At the same time, you also have a lot of  
4 legitimate concerns, and that is really where I  
5 think the focus should be, to be the solution and  
6 not the problem. All the participants, the parties,  
7 the candidates, I don't believe anybody benefits if  
8 at the end of the election, somebody is saying the  
9 election was stolen, the election was in fact  
10 conducted poorly in a way that disenfranchised  
11 voters unless that is very legitimately documented  
12 and presented in a way that you have a solution and  
13 anybody responsible for that is prosecuted.

14       I think that we have a duty not to  
15 perpetuate these anecdotes if they're unfounded.  
16 That's why I think, again, studies looking at  
17 specific hard evidence are where we need to focus  
18 because that will not undermine inappropriately the  
19 confidence of our voters and only focus on

20 legitimate issues that we can fix.

21           So, yeah, you have a lot of those

22 situations, but again, part of the problem, as just  
216

1 mentioned, is these issues arise because of the  
2 litigation surrounding the election, which is  
3 unfortunately an increasing feature of American  
4 elections. Again, I'll quote the Supreme Court  
5 which said that court orders affect elections,  
6 especially conflicting orders, can themselves result  
7 in voter confusion and consequent incentive to  
8 remain away from the polls.

9           So what we're saying is, what the  
10 Supreme Court is saying is, even the process of  
11 litigating the election, particularly in the waning  
12 days before the election and you're trying to change  
13 the rules while people are being trained can  
14 themselves cause more harm than good. We need to  
15 keep that in mind as well. So I think both of those  
16 things is something to focus on.

17           CHAIRMAN DeGREGORIO: Thank you.

18           MR. SELIGSON: Well, it's an excellent  
19 question, Mr. Chairman. I think one of the problems  
20 in this field is the ability to get good data



21 quickly or at all. I think in the next couple of  
22 months or year, we'll be working very hard at

217

1 getting as much data from localities, from State  
2 election officials as we possibly can, which is what  
3 we've been doing over the last couple of years.

4 I think for one of these early sort of  
5 first blush reports, the issue is problem  
6 identification, and these newspaper reports, you  
7 know, as a journalist, I really do think that  
8 journalism provides the first draft of history, and  
9 I'm not sure that we need to get a secondary source  
10 to say, Well, these are not real problems. I think  
11 we're reporting real problems, but I think, again,  
12 what we need to do is get a hold of as many sources  
13 as we can and put together as much data as we  
14 possibility can before we do a thorough analysis,  
15 which, admittedly, we have not done yet.

16 CHAIRMAN DeGREGORIO: Yeah. We have  
17 done that on our own. My assistant actually did  
18 that. We've got your report and other reports that  
19 were not in your report, and I think we've  
20 identified so far about 109 of the 6800  
21 jurisdictions in America that had some kind of

1 problems, but at least that's the figure we've  
2 looked at so far.

3       Okay. My fellow commissioners.

4 Commissioner Hillman.

5       COMMISSIONER HILLMAN: I will keep my  
6 questions short in essence of time so we can get to  
7 our final presenter.

8       But, Mr. Hearne, a question for you, and  
9 it gets to -- and I'm looking at your testimony.  
10 You cited a couple of court cases, which means that  
11 the complaint actually went to the courts. It looks  
12 like organizations that were engaged in registering  
13 people or submitting registrations in the names of  
14 people who were not eligible to vote, either because  
15 it was a duplicate or they're deceased or whatever,  
16 but I just want to see if my understanding is  
17 correct when you cited a couple of these that the  
18 court case, the case, was again an organization or  
19 one individual, or was it against all of the 2,000  
20 people whose names showed up on the rolls?

21       MR. HEARNE: It was the organization.

22 Again, there are several places in my prepared

1 testimony where I cite. Probably the best example,  
2 and I believe this is the one you may be referring  
3 to, the situation in Missouri where the U.S.  
4 Attorney in the Western District of Missouri  
5 returned or a Federal Grand Jury returned four  
6 indictments against some operatives that were  
7 working for an organization known as ACORN.

8       The statements and the press coverage of  
9 that, and I'm merely repeating what is in there -- I  
10 have no information other than what has been  
11 publicly made available, is that they were looking  
12 at the organization itself, not just the  
13 individuals. Now, the individuals were the ones  
14 indicted. In that case, the concern is when you  
15 have not just three or four individuals, but what  
16 the election officials reported was in the City of  
17 St. Louis and Kansas City large numbers of voter  
18 registrations forms that were fraudulence or  
19 duplicate or submitted. Now, here's where that's a  
20 problem, because that disenfranchises a legitimate  
21 voter.

22       COMMISSIONER HILLMAN: No. I understand  
220

1 that, but there's a point I want to get to. You  
2 also cited one in Pennsylvania, a case from  
3 Pennsylvania where it appears that the complaint was  
4 against an individual, but it was talking about  
5 hundreds of names. When those items are reported,  
6 generally what I hear is hundreds or thousands of  
7 people are committing voter fraud because there are  
8 hundreds or thousands of names that are identified  
9 as duplicates or inappropriately showing up on the  
10 roll versus it being one or a half dozen  
11 individuals.

12       So in the conversation about this, my  
13 question to you is how do you separate that  
14 language? How do we get away from the anecdotal  
15 thousands of fraudulent voters when it may be one or  
16 two entities generating these hundreds or thousands  
17 of names?

18       MR. HEARNE: You're absolutely correct.  
19 I think that the focus should be, and certainly no  
20 one should misunderstand when somebody submits --  
21 one of the most infamous examples came out of 2004  
22 when Chad Staten as submitting Dick Tracy, Mary

1 Poppins, and a hundred other fraudulent  
2 registrations and was paid crack cocaine to do that.  
3 Now, that's not a hundred cases of voter fraud, but  
4 that's one individual trying to commit -- to submit  
5 a hundred fraudulent registrations. Now, those were  
6 caught and the process stopped those from finding  
7 their way under the voter roll, but what we need to  
8 focus, as you're indicating -- I think you're  
9 absolutely right -- is to look at the individuals as  
10 well as organizations, anybody who's sponsoring  
11 those kind of efforts that seem to be trying to game  
12 the system one way or another, and I don't care what  
13 they're doing, but we need to focus on the  
14 individuals as well as the organizations that are  
15 engaged in this, not misrepresent it as some broad,  
16 you know, hundred thousand individuals trying to  
17 commit fraud. The person submitting those  
18 fraudulent registrations is the person who should be  
19 prosecuted.

20           COMMISSIONER HILLMAN: Are you aware of  
21 any case where hundreds or thousands of people in  
22 any way one State or jurisdiction in one election

1 cycle were found to be engaged in voter fraud and,  
2 therefore, you know, charged with it?

3 MR. HEARNE: I don't know of a case -- I  
4 know voter fraud is normally, in my experience, all  
5 the cases I'm familiar with, perpetuated by a small  
6 group of people. Now, that's not to say a small  
7 group of people submitting a lot of phony voter  
8 registration forms or fraudulent absentee ballots  
9 cannot, in fact, affect the outcome of an election.  
10 It can disenfranchise hundreds of individual voters.

11 COMMISSIONER HILLMAN: Oh, no. I'm not  
12 talking about that. I'm talking about the numbers  
13 of people who are actually charged with the voter  
14 fraud activity.

15 MR. HEARNE: My experience has been it's  
16 normally a small group of people involved with small  
17 a small organization effort that is involved, but it  
18 can have a very significant impact. Again, some of  
19 it impacts the fact that it undermines confidence  
20 throughout our entire election system.

21 COMMISSIONER HILLMAN: Thank you.

22 For the other panelists really quick,  
223

1 thinking on what you summarized for us and what  
2 you've heard and analyzed from the 2006 elections,  
3 what would say thinking back to 2000 elections and  
4 2006, what is the most significant improvement, good  
5 change that has happened and is there anything that  
6 you would cite as has gotten worse, some unintended  
7 consequence of efforts at election reform that may  
8 have actually resulted in something that's more of a  
9 barrier or something?

10 Ms. Wilson.

11 MS. WILSON: Yes. From the League's  
12 perspective, there are two part of HAVA that require  
13 a good bit of work because they have not functioned  
14 exactly as were intended, and so you might say that  
15 the situation in some States got worse as a result  
16 of it, and those were the provisional balloting. We  
17 still have 700,000 provisional ballots that were not  
18 counted this time around, and we have, basically,  
19 across the country in different States, different  
20 ways, and different reasons, and different ways that  
21 the provisional ballots are counted or not counted,  
22 and we really and truly need to work on that so we

224

1 have a consistent way a person in New Mexico can be

2 certain that their ballot, their provisional ballot  
3 will count if it's cast in the right county. Other  
4 States, it has to be in the right location. Well,  
5 if the person knew to go to the right location, he  
6 would have gone to the right location, and so we  
7 really need to work on that particular situation.

8         The statewide data base, I think we all  
9 applauded that when it was placed in HAVA. It needs  
10 a great deal of work on the part of all of us, not  
11 just to make sure that it is being used in the right  
12 manner, to make sure that it's being used at the  
13 polls and it's being used by the county election  
14 officials and you don't have two different systems,  
15 two different poll books that are being used, but we  
16 also need to make sure there's this consistency that  
17 computers within the State talk to each other and  
18 talk to each other properly so that there's not  
19 suspicion if names are not identical, but they're  
20 the same person. We need to make sure that there's  
21 a good system in place that the person who's  
22 registering to vote isn't kicked off of registering

225

1 to vote just because they used a different initial,  
2 which happens a lot of times with women who are



3 married and assume a different middle initial when  
4 they're married.

5       We need to work on that particular  
6 system, and that's something that one might view it  
7 as a real great thing that came out of HAVA, but in  
8 the implementation, there are lots of folks that we  
9 need to work on.

10       Now, looking at the positive side of  
11 things, from the voter's perspective, our focus on  
12 the overall process and recognizing that the process  
13 and its pieces need to be looked at and that they  
14 are as important -- it's as important to educate the  
15 voter about the process as it is about the  
16 candidates and issues. I think that that's  
17 something in the six years has been very good.

18       COMMISSIONER HILLMAN: Thank you.

19       MR. GOLDMAN: Thank you, Commissioner.

20 First of all, I want to follow up on what President  
21 Wilson was saying. One of the greatest things  
22 that's happened over the past six years is that I

226

1 really think that there's a new citizen awareness  
2 about the mechanics of elections in a way that there  
3 wasn't before the 2000 election debacle, and I think

4 that while I'm sure some election administrators  
5 would prefer a little bit more organization to that  
6 activism, I think that the fact that we have  
7 citizens who are really engaged in this process is  
8 terrifically hopeful, and I think that's what we're  
9 seeing to sort of spur a positive change.

10 I think another positive since 2006 is  
11 this room that we're sitting in here. I think the  
12 fact that Congress has recognized that it has a role  
13 in at least providing to the States to do this  
14 incredibly important job and, in fact, the jobs that  
15 their jobs rely on is something that is hopeful.

16 I think, unfortunately, there are some  
17 things that -- there are some growing pains in that  
18 process, and one of those, I think, is the  
19 experimentation with the machines that I think we  
20 have to re-think about and that we have to try to  
21 figure out how to make sure that those machines are  
22 more responsive to the voters or at least that they

227

1 still confidence from the voters.

2 I think that the voter registration data  
3 base, again, is something that I think we all at  
4 this point agreed on this piece, that if that

5 experiment goes as is planned and if that experiment  
6 goes as it was envisioned, it will make enormous  
7 strides to ensuring that eligible voters have access  
8 to the polling place. I think that one of the  
9 things that we've gone in the wrong direction about is  
10 by sometimes when we're developing new policy ideas,  
11 we sometimes mistake partisan-driven attempts such  
12 as these restrictive voter identification laws and  
13 unnecessary proof of citizenship laws for real  
14 reform. While election fraud is incredibly,  
15 incredibly important to prevent, we have the means  
16 to do it and there are new things that we need to do  
17 in order to make sure that we're more effective in  
18 preventing voter fraud. This is not -- these sort  
19 of putting the cart before the horse and in some  
20 ways putting the cart where there's no horse  
21 anywhere around is, I think, one of the ways we've  
22 gone in the wrong direction.

228

1 COMMISSIONER HILLMAN: Thank you.

2 And Mr. Seligson.

3 MR. SELIGSON: Well, being a  
4 non-advocacy group, I tend to shy away from such  
5 questions, but I think aside from me getting steady

6 employment, the best thing to happen since the 2000  
7 election is the ability of voters with disabilities  
8 to cast a ballot secretly and independently, and  
9 this being the first election where that was almost  
10 nationwide with the exception of the my home State  
11 of Massachusetts and parts of New York, if you could  
12 find a place where you could do it, I guess you  
13 could. That is a major step forward.

14 COMMISSIONER HILLMAN: Thank you.

15 CHAIRMAN DeGREGORIO: Commissioner  
16 Davidson.

17 COMMISSIONER DAVIDSON: The first  
18 question I would like to ask each one of you that  
19 was collecting information about the election, I it  
20 think that, Jonathan, you -- Jonah -- I'm sorry. I  
21 apologize -- you mentioned that you got around  
22 25,000 calls. Did you keep good information on  
229

1 these? Did you keep the name, the place that it  
2 happened, the location that it happened, you know,  
3 actual information, and how many of them were  
4 machine related? How many of them were that they  
5 were asking for information that was not necessary,  
6 like I.D., or, you know, what were -- or was it

7 intimidation? Because a great deal of your paper  
8 was involved with intimidation and, you know,  
9 false information out to voters telling them wrong  
10 information prior to the election.

11 Do you keep detailed information on the  
12 reports, President Wilson?

13 MS. WILSON: With respect to this  
14 particular election, we had an online survey sheet  
15 that we certainly promoted with our members to write  
16 -- fill in the answers to questions about what their  
17 election experience was about, and those survey  
18 sheets are still coming in. We had that on line.  
19 It's the first year we have done it, and we do need  
20 to promote it lots more in the future so that we can  
21 actually get that kind of hard data from our  
22 members.

230

1 In terms of the discussions that I had  
2 with my State League leaders, we have pretty good  
3 hard data about what their States experienced.

4 MR. GOLDMAN: The Election Protection  
5 Coalition from those 25,000 calls has a data base  
6 that sort of gets behind the hotline called the  
7 Election Incident Reporting System that I hope

8 eventually will be changed to just the Election  
9 Reporting System because we report a lot more than  
10 just incidents that come in from our callers. Every  
11 year, we have a lower number of reports that we do  
12 calls because our first priority is always helping  
13 voters. So we provide a lot of information for  
14 voters in a very chaotic environment. So people  
15 aren't going to input every call that comes in.

16       COMMISSIONER DAVIDSON: Well, is that  
17 part of your numbers? Excuse me for interrupting,  
18 but was that part of the number, the 25,000 of  
19 people want to know information?

20       MR. GOLDMAN: Yeah. Of the 25,000,  
21 there's usually about half to about 60 percent of  
22 people who are calling in asking for information.

231

1       COMMISSION DAVIDSON: Okay.

2       MR. GOLDMAN: We have about -- probably  
3 at the end of the day, we'll have about 10,000  
4 reports that will be entered into the system, and  
5 our preliminary analysis suggests that the number  
6 one problem, taking out the inquiries where people  
7 want to know where they go to the vote or want to  
8 know whether they've been registered, those

9 inquiries which are, of course, very important  
10 services that we provide, but with the problem, the  
11 single largest problems that were reported to us  
12 were problems with voting machine, but about 10  
13 percent of our problems were problems, as you  
14 suggested, about voter intimidation and deceptive  
15 practices, which is -- when you take about 10  
16 percent of those calls, it's significant -- it's a  
17 little bit lower than 10 percent of those calls.  
18 That's a significant number of callers who are  
19 calling to report some sort of mischief in the  
20 election process.

21           COMMISSIONER DAVIDSON: You know, I'd  
22 like to follow up on that, because it's a lot like

232

1 Commissioner Hillman was talking about. You've got  
2 maybe two or three people that's causing this big  
3 problem. I mean, I don't know, but my main problem  
4 is -- by being a Secretary of State and an election  
5 official for many years, it's very difficult to get  
6 somebody to actually prosecute on these cases and  
7 track them down and find who has done it, number  
8 one, and to actually prosecute it.

9           What is your suggestion that we do to

10 make sure that we do stop this type of a process?  
11 It just doesn't help to increase the amount of --  
12 you know, if they are caught and they are  
13 prosecuted, to actually give them more time or, you  
14 know, whatever it might be, because when you're  
15 passing laws like that, your States come back and  
16 say, Well, there's a fiscal note on this because now  
17 we have to put them in prison and, you know, there's  
18 a fiscal note. They even hate to increase the  
19 amount of time and they go usually for fines or  
20 something like that.

21       What's your suggestion? Because I do.  
22 I see it a problem as well as everybody else. Those  
233

1 types of issues are problems. So how do we solve it  
2 when we can't get somebody above us to enforce it,  
3 one, because they've got more urgent things,  
4 obviously? We know they're very busy with murders  
5 and other things that are very pertinent, but how we  
6 stop these things and handle that?

7       MR. GOLDMAN: Well, I think that there  
8 are two parts of the -- there are sort of two  
9 pieces. The first is that there has to be the  
10 proper infrastructure, legal infrastructure, to be



11 able to respond to those issues, and of course when  
12 we see like we saw in 2004, which has now become an  
13 infamous case of these types of deceptive practices  
14 and, in fact, in some ways the example is in  
15 Milwaukee and African American communities, there  
16 was a flyer distributed from the so-called  
17 Milwaukee's Black Voter League that suggested that  
18 if you ever voted in an election that year, if you  
19 didn't pay your parking tickets or fines, then you  
20 couldn't vote. Those things, we see around the  
21 country in places -- in jurisdictions around the  
22 country.

234

1           The most important thing is, obviously,  
2 getting the right information to voters so they can  
3 use it and they can go through the process and cast  
4 a ballot, and we don't now have a structure for  
5 correcting that information in any way official. We  
6 try to do it from the advocacy community side where  
7 we work with our partners and work with local radio  
8 and work with local TV to get the information.

9           But, for instance, Senator Obama has a  
10 bill right now that would actually provide a  
11 structure for -- it first would make those practices

12 specifically illegal, which is important, but more  
13 importantly in a lot of ways is it will create a  
14 structure for getting the right information into the  
15 community, and I think that's very important; but  
16 the difference in a lot of ways between the fact  
17 that -- you're right -- there are a couple of people  
18 who are doing this, but they're getting this  
19 information out to thousands and thousands of  
20 voters, 14,000 in Orange County this years,  
21 thousands of voters in Arizona this year, and now  
22 with the advent of using this type of stuff through  
235

1 robocalls and other kinds of mass communication,  
2 they're getting it out to the thousand of voters as  
3 opposed to what you see on the other hand, which is  
4 when you talk about the registration issues that,  
5 you know, Mr. Hearne was talking about which are  
6 incredibly important to make sure that those people  
7 are not able to submit fraudulent voter registration  
8 forms, but those aren't voters who are actually  
9 getting to the polls. Those are registration forms  
10 that are being submitted and providing a headache  
11 for election officials that shouldn't.  
12       So there's only -- we have a few people

13 creating that, that sort of that problem stops  
14 there, whereas in this case with deceptive  
15 practices, you have a few people who are  
16 perpetuating these practices that thousands and  
17 thousands of voters potentially are affected.

18       COMMISSIONER DAVIDSON: Well, I think  
19 you're right in that case, but I also think you need  
20 to think about the other issue when it's fraudulent  
21 registrations when they take names out of the phone  
22 book, and I saw this in Colorado, and they are

236

1 changing your addresses. Then that put a person  
2 location and that then make's a problem for the  
3 voter themselves and then possibly, it could  
4 disenfranchise if they moved to another county.

5       So there are issues with voter  
6 registration that is just not, you know, playing and  
7 giving false names like Mickey Mouse and Donald Duck  
8 and things like this, because they go into more  
9 in-depth-type issues.

10       MR. GOLDMAN: And, Commissioner  
11 Davidson, we get those calls into Election  
12 Protection. They're devastated to hear voters  
13 saying I registered 30 years ago, and I just went to

14 the voter registration to the Board of Elections,  
15 and they told me I lived five blocks away from where  
16 I live and registered 30 years ago and have been  
17 voting here forever.

18       Absolutely, that is a huge problem.  
19 That is a problem and that problem needs to be  
20 solved and can be solved, because that currently is  
21 illegal, and what we need to do is provide the  
22 resources to be able to support the investigations

237

1 to make sure that we have the laws that are  
2 currently on the books, which could do a good job,  
3 are actually enforced; and the way that we do that,  
4 I think, is by making this, like I said, an  
5 apolitical policy issue. We can talk about this  
6 like those things are offensive to a policy that we  
7 care about as Americans and take this discussion  
8 outside of the bluster of the two or three weeks  
9 surrounding the election, and we need to make this  
10 really as -- again, you know, this commission is a  
11 result of a rare moment in American history where we  
12 did that, and I feel like we're losing that and we  
13 need to get closer to making sure that we provide  
14 the resources to the people who are going to protect

15 our elections.

16 COMMISSIONER DAVIDSON: Okay. I  
17 appreciate that.

18 Does anybody have anything else to add?

19 MR. HEARNE: I would add very briefly,  
20 Commissioner Davidson, you're absolutely right in  
21 terms of the need to take very seriously and  
22 prosecute these election crimes, whatever they are.

238

1 In Milwaukee, a group went in at night in  
2 camouflage, slashed the tires that were there to  
3 take individuals to the polling places. That is the  
4 kind of voter intimidation that needs to be  
5 researched and prosecuted, and it was in Milwaukee.

6 We need to hear more stories like that,  
7 because then people will -- that few, and there are  
8 few people who perpetrate a large affect, a large  
9 negative affect on the election process, fraudulent  
10 registration, intimidation, harassment, or  
11 suppression. Any of that needs to be very seriously  
12 prosecuted, and my own view is that for too long in  
13 this country, we have not taken those election  
14 crimes as seriously as we need to. An encouraging  
15 thing was the Carter-Baker Commission made some

16 recommendations about increased felonies for voter  
17 intimidation and voter suppression, and those were  
18 adopted in Missouri and in Pennsylvania and some  
19 other States as part of their Voter Protection Act,  
20 and that will send a signal.

21       If you're going to engage in this, this  
22 is not some prank that go on, because you're  
239

1 disenfranchising somebody's most fundamental liberty  
2 when you interfere with their right to vote, and  
3 that's why it's so important to prosecute these  
4 cases vigorously and seriously, and that's what this  
5 commission can also offer.

6       COMMISSIONER DAVIDSON: Thank you.

7       CHAIRMAN DeGREGORIO: Well, thank you  
8 all for your written comments, your oral comments,  
9 and for your insight in answering our questions  
10 today. We appreciate the work that you do with your  
11 organizations and urge you to continue that great  
12 work.

13       Thank you.

14       Our final panel consists of one person,  
15 though he represents many others, and his name is  
16 John Groh, and John Groh is the Chairman of the

17 Information Technology Association of America, also  
18 known as the ITAA, the Election Technology Council.  
19 Additionally, in his role as Senior Vice President  
20 of Government Relations for Election Systems and  
21 Software, he is the company's liaison with the U.S.  
22 Election Association Commission and has participated

240

1 in NIST's TGDC process of creating the new voluntary  
2 voting system guidelines. Further still, he  
3 represents ES&S at NASS at NASS events and serves as  
4 spokesperson for ES&S on policy issues, and  
5 certainly Mr. Groh has, I know, attended quite a few  
6 of our EAC meetings, and we certainly appreciate  
7 your attendance here because we know that you  
8 represent the manufacturers of election equipment  
9 throughout America, and election equipment was  
10 certainly tested on November 7th and in earlier  
11 primaries held this year.

12       Mr. Groh, the floor is yours. I know  
13 you have a plane to catch, and I promise you'll get  
14 out of here on time to catch that plane.

15       MR. GROH: This is important. So we'll  
16 take the amount of time it takes to get this done.

17       You know, thank you very much for

18 extending the invitation to my group or the group  
19 that I'm involved in. Again, it's very much  
20 appreciated.

21       You've already introduced me, but I want  
22 to recognize the same sentiment that most everyone

241

1 else has. You know, your leadership on this  
2 Election Assistance Commission has not gone  
3 unnoticed, and you're to be commended for the time  
4 you put into it, the perseverance, the constitution  
5 you had to put up with a lot of it; and also for  
6 Commissioner Hillman and Commissioner Davidson, the  
7 same sentiment goes. We know this is a tough job.  
8 We're on the probably other end of it, and we see  
9 it's just as difficult, but you are in the public  
10 eye. So there is a lot you have to contend with.

11       So, again, I applaud you for your  
12 ability to stick with this, offer your leadership,  
13 and have a vision to get something done as opposed  
14 to what can't happen. So that's to be very much  
15 applauded.

16       Let me go on. I have some submitted  
17 testimony, and I will not cover all of it, although  
18 I do want to cover the issues that I think are



19 important to this; but the ETC is a group that falls  
20 under the umbrella of ITAA, and there are currently  
21 seven member companies, and these consist of the  
22 companies which offer voting system technology and  
242

1 hardware products, software, and services to support  
2 the election process at the county and State levels.

3       In 2004, these companies organized an  
4 association, which again, like the Election  
5 Assistance Commission, was unprecedented. We had  
6 never formed anything like this before, and I think  
7 it was a matter of necessity. Much like your role  
8 of finding your way, we too, although it was not as  
9 near a big of a challenge, but we had no manner to  
10 understand how we should act and how we should go  
11 forward, and I think we have found a little stride.  
12 I do know that all of the member have been very  
13 strong in participating.

14       Just as you had mentioned, I attended  
15 most of the NIST and the Technical Guideline  
16 Development Committee meetings. Others have too,  
17 and today I know there are other members in the  
18 audience. Ian Piper is here from Debolt. I have  
19 Steve Pearson from ES&S, and if I've missed seeing

20 some of the others, you know, excuse me; but we are  
21 part of this and have a major stakeholder in this.

22 I think it's also important to  
243

1 understand within the ETC, you know, we represent  
2 over 2,000 different employees, and when I take our  
3 company alone, about 400, and I expand it out to the  
4 people also service us, our number gets up to, very  
5 quickly up to about 3,000 people who work and are in  
6 involved in what ES&S does downstream from us by  
7 building the product and, you know, helping design  
8 firms. We use a public relations firm, and these  
9 are all citizens and voters too that I think have  
10 the same empathy as everyone else. They want this  
11 to be done right.

12 We're pleased to offer you, you know,  
13 our perspective and comment, and this is coming from  
14 the election technology vendors community, and I do  
15 want to make one typographical error [sic]. It  
16 looks as if I'm going to comment into the future on  
17 2007. Believe me, I haven't even started thinking  
18 of that yet. So it is on November of 2006.

19 At a high level, the conduct of the  
20 elections proved to be successful in the face of

21 unprecedented circumstances and challenges presented

22 to the election jurisdictions and their vendor

244

1 partners. I want to point out a few of those that I  
2 think were at kind of unprecedented levels of  
3 scrutiny we all were faced with, the election  
4 infrastructure that has changed more in the past six  
5 years than in the century proceeding that period  
6 with nearly one in three voters nationwide using new  
7 voting equipment for the very first time.

8       The second challenging was managing the  
9 upgrades in the voter tabulation and the voter  
10 registration infrastructure simultaneously. It is  
11 like taking on two projects at the same time.  
12 That's also in the face of new Federal oversight,  
13 spending, outdated State and local laws and  
14 procedures that haven't caught up with it, and not  
15 to reflect on post-HAVA realities, the evolving  
16 voting system guidelines that we're trying to catch  
17 up with everything that was going on. So we have  
18 all been working at the speed of light, been  
19 drinking out of fire hoses, so to speak, as an  
20 analogy.

21       Another issue was the very high voter

22 turnout for the midterm election, which we want.

245

1 That is the whole purpose of election  
2 administrators, Secretaries of State, your role,  
3 vendors. We want high voter turnout because that is  
4 including all voters, but the high turnout in this  
5 midterm election and a first-time user also  
6 exacerbates the issue.

7 Another was the intense level of  
8 scrutiny by the media and other interested  
9 observers, particularly since races were more  
10 competitive than most in recent history; and then  
11 lastly is the incredible short timeframe that all of  
12 this had to take place in. I've spoken in front of  
13 group maybe five times now over the last two years,  
14 and I think that's been a recurring theme, that time  
15 was always the one element that was against us and  
16 time was the blanket that many people used to cover  
17 themselves in their procrastination, and so that  
18 made it very, very difficult.

19 But particularly given the scope and  
20 compressed timeline of change in the U.S. election  
21 environment, we as the vendor community believe  
22 there's a lot to be proud of following the November

246

1 election, and when we say we, we don't just mean the  
2 vendor community. We mean the Secretaries of State,  
3 the election administrators, the NGOs, and the  
4 interested parties and stakeholder in it as well as  
5 the voter and as well as you as the Election  
6 Assistance Commission.

7       Firstly, through a strong partnership  
8 that you've been inclusive of the vendor community,  
9 the election administrators, and many others, the  
10 Congress, State legislators, the county and city  
11 officials, nearly all jurisdictions across the  
12 country met the critical HAVA deadlines, and, I  
13 mean, we focused mostly on those who didn't meet it,  
14 but we're forgetting that, I would say, as a  
15 percentage we had 90 percent that were meeting it or  
16 had in place the things to meet it. As a result,  
17 this was the most accessible election in history,  
18 and the panels preceding me have all mentioned that.  
19 That is a major, major event that has been a battle  
20 that has been fought by over years, and you  
21 succeeded in bringing that about.

22       Far more voters could cast ballots

1 privately and independently. Far more emphasis was  
2 placed on ensuring that no one was disenfranchised.  
3 That's a significant accomplishment.

4       Second, with the newer voting technology  
5 in place that offered substantially enhanced  
6 opportunity to capture voter intent, we feel there's  
7 a higher degree of confidence the more votes cast  
8 were counted and counted accurately. Third, the  
9 vast majority those voted had a positive experience  
10 at the polling place and came away confident that  
11 their votes were cast and counted correctly. In  
12 fact, exit polls conducted by the Christian Science  
13 Monitor indicated 88 percent of the respondents felt  
14 confident in the voting device they used that day,  
15 that it did work.

16       Indeed, there is much to point to the  
17 election that should build confidence that the Help  
18 America Vote Act is fulfilling its promise, and I  
19 know that Doug Lewis mentioned this also this  
20 morning, that that may be the highest watermark  
21 we're ever able to obtain, and that may equate to a  
22 hundred percent.

1           Also, if you think about the facts of  
2 the past two and a half years, they represent a  
3 great transformation in the way that elections run  
4 in the country since the Voting Rights Act of the  
5 sixties. I believe that it's difficult to argue  
6 good things -- I believe it is difficult to argue  
7 that good things did, indeed, happen. No doubt,  
8 there is more that we all can do and we have  
9 important lessons learned under our belt, but to  
10 those who laid out the vision of HAVA and motivated  
11 a nationwide election reform effort, I or we as the  
12 Election Technology Commission or Council say we are  
13 on the right track. That leadership, that passion,  
14 that strong constitution that you've been able to  
15 put forth as well as leaders at the Secretary of  
16 State level or NASS and NACED is to be commended  
17 because you are the ones who made it happen.

18           But, nonetheless, if consider nothing  
19 other than the media coverage surrounding the  
20 election, you'd be left with a very different  
21 perspective. Sitting over here today, the first  
22 panels were very, very uplifting for me, and I can

1 tell you the last panel became very, very negative  
2 or in a non-positive way event for me, and it left  
3 me lower than I was starting in the morning, and I  
4 think it's the way that we can look, is the glass  
5 half full or the glass half empty, and I believe  
6 that the spirit of people where it is half full are  
7 the ones that move it forward, and I think want to  
8 again commend those that look and approach this in  
9 that fashion.

10       To give you some insight into it, if you  
11 glance over a summary of the news articles regularly  
12 posted on electionline.org, and I'll pick on Dan's  
13 group a little bit, just between November 6th and  
14 December 1st, there were 729 election-related  
15 articles that made mention of events that composed  
16 419 States. I know I'm a studier of geography. I  
17 know we don't have 419 States, but I think you all  
18 understand there were 419 States uniquely pointed  
19 out in those 729 articles; but it wasn't just the  
20 amount of coverage. It was the extent of the  
21 factual air that is striking to me, and I have, you  
22 know, pieces on that, but I hope in the Q and A

250



1 maybe I'll get an opportunity to bring some of those  
2 up.

3       But in my ways, the days leading up to  
4 and following the election reminded me of the Y2K  
5 phenomenon. So many people predicted such a dire  
6 outcome and it became everyone's reality. Whether  
7 or it was borne out by the facts was indeed not in  
8 everybody's mind. Now, I do want to be very, very  
9 clear. I'm not up here saying that there weren't  
10 any issues anywhere in the country and there weren't  
11 issues that were caused by my company specifically  
12 or that the other vendors would also mention that,  
13 but with very rare exception, those issues were  
14 managed efficiently and effectively and the election  
15 process did go forward.

16       The results were reported when and as  
17 expected. In those rare situations where the  
18 outcome of the election was delayed, it pre-disposed  
19 perspective and in some cases a rush to judgment  
20 inevitably left the public with the sense that the  
21 voting technology must be to blame. Most of the  
22 time, that simply was not so.

251

1       Allow me to put on my company hat here a

2 little bit and speak from my perspective at Election  
3 Systems & Software, because it's the only one I can  
4 speak to with pure confidence, because I know the  
5 pieces; but let me reflect on a situation that  
6 exemplifies what I'm referring to, and that's the  
7 contested 13th Congressional District race in  
8 Sarasota County, Florida. There have been over the  
9 days succeeding the election audits and tests that  
10 have shown time and time and time again that the  
11 county's voting system functioned just as it should.  
12 Votes were cast and captured. The results were  
13 reported accurately. Data was retained for the  
14 post-election analysis, and analysis and videotaping  
15 that was conducted by the State of Florida  
16 demonstrates that voters can and should have  
17 confidence in the system because it was working, but  
18 today a court is considering a challenge brought by  
19 a group of interested parties, once again calling  
20 into question the reliability of Sarasota County's  
21 voting equipment. So many people are so convinced  
22 that technical issues could occur that they're just

252

1 not allowing the facts to get in the way.

2 Perhaps there are important takeaways

3 from the Sarasota experience; however, the voting  
4 system worked, period. Mischaracterized facts about  
5 isolated incidents are not only impacting voter  
6 perception and the overall election process, but are  
7 now being used to draw broad conclusions about  
8 voting equipment and set the stage for a wholesale  
9 change to U.S. voting infrastructure and election  
10 practices. Listening to the panel this morning and  
11 to also belay my sentiment, that is something we  
12 want to be very, very careful to, to leap to those  
13 conclusions. We will be into more unintended  
14 consequences.

15       These calls are unfortunate and  
16 misplaced and they take away from the areas where  
17 constructive dialogue between the election  
18 officials, administrators, vendors, poll workers,  
19 and even voters could improve the process for future  
20 elections and could begin to help build a catalogue  
21 for best practices to emulate and miscues to avoid.  
22 For instance, there isn't any question that we all

253

1 could benefit from heightened focus on the human  
2 element in carrying out an election, and as vendors,  
3 we have important roles to play in this area. The

4 truth is that a great many of the issues that  
5 occurred on election day were directly related to  
6 human error inside my company, inside other vendor  
7 companies, but also at all levels from poll worker  
8 to voter to election official, and they were not  
9 malicious and they were not predetermined and  
10 pre-ordained that that's what they wanted to have  
11 happen.

12       But they were directly related to human  
13 error and utilizing the equipment or the failure to  
14 follow through on important processes and procedures  
15 that you have pointed out in guides to people in  
16 advance of the election, but that's to be expected  
17 because there were so many firsts in this election  
18 and very little time to prepare those who were  
19 responsible for making it happen. Even the EAC  
20 experienced these pressure. Evidence is the timing  
21 around helpful and important how-to materials that  
22 you were able to get out in September. I know your  
254

1 desire would have been to have those out months in  
2 advance. You didn't do that because you didn't  
3 understand they were important; it's that they had  
4 to follow a timing mechanism of when they could be

5 accomplished, but they are there and you have the  
6 continued effort to built on those.

7 Additional training and new ways of  
8 delivering it are important. Stiffer quality  
9 assurance and quality control is no doubt something  
10 that will be important for elections. Building  
11 efficiencies into the election process and pursuing  
12 more aggressive recruitment of the next generation  
13 poll workers to match up with the dedicated poll  
14 workers that exist today will be a way to continue  
15 to innovate new and improved voting solutions.

16 All these are examples of areas that  
17 merit your and my attention. As the vendor  
18 community, we stand ready to engage in this  
19 dialogue. In fact, we see it as a critical for  
20 achieving the real vision of HAVA, which is behind  
21 why we are doing all of this.

22 We respectfully suggest that the EAC  
255

1 work to identify, perhaps through a survey of States  
2 and counties and separately the vendor community,  
3 operational issues that need to be addressed, and I  
4 won't say more about that because I'm repeating what  
5 others have mentioned.

6 Both Commissioner Davidson and  
7 Commissioner Hillman, you have asked the prior panel  
8 do they have records of that data, because it's only  
9 with that that we can get factual information; but  
10 this would help all of us, you, the EAC, hone in on  
11 enhancements to the overall election process and  
12 elections administrators target limited resources to  
13 areas of the greatest need. In addition, the EAC  
14 may wish to sponsor research that evaluates critical  
15 success factors in the election management and  
16 performance.

17 This kind of leadership and input from  
18 the EAC would be tremendously helpful in assuring  
19 that we all gain from the HAVA experience and  
20 continue to improve. At ES&S during the primary  
21 season, we went through a wholesale similar exercise  
22 of change and have already implemented significant

256

1 operational changes that were beneficial leading up  
2 to the November election. Though I cannot speak  
3 specifically for my other vendor companies, I am  
4 very confident and sure that everyone in that vendor  
5 community has taken similar steps.

6 In conclusion, I would like to emphasize

7 that we are strongly committed as an organization of  
8 vendors to responding to the needs of our customers  
9 and to providing secure, accurate, and reliable and  
10 accessible voting systems. We are also committed to  
11 and focused on meeting the new voluntary voting  
12 system guidelines, the product challenges that will  
13 come via the EAC, Secretaries of State, and others.

14 Over the course of the four years since  
15 the passage of HAVA and the launch of the Election  
16 Assistance Commission and the board and committees  
17 that run in cooperation with NIST, tremendous  
18 progress has been made. I don't think we should  
19 forget that and take our eye off of that.

20 The ETC is a stakeholder and as that  
21 stakeholder has made a visible effort to be part of  
22 the going forward solution. On behalf of all of our  
257

1 member organizations, we are proud to be part of  
2 this and we thank you for including us as part of  
3 the stakeholder community.

4 With that, I'll take any questions.

5 CHAIRMAN DeGREGORIO: Thank you, Mr.  
6 Groh.

7 Commissioner Davidson.

8 COMMISSIONER DAVIDSON: I have one  
9 question, because I know we need to keep this short.  
10 In talking about collecting information and how  
11 valuable it will be to us in the future, one of the  
12 things with ours certification of our voting  
13 equipment, we are going to have to really assess  
14 what the issues are in any election and we're going  
15 to ask the States and counties to work with us,  
16 partner with us to give us information so we can go  
17 out and send, if we have to, teams out to see what's  
18 wrong, you know, an individual out to see exactly  
19 what took place to evaluate whether it is an  
20 equipment problem.

21 Like you said, was it an equipment  
22 problem or was it an judge problem or was it laid  
258

1 out improperly, you know, where did the mistake take  
2 place, in other words.

3 Is the vendor community that you  
4 represent, are they willing to also work with us and  
5 notify us of any issues that has taken place? We've  
6 asked for that. It's in our plan, and I feel that  
7 they will be willing to do that, but I just want to  
8 get it on record one more time.



9 MR. GROH: I cannot speak yet for the  
10 ETC in a blanket, but I can speak for my company,  
11 and I think I will probably be very reflective of  
12 the other members, but yes. We see very high levels  
13 of merit in being able to get those facts to you.  
14 The comment, though, I'd also make in  
15 making that commitment to you as one of the leading  
16 vendors is that it takes time to get that  
17 information pulled together, and much as we stopped  
18 hundreds of years ago when there was an incidence  
19 that today results in a trial and facts being  
20 brought out, the lynching that went on of people  
21 that were accused immediately of some crime, we need  
22 to allow that time and for the facts to evolve in

259

1 these types of matters also.

2 The items that, you know, I talked about  
3 with electionline.org and their article where they  
4 had these articles they reflect and so forth, many  
5 of those I can thumb through and they're counties or  
6 jurisdictions that we serve and we know the rest of  
7 the story. To give you one example, in Marion  
8 County, Indiana, which I was there on the election  
9 day. I was involved in it for the three days

10 afterwards in the recounting process they went to.  
11 Reading the press, it makes it sound like the  
12 technology was coded incorrectly not to close the  
13 polls at eight o'clock. That is true halfway. The  
14 accessible voting equipment, which there was one at  
15 every polling place, was coded to close at eight  
16 o'clock and would not until eight o'clock, but it  
17 only held less than two percent of the vote. The  
18 primary voting system, the Optical Mark Read System,  
19 was programmed correctly.

20       Should that have been happened?

21 Absolutely not. Will it happen in Marion County  
22 every again? I doubt it. What was the cause and  
260

1 effect that? Was it human error at my company on  
2 coding the DRE accessible voting systems  
3 incorrectly? And how that happens is I took an  
4 individual which we were late on getting Marion's  
5 data, and I took an individual that had been working  
6 in Pennsylvania. He had been coding in eight  
7 o'clock, eight o'clock, eight o'clock, eight  
8 o'clock, eight o'clock, all of a sudden switched  
9 over to one county and one set of systems and had to  
10 code it at six o'clock and made a mistake.

11 But if our quality assurance and the  
12 logic in accuracy and the testing procedures with  
13 you have which run a mock election before that, we  
14 could have caught that before the election and been  
15 able to take care of it.

16 Another dilemma in that was the lack of  
17 any intercommunication. The 600 or so precincts  
18 that are polling sites in Marion County had no way  
19 to communicate. We could have very quickly given  
20 the poll workers instruction on how to close and  
21 override this because that's a tool or a piece  
22 that's in there, but we didn't have a communication

261

1 structure.

2 And, lastly, it was also a direct result  
3 of the lack of adequate training on the front end,  
4 and it wasn't from desire. It was from lack of  
5 time. They were trying to implement this at the  
6 very last minute to have a successful voting system  
7 work, it did not get accomplished in the primary and  
8 didn't want to miss this one, but in turn, their  
9 poll workers at the opening and the closing of the  
10 polls were not ready and did not have the needed  
11 skill to close the polls.

12           So it's only when you know all of that  
13 information can you really now put yourself in the  
14 position of understanding what went on in Marion  
15 County, and I can go on and talk about others in  
16 here too and I'm sure that the other vendor  
17 community could, but it would take a matter of three  
18 to four days to get that information kind of  
19 accumulated.

20           COMMISSIONER DAVIDSON: Well, I think we  
21 understand that. We understand that we're going to  
22 have to be part of that process, but even knowing

262

1 there is an issue, I think that that's our first  
2 flag. We don't want to read it in the newspaper.  
3 You know, if know that there is an issue, that's  
4 some of the things that we're looking for that needs  
5 to be reported to us right away, because as you say,  
6 I was in Tennessee and some of the testimony that  
7 went on today about Tennessee was not quite  
8 accurate, because I was there. I saw what took  
9 place.

10           So, you know, I mean, the information is  
11 very important and obviously correct information and  
12 being there firsthand is where you get it.

13 MR. GROH: Well, and just like trying to  
14 get the facts on everything so that you're dealing  
15 with the facts. They cannot come from any single  
16 source. They need to be collaborated. There is an  
17 obligation on the parts of the Secretaries of State  
18 and local election officials, the vendor community,  
19 the voters themselves, but we shouldn't take any one  
20 of them in its own silo and its own staff and use it  
21 to be making conclusive decisions on it, and the  
22 biggest fear I have is that is what we are doing in

263

1 the popular press, taking things that don't have the  
2 rest of the information around it, and it's of no  
3 benefit, really, in the long term. It doesn't help  
4 improve the system. It only creates flat tires of  
5 the vehicle for a period of time.

6 COMMISSIONER DAVIDSON: Thank you.

7 COMMISSIONER HILLMAN: A question for  
8 you, Mr. Groh: How long have you been in the  
9 industry?

10 MR. GROH: I don't know. It seems like  
11 60 years or so. I've been in this 11 years, and I  
12 started when the company election systems and  
13 software that exists today was about 40 people. I



15 now is a transformation process, and it's pretty  
16 radical because of it has happened within the past  
17 two to four years, certainly since 2000, and there  
18 are bumps and grinds when any industry goes through  
19 any kind of a radical transformation process. I  
20 mean, we're going from punch card and levers to  
21 systems that are driven by, you know, technology and  
22 computers and the like.

265

1           And so to talk about that, sometimes I  
2 know the feedback I get says, Gee, it sounds like  
3 you're an apologist for the vendor community or  
4 that's awfully self-serving for the vendor  
5 community, and the perspective I talk about from  
6 isn't from the vendor community. It's from a book I  
7 read by an economist who just said, you know, this  
8 is the way it goes. There are cycles and you go  
9 into the cycle and you come out of the cycle, and  
10 when you come out of it, it's a good product or it's  
11 a good transformation, and the only time it's not  
12 good is if you don't make the fixes along the way  
13 and if you didn't pay attention to the errors.

14           If that's the case, what would you  
15 share, your perspective, would be sort of a time

16 line going forward when the United States can expect  
17 to see electronic voting systems that are working  
18 well today enough that people will say, And what was  
19 the problem and what was that; I'm reading old news  
20 clips from 2004 and 2006, and what was it that they  
21 were concerned about these electronic voting  
22 machines?

266

1 MR. GROH: With my typographical error  
2 that said I was going to talk about November 2007,  
3 you're asking me to look a little bit forward, and I  
4 don't know if I'm fully capable of doing that, but  
5 let me look backwards and then get to the leading  
6 part of it. Since 1995 when I became involved in  
7 this, there were the same kind of issues in that  
8 period of time in counties and jurisdictions. We  
9 just didn't see them on a national level. It was  
10 the 2000 election that raised this up, and so the  
11 panel that preceded me is representative of people  
12 that have a very bright light and a very bright spot  
13 light on that.

14 This morning when Doug Lewis talked  
15 about the bitterness of the partisan culture that we  
16 also exist in that you don't lose an election,



17 you're cheated out of an election, and you don't  
18 looks for the facts to relate that, you can drive  
19 whatever you want if you're not willing to use the  
20 facts that are there.

21           So to answer a little bit of that, I  
22 don't know that we can achieve it where you have an  
267

1 election where there is absolutely not a problem  
2 anywhere in the country because it involves too many  
3 human beings and thousands -- as Brett Williams said  
4 in a prior testimony, there's a thousand moving  
5 parts in this election thing, and so many of them  
6 are human, and I can quote time and time again  
7 things that we know in this last election that did  
8 not make the paper and were not major catastrophes,  
9 but it was a Montana election official who zeroed  
10 out his totals before he printed them out and  
11 admitted that he did. He did it in the fact that he  
12 had probably been up 17 hours already, fives with  
13 maybe four hours sleep a night. He made a mistake.

14           I know of instances in Dodge County,  
15 Nebraska where Fred Middy, the Election Clerk there,  
16 zeroed out their entire group of absentee ballots on  
17 election night, and they had to come back the next

18 morning to start counting over because everybody was  
19 shocked. We make some mistakes in the vendor  
20 community.

21       So as long as that exists, I'm sure  
22 there will be mistakes and errors. Our election  
268

1 process has become much more complex. The addition  
2 of the voter registration and centralized data bases  
3 --

4       COMMISSIONER HILLMAN: I don't mean to  
5 cut you off, but I'm talking about the technology.  
6 I'm talking about the evolution and the development  
7 of the technology.

8       MR. GROH: Clearly, Commissioner  
9 Hillman, it will get much, much better. We have  
10 been through the first what I would say is major use  
11 of it, a lot of lessons learned, what we applied.  
12 In the next go around, you will see less and less of  
13 these issues. The lessons learned will be applied.

14       I would say if we would stay on this  
15 election technology for two more cycles, you would  
16 see very little that would happen from a popular  
17 press standpoint. You ill not hear the kind of  
18 things that you're hearing today. I'd also

19 characterize the things that you've heard today are  
20 not all accurate, and so if that's only where you  
21 get your information from, it's not honing in on  
22 what was the real issue. So it may have been  
269

1 something they're saying the technology didn't work,  
2 but the technology did work and something else  
3 caused it not to work.

4       COMMISSIONER HILLMAN: Okay. And so  
5 speaking of the something else, I have a specific  
6 question, and it gets to the issue of -- I don't  
7 know. I've heard different terminology, screen flip  
8 or, you know, calibration and I punched Groh and it  
9 came up Hillman or whatever it is. You know, from  
10 my layman perspective, I'd like to see the day when  
11 you can attach the voting system hanging upside down  
12 from the ceiling and vote on it and it would be  
13 accurate and there's not sensitivity in calibration  
14 and it has to be balanced and so on and so forth.  
15       Can you explain to me, putting on your  
16 company hat a little bit, what are the sensitivity  
17 issues on that? There are repetitive reports about  
18 this. Whether it's once instance that 250 people  
19 around the country keep repeating, like the forward

20 E-mail, I don't know, but I know that I've seen that  
21 this has been reported in more than one  
22 jurisdiction.

270

1 MR. GROH: Well, again, the answer on  
2 this is very broad and very varied because it has a  
3 lot of issues that are with it. One is all of us  
4 that are in the vendor community that are providing  
5 touch screen technology, we are -- you know, we are  
6 using the technology that is available and out  
7 there. It's not something we created in the touch  
8 screens themselves. So we also have to live within  
9 the inherent limitations, the technology limitations  
10 of touch screens, which are getting better and  
11 better and better.

12 In that, we do know that there's some  
13 things, some issues, that are inherent to the  
14 technology. Putting the voting areas too close  
15 together where a long fingernail and the pad of your  
16 finger can be touching two spots and we know that it  
17 will take the average between those two spots, and  
18 that's where it will try and place a vote. So if  
19 you'll place those farther apart, of you'll get  
20 bigger target areas or a fatter or a larger target

21 spot for fingers where somebody may try to use their

22 thumb as opposed to an index finger as opposed to a

271

1 middle digit on that, those are all things that can

2 help remove that.

3       The interesting things that we've heard

4 about this vote flipping and I heard about it in

5 this election and I read some in electionline.org.

6 I had no personal experience with it from our

7 company, meaning where we got a call in and they

8 said we have units that are flipping votes.

9 Additionally, on the review screens that we look at,

10 that's a great place to catch it, but I'll go back

11 to two that are not anecdotal examples. When

12 California did their test on voting technology and

13 videotaping, they were able to find where there will

14 be instances of what people said, Well, there was a

15 vote flip that went on. The videotape was able to

16 show that there was somebody resting their wrist or

17 had jewelry that was touching the touch screen

18 itself as well as their fingertip and the technology

19 is reacting to what it's seeing as two touches.

20       The Florida audit that went on this last

21 week or Sarasota found examples of the same thing,

22 and this was people who now were trying to vote

272

1 very, very accurately to see what would happen, and  
2 they still were making mistakes of either making the  
3 wrong entry or entering it by not touching the  
4 location that they needed to and touching the one  
5 below.

6 COMMISSIONER HILLMAN: Thank you.

7 CHAIRMAN DeGREGORIO: Mr. Groh, I want  
8 to follow up just on a question that Commissioner  
9 Hillman had, just a technical question about this  
10 so-called vote flipping, and you mentioned the  
11 technology involved with that. Do you think that  
12 our voting system guidelines should have some kind  
13 of specification to require some kind of spacing  
14 between these boxes as opposed to them being right  
15 next to each other where you can press your thumb  
16 like that and it might go down and then go up? Are  
17 these technical guidelines that this commission  
18 should put forth that requires some kind of spacing?

19 MR. GROH: I think it probably would be  
20 part of the solution and would be legitimate to have  
21 it in there. I believe that, you know, your ballot  
22 layout and your human ergonomic folks that are going

273

1 to look at it when I listened to them in Santa Fe at  
2 your public hearing down there, they're mentioning  
3 it and understanding it and getting this.

4       Additionally, people who are on the  
5 technical development -- guidelines development  
6 committee are looking at what are the limitations of  
7 the touch screens, because I as a company am not  
8 going to be able to change that. I don't use enough  
9 of those. It's nationwide how touch screens are  
10 used which is going to drive that piece of it. So  
11 we know inherently they're going to get better, but  
12 as opposed to waiting for that, it will also help  
13 the system out by creating a better ballot layout  
14 that allows you to eliminate that.

15       CHAIRMAN DeGREGORIO: We've heard  
16 testimony this morning. We've heard some this  
17 afternoon, and collectively people, you know, are  
18 certainly suggesting to us that it was a successful  
19 election. Certainly I have made statements to that  
20 too, but we've also heard that all was not perfect.  
21 There were some problems. You identified your own  
22 in Marion County, Indiana. To the north of you,

1 another vendor had a problem with the smart cards  
2 not being programmed correctly that required the  
3 polls to stay open an hour and a half by court order  
4 because of an error that at least was identified by  
5 the vendor according to the Secretary of the State.

6       You've been around our meetings enough  
7 to know the testimony we have received from election  
8 officials and Secretaries of State over the past  
9 year and half, certainly, when there were concerns  
10 about vendors and delivery of their services. You  
11 identified in your testimony how your company took a  
12 look at itself after the primary season, problems  
13 from the primary season, to retool itself to support  
14 election officials, and we recognize that many  
15 election officials out there really rely on the  
16 vendors for a lot of things. The bigger  
17 jurisdictions don't, but the smaller ones do. So  
18 one little mistake by a vendor really gets blown up  
19 very big because it affects the whole county like it  
20 did in Indiana.

21       How do you -- taking a look at this from  
22 time forward, which you learned, your company and



1 companies collectively learned from this election,  
2 how are you going to address these issues and ensure  
3 that election officials take on the responsibility  
4 independent of you, independent of your companies,  
5 to ensure that everything is working right before  
6 the election? I read some of these stories, and  
7 I've read every one of them. I really tried to read  
8 every one of them. Why didn't the logic and  
9 accuracy test catch that?

10       And so, you know, what are you do doing  
11 from this time forward to help, you know, election  
12 officials get it right without the problems on  
13 election day that you've seen in some jurisdictions?

14       MR. GROH: Well, clearly it's a much  
15 longer answer than I'm probably willing to take the  
16 time here today, but let me give you a few things  
17 that I think are important here. One is just like  
18 you introduced changes and you've identified changes  
19 in your quick start management guides and your books  
20 that ar going to come out now that are going to be  
21 like a desktop reference for election  
22 administrators, that's one thing that means it's

1 moving, folks. The way that you manage and run  
2 elections, like Kevin Kennedy said, you can't run it  
3 out of a shoe box anymore. Well, it's moving ahead  
4 and we all now that. We're provided those pieces.

5 Vendors also have to do that same  
6 element to it. I know that ES&S shared a lot of  
7 things that we felt we were proud of that were the  
8 result of what I would say are mistakes on our part  
9 in getting ready for the primaries. We weren't on  
10 time. We were late. And those are the result of  
11 not starting soon enough, recognizing that State law  
12 has not caught up with Federal law yet as far as  
13 candidate closing, which compresses the time that  
14 you have to do this work down into an unrealistic  
15 and unreasonable amount of time.

16 The intent or HAVA is really to have  
17 accessible voting on the very first day that people  
18 can vote. That means that voting day is no longer  
19 the important day. It's that early voting. So we  
20 need to recognize that we need to do the L and As  
21 before that. You're right. If we're talking in  
22 Indiana, why wouldn't have that been caught in the L

1 and A? Why in Marion County didn't we catch in the  
2 L and A if it was run and you opened and closed the  
3 poll and simulated and mocked up an election should  
4 you not have caught it, which is all part of the  
5 quality assurance process. It isn't that somebody  
6 is making mistakes. The mistakes are going to  
7 happen. What we're doing is building fail safes  
8 that are redundant checks in there.

9       So we will continue to make  
10 improvements. Many will be, we can say mandated by  
11 you, but I look at it that they're recommended by  
12 you and they're embraced by us. They need to be  
13 embraced by the election officials.

14       Then one other final comment I'd like to  
15 make is there is a lot of conversation around should  
16 the election administrators be totally independent  
17 or should they be dependent on the vendor. I don't  
18 think you're going find it an either/or, because you  
19 have this dichotomy of large counties that have  
20 infrastructure and IT staff and people that are  
21 there and small counties that never will, and  
22 they're going to need the help. But in contrasting

278

1 a real example, Sarasota County, ES&S has nothing

2 really to do with the election. We provided the  
3 technology in 2001. We don't do anything. They're  
4 totally self-independent. They have an excellent  
5 election director in Cathy Dent. She runs as good a  
6 house, as good an election shop as anybody in the  
7 United States, but again, one thing that was  
8 unintended caused what you can say is a major, major  
9 tipping point.

10       We also noticed, though, in the press  
11 that there were counties in Florida that have the  
12 help of vendors, and of course that was also  
13 chastised, that the vendors are helping, and it was  
14 a county just south of her or contiguous to her  
15 where the vendor was helping with it and they said,  
16 How can that be? So you're going -- we won't win  
17 whichever way we go, but I do think it's a matter of  
18 understanding that all of us have some  
19 responsibility in the election. The election  
20 official at the county level is on the front line.  
21 The vendors are there to help, but if we don't  
22 follow good processes and procedures, anything we do

279

1 in our life will not come out correct.

2       CHAIRMAN DeGREGORIO: Thank you.

3 Mr. Wilkey and Mr. Gilmour, I'm sorry.  
4 We're running late and I know Mr. Groh has a plane  
5 to catch, but let me ask my fellow commissioners for  
6 any closing remarks they might have.

7 Let me remind all of you that the  
8 swearing-in for --

9 COMMISSIONER HILLMAN: We have the  
10 minutes to do.

11 CHAIRMAN DeGREGORIO: Oh, we do have the  
12 minutes. I'm glad you reminded me.

13 MR. GROH: If I may, I'll step away from  
14 the table.

15 CHAIRMAN DeGREGORIO: Yes. Please.

16 Yes, we do have the minutes. Thank you,  
17 Commissioner Hillman, for reminding me of the  
18 minutes. I assume that you've had the opportunity  
19 to look at them over, and I know that I have over  
20 the past 24 hours several times and made several  
21 corrections to the version that you see, but you may  
22 have other corrections to them. So we'll take the

280

1 minutes up at this moment.

2 COMMISSIONER HILLMAN: Okay. I do have  
3 some corrections, and I think they're simple enough

4 that I marked up where the corrections were.  
5 There's only one place where the correction would  
6 have an implication on the statement, and that is we  
7 were talking about draft and predecisional documents  
8 are not considered final or releasable under the  
9 Freedom of Information Act, and then the paragraph  
10 went on to say a document is final only when EAC has  
11 made a decision to adopt the report, and that's on  
12 page 3, not adopt the report as policy. So the  
13 words "as policy" would be stricken because not  
14 every report we adopt as policy.

15       The others are just typographical for  
16 the most part. So I could just submit those for the  
17 record.

18       CHAIRMAN DeGREGORIO: Would you like to  
19 make a motion to adopt these?

20       COMMISSIONER HILLMAN: Yeah. I move  
21 adoption of the minutes with corrections.

22       COMMISSIONER DAVIDSON: I second it.  
281

1       CHAIRMAN DeGREGORIO: Okay. We have a  
2 move and second to adopt the minutes of our October  
3 26th meeting as corrected. All those in favor,  
4 signify by saying aye.

5 MEMBERS IN UNISON: Aye.

6 VIII. CLOSING REMARKS

7 CHAIRMAN DeGREGORIO: The ayes have it.

8 Before we go and close this meeting,

9 first of all, let me remind you that Chairman, the

10 new Chair, Donetta Davidson will be sworn in on

11 Wednesday, January 3rd at 2:00 here at the EAC, most

12 likely in this room, I assume.

13 The next public meeting of the EAC will

14 be on Thursday, February 8th at 10 a.m. here at the

15 EAC. This meeting is being taped and will be on the

16 web at our website, WWW.EAC.gov next week. Please

17 keep track of that site for that and other things

18 that we're going to do, and everything that was done

19 at this meeting, certainly the testimony, the

20 decisions we made, the reports that we addressed,

21 the certification program will all be posted on the

22 web.

282

1 Finally, before I gavel the meeting to a

2 close, I have just a final statement for me to make

3 because this is the final meeting that I'll have as

4 Chairman of the EAC and probably the last public

5 meeting I will sit at as a member of the Election

6 Assistance Commission. So I would like to take a  
7 brief minute to reflect year as Chairman and just a  
8 moment to talk about what the past three years have  
9 meant to me as it was just three years ago on  
10 December 9th, coming up in a couple of days that  
11 Buster Sorez, Ray Martinez, Gracia Hillman, and  
12 myself were confirmed by the United States Senate.  
13 I remember, Gracia, that day.

14       As we've heard today, after seeing some  
15 of the problems elections officials experienced in  
16 the early primaries this year, the EAC in 2006  
17 provided guidance to election officials across the  
18 country in the form of the quick start management  
19 guides. These guides were an important step in  
20 providing election officials with real tools to do  
21 their job better. I know the full set of management  
22 guidelines the EAC will issue in 2007 will go a long

283

1 way to help election officials cope with the myriad  
2 of details that are involved in conducting  
3 elections.

4       As the national clearinghouse for  
5 election information, in 2006 the EAC undertook many  
6 research projects on election administration issues.



7 The topics covered by these projects were numerous  
8 and included effective designs for ballots and  
9 polling places, best practices for college poll  
10 worker training, recruitment, and retention, voter  
11 fraud and intimidation, vote count-recount  
12 procedures, and public access portals, and others  
13 that I don't have time to mention.

14       The EAC has still many more topics to  
15 research and much more information to gather, but we  
16 are very proud of the work we have already done and  
17 will continue to work very hard to gain and share as  
18 much knowledge as possible about election  
19 administration. In 2006, the EAC also conducted  
20 nine public meetings throughout the country in order  
21 to better inform the public about the number of  
22 important election administration topics and to hear  
284

1 about their concerns. These meetings covered  
2 everything from the National Voter Registration Act  
3 to military and overseas voting.

4       2006 was a year of great challenges and  
5 changes for elections in America. As you have  
6 learned today, the 2006 election was, by most  
7 accounts, a success. Voters turned out in large

8 numbers and with the exception of a few anomalies  
9 were able to cast their ballots with confidence, yet  
10 there are still challenges ahead.

11       As a former election official, I can  
12 tell you that there's no substitute for training and  
13 experience when it comes to conducting elections.  
14 Today, there's little training for new election  
15 officials, and that's why we need to focus on  
16 professional development for these dedicated public  
17 officials. State and local officials should make an  
18 investment in training and improving the management  
19 capacity of election officials. Too often, election  
20 officials do not receive the adequate funding and  
21 support they need from their local governments to  
22 conduct their elections.

285

1       One of the biggest challenges we face is  
2 a shortage of poll workers. Many of our poll  
3 workers who served selflessly for years are not  
4 comfortable with the new voting technology. We need  
5 to continue to bring more and more young people in  
6 as poll workers so that they can bring their  
7 technology know-how and electronic savvy to the  
8 polling place.

9 We must continue to work to improve  
10 voter confidence in the process. We took a big step  
11 with our voting system guidelines and now today with  
12 the EAC adopting its Voting Systems Testing and  
13 Certification Program. Beginning in January, voting  
14 manufacturers that choose to participate must submit  
15 their entire system for testing in order to receive  
16 EAC certification. These manufactures will finally  
17 be held to a Federal standard and involved in a  
18 process that is transparent, fair, and thorough,  
19 creating more public confidence in these systems and  
20 the companies that produce them.

21 In my time as Chairman, I've had the  
22 pleasure to travel the country and the world

286

1 representing the EAC. I've been fortunate enough to  
2 speak about the EAC and its many accomplishments and  
3 to listen to concerns about our voting process at  
4 many venues. I've also had the opportunity to  
5 educate the media and others about the details that  
6 go into our election process and to dispel many of  
7 the myths and misinformation that we often read and  
8 hear about regarding the process.

9 As I prepare to close off my time as

10 Chairman, I would like to thank my fellow  
11 Commissioners for selecting me to serve as the  
12 Chairman of this Commission. It has been an honor  
13 to do so, and I hope that I have done you and the  
14 citizens of America proud in my time in this office.  
15 Finally, the last three years have been  
16 some of the most challenging and yet rewarding of my  
17 professional career. The past 21 years of my life  
18 have been devoted to giving people from all over  
19 this world the opportunity to participate in free  
20 and fair elections. During my time on the EAC, I  
21 have been truly blessed to use my skills and  
22 experience to work in a non-partisan spirit with

287

1 great Commission and a great staff to implement the  
2 Help America Vote Act of 2002. I thank them for  
3 everything they have done to make the EAC  
4 successful. I've done my best to listen, to learn,  
5 and to lead this new great agency that touches the  
6 lives of every single American. I've often said  
7 that details matter in the election business, and as  
8 you have come to know, these details matter a great  
9 deal to me.

10 During the 10 years preceding my

11 appointment to the EAC, I worked as hard as I could  
12 to improve the election process in many emerging  
13 democracies throughout the globe. Whether it was in  
14 Congo or Cambodia, Russia or Romania, Slovakia or  
15 Sierra Leone, those 10 years were truly a wonderful  
16 opportunity that allowed me to touch the hearts and  
17 minds of many people and experience firsthand the  
18 many similarities and few differences we actually  
19 have among each other in this world. I will be  
20 forever grateful to President George W. Bush for  
21 giving me the opportunity to do and experience the  
22 exact same thing for the United States of America

288

1 while on the EAC.

2 Thank you very much and God bless all of  
3 you. With that, I'll bring this meeting to a close.

4 We're adjourned.

5 (Whereupon, at approximately 4:03 o'clock,  
6 p.m., the above meeting was adjourned.)

7 \* \* \* \* \*

8

9

10

11

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

289

1           CERTIFICATE OF COURT REPORTER  
2  
3       I, CATHERINE B. CRUMP, the officer before whom  
4 the foregoing meeting was taken, do hereby  
5 testify that the foregoing meeting taken by me  
6 stenographically and thereafter reduced to typewriting  
7 under my direction; that said transcript is a true  
8 record of the meeting given; that I am neither counsel  
9 for, related to, nor employed by any of the parties  
10 to the event in which this meeting was taken; and  
11 further, that I am not a relative or employee of any  
12 of the parties hereto nor financially or otherwise  
13 interested in the outcome of this meeting.

14

15

CATHERINE B. CRUMP

16

Court Reporter in and for the

17

District of Columbia

18

19

20

21

22

=

Close <javascript:close()>