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U.S. ELECTION ASSISTANCE COMMISSION
PUBLIC MEETING AGENDA

Taken at the Hilton Seattle Hotel
Windward Room
1301 6th Avenue
Seattle, Washington 98101

Taken on the date of:
Thursday, April 20, 2006

Start time: 10:00 o'clock, a.m.
Taken by: Katherine MacDonell, a court reporter

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I-N-D-E-X

- Call to order (Chairman DeGregorio)
- Pledge of Allegiance
- Commissioners
- Roll Call
- Adoption of Agenda
- Presentations - Vote Counting and Recounting
- Commissioners' Closing Remarks
- Adjournment

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3 CALL TO ORDER: (Chairman DeGregorio)

4 MR. CHAIRMAN: Good morning, everyone. My name
5 is Paul DeGregorio, Chairman of the U.S. Election Assistance
6 Commission, and I'm calling this meeting to order. I will
7 ask you to please stand for the Pledge of Allegiance.

8 (Whereupon Pledge of Allegiance was recited.)

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4 PANEL

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6 Panel 1: Perspectives from states

7 * Secretary of State Same Reed, WA

8 * Rosanna Bencoach, Manager, Policy Division,
9 State Board of Elections, VA

10 * Jill LaVine, Registrar of Voers,
11 Sacramento, CA

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13 Panel 2: Research on Vote Counting and Recounting

14 * Thad Hall, Assistant Professor, Department
15 of Political Science, University of Utah

16 * Doug Chapin, Direction, Electionline.org

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3 COMMISSIONERS

4 Mr. Tom Wilkey - EAC Executiver Director

5 Donetta Davidson - Commissioner

6 Ray Martinez - Commissioner, Vice Chairman
7 Paul DeGregorio - Commissioner, Chariman
8 Gracia Hillman - Commissioner
9 Juliet Hodgkins - EAC General Counsel

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3 MR. CHAIRMAN: I would like to ask our legal
4 counsel, Julie Hodgkins, to conduct the roll call.

5 MS. HODGKINS: Thank you, Mr. Chairman.

6 ROLL CALL

7 Mr. Chairman and members of the Commission,
8 please respond by saying "present" or "here" when I call
9 your name.

10 MS. HODGKINS: Paul DeGregorio, Chairman?

11 MR. DEGREGORIO: Present.

12 MS. HODGKINS: Ray Martinez, Vice Chairman?

13 MR. MARTINEZ: Present.

14 MS. HODGKINS: Donetta Davidson, Commissioner?

15 MS. DAVIDSON: Present.

16 MS. HODGKINS: Gracia Hillman, Commissioner?

17 MS. HILLMAN: Here.

18 MS. HODGKINS: Mr. Chairman, there are four
19 members present and a quorum.

20 MR. CHAIRMAN: Thank you.

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3 ADOPTION OF AGENDA

4 The first item of business is the adoption of
5 the agenda for the meeting today. Members of the
6 Commission, you've been presented with the agenda, the
7 proposed agenda. Do I have a motion to adopt the agenda?

8 MS. HILLMAN: I move that we adopt the agenda.

9 MR. CHAIRMAN: Is there a second?

10 MR. MARTINEZ: I second, Mr. Chairman.

11 MR. CHAIRMAN: All those in favor signify by
12 saying "aye".

13 MEMBERS: Aye.

14 MR. CHAIRMAN: Those opposed "nay". The ayes
15 have it. The agenda is adopted.

16 Our next item of business is the correction and
17 approval of minutes for our March 14, 2006 public meeting.
18 Do I have a motion to adopt the minutes of the March 14th
19 meetings? Are there any changes to be made?

20 MS. HILLMAN: So moved.

21 MR. MARTINEZ: Second, Mr. Chairman.

22 MR. CHAIRMAN: Motion has been made and

23 seconded to approve the minutes of the March 14th, 2006
24 meeting. All those in favor signify by saying "aye".

25 MEMBERS: Aye.

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3 MR. CHAIRMAN: Those opposed nay. The ayes
4 have it. The minutes for the March 14th meeting have been
5 approved.

6 Please to remind all of you to turn off your
7 cell phones for this meeting so that we can have
8 noninterrupted proceedings. Mine is turned off, too, so
9 thank you.

10 Well, today's presentations before the EAC are
11 very important to all of us who are involved in the business
12 of conducting elections, advocating for voters, and those
13 who are interested in making sure that all votes are counted
14 fairly and adequately and that the votes can be trusted.

15 Today we have presenters who are going to give
16 us information that is going to help the EAC as we move
17 forward to inform the nation and inform election officials
18 on the vote count and recount procedures that go on in
19 American and how they can be improved.

20 And we decided to come out here to Seattle,
21 Washington, because Washington state, of course, was the
22 scene of one of the closest elections in American history,
23 the governor's race in 2004. And I know that most of the
24 people in the audience are from Washington state and very
25 familiar.

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3 MR. REED: Oh, you noticed.

4 MR. CHAIRMAN: And the vice chairman and I had
5 the opportunity in December of 2004 to come to Seattle and
6 to visit several counties that were conducting a recount at
7 that time and doing the manual recount that was required
8 under Washington state law, and it was a very good
9 experience for us because we saw firsthand how the
10 procedures for Washington state were being followed. And we
11 realize it was an election where there was a lot of scrutiny
12 by political parties, by candidates, by the media, and by
13 the nation, too, because people were looking to see how the

14 procedures were going to be followed, and so it was very
15 important for us to do that. And the EAC took it upon
16 ourselves to follow to see what HAVA requires of us to
17 institute a study on vote counts and recounts in the United
18 States.

19 The Bush versus Gore decision in 2000 focused
20 upon what constitutes a vote and the need for consistency
21 throughout a state when they process ballots and when they
22 count ballots. And certainly, of course, the state of
23 Florida going through that recount led to -- really led to
24 HAVA's passage.

25 And so we put out an RFP to do a study on vote

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3 counts and recounts in the United States, and the University
4 of Utah received the grant to conduct that study. Professor
5 Thad Hall, who is speaking later, will talk about that
6 study.

7 So we take this issue very seriously at the
8 EAC, and we want to be able to put forth a document this
9 summer that helps the states and instructs the states on
10 some best practices that are going on, to do some
11 comparative analysis on what the laws are in the states, and
12 we'll hear testimony about that today so that as we approach
13 other elections this year, whether they be state, federal
14 primary elections, and of course, the general election in
15 November, that learning from others, learning what other
16 states do, that election officials can do the best job they
17 can in this process. And the legislators and advocates can
18 also see what other states do and look at these best
19 practices to also advocate for improvements in the process
20 of our vote count and recount procedures throughout the
21 United States.

22 Our first panel has three distinguished people
23 in the field of elections who are going to be giving to us
24 their perspective on vote counts and recounts, and
25 particularly focusing on their own experiences in this area

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3 in their states. And our first presenter is going to be the
4 Secretary of State for the State of Washington, Sam Reed.

5 Sam Reed is a person that really has
6 distinguished himself in his career. Not only is he
7 Secretary of State of the state of Washington but he is also
8 president of the National Association of Secretaries of
9 State, so all the Secretaries of State of the nation have
10 elected him as their leader for this year. And there really
11 couldn't be a finer person to do that because here's a
12 person that was a local election official in Washington
13 state and rose to the state's highest office in terms of
14 elections, and so he knows a lot about the election process
15 because he was a local official. And now he has been a
16 state official for several years. He gets the national
17 perspective as president OF NAS.

18 He also serves on our board of advisors, the
19 EAC board of advisors, and he has launched an aggressive
20 campaign here in Washington state to encourage the youth
21 vote and he's also paved the way for the state's first voter
22 registration database in recent months, and given other
23 states some ideas on how he has done his comparison and his
24 integration of local databases into the state's database.
25 So we are fortunate to have Secretary of State Reed with us

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3 today to present.

4 We also have as our second presenter Rosanna
5 Bencoach. Rosanna is a person who has been involved in
6 legislative and policy making for the State of Virginia.
7 The State of Virginia has a Board of Election that governs
8 its election, and she has been the policy manager for that

9 board since 1999.

10 In 2001 she led a study of the State Board of
11 Election that led to substantial revisions to Virginia's
12 recount laws. And in 2004 the legislature passed laws to
13 implement HAVA within the state of Virginia and Ms. Bencoach
14 led that effort in formulating the changes that needed to be
15 made in Virginia to comply with HAVA. And recently, in the
16 2005 elections in Virginia where they elect their governor
17 and state-wide officers, they had a very close contest for
18 Attorney General of about 300 votes, if I remember, of
19 several million cast. And so they had to implement these
20 new laws, this recount, through this -- for the recount that
21 they had for Attorney General. So those laws were put to a
22 test and she'll talk about that with us.

23 And our last presenter for the first panel is
24 Jill LaVine. Jill is someone that we have known in the
25 election community for many, many years. She has worked in

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3 elections for 20 years and she has been the Registrar of
4 Voters in Sacramento, California for the last two years.
5 And she co-chairs the California Professional Election
6 Administration Credential program.

7 She is a true professional election and she has
8 worked in her career to learn more and to learn as much as
9 she can to improve the process of election, so much so that
10 Congress has called upon her to testify. And we are pleased
11 that she is going to be before us today to talk about her
12 experience in counting ballots, and particularly with the
13 voter verified paper audit trial that is now required in the
14 State of California, but to give us some personal
15 perspective from her and her county on a situation that she
16 instituted and tried out a few years ago, actually, before
17 V-PAD really came into mandate in 25 of our states. It was
18 before this was all mandated that she was involved with the
19 V-PAD issue in counting ballots, so she is going to give us
20 that perspective. So we are really pleased to have three

21 distinguished people to talk to us today.

22 And so, Secretary Reed, we will start off with
23 your testimony and thank you for coming.

24 MR. REED: Thank you, Mr. Chairman. Thank you
25 for your kind remarks. The fact is that it was an honor for

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3 me to go back in January and swear in Chairman DeGregorio as
4 the president of the National Association of Secretaries of
5 State. And the Commissioners, it's nice having you here in
6 the state of Washington. Welcome. And staff.

7 Washington did have a close election in 2004.
8 133 votes separated the Governor's race out of 2.9 million
9 casts. Percentage-wise that is .00046 of 1 percent. And
10 one thing that I can remember telling Nick Handy when he
11 became elections director is that the elections
12 administrators' prayer the night before the election is we
13 don't care who wins just so that they win solidly, because
14 any time you get that close in the kind of decentralized,
15 fragmented election system we have in America, once you put
16 the magnifying glass on it, it is inevitable that there are
17 going to be some, you know, situations that you hadn't
18 anticipated and that are going to be problematic.

19 I became Secretary of State in January of 2001.
20 And, of course, that was right after the Florida experience.
21 My first NAS conference was in February in Washington, D.C.,
22 and I remember pulling Katherine Harris aside and asking her
23 what she would have done differently in terms of their
24 recount and she actually did have some very good suggestions
25 and insights.

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3 My experience as a local election official in
4 the state of Washington is County Auditor. I was Thurston

5 County Auditor for 23 years. I was in a congressional
6 district in a county and a legislative district where we
7 ended up having very, very close races, so I conducted just
8 a large number of recounts: Machine recounts, hand
9 recounts, even in a contested election two congressional
10 district recounts. So I have really been in it and through
11 it a number of times. In fact, the last one was in 1996
12 between Linda Smith and Brian Baird, and they really didn't
13 like one other. Their election staff didn't like one
14 another, and of course then we have the national people in
15 there, and I'll tell you that was one intense recount.

16 And so I have had a number of experiences prior
17 to this and I would like to share a few observations with
18 you in terms of recounts and what is important in terms of
19 being properly prepared for this.

20 The first is that your statutes and rules need
21 to be very clear, because you are in such a contentious
22 situation that anybody who can challenge anything will.
23 That's fundamental. And you need to have clear standards of
24 what constitutes a vote, again, because you are going to be
25 challenged. These standards cannot change during the U.S.

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3 election. These standards cannot vary from county to
4 county. It is so important that everybody buy into in this
5 in terms of at the county level, as well as at the state
6 level.

7 The working relationships, which I understand
8 which were covered pretty extensively yesterday afternoon so
9 I will get into them briefly, but in my opinion as a long
10 time local official and now as a state official for almost
11 six years, is that nothing is more important when you get
12 into situations than having already developed a relationship
13 of trust and confidence between the Office of Secretary of
14 State and the local officials.

15 Nothing is also as important as those local
16 election officials having that kind of trust between them,

17 because what is going to happen during this recount
18 situation you have to be able to communicate on a regular
19 basis. And I think as reported to you yesterday, our
20 cochair in the State of Washington was that every day during
21 our recount situation is that every day we communicated with
22 the counties. And obviously, if there was any particular
23 problem that occurred we sent somebody there, to be there
24 with them.

25 It is obviously essential that you develop a

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3 relationship of being supportive. On the other hand of the
4 state office, the public you serve and the legislature and
5 such also expect you to make sure it's being done correctly.
6 In other words, it isn't like you should go there and just
7 be supportive for the sake of being supportive. You have to
8 be candid and open in terms of if there are mistakes saying,
9 this is not acceptable, we are going to have to correct
10 this, and move on.

11 The relationship between the Office of
12 Secretary of State and the state of Washington and the
13 county auditors is one that we have worked on extensively.
14 And I must say that that, you know, that did work well, in
15 fact almost to the point of a fault, in that particularly
16 during the trial they started referring rather derisively to
17 us as the election committee because we stick together so
18 much. And nobody was splitting, you know, and saying bad
19 things about the others and all.

20 So obviously you need to have credibility in
21 terms of being realistic about some of the problems, but
22 that relationship is extremely important.

23 My experience as a local official also that I
24 think is very important that, again, throughout the United
25 States, and be aware of this, is the importance again of

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3 establishing that relationship with your fellow local
4 officials prior to the election. And I experienced that in
5 these congressional district recounts where, you know, the
6 parties try to play you off against one other, particularly
7 because we are partisanly elected officials.

8 In my district we have Clark County which is
9 down in Vancouver right across from the Portland. And then
10 Thurston where I was, the Olympic area, were the two large
11 counties in the district. The Clark County Auditor is a
12 Democrat and I'm a Republican, and needless to say, you
13 know, they really tried to play us off one against one other
14 and say we're doing different things and all that. But
15 guess what? We talked every day, every day. And we went
16 through everything to make sure we were exactly the same and
17 that they were giving the same answers and everything. And
18 again, that's fundamental. And then we held conference
19 calls. I think we had 13 counties. We'd get all 13
20 counties on the conference calls to make sure we were all on
21 the same page.

22 The relationships were also important in terms
23 of dealing with the political parties and the candidates. I
24 personally called the gubernatorial candidates and said,
25 here's what we are doing, here's why we're doing it, and

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3 here's what we expect to happen as a result. We talked to
4 the political parties every day as well as the counties.
5 Now, their situation is different. Their role is very, very
6 different, obviously, but we thought it was very important,
7 again, that we make it very clear what was going on and why.

8 News media, it is so important they be totally
9 transparent. That whatever they want to know, you answer.
10 And by the way, that was one of Katherine Harris's
11 suggestions. The problem was she said we developed a bunker

12 mentality, we hid in a room, we locked people out and should
13 have been much more open. And we were. To the point of
14 exhaustion may I add. 6:00 a.m. to about 11:00 p.m.
15 answering press questions and conducting interviews. And I,
16 as Secretary of State, but also particularly King County and
17 some of the other county level officials as well. Also
18 important to educate the political party as the candidates
19 and the media in terms of the process.

20 And finally, the public, of course, gets very
21 excited, you know. They took, you know, they took sides in
22 this gubernatorial race and very upset over this. And
23 anything that is raised that is a mistake, you know, would
24 be played over and over in the news at the top of the hour,
25 front page of the paper, and on TV that night. So it's

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3 very, very important also you get out your message in an
4 organized and consistent way.

5 And that's what we did within our office in
6 terms of communication between elections division and
7 Secretary of State and communications director, but also
8 that's part of what we were doing in communicating with the
9 counties.

10 We need to have a good understanding of what
11 the roles are and in terms of what the role of the Secretary
12 of State's office is, the county level and the canvassing
13 boards within the counties, and then the state of
14 Washington. By the way, the counties are responsible for
15 the conduct of the election and voter registration, and
16 their canvassing boards are responsible for certification.
17 So the Secretary of State has more of an orchestrating role,
18 oversight role, training role, and you know, adopting rules
19 and such, but the Secretary of State does not count any
20 ballots in the state of Washington. It's the local
21 government that does which, again, makes it so imperative
22 that kind of relationship.

23 So important that there be uniform and

24 consistent state standards, like in signature verification.
25 As you are probably well aware, Washington and Oregon are

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3 vote by mail states. We are not entirely, but we're very
4 close to that entirely in the State of Washington. And so
5 clearly, that is one of the pivotal points in terms of
6 whether votes are going to be counted, is whether that
7 signature is valid, because that signature is what
8 determines whether that ballot is going to be processed.
9 And if there is a perception that you are using different
10 standards from county to county and throwing out a bunch
11 from one county and not in another, you are setting
12 yourselves up for a challenge.

13 Also the provisional ballot processing which we
14 are fortunate in the state of Washington that we have had
15 that kind of system here for a long time, so we were very
16 consistent in terms of how we handled them, other than there
17 were there some mistakes made in some polling sites, but in
18 terms of how our canvassing boards handled them.

19 And the preinspection of ballots, which are so
20 important both in terms of the optical scan, and we had
21 punch cards going on. In terms of getting a consistent
22 number when you start doing recounts is the better job you
23 did in preinspection, the more consistent your count is
24 going to be.

25 In our state I think we had 14 counties of 39

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3 that were punch card. And by the way, they were very
4 consistent when we did the recount, so we did a good job of
5 chad checking to make the optical scan more variation for
6 reasons I think you understand pretty well, which is the
7 voter can be very creative in how he or she decides to mark

8 that ballot rather than following the instructions. And so
9 that was a little bit more of a problem.

10 The breakdown in the state of Washington was in
11 terms of some of the execution, some of that caused by us
12 having the latest primaries in the United States here in the
13 state of Washington. Our primary is only seven weeks before
14 the general. We certify it 10 days after the primary, then
15 the mail ballots have to be out 20 days before the general,
16 or 18 days now, but the military and overseas even a week
17 earlier than that.

18 So and then as inevitably happens, you have
19 other printer problems and such, but we had a lawsuit by the
20 Libertarian party which delayed us being able to print our
21 ballots. Once that was resolved at the state level, then
22 there were lawsuits out at the local level, particularly
23 over in Spokane, so they were really rushed. And once that
24 happens that is a problem.

25 Fortunately the legislature just planned to

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3 move back our primary. But we had problems in terms of
4 reconciliation, which is so important, and that is something
5 that I would want you to emphasize in your report, is they
6 need to know how many ballots they received and then be able
7 to balance how many were county versus how many were
8 rejected, and that number needs to match. That -- both in
9 terms of knowing your missing ballots from your precinct, if
10 you know they're not all counted, which was a problem, and
11 just in terms of again, the kind of trust and confidence in
12 terms of public perception. That was a problem.

13 In the state of Washington we had our first
14 kind of election from hell in 1990, at least in recent
15 history, where we had a state House of Representatives'
16 race, one vote. And when they did recounts in the three
17 counties, the same kind of things happened. We lost ballots
18 and that led to us adopting a certification and training
19 program in the state of Washington operated under the Office

20 of Secretary of State. This has been very helpful to us in
21 terms of training, very helpful to the counties. It has
22 been again, a real partnership. The county auditors are on
23 the board that oversees this program.

24 And so for example, we're going to do the hand
25 recount. There was this sentiment expressed by the public,

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3 media and some of the party people that oh, this is going to
4 be a mess, this is going to be embarrassing, and partly
5 because of the perception of Florida. In fact, they
6 executed it very, very well. And Commissioner DeGregorio
7 and Martinez saw some of that, but in all 39 counties, both
8 party observers and they said they were impressed, they were
9 -- because of the way the party observers were handled, the
10 professionalism in terms of bipartisan boards and
11 everything, and that was key to our success. And I would
12 highly recommend that to other states in terms of having a
13 training program.

14 In our case they have to have certain
15 requirements in order to be certified as election
16 administrator, and a requirement that at least two
17 administrators in each county are certified. The larger
18 ones of course need to do better than that in terms of
19 getting more people certified.

20 Another very important point is the education
21 of the public. In our state, as I've obviously seen in
22 other states, one of the difficulties you get into when you
23 do a recount is the voters didn't follow the rules. They
24 didn't do it correctly. They made sure they got very
25 creative. And that puts the canvassing board in a very

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3 difficult situation, puts the election administrator in a
4 difficult situation. So in fact, we had have sponsored by
5 the County Auditors using HAVA money in the last election
6 training over TV ads and radio ads and newspaper ads to the
7 voters in how to vote properly and how not to make mistakes.

8 Knowing we have limitations on time, I had more
9 to say but I will conclude with just a couple of points that
10 I think are very important from my rather intensive
11 experience in this area.

12 And I guess most important is transparency, is
13 that if you're going to get trust in your results and
14 confidence of the public, they really need to know what is
15 going on. And they need to be able to observe what is going
16 on. They need to understand why you are doing this and what
17 the possible ramifications are of how this is going on.

18 The second point is that inevitably you are
19 going to have challenges from the parties, you are going to
20 have challenges from the news media, you are going to have
21 challenges that will end up in court. And one of the points
22 that I made that I think you may not hear from others, that
23 I think was really quite important in terms of coming out of
24 our recount here, is that I kept reminding people we are
25 setting an historical precedent here. The answer we're

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3 giving, the decisions we're making are setting a precedent
4 for the future.

5 I was in court a lot. Went to the State
6 Supreme Court a couple of times and a couple of Superior
7 Court things. And I had to remind the lawyers, the lawyers
8 tend to just want to win their case, and I said, wait a
9 minute, just think, you know, what this decision is going to
10 do in terms of future elections. Do we want every, you
11 know, town council race, every fire district commissioner
12 race that is close to end up in court or end up with a, you
13 know, major problem? No. So let's be sure that the
14 precedents we're establishing here are ones we can live with

15 in the future in terms of conducting solid election.

16 Second is, and I made this point to the press
17 when we had to announce our first recount, is that some
18 board election administrators understand the role of the
19 parties. The parties will rise in righteous indignation and
20 say, all we want is a fair and free election, to make sure
21 every ballot is counted correctly. Well, in fact, that
22 isn't their role at all. Their role is they want their
23 candidate to win, and they view this is an extension of the
24 campaign, and they're going to do whatever they can, they're
25 going to say whatever they can through the news media and

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3 all because they are trying to get every ballot, you know,
4 counted for their candidate.

5 If they are ahead, well, their position is,
6 well, I think we have done enough here, about time to wrap
7 this up, you know. And if they are behind, we need to count
8 more ballots, you know. And so there should be no illusion
9 about what the role of the parties is. We need to respect
10 that role and deal with them and understand that that
11 definitely is what their role is. Though, by the way, party
12 observers in all of our state did a good job and we --
13 partly because we made it very clear what their role was.
14 We do political party observer training. We have manuals
15 and such for them, so they did understand that.

16 Finally, I'll just make the point that I
17 started with, is this is a fragmented, decentralized process
18 in America. You can't eliminate risk. So what is most
19 important is that you reduce your risk as much as possible
20 through the best management practices, oversight and
21 redundancy. The goal all of us have is have those voters be
22 able in the final analysis to have trust and confidence in
23 the system. And I really think that has to be paramount in
24 terms of the way the election administrators look at this
25 process when they have a recount.

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3 THE CHAIRMAN: Thank you, Secretary Reed. We
4 appreciate those comments and we are going to have our other
5 panelists speak before we ask questions, but I'm sure that
6 all of us will have follow-up questions. But we appreciate
7 your testimony.

8 Ms. Bencoach, will you share with us your
9 experience in the State of Virginia.

10 MS. BENCOACH: Yes, Mr. Chairman. I appreciate
11 the invitation today to talk about Virginia's experience in
12 the recent recounts. It's an honor to be here. Also I
13 first want to extend my thanks for the hospitality extended
14 yesterday by the King County Auditor's office, and that was
15 a tremendous meeting yesterday. And I'm taking quite a few
16 suggestions back to Virginia from that.

17 As you all know, the Help American Vote Act
18 requires states to adopt uniform and nondiscriminatory
19 standards defining what constitutes a vote on voting systems
20 in use of the states. Last December, faced with recounting
21 our closest election in statewide history, Virginia found
22 that it is equally important to define what counts and what
23 doesn't in a recount and to clearly spell out procedures to
24 be used for each system.

25 Our only previous statewide recount was in the

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3 1989 election for governor. The difference in that election
4 was just under 7,000 votes out of 1.79 million cast. The
5 numbers changed slightly in the recount, but the outcome did
6 not change. In our 2005 election for attorney general, the
7 certified results showed a difference of 323 votes out of
8 1.94 million cast.

9 In Virginia, recounts are conducted under the
10 direction of a three-judge court. Only the candidate who

11 has apparently lost by no more by 1 percent can request a
12 recount. If the margin is one-half of a percent or less,
13 then the localities and state agencies that are involved pay
14 their own costs for the recount. If the difference is over
15 1/2 percent, and it's still less than 1 percent, then the
16 candidate has to post a bond of \$10 per precinct involved in
17 the recount and the entire district is recounted. There are
18 no partial recounts. And they will later be assessed for
19 the actual cost. This keeps the number of recounts down in
20 that higher margin, and we actually have very few recounts
21 in Virginia. After each election we usually have a few from
22 local offices, occasionally one from the General Assembly,
23 but we really have very few recounts in Virginia.

24 After the 2000 presidential elections, Virginia
25 State Board of Elections initiated an ad hoc study of the

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3 state's recount laws, drawing on the experience of a
4 bipartisan group of election officials, party staff and
5 officials, and recount attorneys, all of whom have worked in
6 the previous Virginia recounts.

7 The 2001 Virginia General Assembly specified
8 that all marksense and punch card ballots be recounted by
9 running them back through the counters to separate the
10 undervotes and overvotes for hand counting, adopted a
11 "two-corner" chad rule for punch card ballots that are not
12 accepted by the tabulator, and charged the State Board of
13 Elections with promulgating standards for recounts.

14 The legislature also formed their own omnibus
15 study on elections, which included every issue that anybody
16 wanted to study after the 2000 elections. And our agency
17 recount study provided input to the legislature study and
18 also to the State Board. The State Board's recount
19 standards were adopted in August of 2001.

20 Our standards provide administrative details
21 that are not spelled out in the law and also draw together
22 the key code provisions that deal with counting of the

23 ballots. The main reason for this is that the judges who
24 are overseeing the recounts very seldom deal with election
25 law issues and we wanted to make their task easier, instead

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3 of having to try to fix things on the back end. The
4 standards directed the ballots ruled invalid in the election
5 could be not recounted in a recount. That also includes
6 provisional ballots that are not counted in the original
7 election, that issue was not revisited, and matters of voter
8 eligibility are not appropriate for recount, only for
9 contest.

10 The State Board directed that in recounting the
11 ballots, unless the recount law specifically directs
12 otherwise and to the degree possible, the ballot shall be
13 counted in accordance with the same laws that apply when
14 they are counted at the polls. It's also important to add
15 that in Virginia the law states that the recount is final.
16 There is no second recount. There can be only one recount
17 of the vote.

18 The standards also included instructions on how
19 to count paper ballots, as well as any marksense ballots
20 which were counted by hand. Virginia is a "voter intent"
21 state, but in our research we could find no instance where
22 the state had given any instructions to the localities on
23 how to interpret voter intent, except for write-in ballots,
24 which names are valid, which names are not.

25 The State Board later directed that the ballot

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3 examples would also be used whenever ballots are hand
4 counted, so this continues the practice of trying to count
5 them the same way in the recount and the election itself as

6 the recount laws specifically direct.

7 In 2002 our General Assembly clarified the
8 recount laws based on the Board's conclusions writing some
9 of our conclusions into law, and also vote to limit the
10 rerunning of marksense and punch card ballots to situations
11 "when the printout is not clear, or on the request of the
12 court." The agency's recount study numbers had debated
13 requiring the ballots to always rerun versus never having
14 them rerun and just relying on the printout and they came up
15 with this compromise and believed that if a party to the
16 recount made a good argument, then the court would order
17 them rerun. Of course, we have had varying decisions by
18 different recount courts since then.

19 The 2005 statewide recount presented our first
20 major test of these various law changes and of the recount
21 standards and ballot examples. As soon as we realized that
22 a recount was likely, Jean Jensen, the secretary of the
23 State Board of Elections, and she is the administrative head
24 of the agency, called a meeting of the key agency staff to
25 sit down with the lawyers from both candidates and both

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3 political parties. Throughout the process we would be in
4 regular communication. With the exception of the Virginia
5 Freedom of Information Act requests that were only filed by
6 one candidate, and often they file duplicate requests, as
7 soon as they found out about one they filed a duplicate, the
8 information was provided simultaneously to both candidates.
9 We worked to keep the process open and transparent and to
10 keep our staff accessible.

11 At the preliminary hearing the presiding judge
12 decided that the code not allow him to "go on a fishing
13 expedition" for votes, and turned down the apparently losing
14 candidate's request to rerun all the marksense and punch
15 card ballots through the tabulators to separate out the
16 overvotes and undervotes for hand counting. And we
17 estimated this was approximately a half a million votes that

18 would have had to be rerun in different localities. A
19 later, more limited motion based on the drop-off rates was
20 also turned down. The judge expressed his frustration with
21 the wording "on the request of the court" in the law, and he
22 wanted more clarity over when they were supposed to be rerun
23 and when they were not.

24 In the course of the recount it was discovered
25 that not all of the marksense machines then in use in

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3 Virginia could be reprogrammed to separate out the overvotes
4 and undervotes for a single office as was specified in the
5 law. The equipment had been certified before the law was
6 changed. The law has now been amended to require ballots to
7 be hand recounted in a recount if the tabulator cannot be
8 reprogrammed to meet this requirement.

9 The recount uncovered other issues. In one
10 locality the wrong pens had accidentally been used. That's
11 now been corrected. In another locality they found what
12 they called unprocessed ballots listed on the tape. The
13 Board policy will be addressing this issue requiring that
14 those ballots be rejected at the polls so the voter has an
15 opportunity to correct them, to vote again, have the ballot
16 counted, and that is going to be addressed in policy. That
17 is what's now done with overvotes; if there's any overvote
18 on the ballot the machine rejects it and that voter has an
19 opportunity to say, override it, you know, or I'll vote
20 again.

21 The recount was conducted on December 20th and
22 21st, following numerous court hearings and several versions
23 of procedural order. The last procedural hearing on the
24 recount was actually held on the day before the recount
25 began, when the court ordered that ballots be hand counted

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in nine precincts of two localities. These were the precincts with the unprocessed ballots and with the wrong pens. In the one additional precinct on the day of the recount the decision was made to rerun the punch card ballots through the tabulator when the printout could not be found. And a recount law provides for this to be decided on election day.

The shifting procedural orders presented problems for everybody involved in the recount. Programming costs and time were also problematic. Because election officials on the day of the recount could decide that the printout was not clear and the ballots had to be rerun, all the localities with marksense ballots and with punch card ballots had to have reprogrammed and retested units available to handle all of those precincts on the day of the recount. The program cards were still under seal so they had to acquire new cards to use. The time that some vendors required in order to do this reprogramming was also an issue. And the next time a recount order was filed, what we would probably do is order as soon as the recount is filed that they start getting those cards and getting them programmed.

Another complicating issue was the variety of

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voting equipment in the state. The State Board certifies the equipment, but the 134 localities pick from the list. And with the notable exception of the HAVA funding, Virginia has paid for voting equipment with local dollars. With a combination of old equipment, replacement equipment, and DREs added for accessibility in precincts that have another main system, our staff was hard pressed to write the instructions for the recount at the time the recount was happening. Virginia had a history of writing these instructions as needed, and we are revisiting that process.

But all said, it worked remarkably well, and

14 that is due largely to dedicated 134 local general
15 registrars, their three-member local electoral boards and
16 our State Board staff.

17 The first day of the recount was conducted
18 entirely in the localities beginning at 9:00 a.m. In each
19 locality two members of the electoral board (one Democrat
20 and one Republican) served as the local recount
21 coordinators. Recount officials have been selected by
22 parties to the recount from among the election officials who
23 worked in the November election. The two campaigns also
24 could send a designated representative for each recount
25 team. Since this was a court proceeding, it was overseen by

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3 the clerk of court in each locality.

4 Except for the ten precincts discussed above
5 that had to be hand counted, the process was
6 straightforward. Sealed envelopes for the other 2,500
7 precincts, including central absentee precincts, were
8 opened, printouts from election night were examined, ballots
9 that had been hand counted originally were hand counted
10 again, and results were written on the forms for transmittal
11 to Richmond. If the two recount officials selected by the
12 two sides, the election officials, did not agree on how a
13 ballot should be counted, it was set aside with a note about
14 why they didn't agree and it was sent to Richmond. As each
15 locality finished, the State Police picked up the materials
16 and then ran them up to Richmond in a relay system.
17 Although the furthest locality is a six and a half hour
18 drive from Richmond, everything was locked up in the
19 Richmond for the court's office by midnight.

20 The next day the Richmond phase began at 8:00
21 a.m. At each of six tables a State Board staff member
22 opened the envelope and read the results to a contracted
23 accountant and that provided another step of neutrality
24 while observers from both campaigns watched. When any
25 questions arose, the attorneys from both sides would come

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3 over to the table and discuss the issue. The finished tally
4 sheets were sent to a compilation table that was similarly
5 staffed and a staff member took the finished envelope and
6 brought it over to the next locality. Most of the issues
7 were resolved quickly. We actually ended up with very few
8 contested ballots being sent to Richmond. But those issues
9 that couldn't be resolved quickly were sent to a separate
10 room where eventually three teams of SBE senior staff,
11 attorneys and clerk's office staff went through the
12 problems.

13 Overall the mistakes we identified in the
14 process were human mistakes. Numbers were transposed or
15 entered in the wrong boxes, one valid absentee ballot was
16 sealed up uncounted, those type of things. And we'll be
17 addressing those in our annual training this year.

18 One electoral board member realized shortly
19 after the recount that they had used the wrong form. They
20 called everybody back, they redid it, they sent it on in a
21 timely fashion.

22 One locality out of 134 later claimed not to
23 have received the orders, instructions or forms, which were
24 all sent by e-mail posted on the website, never called
25 anybody to ask, and then just sent everything to Richmond.

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3 On that second day of the recount when the error were
4 discovered, the attorneys for both sides reached agreement
5 that they and SBE staff would take those materials and do
6 their recount for them. That took about two hours. In
7 January when that registrar and the electoral board were
8 called in to meet with the State Board, that meeting took

9 quite a bit longer.

10 The recount was concluded at about 9:00 p.m. on
11 the second day. The outcome did not change and the original
12 winner picked up a net gain of 37 votes, of which 36 were
13 from the hand counted precincts. The losing candidate did
14 not choose to contest the election. That contest would have
15 been before the House of Delegates in the State Senate,
16 which were both controlled by the other party. The losing
17 candidate is still in the General Assembly, where he
18 introduced bills this year having to do with recounts,
19 including requiring that all the ballots be run through
20 every time. That bill did not pass.

21 Other bills passed this year requiring that
22 candidate representatives of recounts be given an
23 unobstructed view of the proceedings and specifically
24 allowing representatives at more points in the election
25 process, but also specifically prohibiting those observers

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3 from interfering in any way.

4 The final bill that passed this session
5 requires us to provide explanations whenever the unofficial
6 or the official results that are posted on the SBE website
7 are changed and why they changed, and those explanations
8 will also be posted on the State Board website, so people
9 can see as they're going along why the numbers change,
10 someone corrected.

11 I thank you for allowing me to share these
12 observations and I hope that they were useful to you.

13 THE CHAIRMAN: Thank you, Ms. Bencoach. You
14 know, we explained just in the first two how there are some
15 similarities in the proceedings in a recount in two
16 different states and some similar suggestions, but we also
17 see the differences between the two, and I think that, you
18 know, that can tell us about the whole country because we
19 really have, you know, 50 states that have different rules,
20 different procedures, many different procedures in fact.

21 But it's helpful to get the different perspectives because
22 we learn from each other and I'm sure as you said you
23 learned from what you heard about Washington state. But now
24 we have the California perspective on a counting of paper
25 ballots.

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3 MS. LAVINE: Paper ballots.

4 THE CHAIRMAN: That's right, paper ballots, so
5 Ms. LaVine, thank you.

6 MS. LAVINE: I'm glad I live in California for
7 this point. Thank you for this opportunity to speak to you.
8 My name is Jill LaVine, I'm from Sacramento, California.
9 I'm the Registrar and I have been working in elections for a
10 little over 20 years and I started as a temp and had no idea
11 what I was getting into at that point.

12 In Sacramento County we have a little over
13 600,000 registered voters that I conduct elections for on
14 the federal, state and city level. We have over 125 special
15 districts that I also conduct elections for and in two
16 languages. We have used a punch card system for a little
17 over 34 years before we changed systems. We knew it was
18 time to go out. We were kind of looking around at that
19 point. Technology was changing so fast that we took kind of
20 baby steps in the beginning. We actually went out to bid
21 for a new system three times in four years. We had a lot of
22 changes happening.

23 In 2001 punch cards were decertified. That
24 was by our then Secretary of State Bill Jones, and
25 Proposition 41 was passed by the voters giving us some money

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3 to buy a new system. However, with Proposition 41 they
4 never can give you money without a few strings attached, so

5 Proposition 41 included the following language: "Any voting
6 system purchased using bond funds that does not require a
7 voter to directly mark on the ballot must produce at the
8 time the voter votes his or her ballot or at the time the
9 polls are closed, a paper version or representation of the
10 voted ballot or of all the ballots cast on a unit of the
11 voting system. The paper version shall not be provided to
12 the voter, but shall be retained by the election officials
13 for use during the 1 percent manual recount or other recount
14 or contest."

15 And there was a lot of discussion just exactly
16 what did that mean. At that time our Secretary of State was
17 Kevin Shelly, so he established a task force to look at what
18 this paper audit trail actually meant.

19 So off we go our second RFP canceling the first
20 one because they didn't know exactly what that one meant.
21 And in this RFP we asked the vendors to include questions
22 about paper audit trail and because we were interested in
23 this early voting process, we did that. So this kind of all
24 combined together for this second RFP.

25 All but one of our vendors have done, one of

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3 the vendors that were busy, had done early voting, so we
4 chose one of the vendors and asked them if they would
5 consider doing a pilot project for Sacramento County on
6 early voting. This was a very limited project, and the
7 equipment for this pilot program was from Avante, the Vote
8 Trakker program. It was provided to Sacramento County with
9 no cost and was authorized by our Voting Systems and
10 Procedure Panel within the office of the Secretary of State
11 and my board of supervisors also approved it. This was a
12 certified system to count ballots on.

13 So this project involved early voting for 11
14 days at six different sites, and this was for the November
15 5th, 2002 election. So voters anywhere in Sacramento County
16 could go to any one of these six sites and vote their

17 ballot. There was a total of 246 different variations of
18 the ballot, so it made it a little more complicated. And
19 each voting system was -- voting unit was accessible to
20 blind voters and voters with disabilities, and they could
21 choose to have it in English or Spanish.

22 A total of 1,612 valid ballots were counted at
23 the early voting locations. And at this time I believe we
24 were the first jurisdiction in the nation to go out with the
25 voter verified paper audit trail. We sure attracted a lot

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3 of attention.

4 This experiment was very closely watched and it
5 was controlled under some very controlled conditions. We
6 had experienced people at each staff. We had -- from the
7 vendor at each of the polling places. The equipment had to
8 meet of course all of the Secretary of State's requirements
9 and our requirements and expectations.

10 At the end of this project, knowing the
11 California code requires that during the canvas of any vote
12 that 1 percent of the precincts chosen at random will be
13 manually recounted to verify the equipment, as part of the
14 canvas, we chose one of the units or one of the polling
15 sites and recounted these ballots. The precinct we selected
16 had 114 ballots. Because it was possible for a voter from
17 any one of the 246 ballot types in the county to vote at the
18 early sites, it made this recount very difficult and our
19 tally sheet consisted of not just one page but several pages
20 to accommodate all the choices.

21 We had four teams of two sit at tables with
22 tally sheets to handle all the contests. The paper ballots
23 were held together with large binder clips. Because they
24 varied in length from 11 inches to over 20 inches, they
25 rolled and it was very difficult to handle. I was watching

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3 several of the teams. They would put a brick on paper and
4 paper weighted each end of these little curled ballots and
5 start counting, and as soon as it moved or something bumped
6 it, it rolled back up again and they'd be starting all over.

7 The vendor also used a heat sensitive thermo
8 paper that left kind of an icky residue on our recounters'
9 hands, and so they said, can we have some rubber gloves? So
10 those were provided, too.

11 We allowed provisional voting for this early --
12 for this ballot project and processing the provisional
13 ballots was a very quick and easy process. We also allowed
14 for write-in votes in this process and that was very quick
15 and easy also, because in one case presentation of the
16 reports made it very easy to count those write-in votes. So
17 knowing that this project was under scrutiny, we verified
18 the number of voters on the machine with the report. We
19 verified the report with the paper record. Then we verified
20 the machine totals with the paper records, so we did several
21 cross checks to make sure we got it all together. And when
22 the counting was all completed we were off by one ballot.

23 So what we learned is after printing out a
24 report, that a fleeing voter who actually voted who didn't,
25 you know, push the cast button, cast ballot button didn't

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3 produce a paper record for privacy reasons. So therefore,
4 going back to the report, we found the fleeing voter and
5 then we actually confirmed the number of that voter and we
6 took that activity report and everything came out right.
7 But it took 127 and a half hours to recount 814 ballots, or
8 approximately an hour and 15 minutes for each ballot. The
9 number from the machine count did match the paper of votes
10 for the paper ballots exactly.

11 Now, we are very thankful that this project was

12 a November election, because had it been a primary election
13 in California with our eight parties and our three
14 non-partisan crossover opportunities that California allows,
15 I think we'd still be counting. Also the paper audit trail
16 did not print in Spanish, so we recounted in English only.
17 This is before we had any true rules about what a paper
18 audit trail should be and we were kind of stabbing in the
19 dark here. We were grateful that there were no challenged
20 contests and it was not necessary to count any more than the
21 114 ballots. Otherwise, there would be significant delays
22 in those election results.

23 I want you to know that we canceled that RFP
24 and we've learned now with the third time after that. And
25 I'll be happy to answer any questions that you have.

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3 THE CHAIRMAN: Thank you, Ms. LaVine. We
4 appreciate your experience in this area and I'm sure we'll
5 have questions. I'm going to ask Vice Chairman Ray Martinez
6 to lead us off with questions in this panel with
7 Commissioners. We have about 20 minutes total, so please
8 keep that in mind when you are asking questions.

9 But before the Vice-Chairman starts, I think
10 that many of you know that he announced in recent days that
11 he's going to be leaving the EAC on June 30th, and the good
12 news about any of that is that he's going to stay until June
13 30th and we'll have his expertise for three more months and
14 three more meetings. But it has been a pleasure to serve
15 with him and I'm sure we're going to have other times to say
16 nice things about Ray Martinez and what he has done to
17 contribute to the success of the EAC.

18 But we've had -- the Vice-Chairman and I have
19 had an opportunity to travel together to some places, and of
20 course Washington state was one of those places, and to
21 learn firsthand on the recount. Just last week he and I
22 were in New Orleans for the early voting for the mayoral
23 elections. They'll be taking place on Saturday in New

24 Orleans.

25 But I'll have plenty of other things, nice

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3 things to say about Ray Martinez, but it's a pleasure that
4 he's going to stay with us several more months and gave us
5 all some breathing space on this. But Vice-Chairman, I'll
6 turn the mic over to you.

7 MR. MARTINEZ: Thank you, Mr. Chairman. Thank
8 you for the very kind comments. Let me just say I
9 appreciate your leadership, Mr. Chairman, in putting
10 together this particular public hearing, but also your
11 leadership throughout my tenure on this commission for being
12 proactive. I mean I remember shortly thereafter Mr.
13 Secretary all started the recount here for your Governor's
14 race back in I guess right after the election in 2004, where
15 the chairman came into my office and said, we ought to go
16 and go witness firsthand, and you were very receptive and
17 Mr. Handy was very receptive in saying, we'd love to have
18 you, but Mr. Chairman, thank you for your leadership and
19 putting together what I think is already a very insightful
20 conversation about vote counting and recounting.

21 And let me take the opportunity also, Mr.
22 Secretary, to thank you for hosting this when you did
23 because it was very insightful for us. And I have to tell
24 you just anecdotally when I first came here for that visit,
25 you and I have had occasion to meet before, but not really

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3 know each other very well. But I didn't know what your
4 party affiliation was. I'm a Democrat myself, as you
5 probably know by now, and you are a Republican, but I
6 remember touring, doing some things that day or the two days
7 that we were here and not knowing and not even needing the

8 occasion to know, quite frankly, because of your
9 professionalism, because of your evenhandedness and your
10 leadership that I think it reflects very positively upon how
11 you do your job, how your colleagues across the country see
12 you as a Secretary of State, and your fine staff and the
13 leadership that you provide, that there was just no regard
14 to that. You were doing the job that had to be done to get
15 your state through a tough recount procedure, so thank you
16 for doing all that you did.

17 I also want to say just very generally that
18 this is an important issue. I mean I think that as we look
19 into it, I'm looking forward to the second panel, Professor
20 Thad Hall is going to offer I think some very compelling
21 testimony about not vote recounts, but about the actual
22 counting process itself and the disparity that we seem to
23 find from state to state, Mr. Secretary, in policies and
24 procedures that are adopted, not just for recounts again,
25 but for the process of actually counting votes. And that

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3 was one of the things that HAVA really wanted us to do, was
4 to actually get a grasp on what voter intent really meant,
5 and I think states have certainly grappled with that, but
6 it's also true that we have a long way to go perhaps in
7 looking at some of the research and some of the testimony
8 that we'll hear this afternoon.

9 And I guess I want to start with a threshold
10 question to the Secretary, and that is, you know, again,
11 it's one of those things where because of the great history
12 of federalism, Mr. Secretary, and how we run our state --
13 how we run our election process, that it's always a struggle
14 for this agency to figure out what its niche is, what can we
15 offer, and that's sort of been our struggle now for the past
16 two and a half years, the short tenure of this agency. And
17 it seems to me that given what we're learning already just
18 in this panel's testimony about the disparity in policies
19 and procedures when it comes to recounts, and I know that

20 our testimony here, your testimony is specific to recounts.
21 Ms. LaVine, now that we're dealing in a V-PAD
22 environment, that which is, you know, California certainly
23 is right in the middle of that, of that discussion. And I
24 guess, Mr. Secretary, does the EAC have a role to play with
25 regard to offering some advice? Best practices, what -- is

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3 there room for some level of not necessarily uniformity, but
4 do certain best practices that now have been adopted in
5 Washington State play in other jurisdictions as well? And I
6 wonder if you could just offer any comments that you have
7 about that particular issue.

8 MR. REED: Thank you. And Commissioner
9 Martinez, I want to thank you for your great service. I
10 thoroughly enjoyed working with you and appreciate what
11 you're brought to this position as an attorney and as a
12 person who has been so engaged in the process before. And I
13 view it as a real loss that you are departing.

14 Your comment about my impartiality, one
15 interesting thing is when I met with leadership prior to the
16 2005 session, one of the points they brought up was well,
17 shouldn't we be making the position of Secretary of State
18 and County Auditor non-partisan. And I said, did you see
19 anything, did you hear anything of any of the -- we have 38
20 -- well, I guess it's now, what, 36 partisan elected County
21 Auditors or myself that would lead you to believe that any
22 of us had done anything in a partisan fashion? Well, no.
23 And I said, well, then it sounds to me like, you know, a
24 solution looking for a problem. But I do think that is
25 something commendable for all the County Auditors across the

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3 state, because they're under great pressure as well. Your
4 own party expects you to do them favors, the other party
5 assumes you are doing your own party favors, so it really
6 puts you in a tough spot.

7 One thing that has made America great and has
8 made our election system so robust and work so well and
9 relate so well to the citizens at the grass roots level is
10 that we do have a federal system in our country, that we do
11 have a federal role of kind of an oversight role, state
12 role. In the state of Washington and I know many of our
13 states in terms of elections where we are engaged in setting
14 standards, equipment, certifying the equipment, providing
15 training and such, but in fact it's that local official who
16 knows his or her county best, who knows these people and
17 knows the community, knows what works and how to engage
18 people in their own community, of really having the
19 responsibility for conducting elections and registering
20 voters and such. And frankly, I think that is what has
21 caused, you know, our system in America to work so well for,
22 you know, well over 200 years now. The situation in eastern
23 Washington is different from the situation in New York City.
24 And you know, I could go on and on with those kind of
25 comparisons, but I think that is very real.

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3 One thing that we struggled with both after
4 that 1990 election I told you about, the State House of
5 Representatives, and with the 2004 was legislators right
6 away wanted to say, well, those darn local people, they
7 screwed up, they made mistakes. We want to give you more
8 control, you know, and wait a minute, I don't think, you
9 know, I don't think we ought to overreact to one situation
10 where we start imposing the state into it. But in fact, you
11 know, through the statewide voter registration database,
12 through some of the other Bush versus Gore decisions'
13 standardization, the state is taking a stronger role. But I
14 think it's very important that we protect that grassroots

15 base for the election system in America.

16 So my colleagues, the Commissioners know and
17 everybody in the room knows this, in the Secretary of State
18 Association we're very, very nervous about EAC. Thinking
19 back and seeing other federal agencies created over the
20 years who started off just kind of advisory in setting up,
21 you know, standards ended up, you know, mandating and having
22 control, and I do think that this is something which you as
23 a commission need be vigilant about, is not getting carried
24 away, because also you're going to hear these states are
25 screwing up, you need to have the government take over.

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3 But you're exactly right in your point about
4 handling of the ballots, and since we do elect the President
5 of the United States, you know, across all 50 states, I do
6 think it is important that there be more standardization in
7 terms of what we look at and what constitutes or even a vote
8 in such, because if you cross state lines and see they are
9 doing it entirely differently, we're going to get the same
10 kind of challenges I was talking about we get here going
11 from county to county. However, you know, I urge you not to
12 get too carried away with that. But we are looking to you
13 for these kind of standards. We are looking to you for some
14 guidance. And I think that what you've done so far in terms
15 of your advice or standards all have been very, very helpful
16 and that is exactly the role we ought to be playing.

17 I appreciate Chairman DeGregorio as a former
18 local official and then state official. He has been so
19 sensitive and has worked so carefully with us, and I think
20 that's something each of the commissioners has done, and I
21 urge you to continue to take that role. Be very, very
22 sensitive not to be heavy handed in terms of dealing with
23 states and local governments.

24 MR. MARTINEZ: Thank you, Mr. Secretary. I
25 appreciate the very I think eloquent and candid response to

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3 that issue and it's something that I think we are mindful
4 about and it plays in the background for how we wear our
5 different hats, as either a national clearinghouse or
6 issuing voluntary guidance or even voting system standards
7 for that matter.

8 Ms. LaVine, from a local official's perspective
9 I guess I'm actually curious as to where you ended up. So
10 you're talking about this pilot project in your testimony.
11 If I'm not mistaken California requires via state law a 1
12 percent manual recount, random manual recount, and I think
13 you also have one to 25 states or so that require the VVPAT
14 and so I wonder -- now, you expressed this testimony about
15 how this was time consuming at a minimum. Where do you see
16 yourself going with this state requirement and how you are
17 going to handle all of this in the future?

18 MS. LAVINE: Well, actually, we counseled on
19 second RFP, went out to bid for the third time and we did
20 not choose the system with the voter verified paper audit
21 trail. We chose a system that is optical scanned, AutoMARK,
22 optical scan unit. After we saw the problems with the paper
23 audit trail and not knowing exactly where the standards were
24 going to end up, they were still, you know, in such a mess
25 at that point, and knowing we had to move on a system before

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3 the deadline, we chose the optical scanner system. But you
4 are correct, we do have the mandatory 1 percent manual
5 recount of 1 percent of our precincts and at least one of
6 their contest.

7 MR. MARTINEZ: So some of your colleagues in
8 California may actually find themselves in a situation where
9 you perhaps find yourself in that pilot project?

10 MS. LAVINE: Yes. Very concerned about that

11 one.

12 MR. MARTINEZ: Okay, all right. Let's see, Ms.
13 Bencoach, thank you for coming from Virginia and being here
14 with us. Is there, and my time's just about up, but is
15 there any -- so you have now been through a, and I'm
16 actually a voter in Arlington County in Virginia, so I
17 followed the press accounts of what you all did and I guess
18 it seems apparent that after what Washington state went
19 through they had some lessons learned, and it sounds like,
20 Mr. Secretary, that your legislature has actually taken some
21 steps in how to find some equalities in procedures with
22 regard to recounts?

23 MR. REED: Perhaps so, yes.

24 MR. MARTINEZ: And I'm wondering, I know that
25 the candidate who lost ultimately offered some of his own

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3 ideas in the legislature which failed, not unexpectedly. Is
4 there any thought with regard to State Board of Elections
5 that there is some cleaning up that we need to do or some
6 responding to what you all just went through in your recount
7 for the Attorney General's race?

8 MS. BENCOACH: Yes, sir. I think the main is
9 not to wait to respond, because there is not enough time to
10 respond once a recount is imminent, and that we have to
11 prepare in advance. We have to train in advance. We have
12 to make sure that everything is clear. We have to provide
13 more guidance to the localities and not leave them to say,
14 well, you know how to do it. Yes, they know how to do it,
15 but it helps to have the outline of how to do it and have
16 those procedures laid out in advance.

17 One of the problems we've had is that we didn't
18 have necessarily always have the expertise at the State
19 Board to draw up those procedures and say, well, you turn on
20 the red button on the top right-hand corner in order to --
21 those type of details that we didn't necessarily have at the
22 state or the local. We've been relying heavily on the

23 vendors for that information, and as I said about the one
24 case where equipment was not complying with the new law, the
25 vendor didn't volunteer that information. So we have to

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3 examine that. And we are looking to see what we can do
4 better.

5 MR. MARTINEZ: I appreciate that. I will turn
6 it back to you, Mr. Chairman. I will close it by saying, I
7 have said for a long time now, publically and privately, how
8 important it is that the states clarify policies and
9 procedures, particularly with regard to difficult election
10 administration issues like the casting and counting of
11 provisional voting like what we are hearing today with
12 regard to recount procedures. That transparency and
13 sunshine, if you will, be placed onto that process by a
14 state's legislative body and clarify through codified or
15 through state laws and procedures well before you find
16 yourself in a situation like what you did, Mr. Secretary,
17 here. It's just so critical in my opinion that these issues
18 as much as possible be anticipated and clarified and in a
19 sense codified to the extent reasonably possible by a
20 bipartisan legislative body, as opposed to having to place
21 either a partisan elected official in a position of having
22 to administratively promulgate rules and procedures as the
23 game is being played out. That's such an unfair position in
24 my opinion to place either a State Board of Election or, Mr.
25 Secretary, a Secretary of State who then has to make some

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3 very difficult decisions. I think that lesson is being
4 borne out by what we've heard today.

5 Thank you very much. Thank you, Mr. Chairman.

6 MR. CHAIRMAN: Thank you, Mr. Vice-Chairman.
7 I'm going to turn to Commissioner Donetta Davidson, who
8 actually was the president of the National Association of
9 Secretary of States immediately prior to Secretary Reed, and
10 I think her resignation made it possible -- we'll turn to
11 Commissioner Davidson.

12 MS. DAVIDSON: Thank you. Thank you very much.
13 And I, too, want to say how much I know I'm going to miss
14 Commissioner Vice-Chair Martinez. He has been a great one
15 to learn from and I've always said any meeting that I ever
16 go to, it seems like I always come away with some more
17 knowledge than what I had before, and he was part of that
18 knowledge that we had at our meetings.

19 I appreciate each one of you being here today.
20 And definitely we do learn and I will say, Secretary Reed, that
21 we learned a lot yesterday in the focus group, that your
22 counties were willing to share the good, the bad, but the
23 ugly as they want to say, but you know, and how they were
24 going to cure in the future, and that helps everybody I do
25 believe. I think that everybody gained from that meeting

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3 yesterday that was able to attend, and it was very, very
4 positive. It took time out of their schedules and we always
5 know that election time is very busy for everybody, so I do
6 appreciate how much time that you gave to this and to the
7 counties, how much time they also gave.

8 My question, more questions to you, is
9 obviously you have a good relationship with your
10 counterpart, your counties and the press and the --
11 everybody really. You went through everybody that you need
12 to have a good relationship, the parties, the press, the
13 public. But most of all, the counties, having that
14 relationship with the counties, how can we get other
15 Secretaries of State and other election officials to work
16 closer and work as a team with the people that is so
17 valuable to them for information or resources because they

18 are the ones that run the elections? How can we get the
19 other Secretaries to realize the value in that?

20 MR. REED: That's a good question, Ms.
21 Davidson. And by the way for others in the room, you should
22 know that she was a county clerk in Colorado for small
23 counties and large counties, so she was a local official for
24 a number of years like myself before being Secretary of
25 State.

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3 I think that is a message that the EAC needs to
4 send out in terms of where you concluded as being strong
5 advice and what you have seen in terms of what works well.
6 This why not a Secretary of State, you know, and they read
7 this, they need to get a message. I think the National
8 Association of Secretaries of State needs to give that
9 message, and then first a number of states that have
10 election commissions. But also it needs to go to the local
11 officials.

12 One thing that you probably heard yesterday was
13 that the local officials in our state made, you know, quite
14 an effort to work with us and because there are always going
15 be differences. You know, I'm surprised how quickly, you
16 know, once I became Secretary of State I was put in this
17 position of seeing it a bit from a statewide level and all
18 that, and because I was so used to seeing it from a local
19 level. But respect the differences and when you do
20 disagree, disagree agreeably and retain your trust. So I
21 think that needs to be something emphasized on both sides.

22 But you're absolutely right, I think this is
23 fundamental to a successful elections process in our
24 country, is having that good relationship. And as you and I
25 know, we know other Secretaries who don't have that as a

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3 goal, but I think we need that for our new ones.

4

MS. DAVIDSON: The other question I have after
5 one of your recounts, I think it was -- it wasn't this last
6 one, but you put in a really a heavy certification program
7 to your counties on training. Would you say that's one of
8 the most valuable things that was done in that process so
9 that everybody had the same training, or am I putting too
10 much emphasis on training?

11

MR. REED: Absolutely. That program I think
12 has been wonderful, and I say that as a person who worked
13 with it at the county level and my election staff now at the
14 state level. And we have a very, very aggressive program in
15 terms of what we require of experience and training and
16 testing. And testing isn't easy. It's quite a rigorous
17 test in order to be certified.

18

And then every year a requirement for ongoing
19 professional education. We have a major elections
20 administration conference, which Chairman DeGregorio spoke
21 at, and obviously very, very well attended because of this
22 requirement for a certain number of hours. It's the one way
23 we have of making sure everybody hears the same message in
24 terms of these standards and professionalization of this
25 election administration business and not just learning to do

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3 it from, really, I've done it the previous 15, 20 years and
4 say, now here's how you do this. They hear other people
5 from other counties also share with one another what has
6 worked in, you know, different counties or innovations they
7 made that you can pick up from. Because in the state of
8 Washington we practice the standard if it's a good idea,
9 swipe it, you know. And you know, that's worked very, very
10 well for all of us. We learn so much from going there and
11 just listening to the other counties and as well as the
12 training that is provided by the Office of Secretary of
13 State, and we're always bringing in top, you know, people

14 from the national level as well, and it has been enormously
15 beneficial to the State of Washington.

16 MS. DAVIDSON: Thank you. I appreciate it and
17 thanks for hosting this here in Washington. Lovely state
18 and, you know what, it hasn't rained for two days, so I feel
19 like we're on a roll. And I appreciate that.

20 I'll turn to Ms. Bencoach, and I've got one
21 question: Yesterday you heard where Washington state is
22 also a vote intense state and they review ballots that come
23 in, absentees and that area, review the ballots before
24 they're ever read through the machine to make sure of voter
25 intent and then do the duplication, and of working through

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3 that process. Do you do that in Virginia?

4 MS. BENCOACH: No, ma'am, we do not. We put
5 the ballots through the machine on the election day. They
6 are not opened before that time. And they are only examined
7 manually if either the machine rejects it for some reason,
8 for example, if it's been mutilated in the mail and can't go
9 through the counter, or if there's a recount.

10 MS. DAVIDSON: After listening yesterday, do
11 you think that is one of the suggestions you're going to
12 take back as reviewing it? I know it takes time before
13 election, but definitely then, it puts more of a -- the way
14 I looked at it yesterday, it put more of an emphasis on a
15 recount and our count. Election day count is tremendously
16 accurate and our recount will be almost the same. It makes
17 less changes for the public to say, why is there so many
18 changes. Do you think that's one that you might take back?

19 MS. BENCOACH: I'm not sure. We, a couple years
20 ago, we found out that there were localities when a ballot
21 had arrived damaged that we were remaking that ballot to run
22 it through, to run a new ballot through, and the State Board
23 put a stop to that. They wanted the integrity of having the
24 original ballot that the voter cast. And then if you were
25 in a position of hand counting that ballot and looking at

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3 the voter intent, then they had standards in place to look
4 at the voter intent, so the State Board was very nervous
5 about when we heard the ballots were being remade at the
6 local level.

7 We also had people that when we first put in
8 the new law about counting overvotes and undervotes if the
9 court so orders, we were very nervous about that and we
10 said, well, we won't -- said, we will never have an election
11 in this locality where a recount changed a single vote. And
12 that would guarantee that they'll always change. And our
13 response to that was that we have insured that in a recount
14 that when, you know, when those few votes can make a
15 difference, that they are properly counted, but for the most
16 part we rely on the machine count, so I'm not sure that
17 remaking or enhancing the ballots would be something that we
18 would want to adopt.

19 MS. DAVIDSON: Okay. I appreciated all of your
20 examples. I think that that is very helpful for the public
21 and I don't know if they got copies of that or not, but the
22 examples show some of the things that voters do, and I think
23 it is well worthwhile for the public and people to
24 understand that people don't follow instructions, and in
25 trying to decide if you can get that voter to vote or not is

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3 very difficult in some cases. I think that was very wise of
4 you to attach that to this and I appreciate that.

5 Ms. LaVine, welcome also. And definitely with
6 you testing and seeing how long it took to do the recount of
7 the verified paper, what do you think we need to be
8 notifying states of? We have at least 25 and I think it's

9 26 states now, I'm not quite sure, but somewhere in there,
10 that have passed that they have to have a verified paper to
11 go along with it. What kind of suggestions should we be
12 making up front ahead of time to the states and saying, you
13 need to be prepared and think through the process of doing a
14 recount or audit even before it's election day and setting
15 them up after the fact like you said? We heard great
16 testimony, you have got to have procedures in place. Do you
17 think states have really thought out this process and even
18 the security of the paper and things like this? Have they
19 thought those processes through?

20 MS. LAVINE: I would say no. I mean we were
21 totally surprised at the amount of time this whole
22 situation, you know, recounting those papers took. We were
23 surprised at little things during the day such as the bins
24 would fill up with the paper because they curled so bad that
25 we couldn't get another voter verified paper, you know,

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3 piece of paper into the bin, and so the precinct office was
4 trying to empty the bins after every ten voters. We were
5 going no, you can't do that either. There were so many
6 things that took us by surprise that I don't think anybody
7 has really thought out what it's going to take to recount
8 those long curly paper trails.

9 MS. DAVIDSON: Would you suggest, and I don't
10 mean to interrupt you, but would you suggest that even when
11 they're testing their ballots to make sure they are accurate
12 and make sure everything -- that they actually have to go
13 through and test what the procedures would be on a recount
14 or even the audit of the election, so that they could set up
15 and really see where the problems lie? Because I don't
16 think we all know where the problems are going to lie.

17 MS. LAVINE: I don't think so either. I think,
18 you know, there needs to be some work done ahead of time to
19 get those procedures in place. And just like knowing what
20 we went through without procedures because we were testing

21 uncharted territory at that point that no one had ever done
22 a recount on a paper audit trail, it was very difficult, you
23 know. There needs to be something thought out way ahead of
24 time and it needs to be done now before we actually get to a
25 point where there is a one percent mandatory recount.

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3 MS. DAVIDSON: I appreciate that. Thank you
4 all. Mr. Chair.

5 MR. CHAIRMAN: Thank you. Now we'll turn to
6 our former chair and now Commissioner Hillman who led us
7 through a very good year last year in getting a lot
8 accomplished. And now I'll turn to you for questions.

9 MS. HILLMAN: Thank you very much. I join my
10 colleagues in thanking each of you for being willing to
11 share with us your experiences with recounts. I want to
12 follow-up beginning, Secretary Reed, with you.

13 You emphasized that states should have uniform
14 and consistent standards statewide and it sounds like it's a
15 little bit like either disability or catastrophic insurance
16 you hope you never needed, but it has to be there, and when
17 you do need it you have no idea the volume of paperwork
18 you're going to have to fill out to even get the benefits,
19 so do you practice doing this every month just to stay in
20 practice or do you wait until the event happens? And so
21 that the familiarity of the county and local jurisdiction
22 level clearly is important as well.

23 And so looking back to a little bit of the
24 dialogue you had with Commissioner Martinez about the role
25 that each state has to play with respect to assuring that

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3 the election processes in each state are conducted fairly,
4 effectively, cost efficiently and so on and so forth, how

5 does this notion of uniform and standard procedures
6 statewide get advanced with the other states? And I'm going
7 to guess that not all 50 states and five jurisdictions have
8 such uniform and consist statewide standards, and so to that
9 extent, wearing both your hat as Secretary of State and
10 president of NAS, how does this conversation get plugged
11 with the other states in advance at that level?

12 MR. REED: The Bush versus Gore decision in
13 2000 pretty well required us to do this. And in talking to
14 the other Secretaries of State responsible for elections, I
15 have seen, you know, an effort to standardize. In our state
16 that was one of the ironies, as the person who was such an
17 advocate for local control, one of the first things I did
18 was say, now we need to have statewide standards, now that
19 I'm elected, right? And the reason is because Bush versus
20 Gore. And so what it is created a task force with the
21 counties and our state elections people headed up by a
22 county person and they put it together. And I do think it's
23 very important, as you say, to advocate this throughout the
24 country because it's so important that each state have it
25 for the reason you said, which is you never know when you

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3 are going to end up with such a close election.

4 The other point, though, Commissioner Hillman,
5 that I want to make is, you know, kind of woven into your
6 question was, how do you make sure this happens? And in the
7 state of Washington one thing that I didn't mention may have
8 been mentioned yesterday, but worth your noting in terms of
9 what you are going to come up with here is that we also have
10 a review function, and after what happened in 2004, the 2005
11 session legislature actually gave us more money to expand
12 that program where we go out to each county and review that
13 county to make sure that they are implementing these
14 procedures and standards, that they are doing things
15 properly, and they got proper space, proper staffing and
16 property security and audit trials, and then we come back

17 doing an election and watch them and see if in fact they are
18 doing it, because it's one thing to have standards and
19 another thing to have standards actually apply.

20 And then additionally we have a number of
21 trainings, both at the regional level and statewide, to
22 train to the standards. And I do think that is something
23 that would be advisable in other states around the country.

24 MS. HILLMAN: You also talked about the risk,
25 that there is an inevitable, you know, risk factor in all of

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3 this. What do you do to sort of monitor and measure and try
4 to reduce that risk as the years go by, you know, from the
5 experiences you learn with recounts and, you know, you
6 figure okay, for the next time, you know, whatever procedure
7 may have to be reviewed?

8 MR. REED: One thing that we do from the
9 Secretary of State's level and then we, of course, recruit
10 some of the County Auditors to include this experience,
11 through these kind of experiences of to convey to people in
12 counties who say it never had this happen, now of course,
13 now we have got the 2004 we all experienced. But prior to
14 what, like with what happened to us in 1990, three counties
15 with one set of race is we spent a whole conference focusing
16 on those three counties and what happened and what we need
17 to do differently and how to handle kind of the situation.

18 Because you are right, it's easy to sit there
19 if you've never had, you know, a situation like this occur
20 and just kind of assume, oh, we'll just keeping doing the
21 same old same old, and then finding yourself having serious
22 problems. So it is really trying to not kind of cover up
23 what had happened before or kind of say, well, you know,
24 that only happens once every 100 years, but to convey to
25 these counties the importance of them having the kind of

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3 practices and standards and operations that will hold up to
4 immense scrutiny, and I think we've really focused on that
5 here in Washington State.

6 MS. HILLMAN: You and Ms. Bencoach talked about
7 some of the things that voters do that cause their votes not
8 to be counted, and I particularly appreciated the examples
9 that Ms. Bencoach shared. I'm taking it that for purposes
10 of this, those were created for your document but taken from
11 real instances. And it shows just how creative the voters
12 can be.

13 And so if it comes to voters not following
14 directions or perhaps not realizing the consequence of not
15 checking off a ballot properly or maybe they don't care,
16 they just want to make a political statement on the ballot,
17 and it doesn't matter whether the vote gets counted or not,
18 but what are some of the things that lead to voters making
19 mistakes? Let's assume it's not an intentional political
20 statement, but the voter really didn't either understand the
21 directions or see that -- whatever it is that leads to, you
22 know, the mistakes that are made that cause votes not to
23 count, and I would ask it of each of you.

24 MR. REED: There are a couple factors. One of
25 them is they move from county to county or state to state,

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3 and one practice in one place is different than the other.
4 Like we have adjoining counties, Pierce and King County, one
5 county you draw arrows in such and order to show your vote,
6 the other one you fill in the oval. And so they tend to
7 move to the next county, they just continue doing what they
8 did before. Or just are intuitive, you know, well, the way
9 you voted you put a X or a check next to it, you know,
10 rather than filling in the oval.

11 The other thing, you know, is we've said they

12 just get very creative in terms of wanting to tell you how
13 they intended to vote, including writing messages to you and
14 everything. Some editorial comments. So this is one lesson
15 we hope that our electorate here in the State of Washington
16 is learning from 2004, because they knew a lot of votes
17 didn't count because they hadn't voted properly. As I say,
18 there was a voter education effort made in 2005 to try to
19 improve on that. But the main thing is people just pick
20 them up and they start voting without bothering to read
21 directions. And they need to know that they want that vote
22 to count, they need to follow directions.

23 MS. HILLMAN: As I hear you say that I think of
24 the many, many times I've attempted to do something without
25 reading the directions first, but lesson learned.

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3 MR. REED: Oh, none of us ever do that.

4 MS. HILLMAN: Never, never.

5 Ms. Bencoach.

6 MS. BENCOACH: I think a lot of it has to with
7 the communication at the precinct level. I visited a
8 precinct in Henrico County, Virginia, a couple of years ago
9 where they were testing a new voting system. And they had
10 the nicest little lady right at the front door where
11 everybody came in, who instead of asking, do you need help
12 understanding how to cast a vote, said, let me show you, can
13 I show you how this works, and you know, this is my job, I
14 need to show you. And she was as nice as could be and
15 nobody walked by her. Everybody stopped for the
16 demonstration.

17 So I think a lot of that goes on the precinct
18 level and how it's handled there. And in other precincts
19 where they say, do you need help, can I show you, oh, no, I
20 know how to do it.

21 MS. HILLMAN: Thank you. Ms. LaVine?

22 MS. LAVINE: We moved to optical scan a couple
23 of years ago, but at the same time we still have people

24 punching their ballots and still have people taking an
25 exacto knife and cutting the oval out, and even sending us a

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3 note saying, you know, these were really difficult to punch
4 this time. We actually moved from the punch cards to the
5 optical scan, with all the little buttons with the little
6 boxing gloves on it saying, please don't punch the ballot.
7 WE gave them to our precinct auditors. We did a big
8 campaign. We still have a problem unfortunately. Outreach,
9 voter demonstrations, instructions, inserts. And it doesn't
10 help that our media uses an old clip and then shows people
11 punching the ballot, like I could scream when that happened,
12 like, can't you please update your media, you know.

13 We don't seem to have a problem in this
14 precinct because we, you know, we do get to see them right
15 before they go in again, but what the absentees will do and
16 that's where get we include the inserts, you know, saying,
17 you want your ballot to count, you know, please do it this
18 way. So it's just constant, you know. It's a forever job.
19 And I think Mr. Secretary is correct, they move from county
20 to county, from state to state, and they assume they know
21 how to do it without reading the directions.

22 MS. HILLMAN: Thank you.

23 My final question for each of you is about
24 voter confidence in the recount processes. I think,
25 Secretary Reed, you acknowledged earlier that people view

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3 somewhat with a jaundiced eye that there is a partisan
4 responsible for elections, and of course he or she is going
5 to do favor or show favor for their particular party. Even
6 though we know that is not the case, it is just something I
7 think that people have latched onto.

8 But beyond that, I'd just like to hear what
9 each of you feels either gives the voter the greatest
10 confidence in the recount process or the lowest confidence
11 in the -- not or, and the voter who has lowest confidence in
12 the recount process, what are some of the things that
13 contribute to that? Secretary Reed?

14 MR. REED: The -- I think that the concern
15 about partisan officials be in charge of elections tends to
16 be more for party insiders than the general public, has been
17 my experience anyway, it maybe different for some people.
18 To get confidence I think people need to see what is going
19 on, view that transparency. See and hear their local
20 election officials. They need to get out and they need to
21 talk to their service clubs and granges and PTSAs and other
22 groups and be visible. They need to have good press
23 coverage and the new media needs to, you know, realize that
24 they shouldn't only report when there are problems, but they
25 need also to report on the way the election has gone. And

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3 then the need to have everybody in this process, the
4 parties, media, elections people, all that communicating
5 this message.

6 Now, the way they lose confidence, and boy, we
7 sure saw it here, I think had a lot of confidence in our
8 system in the state of Washington, but as soon as there
9 started being news stories about misplaced ballots and all
10 of that, boy, it just dropped like a rock. And partly
11 because people also were fired up over a very close election
12 and they were -- felt very strongly about their particular
13 candidate and thinking, wait a minute, you know, what's
14 going on here.

15 And so even though we have this history and we
16 have people at the local level, the state level who played
17 it very, very straight, we are struggling still to regain
18 that sense of confidence and trust in the state of
19 Washington, and I think it's only going to work out as we

20 spend more time, you know, and we have more elections. 2005
21 went very well and we certainly need to have that happen in
22 2006.

23 MS. HILLMAN: Thank you.

24 MS. BENCOACH: We had a lot more calls from
25 voters asking, does my vote count, how does the process

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3 work, asking the technical questions after the 2000
4 presidential election than we did after our 2005 recount. A
5 lot of that I'm sure is the visibility of the election. But
6 those kind of questions really weren't coming up after the
7 statewide recount. I think a lot of that had to do with us
8 trying to make sure that the process was open, as the
9 Secretary said. Making sure that everybody knew what was
10 going on, but then also reflected the attitudes of the
11 candidates. And then after the process, the candidates were
12 satisfied that it had been conducted fairly, that was the
13 message that they conveyed through the media to the voters,
14 so we didn't get a lot of complaints afterwards.

15 MR. REED: Could I just ask quickly, because
16 this is very important, is that also because people were
17 upset over what happened, to show that things are going to
18 be different in the future we went to the legislature with a
19 very aggressive election reform package. The legislature
20 adopted it. King County, which was kind of ground zero for
21 all of this, has been very aggressive with a task force and
22 committee and making changes, conveying to the public these
23 changes are being made, and so in addition to just having
24 good elections, we also felt we needed to have very open and
25 visible public, you know, exposure to the changes being

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3 made.

4 MS. LAVINE: I've always found that it's the
5 losing candidate that has the least amount of confidence in
6 our system. But during the canvas period, because we are
7 mandated to do the 1 percent manual, we invite them in at
8 that point. We say, okay, look, this is the way we conduct
9 the 1 percent manual, this is the way we will conduct the
10 recount, you can choose to request one. And usually, after
11 they see the way we conduct 1 percent manual, they are very
12 satisfied with what we have done and making sure that our
13 tallies come out the same. During the canvas period we post
14 what we're doing each day, such as if we're going to be
15 working on absentees and provisionals or we will be doing 1
16 percent manuals, so that is posted so any one of our
17 observers that is in our office for our 29 days after each
18 election can see what is going on, what is going on, so they
19 know what it is. It is a very open process, we're not
20 trying to hide anything, and that helps the confidence
21 level.

22 MS. HILLMAN: Thank you.

23 Mr. Chairman, you are a very patient person.
24 We have totally blown the time frame and you haven't scolded
25 us, so thank you.

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3 MR. CHAIRMAN: That's okay. I think we're
4 going to take the time necessary today because this is a
5 very important topic and obviously the testimony we have
6 just heard from these three experts have generated, you
7 know, questions by all of us, including a few that I have
8 for you to wrap the session up.

9 Secretary Reed, I know that the Washington
10 state legislature enacted some changes after the 2004
11 election and many changes that you recommended to improve
12 the process of both count and recount here in Washington
13 state. There is one issue that I know I have heard about
14 then and I've heard about since then, about the fact that

15 you have this late primary in the state of Washington that
16 really compresses the time for election administrators to
17 prepare for the election. I know it became an issue in
18 2004, the recount about military and overseas votes coming
19 in to be counted as the recount process was going through.

20 How are you addressing, how is the state
21 addressing that issue of this late primary? Are they
22 addressing it, is it going to change in the future to allow
23 more time for military and overseas voters to get their
24 ballots in and to give election administrators more time to
25 conduct the election?

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3 MR. REED: Well, I'm so glad you asked that
4 question, Mr. Chairman, because the 2006 legislature did
5 finally pass -- that is something that has been on the
6 legislative agenda since the middle '90s, believe it or not.
7 And one thing I did this last time is I called in the
8 leaders of the veterans' organizations and I said, all
9 right, county people, state people, elections have made the
10 case and, you know, we aren't, we just aren't getting this
11 through, so we need you to come in and talk about the
12 importance of military and overseas, and particularly now
13 with people being deployed. In this state we have extensive
14 deployment to Iraq and Afghanistan, and so finally they did
15 respond.

16 But I would say that the other states as well
17 who haven't had the experience we've had here with the late
18 primary, they really need to reexamine this, because
19 particularly as your absentee voting increases and you have
20 that volume of ballots sitting in your office after the
21 election that you have to check all signatures, do the
22 processing, is it is so time consuming and delays in knowing
23 for sure who won that primary. And so I would certainly
24 recommend that to other states with primaries as well.

25 MR. CHAIRMAN: Has that become effective for 2006?

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3 MR. REED: Becomes effective 2007.

4 MR. CHAIRMAN: 7, so --

5 MR. REED: That's the time table that we would
6 make the changes.

7 MR. CHAIRMAN: So won't be effective for this
8 year's election.

9 MR. REED: Right.

10 MR. CHAIRMAN: Another question I have of you
11 and I'm going to ask your colleagues to address, too, in
12 different ways, but one thing about that I learned about
13 Washington state during its recount, that the optical
14 scanned ballots that were recounted, and of course, it was a
15 manual recount, that about 10 percent of the ballots in some
16 counties were enhanced. They used the term "enhanced" when
17 people use duplicate ballots. I mean I know when I was a
18 director of elections in St. Louis County we had punch cards
19 we had to duplicate the ballots because of the chad hanging
20 or not hanging, but in this case it's an optical scanned
21 ballot and we have to recognize that over 50 percent of
22 Americans now will be voting on optical scanned ballots this
23 year.

24 This enhancement of the ballot, which has been
25 discussed previously, how is it going to be -- how are you

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3 addressing that? Are you addressing that to any kind of
4 voter education to make sure that the voters in a new state
5 70 percent of voting by mail, so they might use it -- at
6 least in the polling place you can -- you can mandate the
7 instrument that they use to mark the ballot, but at home
8 they can use a yellow marker, a light pencil or something
9 that might cause it to be enhanced once it comes into your
10 office to be counted? How you are addressing that issue in

11 this state?

12 MR. REED: Chairman DeGregorio, the enhancement
13 process was one that we as election administrators felt
14 worked just fine. But in terms of public perception, it was
15 a disaster. They were just sure that some election staffer
16 was sitting there changing their vote and all that. And so
17 the legislature, responding to that kind of emotion, adopted
18 a bill in the 2005 legislative session basically banning
19 enhancement and requiring now duplication.

20 Well, the problem with that is because it takes
21 so much longer to duplicate them, particularly because in
22 this state we have a long, long ballot, we have so many
23 people we elect here and we have initiatives and
24 referendums. But that is what happened here, and again, I
25 think, you know, a step kind of needed to regain voter trust

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3 and confidence in the system.

4 MR. DeGREGORIO: Ms. LaVine, you say that your
5 county is going to be using optical scanner system. How do
6 you address, and I don't know what California law states
7 about enhancement of duplicative vote of ballots, but when
8 you get ballots in, particularly from mail-in ballots or
9 even from the polling place where they're not filling in
10 that oval completely or filling in that arrow completely,
11 and it has to be enhanced for the scanner to read it, how
12 are you going to address the issue and how are you
13 addressing it in Sacramento?

14 MS. LAVINE: We actually review all the
15 absentee ballots voter intent. We have the two ballots
16 that comes in, is if there's a problem with it. If they
17 made an X instead of filling in the bubble, will it count.
18 We do have procedures in place where we can enhance the
19 ballot, which is like a marker over the top of it. Even
20 with that marker, it's a blue marker, if we can see the
21 original voter's intent at all times. If we cannot see the
22 original voter's intent, then it must go to duplicative so

23 the original ballot is always preserved. So with those
24 procedures we know when to enhance and when to duplicate.
25 MR. DeGREGORIO: Ms. Bencoach, I was in the

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3 state of Virginia last November to observe your election
4 there that ended in a recount in one of the races as you
5 indicated. I was in southern Virginia in counties that went
6 from transition from punch card, 11 machines, to new
7 systems. And I know several counties went to total touch
8 screen DREs systems. How did the recount experience there
9 work? And let me just add I did see in counties they had
10 employed retired teachers to come in and to educate the
11 voters before they went in to cast their ballot in several
12 of those counties, which is really an excellent program, and
13 because they really sat down with the voter to explain how
14 the system worked. And once the voter got in there, it was
15 very quick because they had this training just before --
16 immediately when they came into the polling place. I
17 commend you for that.

18 But about the DRE experience in the recount,
19 when you went through the recount, did you -- this was new
20 to all of you in the DRE. How was it handled, did the votes
21 change much, if at all, in those counties?

22 MS. BENCOACH: Mr. Chairman, I'm not aware of
23 any votes that changed, and if they did it would have been
24 because either a printout was not read properly or the right
25 number didn't get written down properly. The procedure that

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3 was followed with those was the same procedure that would be
4 followed for example with lever machines with printers that
5 we have now phased out. The process is to go, is to look at

6 a printout, and if a printout that was sealed up in the
7 court's records is unavailable, then the process is to go
8 back to the machine and to rerun the printout. So it was
9 very similar to what they had been doing previously with the
10 lever machines with printers.

11 MR. DeGREGORIO: Did your DREs have the V-PAD?
12 I don't recall that they did. It's not mandated in the
13 state of Virginia.

14 MS. BENCOACH: We're still studying that.

15 MR. DeGREGORIO: Okay. I also want to thank
16 all three of you for your excellent testimony today and we
17 have a second panel that's coming on and we are going to
18 take a five-minute break, quick five-minute break, and keep
19 to the five minutes while we assemble our second panel, but
20 thank you again for your testimony. By the way, for you in
21 the audience this testimony will be posted on the website.

22 (Recess in proceeding.)

23 MR. CHAIRMAN. I mentioned earlier in starting
24 off the session talks about vote count, recount, you
25 mentioned research project that we have embarked upon. And

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3 our second panel here today has two people who really do
4 research for a living and we are very pleased that they have
5 joined us today to give us the benefit of some of the
6 research that they have conducted.

7 And Professor Thad Hall is with the Department
8 of Political Science at the University of Utah, and his
9 primary research interest is the administration of elections
10 and the implementation of voting technology. He's
11 co-authored many publications in this area and is currently
12 writing a book examining electronic voting for Princeton
13 University Press. He's their lead researcher for the EAC
14 vote count and recount project and, you know, it's one thing
15 that we who have been involved in the election
16 administration business for a long time are pleased to see
17 that more researchers and academics are getting involved in

18 studying this very important issue throughout the nation.
19 And we find people who not just conduct academic research
20 but actually talk to officials and actually go to polling
21 places to watch how it works in real life. We are pleased
22 to have Professor Hall with us.

23 We are also pleased to have Doug Chapin, who's
24 the director of Electionline.org. Anyone who doesn't check
25 in this business, who doesn't check Electionline.org every

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3 day is missing out on many important developments that occur
4 throughout the nation each and every day in the field of
5 elections and election reform, and he is the director of
6 this organization that is non partisan, non advocacy. It
7 just provides good information on what's going on to the
8 nation. He is an attorney with an extensive background in
9 election issues, and Doug and I have been on many panels
10 together, and I appreciate what he does to advance election
11 reform in the country and to have people really understand
12 it and compare it from state to state to provide that kind
13 of information, and that's what he I know will do for us
14 today.

15 So Professor Hall, let us begin with you. And
16 first, let me thank you for inviting our staff and some of
17 us to attend the focus group you had yesterday with several
18 of the county administrators and election officials here in
19 Washington state. I know it was a very good crowd and I
20 know we've learned a lot, so let me turn it over to you for
21 your presentation. Thank you.

22 MR. HALL: Thank you, and thank you,
23 Commissioners.

24 I wanted to start out by thanking Nick Handy
25 and the County Auditors for the wonderful event that they

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3 did for us yesterday. It was quite informative and very
4 helpful and there was so much that we were all able to learn
5 from that experience.

6 And secondly, I just also want to thank Doug
7 and Kim Brace and Mike Galbraith, who are the members of the
8 team that are doing the research on this project, and it's
9 been quite an exciting activity to read all 50 states' and
10 D.C.'s election codes and election regulations. I don't
11 highly recommend it for casual reading, but it's pretty
12 interesting.

13 I want to start out by noting that on slate.com
14 this morning there's a quote, we were talking about the
15 election in New Orleans and they said, you know, in New
16 Orleans if you throw enough margaritas and jambalaya at a
17 problem, it will normally go away. And I don't think that's
18 the case quite with vote counting and recounting. This is
19 something where we really need to think through the process
20 of how are we going to do these things in advance.

21 And a lot of the work that we have been doing
22 on this is partly shaped by several of us went to Travis
23 County and there they were transitioning to a new voting
24 technology and they rethought through their entire process
25 of what it meant to conduct an election. And the election

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3 administrator there has kind of a three-pronged approach to
4 how every aspect of her job should be looked at. So what
5 she basically says is for every aspect of what she does,
6 there should be a product, some sort of tangible item, a
7 report for when you do pretabulation, a seal, something like
8 that.

9 Second, there should be a witness for
10 everything, and preferably multiple witnesses. So you have
11 a product and you have a witness for that product. And
12 finally there should be security for it.

13 So all throughout the process if anybody ever

14 questions how she conducted any aspect of her election, she
15 can produce a product, a person and a security mechanism for
16 how that product was secured. And we can think about the
17 voting process in that way, as being a comprehensive
18 activity that starts before an election when ballots are
19 printed and tabulation machines are prepared and goes
20 through the final process of vote tabulating and counting,
21 and then as Doug will talk about the possibility of recounts
22 and challenges.

23 At the outset I want to make a couple of
24 observations about from the data collection. First, the
25 transparency of actually determining what state codes and

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3 regulations say is varied widely from state to state. Some
4 states you can just go online to the Secretary of State's
5 website with the election commission's website and find
6 exactly what both the code and regulations and every aspect
7 of what they do. And in some states it requires a lot of
8 digging, and in fact in some places you have to actually get
9 the regulations because they don't produce them in any
10 electronic form.

11 Second, I wanted to note that some -- that
12 there's one variation in the terms that are used from state
13 to state, which makes trying to figure out all of the stuff
14 quite problematic as well, from the fact that we don't call
15 people who work at polling places the same things to the
16 fact that we call the counting of election different things.
17 All these things vary.

18 Third, one of the things that we saw in doing
19 this is that some states have updated their election codes
20 since 2002 just for the events of the 2000 election were
21 subsequent events, and also to adjust to the adoption of new
22 voting technologies.

23 And a nice example of this is Georgia where
24 when they adopted their new voting technology in 2002, they
25 also adopted new election codes and procedures and new

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3 administrative regulations for a wide aspect of what they
4 do.

5 Now, by contrast we see in some cases they
6 govern voting machines by lever machines, even today. And
7 finally, there is great variation among states in the use of
8 regulations versus using statutory language to govern
9 things. A nice example of this is Maryland. In Maryland,
10 all of their procedures for voting machines are broken out
11 by voting machine manufacturer, not by machine type, so they
12 have rules for every specific brand of DREs used, so that
13 they often have their procedures that are used to conduct
14 their different aspects what they do.

15 If we go through the election process and think
16 about it starting with pre election procedures, one of the
17 things that we see is that almost all states have rules for
18 how you conduct a test or a logic and an accuracy test for
19 the voting machines. But what happens after that varies
20 widely. The rules governing securing those machines and
21 sealing them, for instance, rules governing ballots and how
22 ballots are secured, all vary widely in detail and in scope.
23 And in some places you see very detailed rules and in some
24 places it's not possible to find any rules governing this at
25 all.

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3 Secondly, you also see this varying across
4 voting channels, so if you think about people voting in
5 precincts and early voting and absentee voting, we often see
6 ballots treated differently based upon the mode in which
7 they're voted. And in the case of absentee voting, one of
8 the points that came up in the previous panel but wasn't

9 very explicit is that many states vary in where those
10 ballots are counted and how they're dealt with.

11 So, for instance, in some states ballots are
12 counted centrally when they're received from the absentee
13 voter in the central election office, but in other states
14 those ballots are held, they're divided up by precinct, and
15 then they are sent out on election day to the precincts and
16 they are counted in some way at the precinct. And so we see
17 great variation in how ballots are treated in that regard,
18 which gets to I think the point that Commissioner Davidson
19 was pointing out about how ballots are reviewed, you know,
20 and part of it depends who is reviewing them and the
21 variation they're going to across precincts in those places
22 that send them out.

23 If we look at voting in precincts we also see
24 see a wide array of differences in how things are treated.
25 And one key discussion we had yesterday is we had a long

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3 discussion in this focus group about ballot accountability
4 and reconciling the election and how you do accountability
5 of the votes. And it's interesting to note that in many
6 states there is no requirement that any sort of
7 reconciliation be done between the number of people who cast
8 ballots and the number that are received, and there's no
9 requirement for any sort of auditing of that, either at the
10 precinct or afterwards. And in fact, if you look at the
11 election day study and the work that has been done by the
12 Voting Technology Project, you'll find that numerous states
13 cannot tell you how many people cast ballots in their state.
14 They can tell you how many people voted on the first race,
15 but they cannot tell you how many people actually cast
16 ballots. And so it's not possible to actually engage in any
17 sort of accounting for the election. And this is obviously
18 very problematic.

19 And the rules even in states that have this
20 requirement of the county vary widely. So, for instance, in

21 some states if you have more ballots in a ballot box than
22 you have people who signed in, you randomly draw ballots out
23 of the ballot box until the two numbers match, and then you
24 seal those ballots separately and you send them in. But
25 that's how ballot reconciliation is done in some places, and

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3 so you see wide variation in how this is done.

4 Another key issue, obviously, is are the rules
5 that govern the definition of a vote, and this also is an
6 area where you see states that vary between having great
7 detail, so you have a state like Virginia which has great
8 detail. And in some states their election codes have pages
9 upon pages of pictures of what the vote looks like by ballot
10 type, and in other states a vote is what the voter's intent
11 is or it's what the inspector determines the voter's intent
12 is upon reviewing the ballots. And by contrast in some
13 places it's whatever the machine tells you the vote is, and
14 that's what a vote is.

15 And so we see this wide variation, and that was
16 actually one of the most difficult things to review because
17 you could dig and dig and dig and dig in some states to try
18 to find where this definition of what a voter's intent was
19 and it wasn't there. And it was a quite time-consuming
20 process to find nothing.

21 The third issue, and this was another issue
22 that came out yesterday, was this issue of transparency. We
23 see across states a wide range of issues regarding
24 transparency, regarding how we govern people of surveying
25 aspects of an election. And here you see some states have

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3 no provisions for people to be able to observe elections,
4 unless you are appointed by a political party. And so

5 political parties have challengers increasing, but do not
6 have the opportunity for people like myself or other people
7 who might be interested in observing elections, which I
8 realize is a small group of geeky people, but you know,
9 there are people who actually like doing this, and you know,
10 it's very difficult to do this in some states.

11 So for instance, several of us were wanting to
12 go observe the election in Ohio in 2004, but that was not
13 possible because their rules don't allow you to go unless
14 you're appointed party challenger. And by contrast, you
15 have some states that have very generous rules regarding
16 election observation where people are allowed to attend, the
17 public is allowed to observe, and that's, you know,
18 obviously provides a different level of accessibility to
19 people and allows people to have more confidence if they
20 want to go observe.

21 And finally, we have an issue of post election
22 auditing which is very important, and this is something that
23 came up earlier as well. In California, for instance, they
24 do a 1 percent manual recount to ensure that the ballot
25 tabulators, you know, tabulate it correctly. And in the

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3 state of Colorado they've adopted new rules for doing audits
4 of their voting systems as well, a random audit, to ensure
5 that their DREs are operating correctly and their other
6 voting systems. And I think that clearly that this is
7 something that other states should look at as well, because
8 it provides people with some confidence after the election
9 that the initial count that was done was done correctly.
10 And if there is a problem it allows for some opportunity for
11 those problems to be corrected.

12 I just want to spend a few moments to talk a
13 little about the best practices component of this. And what
14 I want to talk about are not specific practices, but the
15 fact that there are nine international norms for what best
16 practices are. Paul and I have actually discussed this

17 because it turns out Paul writes some of this, which is just
18 dandy. So I got to make sure I get all this right. But
19 IVIS and the U.N and several organizations have come
20 together to develop guidelines for international norms for
21 what constitutes best practices in vote counting. And there
22 are eight general guiding principles they have.

23 First of all, it should be transparent, people
24 should be able to observe, and this is both party officials
25 and outside observers.

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3 Second, there should be clear security rules.
4 People should know throughout the process that things were
5 sealed, things were secure, should know that ballots were
6 not tampered with in any way.

7 Third, election officials should be
8 well-trained. There should be clear rules for training and
9 provide people with guidance so that they know what to do in
10 certain situations.

11 There should be rules governing accuracy. This
12 gets to the issue of having some sort of auditing
13 provisions.

14 There should be good secrecy rules. People
15 should be confident that whatever is done, their ballot is
16 secret.

17 Election results should be issued timely. This
18 was something that came up also yesterday, was the issue of
19 how long it takes to issue final election results, and this
20 varies by state. So some states with, for instance, who
21 have -- who require runoffs, a runoff election, you have to
22 certify an election in three to five days often, so you
23 could hold a runoff election three weeks later. By
24 contrast, here in Washington and in California, it can often
25 take a month to, you know, do the final certification

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3 because they go such through a detailed, rigorous process of
4 auditing the election.

5 There's also issues with accountability. This
6 gets back to the balloting issue. Making sure that you can
7 account for all the voters and all the ballots.

8 And then, finally, that there should be equity,
9 that we treat, you know, all aspects of the election process
10 equally when it's appropriate. Voters are treated equally.
11 And you know, here in the United States where we use such a
12 wide array of voting technologies, we should also consider,
13 you know, the importance of treating different technologies,
14 making sure that they have similar, you know, provisions for
15 them as well.

16 And I would like to finally just point out that
17 these problems that we see with vote counting and recounting
18 are not unique in the United States. And if any of you
19 follow what happened in Italy recently, you know, they
20 managed to, you know, have quite a contentious election and
21 they had allegations of fraud and they had issues regarding
22 their recounts and, you know, there were also some things
23 about, you know, you don't want to be in a country that
24 looks like a peninsula because you look like Florida. And
25 so -- I don't make this up, I just report about what I read.

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3 It is clear that these are problems that are
4 not just unique to the United States, but clearly we need to
5 have nice rules, regulations and have thought this, you
6 know, through so we can make sure all these things work out.

7 MR. CHAIRMAN: Thank you, Professor Hall. I,
8 you know, I called the State Department and volunteered to
9 go to Florence and Venice to help them with their recount.
10 They haven't taken me up on that yet. But I appreciate your
11 comments.

12 Professor Chapin. And you know, one thing I
13 didn't say is that Doug also teaches, he is also a
14 professor, so he also does considerable research, but he
15 also teaches young minds in the field of election
16 administration and we appreciate that.

17 MR. CHAPIN: Thank you, Mr. Chairman. It's
18 always an honor to be here. I'd like to extend my thanks to
19 everyone here in the state of Washington, Secretary Reed for
20 their hospitality, to all of you for the invitation to
21 appear here.

22 It's always a pleasure to come to the other
23 Washington. This is my sixth straight day in the Seattle
24 without rain. I'm considering making a ransom demand, I'm
25 not sure.

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3 Thad and I are both self-described election
4 geeks and I think it's very easy as he pointed out to get
5 lost in the minutiae of election codes and the like. I want
6 to paint with a broader brush for just a few minutes.

7 Recounts and contests, the entire family of
8 post election litigation, is best understood I think by
9 thinking about the reasons that -- the interests that
10 underlie the entire election system. And really that's
11 three general interests.

12 The first is an individual interest. Everyone
13 is familiar with the Latin phrase, "vox populi", the voice
14 of the people. And we are taught from elementary school on
15 up that elections are our opportunity for the populi to
16 express their vox, to tell the government what they think
17 should be done and how they think government should be run,
18 and so we have this interest in every individual being
19 heard.

20 We also know we have a societal interest. We
21 have elections because we need to pick winners, we need to
22 choose which candidate has won, which proposition succeeded,
23 failed, how we will govern ourselves moving forward. So

24 there are very results oriented interests in our election
25 system.

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3 And then third interest is really balancing
4 between the two. Another concept that is really sort of
5 almost a cliché is the concept of consent of the governed.
6 And really, to me, consent of the governed is an effort to
7 balance those two interests, an effort to convince every
8 individual, every candidate, every supporter, every
9 opponent, that the election process is fair, such that they
10 feel like their individual voice was heard, but even if
11 their choice was not successful that the system is
12 nonetheless valid.

13 And so these three interests underlay the
14 entire election system, and I think inform our thinking a
15 little bit about recounts, contests and other aspects of
16 election litigation that we have talked about here.

17 First recounts: I asked my students at
18 Georgetown Law School the other day, we were talking about
19 recounts, what exactly is a recount, and there was lots of
20 talk around the table. Quite simply, a recount is exactly
21 what the name suggests. It is a recount. We are going to
22 count again. It is an effort to go back to the pile of
23 votes, be they paper, be they electronic, be they tapes,
24 whatever form of technology the jurisdiction is using, look
25 at them again, and retabulate the totals so that we can

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3 determine who the winner is.

4 Necessarily then, the timing of these occurs
5 before we have a final vote count. And so these recounts
6 typically have sort of two purposes. The first, to
7 determine once and for all who was the winner, which

8 candidate won, which proposition won or lost, something
9 else. But there is also a process-related aspect to it.
10 It's an opportunity for election officials, the election
11 system, voters and the interested public to assess how the
12 process has worked and take lessons from that moving
13 forward.

14 How is a recount triggered? A variety of ways.
15 It can be triggered by a close election, which we seem to
16 have more and more in this country. It can be triggered by
17 request. Many jurisdictions allow candidates who come
18 within a certain margin of their opponent to request a
19 recount. Many don't put that condition on. They can also
20 be automatic. Many jurisdictions like California do an
21 automatic recount of a certain percentage of the vote or a
22 certain percentage of the precincts as sort of a check on
23 the health of the process going forward.

24 And as Thad pointed out, and is really not
25 unusual in the American election system, there is almost a

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3 dizzying array of variations in the way the states handle
4 these various opportunities. There is a variation in who
5 can request. Some places, only a losing candidate can
6 request. In other places, a member of the party can
7 request. Sometimes it's a voter. Sometimes you don't even
8 need it proven that you've voted in the election, just that
9 you have an interest in the outcome.

10 We also have variation in who bears costs.
11 Obviously when a jurisdiction engages in a recount, that
12 entails costs. It's not a costless approach. And so
13 there's always this balancing act between should we require
14 the individual seeking a recount to pay for that recount,
15 but then if the total is overturned should the jurisdiction
16 bear that cost.

17 What's the form. Many jurisdictions do it
18 administratively, State Board of Elections or some variation
19 of that. Others like my home state, the Commonwealth of

20 Virginia, do it essentially in a judicial arena, with very
21 different rules. A judicial proceeding looks very different
22 from an administrative proceeding. Lawyers are present
23 usually at both, but the way they behave varies
24 significantly. What votes are counted. Again, you heard
25 Virginia's experience. Not all votes were counted.

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3 Compare that to Washington state where
4 enhancement or clarification, call it what you will, is much
5 more the norm than it is in other states.

6 Who can observe. If it's a judicial proceeding
7 there are usually there are court rules as to who can be
8 present and who cannot. Some states, like Colorado, have
9 gone to the trouble of producing very detailed, in fact I'd
10 almost use the adverb "lovingly" detailed rules about
11 members of the media, members of the public, who can view
12 the recount, what they are authorized to do, what they are
13 authorized to say, how they get in and how they get out, and
14 are the allowed back, et cetera.

15 How are the votes retotaled. Are they done by
16 hand even if they were original machines ballots. Must they
17 be retotaled in the way that they were originally totaled,
18 liking counting them on a machine count.

19 And finally, what is the effect of the recount
20 outcome. Sometimes you will have a jurisdiction that
21 redoes, essentially changes the winner based on recounts. I
22 can't think of any immediate examples where that might have
23 happened, although I think the state of Washington comes to
24 mind. Where you have a different winner on election day,
25 and then on certification day. But other jurisdictions,

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3 like Illinois, use what is called a discovery recount to
4 essentially put a toe in the water and determine whether or
5 not to do a larger assessment of how healthy the election
6 system is.

7 Contrast recounts then with the family of other
8 post election litigation that I call contests or challenges.
9 Contests are like recounts and that they happen after
10 election day, but they have slightly different purposes.
11 The first is outcome related. If you have allegations of
12 error, misfeasance or malfeasance, either deliberate error
13 or serious mistakes that are believed to have tainted the
14 outcome, it's an opportunity to recheck the outcome. The
15 state of Tennessee is dealing with the state Senate race
16 right now where a sitting member of the state Senate was I
17 believe in the last 24 hours unseated as the result of a
18 contest procedure. So it's an opportunity to get, to change
19 the winner.

20 You can also have a process related contest.
21 You can have people either internal to the system or voters
22 or someone else challenging individual votes in an effort to
23 assess the overall health of the election system.

24 And finally, there is always that individual
25 vox populi role. It's an opportunity for individual voters

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3 to give voice to their own doubts about the process. We saw
4 that a little bit in some of the Nader voter recounts in the
5 immediate wake of the 2004 election. It was an opportunity
6 for voters in cases where they didn't necessarily have an
7 opportunity to overturn the outcome to voice their doubts
8 about the process.

9 And again, just as we have with recounts, we
10 have a wide variety of rules about who can request a
11 recount, a contest, how long it takes, who hears it.
12 Sometimes it's an administrative, sometimes it's judicial,
13 in some places it's the legislature.

14 I had the opportunity, call it good fortune or

15 misfortune, to be involved in a contest in the United States
16 Senate regarding the race from Louisiana, where essentially
17 the United States Senate sat to adjudicate who the winner of
18 that disputed race was. And so you have lots of variation
19 around the country.

20 Putting the recounts and contests in the
21 context of the real world, these three interests that we
22 talked about before, recounts and contests almost always
23 have a tension between what I call fairness and certainty.
24 Fairness is an effort to reach out to that individual
25 interest, to give every individual assurance that his or her

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3 vote was counted, that his or her voice was heard.

4 Electionline recently did a publication on recounts in which
5 we had a picture from the Olympian here in Washington
6 where you've got a group of protesters, each of whom was
7 holding a sign that says, Count every vote. And that count
8 every vote is sort of the impetus of the fairness
9 consideration in recounts and contests.

10 And then there is certainty. There is the need
11 of society, of the jurisdiction, of the government itself to
12 know who the winner was, to move forward. To determine who
13 will be the mayor, the governor, the city council member,
14 the members of Congress, et cetera. And there's always a
15 tension between those two, do we err on the side of reaching
16 out to individual voters' concerns or do we err more on the
17 side of finishing the job, even if that means saying that
18 this result is good enough, rather than assuring ourselves
19 and everyone else that it's perfect.

20 The complication in the real world is that
21 because of the time sensitivity of elections, because of the
22 credible partisan divide, and the competitiveness that we've
23 seen, that there's tremendous pressure from all quarters to
24 wind up the election, to finish the job. And different
25 people in the process have different risks, candidates,

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3 especially the losing candidates run the risk of the sore
4 loser. I think any candidate who comes close always
5 invariably it seems gets either editorial advice or
6 political advice that maybe, even though the result might
7 change, the chance that it will change is not as great as
8 the likelihood that you will be tagged a sore loser. There
9 are presidential candidates, there are gubernatorial
10 candidates, there are other candidates who have run that
11 risk in deciding whether or not to press their right either
12 into a recount or a contest.

13 You have danger to election officers of a
14 controversial, time intensive and cost intensive process.
15 As we've seen in Washington and elsewhere, recounts are not
16 costless and they are not effortless. They involve time,
17 money, effort, and in many cases intellectual activity to
18 figure out how to do the job that needs to be done.

19 There is a danger to society at large of loss
20 of voter confidence. As we see more and more recounts, we
21 see growing concern among the part of voters that recounts
22 are yet another tool for them to overrule us, depending on
23 who the "thems" and the "uses" are. That recounts, you
24 know, Claudis said that said that politics is war by another
25 -- war is politics by another means. Many people believe

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3 that recounts and contests are merely politics by another
4 means, and there are concerns that voter confidence will
5 decline as a result.

6 And finally, you just have the danger of
7 confusion. Because of the wide range of deadlines and
8 procedures, we frequently have friction between state,
9 federal and local requirements. Ohio right now is grappling
10 with its laws about recounts and presidential electors on an

11 allegations that the date of certifying presidential
12 electors is too soon for the state to actually make an
13 accurate assessment of who its electors actually are. And
14 so we have all of these dangers as we rush through the
15 recount or contest process.

16 What we are looking at in conjunction with Thad
17 and Mike Alvarez of CALPAC and Kim Brace of Election Data
18 Services, is we're going through the 50 state codes and the
19 District of Columbia election code and trying to tease out
20 the various parts of the process that will be most
21 important. And Thad mentioned some of the international
22 norms that countries believe ought to be incorporated in the
23 process.

24 We'll be looking at transparency, how the
25 voters can take a window into the process from beginning to

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3 end. What accountability there is for election officials to
4 the public that we actually did our job and we did it right.
5 Flexibility within the process. I think the need to
6 determine in advance as many of the things you can is
7 important.

8 I, however, have a great belief in muddling. I
9 think that the public administration really is the science
10 of muddling through. The goal is not to eliminate muddling,
11 but to narrow it to those situations where muddling is
12 required. You shouldn't have to make up rules that you
13 could have thought about in advance. The more rules you
14 have in advance, the more informed your muddling will be.

15 And finally, we need to find a way to make the
16 election process more adaptable as a result of what we
17 learned in recounts and contests. I think the state of
18 Washington has done a tremendous job in incorporating its
19 2004 experience into its election code. They've done a very
20 good job of looking at what happened in 2004, what they
21 liked and what they didn't like and try to improve there
22 going forward. All of these studies I think will inform our

23 recommendations as to what we believe best practices are and
24 ought to be in the field of recounts and contests.

25 Final thought before we go to questions is a

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3 current concern that we spotted around the country in the
4 tension between recounts and contests. As I pointed out,
5 recounts tend to happen before an election is finished,
6 contests typically happen afterward. The problem is that in
7 the current partisan environment we are blurring the lines
8 between the two. We are more often asking election
9 officials to engage in contest-like behavior, to go through
10 and assist the health of the process in a procedure like a
11 recount, which is really not designed to do that. And it's
12 a little bit like a handyman like me who tries to drive a
13 screw with a hammer. You can get the job done, but not well
14 and it's always frustrating for everyone involved.

15 And so one of the things that I believe and
16 that we have talked about that you all can do going forward
17 is to help states think about how to bring some of those
18 contest-like concerns into the recount process without
19 ensnarling election officials, the media and everyone else
20 with the long, drawn out kinds of contests that recounts are
21 designed to avoid. My high school math teacher once wrote
22 in my yearbook that brevity is the very soul of wit. I
23 think I honor that more in breach than anything else, but
24 with that I'm open for questions.

25 MR. CHAIRMAN: Very well said.

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3 But very good job, Doug and Thad. A very good job and we
4 appreciate and I appreciate your bringing up the
5 international norms, because I was very involved in putting

6 those together several years ago and, actually, going to
7 countries all over the world to talk about these norms. And
8 then after 2000 they said, what, you American talking to me
9 about recounts.

10 But let's talk about a scenario that might
11 develop in November, 2006, where let's say the balance of
12 the U.S. House of Representatives and U.S. Senate depends on
13 the recounts in Senate and House races, and recognizing, you
14 know, that the state laws that apply to Attorney General's
15 race in Virginia and the governor's race in Washington state
16 do apply to congressional districts and senatorial contests
17 that are statewide. In fact, that's one reason why the
18 Vice-chairman and I came out to Washington state, because we
19 recognize that to say that, you know, looking at that
20 scenario that may develop, that contests might not be
21 decided, election contests may not be decided because of a
22 recount that may take to December and, you know, and January
23 as in the case of Washington state.

24 You all study this. You all talked to election
25 officials. I know you're coming out with your report that

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3 will be very helpful to us, but today, can you tell us, give
4 us your -- each of you your top two or three recommendations
5 that you would give to election officials today on how they
6 can be better prepared for recounts or election contests. I
7 mean we understand that assuming that legislation just can't
8 be changed in states, most states it's just too late to
9 change the legislation, but we know they can make rules and
10 they can do other procedure changes. Can you give us, each
11 of you, two or three examples of what you suggest people
12 might do today before November to be prepared for a recount?

13 We'll start with you, Professor Hall.

14 MR. HALL: Sure. Well, I mean I would start
15 out, you know, by talking about the accounting part of it
16 and I'll let Doug talk about the recounting part. But I
17 think, you know, first of all, for those states that don't

18 have good accounting procedures right now for their ballots,
19 that they should develop those, that they should have a
20 procedure for being able to account for the ballots and
21 letting people know, so that when they do a recount, that
22 they can account for what it is that they're actually
23 recounting. I think that that is one key thing that they
24 can do.
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3 Secondly, to go back to a point that came up in
4 the earlier panel, localities need to have thought through
5 how they are going to be able to show a chain of custody for
6 all aspects of their voting technologies. And places that,
7 for instance, have voter verified, you know, paper trails,
8 you know, have they worked through the procedures for how
9 they secure those. If a printer jams, for instance, how do
10 you handle that? Do you replace the whole printer, do you
11 replace the roll, do you secure the roll, do you have a
12 procedure for that? And I can tell you from reading state
13 codes you don't see that.

14 And those are key issues that the states are
15 going to need to have thought through, and I'll stop there
16 and let Doug talk about the recount aspect.

17 MR. CHAPIN: I think probably the most
18 important thing that election officials can do is think
19 backwards from certification. As just like a campaign plan
20 for election day, I think that election officials, at least
21 in a recount or contest world, want to think back to the
22 certification and what do we want to have on certification
23 day. We want to have a vote total, in which we are
24 confident, we want to have evidence that supports that vote
25 total, and we want sufficient data from election day and

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3 beyond that will assist us in explaining to other people, be
4 they lawyers, be they judges, be they advocates or anyone
5 else, how we got to that result.

6 I think I can point with approval to the kind
7 of work that Dan DeGregoro in Travis County. Dan talks
8 about that basically they do a disaster plan and they say,
9 what are the various levels of insecurity we have in the
10 process and what can we do to build a shell around those. I
11 think that's the sort of thing that we can do. In my
12 muddling contests, basically in context, basically what
13 you're seeking to do is you're trying to plan for as many
14 things as you can in advance, so that when the unplanned
15 things hit you, as they always do, you have a wide body of
16 experience, regulation or law to fall back on to explain to
17 one another, to observers, to the media, et cetera, why you
18 did what you did.

19 MR. CHAIRMAN: Thank you. I'm going to turn to
20 Commissioner Hillman for questions.

21 MS. HILLMAN: Thank you. I appreciate what
22 both of you have shared with with us.

23 Thinking about the things that you all just
24 responded to the Chairman's question, and knowing that
25 election administrators struggle to get adequate funding for

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3 their needs, have you looked at what are likely increased
4 costs associated with any of these? Not to say that, you
5 know, it might be human resource costs or whatever it is,
6 that if an entity isn't doing something like this, it's
7 going to have to come up to speed and maintain, and what
8 would the costs be for that and would that be a reason why
9 jurisdictions aren't taking this proactive effort?

10 MR. HALL: Well, I think some of the aspects of
11 this do cost and some may not, so let me give you a couple
12 of examples.

13 First of all, to go back to issue of accounting

14 for ballots, that requires, you know, having procedures and
15 documentation for how you audit the election on election
16 night and thereafter. But other things do potentially cost
17 money. For instance, if you go to Travis County they have,
18 you know, some pretty elaborate security procedures, they
19 have video cameras, they have, you know, specially designed
20 cages for their ballots, you know, all of which to get your
21 point do cost additional funds.

22 Some places will get around that, though, by
23 utilizing existing resources in other aspects of their
24 government. So for instance, they -- in Los Angeles County
25 the sheriff's department helps them do security for their

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3 ballots on election night. And they do that because it
4 turns out that their pilots, their helicopter pilots need to
5 have a certain number of flying hours. And so they
6 literally give their time, you know, to Connie McCormick to
7 help her in what they do.

8 And you know, I think one of the things
9 election officials in jurisdictions that do not have large
10 amounts of resources need to do is to be able to look to
11 other components of their institution, of their county, to
12 help them, you know, through part of this process. But I
13 have not cost it out, you know, how much it cost to do
14 certain aspects of this, but it does vary.

15 MS. HILLMAN: Okay. Doug?

16 MR. CHAPIN: And they teach you in law school
17 that when the judge asks you a question you should always
18 answer the question and then answer the other question that
19 you wished she had asked, so --

20 MS. HILLMAN: Please. Feel free.

21 MR. CHAPIN: So I'm going to do that.

22 MS. HILLMAN: Doug, just let me say, one of the
23 valuable things I've learned since being on the Commission
24 is in federal government, if you don't know the question to
25 ask, you'll never get the information. So please, inform me

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3 of anything I haven't asked you.

4 MR. CHAPIN: In response to your question, we
5 are not looking at the cost aspect of this. But having said
6 that, I'm going to climb on back onto my tired horse, we
7 need better data on costs of elections in this country. We
8 collect data on how much it costs to run campaigns. We know
9 next to nothing, in fact so little that it's almost worse
10 than nothing, about what it costs to do a lot of things that
11 we do.

12 And so I think a valuable byproduct of this
13 effort will be to help maybe tease out. Because it really
14 is sort of a soup to nuts assessment of the vote counting
15 process. It may create a structure by which federal, state
16 and local policy makers can pull apart what it costs and
17 then enable election administrators, who are after all
18 public administrators, the opportunity to do the job they
19 are trained to do, which is assess whether or not the
20 increased costs is worth the increased benefit. And without
21 knowing what either one of those are, they can't make good
22 decisions.

23 So the short answer is no, we are not doing it
24 currently. But the longer term answer is we would be happy
25 to be part of any effort that starts to fix numbers on the

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3 kind of efforts that we're talking about.

4 MR. HALL: And if I can just make one final
5 point, there is a certain risk assessment, the counties are
6 engaging in in this, because if they get sued or they have
7 to engage in a recount, they're incurring additional costs.
8 And so there is sort of a -- are you going to incur costs on

9 the front end or on the back end.

10 MS. HILLMAN: For either or both of you, what
11 else can a recount process inform an election administrator
12 about, other than were the numbers right and did it alter
13 which candidate or which reform measure got X numbers of
14 votes. What else can it inform an administrator on?

15 MR. CHAPIN: I think the third rule is to
16 always flatter to the judge when she asks a good question.
17 Again, my students and I have been talking about this, and
18 one of the things that a recount can do, or at least
19 theoretically can do that I'm interested in looking more
20 into, is it can give election officials and policy makers an
21 assessment of the error rate in election. It becomes part
22 of the feedback loop that election officials can use to
23 determine how well their process is working.

24 So if they count a certain number of votes and
25 discover that they've got a 2.5 percent error rate, that's a

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3 red flag that they want to get that number down. If they
4 find out that their error rate is smaller than that, perhaps
5 that then becomes a message to the legislature that the 1
6 percent or 5 percent recount trigger is actually too high.
7 So the recount becomes a little bit like a thermometer in
8 the mouth of a child, that a high temperature is in itself
9 an indication of disease, isn't a disease itself but an
10 indication that something else is going on. So the problems
11 that a recount uncovers are, while a problem for the
12 election official, are also an opportunity to go back and
13 rethink how he or she is doing their job.

14 MR. HALL: And if you look at the states that
15 are developing their procedures line, that do them
16 automatically, so for instance like in California or in
17 Colorado, that are doing them for, you know, to use Doug's
18 analogy, for medicinal purposes, they are able to learn, you
19 know, about problems that may arise in their processes and
20 procedures that are causing them to have errors.

21 MS. HILLMAN: Is that useful to include in best
22 practices?

23 MR. CHAPIN: I would think so, yes.

24 MS. HILLMAN: Okay. And my final question, and
25 we talked about voters being skeptical as to whether all

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3 votes are being counted and some of the political reasons
4 why that may not be happening, if voters could see the way
5 some of the ballots are marked, the creativity that voters
6 use, either based on lack of information or understanding or
7 other reasons, do you think it would change the voters'
8 perception about votes that aren't counted? If you know
9 that 5,000 people showed up in a particular precinct but
10 only, you know, 4400 votes were counted for any one office,
11 you know, would it change perception?

12 MR. CHAPIN: I think as you asked that
13 question, it popped in my -- I could see a new network TV
14 show, American's Funniest Ballots. And really the work that
15 we've done, it is amazing the ways in which voters can
16 mismark ballots or not follow instructions, but I think that
17 could be, and I'm again now putting on my lawyer hat, I
18 don't know if there are certain ballot privacy rules that
19 you can't actually use, if you have to sort of manufacture a
20 ballot to show how someone actually misvoted it, but I think
21 if people understood that sometimes the quality of the
22 input, they might have a little more understanding of the
23 quality of the output.

24 MR. HALL: And this gets to an issue of machine
25 design and training and issues like that.

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3 MS. HILLMAN: Thank you very much.

4 MR. CHAIRMAN: Commissioner Davidson.

5 MS. DAVIDSON: Well, thank you, I appreciate
6 it. Both of you are very valuable to our process and not in
7 just this process today, but in an election process. And
8 it's great to be able to talk to you because you understand
9 elections and many of the people that have not ran elections
10 sometimes don't understand them. But I really appreciate
11 your knowledge of wanting us to learn each and every day.

12 So saying that, and one of the things, Professor
13 Hall, that you talked about is the counting of the ballots
14 and in machines, the machine, no matter what type of machine
15 it is, it gives you an audit trail of election day or what
16 actually took place. It's usually by time, the numbers of
17 ballots withdrew, it stops, then it starts back up, so there
18 is an audit all the way.

19 When I see that audit trail not being utilized
20 in so many areas of election, do you think that should be in
21 best practices, that they ought to utilize that audit trail,
22 because that tells us how many ballots they ran through. It
23 tells them, you know, everything about their election
24 process. If they utilize that they would pick up that they
25 were missing ballots possibly and they would, you know, be

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3 looking for ballots.

4 I know I had one in my home state and it was a
5 very close election and it ended up in recount and it was --
6 what it was was one of the cards wasn't read from early
7 voting and that so one whole side of early voting wasn't
8 read. And that's problematic, obviously, because it could
9 change a result. It didn't, thank heavens, but it could.

10 I just don't think that audit trials are being
11 utilized.

12 MR. HALL: This kind of gets to an interesting
13 issue about go back to the question of what constitutes a
14 vote. In some states the audit trail is all that matters.
15 The numbers that are generated at the end of the night out
16 of the machine are what the vote totals are. Even if the

17 vote -- even if there may be different numbers of ballots,
18 it's what comes out of the machine that is important. So a
19 few optical scans, you know, a few optically scanned
20 ballots.

21 I remember there was an election official who
22 told me an instance where they scanned 25 ballots and they
23 -- but the tape told them there were 26 votes, and so what
24 do you do in that situation? But I think that people should
25 utilize these tapes much more, and they provide

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3 auditability, you know, to go back to the ballots and make
4 sure that they have the same number of ballots that they do
5 on the tape and that they can, you know, use that for that
6 purpose.

7 And that's a very valuable tool to use and it's
8 something, you know, that Colorado is obviously doing with
9 the paper trail and comparing it to the DREs. They're, you
10 know, using those, the paper in a very effective way to
11 attempt to ensure that what is coming out is accurate and
12 making sure that they've conducted the election accurately
13 and they've done the count accurately. And there haven't
14 been any weird glitches or problems that they didn't realize
15 were going on during election day, but they're obvious from
16 that tape. And I think that that is, you know, clearly a
17 very important accountability process.

18 MS. DAVIDSON: I guess it's partly because I
19 was such an advocate for people to use their audits and to
20 work that way, because I found that if they didn't do that,
21 they were more likely to have a mistake after they counted
22 their ballots than if they did. You know, it tells them did
23 they count something twice, you know, and sometimes
24 absentees they have a precinct or a batch of ballots, and
25 things are hectic on election night and something is read

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3 more than once. So it also indicates a problem there. And
4 that sometimes they don't pick up until election night.

5 MR. HALL: Well, I think one of the nice things
6 that's going on right now is there is -- there are new
7 technologies that are coming out to help people do this.
8 For instance, there are now ballot tracking software for
9 absentee ballots where you put a sticker on an absentee
10 ballot and you can track the ballot through the process, so
11 you know where the ballot is, what batch it is in, if it's
12 been received from the voter. And it also ensures that the
13 ballots you received -- we heard discussion of this
14 yesterday about here in Washington on occasion people, and
15 you were pointing this out as obviously out in Colorado --
16 that people return the wrong ballot for the wrong election.
17 And, you know, if you have this sticker, it in some ways
18 provides ballot security because it insures that the ballot
19 you sent to that voter is the ballot that they're sending
20 back. And so it provides -- you know, there are other
21 technologies, you know, with polls, electronic poll books,
22 things like this, that are going to greatly increase the
23 amount of data election officials have at their disposal,
24 the types of report they can run, and the types of
25 accounting that they can do in real time.

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3 MS. DAVIDSON: You know, that brings up a real
4 question, though. In the balance of public perception and
5 what we do to make sure that we have all the ballots, which
6 is people are very fearful of a code, I mean a bar code on
7 their ballot or any type of numbers on their ballot, they
8 feel that you can then trace back to how they voted. And
9 obviously, we can't. But still it's how do we accomplish
10 making sure that they understand this is more of an
11 insurance that your ballot will be counted and that we don't

12 know. How do we get that through and make the public
13 realize, because part of the things we're going to be
14 recommending, there's going to be a group of people say, oh,
15 my gosh, how do we get to this ballot?

16 MR. CHAPIN: I think you're back to margaritas
17 and jambalaya.

18 MR. HALL: I am. The short answer to your
19 question is that through voter education most people will --
20 can be -- are not going to be concerned about that. So to
21 give you a real life example that we just all experienced,
22 you know, 60 percent of all people filed their taxes this
23 week or last week, or depends on how much of a
24 procrastinator you are, electronically over the Internet,
25 where they sent all sorts of financial information and

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3 Social Security number, all sorts of things. Yet, you know,
4 there all sorts of concerns people have about aspects of,
5 you know, the use of electronics in voting. And so there is
6 in many ways there is a disconnect between what we are
7 worried about.

8 And so I think that education can go a long way
9 to helping that, but there are going to be some people who
10 will always think that bar codes are evil or whatever.

11 MR. CHAIRMAN: I will say that one thing that
12 you all might do well to remind the people who read the
13 report eventually is that the audit trail requirement is in
14 HAVA. The fight we have had over the last two or three
15 years is not about whether or not machines should produce an
16 audit trail. It's about whether that audit trail should be
17 paper and whether or not a voter should have the opportunity
18 to verify it. But the Anson amendment, as it was
19 incorporated into HAVA, makes an audit trail mandatory. And
20 It seems to me that you don't put it there unless you are
21 going to use it for something.

22 And so I think a reminder from the EAC or
23 anyone else with the authority to make those kinds of

24 recommendations that jurisdictions use that audit trail to
25 do medicinally, to use that term, to use that medicinally to

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3 assess the health of their process can only be a good thing.

4 MS. DAVIDSON: I appreciate that. You know and
5 we talk about the public and education and HAVA funds has
6 been useful in that process. Yesterday we heard some of the
7 counties say, if we hadn't have had HAVA funds to help
8 educate the public, we would have had more issues. But if
9 we don't have money to do that, and a lot of states don't
10 have the money to do that, and they go to the press and they
11 ask -- I brought press in and I asked them, please help me
12 educate the voters on new laws, on new things going on.

13 And they basically said, you really don't have
14 a story. There is nothing that we are going to really want
15 to carry. If you do something wrong, then we'll be right
16 there. And I said, well, that doesn't help us, we're trying
17 to educate the public, but if I fall on my face then you are
18 going be there to hammer me.

19 So how do we get the press to know they have a
20 very valuable process, I mean to help in this process of
21 educating the voters on so many areas, because if they were
22 educated, if the voters were educated on how to vote, what
23 they have to bring to the polls if they have to have
24 documents, or you know, in any part of this process, the
25 recount, who is welcome to the recounts, the A and L, any

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3 part of elections, how do we get the press to talk about
4 that?

5 MR. CHAPIN: I think part of that, I think the
6 question that I would be looking to answer is how do you get
7 the word out to the public when the press won't help you.

8 And I think in the current environment you are fortunate or
9 unfortunate, depending on the day I guess, that there is a
10 wide range of voices who are involved.

11 I know just from looking around that behind us
12 in the room here there are many people who are very involved
13 in voting integrity and being concerned about the election
14 process who aren't necessarily members of the media. I think
15 that election officials are beginning to discover that your
16 local newspaper or your local TV station might not be the
17 best outbound source of news. There are groups, there are
18 universities, there are projects like Electionline.org, who
19 exist to help spread the word about things like that.

20 I think that state and local election officials
21 are relying on what is now increasingly become the
22 mainstream media. Relying on the mainstream media to get
23 the word out, I think you are selling yourself short. There
24 are other opportunities to spread the word. Through your
25 own website and through advocacy groups and the like, the

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3 word will get out to people who are paying attention who
4 might not read that paper or watch that evening news.

5 MS. DAVIDSON: Does it have to be catchy to get
6 the public's attention?

7 MR. HALL: Well, catchy is always helpful, but
8 I also think, you know, the other thing that election
9 officials can do, and this is more true as you go east from
10 here where more voting is done at polling places, is
11 election officials have to use their poll workers
12 effectively to educate voters as well. And you know, for
13 instance, in Salt Lake City where I am they were having a
14 problem with voters going to the wrong precincts and having
15 issues, and so they took one of the poll workers and made
16 them a greeter in every polling place to ensure that that
17 person informed voters about, you know, key issues that they
18 needed to be aware of.

19 And what they found from doing that is that

20 they were able to reduce the number of provisional ballots
21 that they had, they were able to reduce the number of
22 problems that occurred. And so there are ways. I think
23 that election officials have to be in some ways creative and
24 self-reliant to, you know, not -- to get around the problems
25 in the media and use the groups like Douglas mentioned.

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3 MS. DAVIDSON: My last question is the VVPAT,
4 are you going to really go into that very much in your study
5 and how it should be utilized and some suggestions on best
6 practices on it?

7 MR. HALL: Yes, we are, and you know, one of
8 the things we'll be doing, you know, for instance as I
9 mentioned several times is looking at, you know, how can we
10 use viability purposes. Also looking at issues associated
11 with -- we'll also talk a little bit about some issues of
12 security and aspects like that.

13 MS. DAVIDSON: That's great.

14 MR. CHAPIN: And then in the recount contest,
15 the issue is whether or not the VVPAT is itself the ballot
16 of record or whether or not the machine count is, and
17 different states answer that question differently and it has
18 an impact on what the outcome is.

19 MS. DAVIDSON: I said that was my last
20 question, but you just reminded me of one. Is it a problem
21 trying to get information and do you report -- and I thought
22 your report was excellent, but because the states have
23 different terminology for different things, as you mentioned
24 both of you in your presentation, how much of a problem is
25 that for us to get actual data that is accurate because of

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3 that problem?

4 MR. HALL: It's very difficult. I mean the
5 variety in different states called the same thing different
6 things, or sometimes use the same word to describe different
7 aspects of the process. And so I don't mean to be flippant,
8 but part of the fun of Electionline is teasing out what that
9 really means. And so when we do a report like this one, we
10 end up essentially creating categories and then trying to
11 make sure that we meaningfully place individual states into
12 those categories. And invariably we get one or two states
13 or localities who calls us to quibble about which category
14 they made, but invariably we explain to them why we did it.
15 And if we can at least make it clear to them that it wasn't
16 just eeny, meeny, miney, mo, they're satisfied that while
17 they might not like the category they ended up in, they can
18 at least accept the process, and we like to think that
19 that's a metaphor for recounts generally.

20 MS. DAVIDSON: Okay, thank you. I appreciate
21 it.

22 MR. MARTINEZ: Thank you, Mr. Chairman. I told
23 the chairman earlier, because I asked so many questions at
24 the first panel that I would give him some time back, so I'm
25 going to actually be very brief in my questions.

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3 Let me thank you all, first of all, and Mike
4 Alvarez and Kim Brace, the two of you for the excellent
5 work. This has been extremely enlightening. I'm so
6 encouraged by the very strong and aggressive research
7 component that this agency has undertaken, again, under the
8 leadership of our previous chair, Commissioner Hillman, and
9 now of course our current Chair, Paul DeGregorio. I'm just
10 very pleased that we are able to do this kind of work. And
11 also give credit to Congress for writing Section 241 of HAVA
12 which says, here's a laundry list and add anything you want
13 to it as well that you think ought to be researched, and I
14 think that was very insightful.

15 Professor Hall, your comment about L.A. County
16 is swimming in my head because in 2004 I went to go observe
17 elections at the invitation of Connie McCormick and she put
18 me in one of those helicopters, and had I known that they
19 were just doing that because they needed to get their
20 requisite hours in, and those pilots hadn't flown in awhile,
21 I would never have stepped foot in that helicopter. But I
22 did, I flew right across the city, and gee, thanks for
23 telling me now.

24 Okay. Well, I guess, again, a couple of quick
25 questions. I think for me I'm surprised, as an attorney I'm

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3 surprised that you have this language, you can both comment
4 on this, but you have this language and how it says go and
5 find what constitutes a vote and, you know, for every system
6 that will be used in your jurisdiction.

7 And it looks like what you're finding, Thad and
8 Doug, is that there is still this huge disparity in how
9 states have taken, and I'm talking now pre-election, the
10 actual counting of votes, not the recount procedure, but it
11 seems to me that what you're finding is that some states
12 have simply said, the vote is what comes out of the machine,
13 versus other states that have been more elaborate in how
14 they've actually defined what constitutes a vote. Can you
15 validate my thinking on that?

16 MR. HALL: That's absolutely true. You know,
17 to give you, you know, two examples, some states when you go
18 to their Web page and you pull up the section on vote
19 counting, you know, it will produce ten PDF files of
20 diagrams and pictures of what, you know, an optical scan
21 ballot looks like and if an X is okay or underlines, or
22 there will be paragraph upon paragraph that says,
23 underlining a vote constitutes a vote for that candidate,
24 you know, things like this that are very detailed.

25 And then, you know, in some states it literally

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3 says, a vote -- the intent of the voter -- for all voting
4 systems a vote is the intent of the voter, and that intent
5 will be determined by the inspector, and that's what you
6 get.

7 MR. MARTINEZ: And Doug, do you think there's
8 a, I mean, do you all have enough information to say a
9 majority of states have done more specific definition versus
10 those that are still vague?

11 MR. HALL: It depends what voting system is
12 part of it. You know, it depends upon what voting systems
13 they use, because some states only define the voting systems
14 that they have.

15 MR. CHAPIN: And on that score I want to point
16 out that to a certain extent, because legislatures don't
17 like to get interested in this until they've got something
18 concrete to do, states I think have postponed doing that
19 kind of work until they knew exactly what kind of system
20 they were going to buy. So to a certain extent this kind of
21 legislative catch-up is just as much a casualty of the
22 continuing struggles that states and localities are having
23 in choosing which technology to buy.

24 You don't want to do what constitutes a vote on
25 a punch card if you're not going to buy a punch card, but if

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3 you haven't decided between optical scan and DRE, you might
4 hold off until you've made that choice and then dive in as
5 Georgia did to make those.

6 MR. HALL: This also gets back to the issue of
7 some states have much more rigorous regulatory schemes than
8 others do. And so in some states they are able to go into
9 their administrative rule-making process and go in and
10 define these very carefully in their rules, and in some

11 states they just don't have the power to do that.

12 MR. MARTINEZ: This is just an editorial
13 comment on my part, but it occurs to me, you know, HAVA says
14 that the EAC is to issue voluntary guidance on all of the
15 Title 3 requirements, Section 301 being one of the Title 3
16 requirements, and we have issued our first set of voluntary
17 guidance with regard to statewide databases. We haven't
18 done voluntary guidance on anything else.

19 And it just occurs to me that given what you
20 said, Doug, that legislatures perhaps are waiting to find
21 out what systems are we going to be using, so that then we
22 can go and find what voter intent means for this particular
23 system. Guidance, this might be something that rises to
24 beyond best practices, but guidance that says now that you
25 have made these decisions, state legislatures go in now and

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3 carry out this mandate and define. So that is perhaps
4 something that will -- that could result from the work that
5 you all have done.

6 Doug, in looking at the landscape of -- I mean,
7 there are very those well documented, Rick Hasson and others
8 who have shown that in the past, certainly since the 2000
9 presidential election, we are now in a more litigious
10 environment when it comes to election litigation. The bulk
11 of the litigation comes from post election procedures that a
12 jurisdiction failed to -- or is it pre election procedures?
13 Whereas you look at the scheme that you all have -- sort of
14 the framework that you've laid out, what's the primary
15 source of litigation that is coming out in election
16 contests?

17 MR. CHAPIN: I haven't necessarily quantified
18 it. My sense in having looked at it is that there are
19 always skirmishes before an election about ballot
20 positioning or whether or not one side or the other is going
21 to be allowed to use challengers at the polls, et cetera, et
22 cetera. Those don't necessarily seem to have increased,

23 just the attention on them has increased.

24 What I do think we are seeing an increase in is
25 in people questioning the result after the vote is done, and

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3 requests for recounts and disputes between advocates and
4 states on whether or not they should be required to post a
5 bond and if so, how much. And then in whether or not a
6 recount is a more appropriate approach than a contest or a
7 challenge or some other sort of post certification for
8 litigation.

9 But we are seeing an increase in that and we
10 did notice one of my colleagues at Electionline recently did
11 a story that we're starting to see an increase in similar
12 proceedings at the college level, where the students for a
13 concerned university are suing the Alliance of Concerned
14 Students because of allegations of defects in the process in
15 the race for the student council.

16 So litigiousness I think is catching, which is
17 good for no one except the lawyers involved. But I do think
18 that interest in extending the political process beyond
19 election day is heightened. When I worked on campaigns
20 election day used to be, we had a finish line and it really
21 is now just the end of act one.

22 MR. MARTINEZ: Right, I agree. And finally,
23 any thoughts about, Doug, as you look at the recount
24 landscape, and I read your again, very insightful
25 Electionline.org report, the human element aspect of it, is

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3 there adequate training of not necessarily poll workers but
4 election officials to get familiar with the recount policies
5 and procedures about particular jurisdictions, or is that

6 just varying again greatly?

7 MR. CHAPIN: I think it varies, but I think by
8 and large, I think election officials are, because they more
9 than anyone else are familiar with their procedures, they
10 are probably the best position to be involved in a recount.
11 The problem is is that to a certain extent their role
12 diminishes in a recount. You're reliant on hordes of
13 volunteers. And to be frank, you're reliant in many places
14 on judges and their law clerks, who may never have even seen
15 an election law case until it landed on their bench.

16 So the need, while we certainly want election
17 officials to be well schooled on best practices and the
18 like, we need to find a way to propagate that information
19 outward so that people who actually do and adjudicate these
20 things are at least equipped with a working knowledge of how
21 they work, instead of muddling through.

22 MR. MARTINEZ: Very insightful. Thank you all
23 very much. Thank you, Mr. Chairman.

24 MR. CHAIRMAN: Thank you. I know in our first
25 panel we ran out of time for our legal counsel and our

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3 Executive Director to have time for questions and I know
4 we're running late today, but I do want to give them time.
5 Mr. Executive Director, Tom Wilkey, do you have any
6 question?

7 MR. WILKEY: Just I guess a couple of comments
8 and a couple of question, if I may.

9 First of all, I'm very grateful that Secretary
10 Reed was able to stay for the remainder of this because I
11 did want to say during the first panel that I wanted to
12 congratulate him on his efforts. Certainly we had a very
13 good day yesterday with your local election officials and
14 you have an outstanding group of people representing all of
15 your counties, and we learned a great deal from that. I
16 also would recommend that you take that wonderful outline
17 that you gave us and share it with your colleagues, with the

18 Secretaries of State around the country, because I think it
19 would be very insightful and very useful to them,
20 particularly in the area of the cooperation between local
21 and state. I took a similar road as you know and we work
22 very hard on establishing that, and I think it makes all the
23 difference in the world when you're doing statewide
24 recounts.

25 Professor Hall, I also want to congratulate you

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3 because I think, unlike many of the academics that are doing
4 various studies of things in elections since 2000, you have
5 really gotten into the processes. You have spent time at
6 the local level, you've spent time in precincts looking at
7 elections, and I think that has made all the difference in
8 the world and how you have addressed this particular report.

9 One area that I noticed in here that has been a
10 bug of mine for many, many years is the quality of pre
11 election testing that is done on election equipment. I have
12 been in jurisdictions in various states over the years and
13 have seen some very good quality tests done, and then again,
14 I have seen some where they just did not cut the mustard, so
15 to speak. I haven't done any really indepth analysis of the
16 level and quality and some perhaps some recommendations that
17 can be used in doing some really good pre election
18 assessments and post election assessments.

19 MR. HALL: Sure. One of the things that we
20 have done is gone through and we capture data on the
21 procedures that are done in each of the states by law and by
22 regulation for pre-election testing, and they do vary. And
23 I haven't fully analyzed all that data yet.

24 But I think, you know, some states do have very
25 detailed rules. The rules often vary by who can be

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3 involved. I know this came up yesterday and Donetta was
4 pointing out, Colorado people can bring in their own ballot
5 or marked ballots to test them. But, you know, there
6 clearly is a wide variation in what is done.

7 And the other thing that was very surprising is
8 there's not variation in the type of recording that's done
9 about it. So, for instance, in some states you do the test,
10 and you may or may not issue a report -- there may or not be
11 like a certification of the machine, and in some states you
12 actually certify that machine and you seal it so that people
13 could know that that machine was tested and it was on this
14 date and they were certified by witnesses and things like
15 that. And you know, obviously, things like that are
16 important to, if you have a problem, to be able to go back
17 and, you know, find what the problem was.

18 MR. WILKEY: Thank you.

19 One question to you, Professor Chapin, and I
20 know from firsthand experience the kind of work you do and
21 have been doing, and I don't think anybody, there's any
22 entity that has published more good work in the area of
23 election administration than you have in a number of your
24 reports. but it leaves me with a question that's probably
25 not been something that Commissioner Davidson addressed.

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3 Her question related to how we get information out to the
4 voters, how we get that best type of information and
5 demonstration out to the voters. Mine is in a similar vein,
6 because I worry a lot that so much good things are
7 happening.

8 This report, for example, is a report which
9 should be in the hands of every election administrator in
10 the country. Similar reports we coming down the pike
11 throughout this year of many, many, many good projects that
12 you are going to be doing. Projects, for example, on poll
13 worker training, design for democracy, other reports that

14 are coming up, reports that you have issued itself.

15 And if we take a look at the landscape of the
16 election administration community in this county, the bulk
17 of them are medium to very small sized jurisdictions. And I
18 worry if we are not able to get this information out to all
19 of them in the hands of the people that really need it.

20 And so I would like you to comment on that, and
21 I'd also like you to think about it and, you know, call me
22 two weeks from now and say, I got some really good ideas of
23 how we can do this, because it does bother me. There is so
24 much good things out there that we need to get out to
25 everybody. How do we do this? Not everybody looks at

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3 websites, not everybody. And the other pieces, everybody is
4 inundated by reports. How do we make a useful, quick, easy
5 to digest and yet are able to get that really good
6 information?

7 MR. CHAPIN: An excellent question. And you
8 know from our work together, it's sort of a long-term
9 passion of mine. And to find a way to create that brand
10 identity among election officials, that they are members of
11 a profession, they do their jobs professionally, but they
12 are not yet recognized formally as a profession. I think
13 the big, fancy word that pops to mind is disintermediation,
14 that lots of people in the past we have relied on large
15 media outlets, large organizations to give us our news, to
16 at least make a suggestion about opinions. And
17 increasingly, people are getting their news, their
18 information and their opinion from lots of other places,
19 from clubs, from neighborhoods, across the back fence. And
20 we just need to figure out where the back fences are where
21 the state and local election administrators are standing and
22 find a way to spread the word that way.

23 It's a fascinating question. There is no
24 shortage of organizations dedicated either exclusively or
25 tangentially to election administration, but I'm not

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3 confident that put together they reach even half of the
4 current population. We need to find a way to do that.

5 And without being restrictive on the kinds of
6 content that we send to them, making decisions about what we
7 do and don't tell them, we need to find a way to create that
8 audience, so that the kind of work, the good work that is
9 happening in rooms like this can get out to people who can
10 benefit from it the most.

11 MR. WILKEY: Thank you. Mr. Chairman.

12 MR. CHAIRMAN: Thank you, Tom. Ms. Hodgkins?

13 MS. HODGKINS: Thank you, Mr. Chairman. And
14 I'm going to a fourth adage of a good lawyer trying the case
15 and that is never ask more questions than need to be asked.
16 And my colleagues have covered everything well. I just want
17 to say to you, too, that the insights that you've provided
18 in studying this process thus far have been very
19 enlightening and I look forward to reading your final
20 report.

21 MR. CHAIRMAN: Thank you, Ms. Hodgkins. And
22 I'd like to thank our court reporter and our signer for the
23 wonderful work that they have done over the last three plus
24 hours. I know it went longer than you first anticipated.
25 We appreciate your hard work in providing an excellent

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3 service to us and to the public.

4 I want to thank Secretary Reed, his Director of
5 Elections, Nick Handy, sitting right behind him for their
6 help in helping us facilitate this meeting out here in
7 Washington state that Dean Logan had to leave, but he was
8 also very helpful to the EAC and our staff in facilitating

9 our work here.

10 We have some guests from the state of Oregon
11 who have sat through this and sat through the focus group
12 yesterday, Patty Maguire, who's the Deputy Secretary of
13 State for the State of Oregon. Patty, raise your hand. John
14 Linback, who's the state election director. We appreciate
15 you coming over from a neighboring state to listen to the
16 proceedings here today. We also want to recognize Cameron
17 Quinn from the voting rights section of the Department of
18 Justice. Cameron, thank you for listening to our comments
19 here today.

20 We want to finally thank our EAC staff for
21 helping put this all together. There is a lot of work that
22 goes into conducting a meeting and certainly when we conduct
23 a meeting out of Washington, it requires additional support.
24 Particularly want to thank Peggy Simms, our research
25 specialist from the EAC who's following this particular

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3 issue, who's our contract officer with our researchers but
4 who helped us focus on this meeting and who to bring forward
5 to testify. Thank you, Ms. Simms, for your excellent work.

6 The testimony given today will be available on
7 our website at www.eac.gov. We know that others in the
8 audience that want to provide us with their comments about
9 the subject of vote on recounts and they can do that at
10 [havainfo](mailto:havainfo@eac.gov), that's one word, @eac.gov. We welcome any
11 comments that members of the public would like to give us on
12 this subject or any other. You can also call our office
13 tollfree at 1-866-747-1471, that's not an American Idol
14 number, so you should be able to get through right away.
15 But thank you again to all of you.

16 Our next meeting is going to be May 25th, next
17 month, at the Hamilton Crown Plaza Hotel. We are going to
18 have meetings of our EAC advisory and standards board that
19 week and many of them will join us for that meeting that
20 we're going to have on May 25th. So thank you very much.

21 And do I have a motion to close the meeting?
22 MS. HILLMAN: So moved.
23 MR. MARTINEZ: Second.
24 THE CHAIRMAN: All in favor say aye.
25 MEMBERS: Aye.

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3 THE CHAIRMAN: The ayes have it. The meeting
4 is adjourned. Thank you.
5 (Meeting adjourned 1:30 o'clock, p.m.)

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2 CERTIFICATE OF COURT REPORTER
3
4 I, Katherine MacDonell, court reporter in and
5 for the State of Washington, before whom the foregoing

6 meeting was taken, do hereby certify that the
7 meeting was taken by me at the time and place
8 mentioned in the caption hereof and thereafter
9 transcribed by me; that said transcript is a true
10 record of the meeting.

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Katherine MacDonell