



MR. SABATO: Let me now go to our third panel. And I want to introduce our chair of the panel and have her then introduce the other members of the panel. And we are delighted to have Catherine Crier follow Bob Schieffer as our moderator today. And we thank her so much for participating in this major way in our National Constitutional Convention.

Catherine Crier is the founder of Crier Communications. She's an award-winning journalist, accomplished lawyer, Judge -- yes, she's been a Judge, too, and writer. From 1999 to 2007 she hosted Catherine Crier Live on Court TV, though she did not have any of the cases that Judge Alito mentioned. That was not her line of work. It was, as all of you remember -- I think it was very fast paced. It was a live daily series and addressed the legal perspective of the day's front-page story. I, frankly, thought it was the best show on Court TV. And that's the truth. And I do enjoy shows like that.

Her work on *The System* -- "The System," documentary, "The Interrogation of Michael Crowe," was recognized with the duPont-Columbia Award in 2004. And she's also received News and Documentary Emmy Award for outstanding investigative journalism.

Catherine Crier began her television career, as many of us remember, at CNN where she was co-anchor of the ground-breaking *Crier & Company*, a live half-hour talk show with female politicians, female experts, female news makers from around the world.

Prior to her tenure at Court TV, she anchored the *Crier Report* for FOX News. She's also served as a correspondent and a substitute anchor on ABC News. So she really knows the television news business.

Prior to her career in television journalism, Catherine Crier presided over the 162nd District Court in Dallas County, Texas as a State District Judge. From 1982 to '84, Catherine was a civil litigation attorney in Dallas and before that an Assistant District Attorney and felony chief prosecutor for the Dallas County District Attorney's Office.

She is a Texas-bred Independent with a spirited passion for justice. She's released her first book, the New York Times number one best-seller -- she knocked my book out of that spot; it really upset me enormously. And her book, though, was entitled, The Case Against Lawyers. I'm hoping some of my students will read it. Cary Lukowski, that's for you -- in the fall of 2002. And that's a wonderful plain-spoken treatise on the law, had Catherine sharing her outrage at some of the problems in the justice system. And she's called on American citizens to demand reform. And we'll see whether that extends to constitutional reform.



Catherine has a wonderful panel. I know you're going to enjoy this enormously. And Catherine and panelists, thank you all so much for being with us.

Catherine.

MS. CRIER: Thank you, Larry. I'm going to keep the introductions very short. I think we have a lot to talk about in this last panel. But there was an interesting overlap, I think, in the members. I will start and go to my left and around the table: Lance Cargill, Speaker of the Oklahoma House of Representatives, shall I say Vanderbilt Law School; Garrett Epps, Professor, Oregon University School of Law; Eric Lane, Professor, Hofstra University School of Law, Senior Fellow, Brennan Center for Justice; Sanford Levinson, Professor at University of Texas School of Law; Michael Steele -- well, yes, he was Former Lieutenant Governor of Maryland and Chair of GOPAC now but Georgetown Law School; Nadine Strossen, Professor of New York Law School and professor -- excuse me, president of the ACLU.

If what Shakespeare told us -- first thing let's do is kill all the lawyers -- were to come to pass, you would lose your humble moderator and entire panel very quickly. And I think it's an interesting question. If we are talking about reforming the Constitution, the role of lawyers -- not an important one, but should lawyers, lady and gentlemen, be allowed to participate in all of this? Any thoughts?

MR. STEELE: No.

(Laughter.)

MR. STEELE: Keep them away. I'll just start it with that. By the way, I'm Michael. This is Nadine.

(Laughter.)

MR. STEELE: They have it switched.

MS. STROSSEN: I think all of us were tongue-tied by that question. And a lot of people might have exactly the opposite question, which is: Do you have to be a lawyer to debate what is, after all, a legal issue? The Constitution is the founding source of our law. And I think it's -- that every member of this society should participate. Certainly lawyers are very important. But I welcome the idea of having non-lawyers as well.



MR. LEVINSON: Actually, I'll gladly pick up your question because I'm also a political scientist. I think that law professors do a terrible job of teaching --

MS. STROSSEN: Speak for yourself.

MR. LEVINSON: -- about the United States Constitution. I think if law professors were in charge of teaching icebergology, we would teach only about the 10 percent that you can see above the horizon and never understand why the Titanic sank.

The things that Larry Sabato has written about, the things that I have written about, are, frankly, almost never taught in law schools because we teach only the litigated Constitution. And even within the litigated Constitution, we tend to teach mostly the hot-button issues.

Most of what Larry has written about, certainly all that I have written about, the things that I think are most in need of change, are what we often view as the dull and boring civics book aspects about the Constitution that, with all respect, I think are more important with regard to understanding our political system than the Bill of Rights, the Fourteenth Amendment, as important and interesting as those are.

Now, I'm not opposed to teaching about the Bill of Rights, the Fourteenth Amendment. I support both. But I think that law professors desperately have a need to teach their students about things like bicameralism, veto systems, the Electoral College, and a lot of stuff that is just never mentioned in law school courses.

So, actually, taking your question as a serious one, I think that it would be a huge mistake to turn a constitutional convention over to lawyers because, frankly, most lawyers haven't studied or thought about what is most important in the Constitution.

MR. LANE: Well, I think lawyers should be involved. I'm a tenured faculty member. I teach a course in constitutional law which is filled with the very things that Professor Levinson doesn't -- things are left out of his course. I don't know why it is that we can't choose to teach -- we can and we do.

And I also think that in a country which is dedicated to the principle of the rule of law, that lawyers should be involved in the constitutional process and, in fact, are the priests of the constitutional process.

And so, therefore, I think that lawyers should play a very important role. I don't think they always play the role that they ought to. But I don't think you could have a constitutional conference -- convention without lawyers. And I would add,



in the reality of the world in which a constitutional convention might ever take place, there will be lawyers there, much as one hopes that they don't show up.

MR. EPPS: Let me just say one word. The question is: Should lawyers be involved in constitutional reform? Yes.

MR. CARGILL: I don't think there's any question that lawyers would play an important role in that process. I'm the leader of a representative body in the Oklahoma House of Representatives. And it's always interesting as I go out to constituents across the state and ask them what percentage of their elected officials they think are lawyers. And oftentimes you'll get a guess of at least 50 percent or more. In fact, in the Oklahoma House of Representatives, only about 15 percent of our body are actually lawyers.

MS. CRIER: How unique is that?

MR. LANE: You know, I don't know how -- how much that's replicated across the country. But certainly in Oklahoma that has been the tradition in the last 10 to 20 years. And lawyers -- the lawyers that are elected to that body do play a very important part in understanding legal traditions and the development of laws. But it is absolutely the case also that those non-lawyers have a lot to provide in terms of real world experience in their industries, their communities, et cetera. So I think a mix, just as in anything, would be -- would certainly be appropriate and good.

MS. CRIER: Just as a note, in here it says, The guardians, the sentinels at the gate of democracy. I happen to agree. The title of the book, The Case Against Lawyers, was really the abuse of the rule of law and what had happened. On that note, though, however, we -- we look at reformation, the constitutional convention, and I fear, like many have spoken of during the course of the day, the outcome of something like that because the very brief -- very universalized document that was created by the Founders, the notion that any part of that might be replicated today, is difficult for me to fathom. And particularly the legal community today is oftentimes gladiators rather than counselors. It seems to be the norm.

Is it possible with the contentious environment in which we live, with the self-interest or certainly specialized interest that most people have when they come to -- many people have when they come to government, is it possible to contemplate a constitutional convention that could come up with the kind of generalized universal abiding principles that now are framed in the Constitution?

MR. STEELE: I think it's -- I think it would be very, very difficult to do for that very reason. And I would -- I would say that every interest that comes before Congress is a special interest -- or before any governmental body. It doesn't matter. But as



a state legislative body or a federal body, when you go before your representative, you have a cause. You have a concern that you're promoting or that you're trying to defeat. And so you have an interest. And it is special to you. That's why I always laugh -- laughed as a native Washingtonian about this idea of special interest because everyone in this city is a special interest, and everyone who comes here is a special interest. That's the nature of our government.

So that's -- that's a good thing in that sense. But I think you then get on a slippery slope. And, you know, I joked before about not having the lawyers there because I know in the end very much -- as many of our panelists have already said -- they're going to be there anyway because they're going to litigate the day after the convention closes. Trust me, there will be a lawsuit filed on some principle or some constitutional amendment that has been added or deleted.

And so that is the reality. It is the new priesthood. It is the new universality in terms of the professional craft that lawyers have a particular role that they play.

I think something like a constitutional convention is -- if you stay true to the Founding Fathers and Mothers -- because I know that there were some Founding Fathers' wives who were saying, Well, you really don't want to do that, who will -- will ultimately stay true to that. You will look to the people to help shape the destiny of a nation, very much as those individuals did at that time, knowing full well that they have to put certain checks and balances in place.

My concern today would be that the special interests -- that all of those interests would be in such conflict that you would create a constitutional crises where there may or may not be one.

MS. STROSSEN: Catherine, to answer your question, I think I have to put it in a comparative perspective because it's not just, Could we come up with the same ideals, in the abstract. But it really -- the question has to be, "Could we do better? Right?" If it ain't broke, don't fix it. Or if you can't improve upon it, don't tinker with it. And I find, of course, the Constitution is not perfect. It is the product of human beings. And human beings are imperfect, especially when they have to work by committee and by compromise. And we all know the most horrible compromise in which the Constitution was based; namely, slavery. And yet even Frederick Douglass, the great abolitionist, said, net, it was positive. And if you look at how it has been amended and interpreted and enforced, I would have to say that over the course of history it has brought us closer and closer to those great ideals that were set out in the Declaration of Independence, essentially, like liberty and justice for all, equal rights for all.



So I'm very reluctant -- I have a humility about thinking that our generation, wonderful as it is, could do any better, precisely because of the kinds of conflicts that you refer to, Catherine, and others have.

It seems to me that if we are in the era of division and strife and controversy and struggle over issues and distrust of government, that is precisely the kind of period in which we do not want to reopen all of the great values and structures on which our government was founded, that if we are going to revisit it, sort of paradoxically, it would have to be in a time of relative peace and tranquility. And we're certainly not there.

MR. LEVINSON: Yeah. I disagree very strongly with what has just been said. I think that it is unduly complacent and that both of the previous speakers at the end of the day really have lost faith in the Democratic experiment.

First, with regard to complacency, if the system is working that well, why is it that right now somewhere about only 25 percent of the country approves of Congress, thinks Congress is doing a decent job. The President is at about 35 percent. The Supreme Court is about 50 percent. Some of this can be explained in terms of partisanship, but I think much more is a well-founded belief that the national government isn't working, whether you're on the right or the left.

We have so many veto points in our system, it is basically impossible for significant legislation to get through. And what lawyers litigate about -- Fred Schauer had an article in Harvard Law Review last year, pointing out that if you ask ordinary people what they believe the most important issues of the day are and then you map that onto what the Supreme Court does, you find almost no overlap. It is ultimately Congress and the presidency who have to respond to what most people care about. And it isn't doing that, frankly. And it's not doing it in part because we have a structure designed by the Framers living in extraordinary different worlds with so many veto points that it constructs gridlock.

I think, actually, this is the perfect time to have a constitutional convention, if you're interested in structural issues because you can't -- you can be as partisan as you want to be. But none of us knows who will be President in 2013, 2017. Should the President of the United States, with a single stroke of the pen -- whether you're thinking of Bill Clinton and the Partial Birth Abortion Act or whatever it was called in 1996, or George Bush with the SCHIPS Bill or the Stem Cell Research Bill -- should a single individual, elected in the bizarre system we call the Electoral College, be able to override legislation that is supported by a substantial majority of Congress?



I would love to hear Newt Gingrich and Charles Schumer, among others, talk about this because I think both of these men are very intelligent, very patriotic, and couldn't help themselves in talking about what would really be in the nation's interest because neither of them knows which party would be helped or hurt by getting rid of the presidential veto. They don't know which party would be helped or hurt by getting rid of the Electoral College.

You could go down a whole list of these structural features. And the fact that we're divided makes it perfect because you really can't predict who's going to benefit or not.

MS. CRIER: You are a gambler, aren't you? Garrett.

MR. EPPS: I'm sorry. I actually favor a debate on some of these structural changes, particularly some that Larry Sabato refers to in his book. But I don't think we could do it right now at a constitutional convention.

Now, I wasn't in Philadelphia in 1787 as a member of the constitutional convention, although I, like most of the people here, have read a great deal about it. And I, like most of the people here, have written a book about it. And you can buy it out there if you want to.

But the one thing that I know about that convention and that Justice Alito made reference to earlier was that it was precipitated by a real crisis. And it was disciplined by a real crisis. The Republic was falling apart.

And although I wasn't there for that, I have had actual experience in government making. I was in charge of creating the government for the City of New York, both in substance, and the political processes that we went through, the largest changes in its history. And I was also the head of Governor Cuomo's Temporary Commission on State Constitution where we explored changing the Constitution of the -- of the State of New York.

And in both instances, one lesson came to me clear, that what gets discussed is what the people perceive of as a crisis. So we held hearings throughout the state, for example. What would you like to change? What ought to be changed? And the things that we heard from the people and I assume what we would hear from their representatives - because, remember, any constitutional convention there has to be people that are chosen as delegates. And those people that will be chosen as delegates are going to be chosen through a political process, an electoral process. And they are going to be reflective of the constituents that vote for them. And unless the people think that there is a crisis in structure in the government, unless you think that the people are worried about the size of the House of Representatives at this moment or some of these other things, I think that what



we're going to find being the agenda are issues like abortion, immigration, Fourth Amendment, First Amendment, religion, and all of these hot-button issues which actually do divide America right now and which people feel we're on different sides that we're in crisis about.

So while I absolutely am interested in structural reforms and would be fascinated to hear a real debate and even though I have some views on them, I would like to hear what other people's views are. I don't think we have a citizenry that is ready yet for that debate, that we've lost -- you know, that's civically literate enough for it yet.

MS. CRIER: Okay. Garrett.

MR. EPPS: I'm going to say something I think may be profoundly uncongenial because I have thought a lot about this. And I think in particular Sandy and Larry's proposals are marvelous proposals. But I'm going to say that if you look at the sweep of American history, the standard Article V proposal by Congress and ratification by the States has a better track record than the Constitution of 1787, which was an extraordinary group of people. We could never hope to replicate the high quality.

But the fact of the matter is, the Constitution that that group produced was badly flawed and failed only 75 years later, precipitating the worst war in the history of the United States and failed largely because of the compromises that we are taught in high school, you know, were magnificent and high-minded.

We don't live under the Founders' Constitution. And this frequent invocation of what Mr. Madison had in mind I think profoundly misleads us. We live under a new Constitution grafted onto that one by the amendment process, particularly the Thirteenth, Fourteenth, and Fifteenth amendments, the Seventeenth the Nineteenth -- have transformed our system.

And when an amendment is proposed by the Article V process and put before the people in -- in their legislatures, there is no log rolling. There is no compromise in the sense that, I'll give you this amendment if you let me keep my slaves or whatever it may be because it focuses people's attention on the subject matter of that amendment, yes or no, up or down.

So I would like to see us talking much more seriously about some very important constitutional textual changes. But I'm going to try and say we should stick with the Article V process. And I'm a little worried about this moment in history getting people together. One reason that the convention of 1787 actually even produced a document is that it really was only one group. This is the end of a revolutionary period. People who fundamentally disagreed with the revolution



were not in Philadelphia. They were either silenced, exiled, or killed during the revolutionary process. So we would have to have a much broader spread of fundamental principles at a convention, including a significant number of the population -- a significant political currents in this country that live by a slightly different creed than the one Nadine invoked. There's a significant group of people in our country who look at government and say, If it ain't broke, break it. And I am a little concerned about what would happen at a convention for that reason.

MS. CRIER: Lance.

MR. CARGILL: Yeah. I would say I agree with many of the comments. Nadine, as a conservative Republican from Oklahoma, if you promise not to go tell my voters, I strongly agree with you.

MS. STROSSEN: We're a very conservative organization conserving the founding values; right?

MR. LANCE: Indeed. Absolutely. It's a joke. It's a joke.

Now, particularly -- no, I particularly agree with Nadine's points. I mean, I think we could all list a litany of shortcomings in our modern political system. But I think when we talk about what the solution to those problems are, I don't know that a constitutional convention is really the cure. You know, could the cure kill the patient?

I think at a time when we need more unity and cooperation, a constitutional convention could generate more division and confrontation in our society. It could likely thwart, rather than fulfill, the will of the people.

I mean, if the problem is a lack of virtue among our elected officials and our politics, if it is a lack of civic education among our populous, I don't know that a constitutional convention is the right way to correct those things and, in fact, would create an environment in which I don't know that the end product of the convention would actually be better rather than perhaps worse than the current environment in which we find yourself.

MS. CRIER: Before talking about the specifics of any modifications or amendments, which I'd like to touch on during this panel, you talked about corruption in Congress or civics education not being the province of a constitutional convention. Do we really have a group that would be appointed to work on this issue, that would be prepared to deal with the kind of basic structural issues rather than the hot-button issues that might be more compelling? Because I've been working with the ABA on a group trying to re-promote civics instruction in our



schools. And it's quite surprising how much time is devoted to other things and how few people actually understand the system of state or federal government in this country.

Do we have a population that would be prepared to conduct this, even though -- even though they certainly weren't instructed prior to taking it on in the original Constitution?

MR. CARGILL: Yeah, I think that's a -- that would be a huge challenge. And, more particularly, who would the delegates to this convention be and how would they be chosen? I mean, inherently, political process no doubt. Would they be, you know, nominated by the particular state? I think there was one idea that they could be popular elected in the various congressional districts.

I think it would be very difficult, again, given -- whether it's intense partisanship, special interests in our modern politics, to create, even come up with, a process by which this discussion would take place. I think you would have to incrementally approach it. It could not -- you know, it could not happen, certainly, overnight. It would be a very long-term process getting there. And that would create enormous instability and uncertainty, not only in our political processes, but I can think of very negative consequences for our economy as well with that uncertainty and how markets would react.

MS. CRIER: American Idol voting, we do have an option. Anybody else want to comment --

MS. STROSSEN: Well, speaking of incrementalism, I guess I would like to ask Sandy: Why a convention? Why not the alternative approach, which, as Garrett has recited, has brought us wonderful transformations from the Bill of Rights on?

MR. LEVINSON: Well, I think that my good friend, whose work I admire greatly, Garrett Epps, is also too complacent. Yes, it is true that the reconstruction amendments change the country. Also, as is pointed out by Justice Alito, the amendments during the Progressive Era were very important. But some of us believe that the Fourteenth Amendment was not really and truly an Article V amendment. It was proposed and certainly ratified at the point of a gun. And so it's hard to know exactly what one learns from the process of the addition of the Fourteenth Amendment.

But, more importantly, we do live under the Founders' Constitution, if you ask: How many branches of government are there? How many branches of Congress are there? Is there an absolute veto of one branch from the other? Does the President have the veto power? How do we elect our Presidents? The Framers would be astonished by how similar it is.



With regard to who would be at a convention, if we are going to think sufficiently out of the box, even to imagine a constitutional convention, I have an answer to the issue of who would be at the convention. It doesn't involve election. It doesn't involve appointment.

Go back either to ancient Greece or to the way we select juries. Select 5 to 700 ordinary citizens from across the country. Pay them for two years what a United States House Representative gets. Give them a very substantial budget to hold hearings in which lots of lawyers, lots of people from every interest group in the country, could testify. Give them a budget that would enable them to visit countries across the world to see how they resolve problems of modern governance. And at the end of the two years, they would come up with a set of proposals.

It seems to me that if you're afraid of election for very, very good reason because either people don't know enough or it would simply turn into a single issue circus, or if you're afraid of appointment because you think, again, altogether rationally, that the people doing the appointing would just stack the deck in favor of their own interest, then, as I say, ancient Greece and the way we conduct literal life and death examinations every day in our judicial system (inaudible) away. I think if you treat ordinary people seriously, they can rise to the occasion.

MS. CRIER: But, just remember, it was like the wealthy landowners that voted in this country who the populous was from which those people were selected and --

MR. LEVINSON: Sure. But today, if you did a --

MS. CRIER: It's a very different group.

MR. LEVINSON: Sure. But if you did a random selection today, if it's, say, 700 people, you'd have some people passionately committed to some of the value issues that tear us apart. You have other -- most political scientists would say that we're actually not so polarized a country as our political system is because of things like partisan gerrymandering, the nature of the Senate, and stuff like that.

And that's why I say that I think ultimately what's at issue in discussions of thinking about the Constitution, including a new constitutional convention, is the extent to which we still believe the Democratic project, which at bottom requires that you have a certain trust in your fellow citizens, that they will, in fact, rise to the occasion if you give them real responsibilities.

MS. CRIER: All right. Eric.



MR. LANE: I want to get back to your question that you asked -- I mean, originally you talked about it, about whether we would be ready for it or this ABA project that you're working on about civics. The journalist Ray Suarez had said -- and many people would agree with this, that we are Americans because of our Constitution. In other words, we're not a country that's based on land or on clan or on religion but on these principles announced initially in our Constitution but obviously developed by all these battles that we've had over it and changes that have come for a couple hundred years.

And Ronald -- an odd pair, if I may say this, Ronald Reagan, in his farewell speech, and several years later Derek Bok, who was then the president of Harvard University, both arrived at the same conclusion about where America was and Americans were, which was that the thread of the American narrative was fraying, that people were becoming disconnected from these values that the Constitution, through its -- not just the parchment but, you know, the significance of its debate and the significance it became in the -- you know, in our history. And both of them felt that if we -- if we lost this narrative thread, the country would all be about "I" and never about "we." And to me -- and this is what our book is about -- to me, it is this issue that gets to this question of civic literacy because everybody understands what "I" is about. We all know what "we" want. "We" want abortion, or "we" want right to choose, or "we" want this right now, or "we" want that right now. But few people have that sense of what "we" are about. And that's something that's taught. That's not natural to people. We don't even know what our neighbors are like often and what their interests are.

So I think that this point that you're making about civic literacy and the failure of us institutionally any longer to take it upon ourselves as a responsibility to make sure the people understand the values of the Constitution really preclude us, really, you know, having a debate right now on the Constitution and certainly having a constitutional convention at this time.

MR. EPPS: Let me say a couple of points. First of all, I want to say that as far as civic literacy, I'm way ahead of the curve. I would great in the -- no, I can name all seven of the dwarfs and four members of the -- well, okay, three members of the Supreme Court.

But I do want to make a serious suggestion, which is, you know, a lot of what we're going to discuss here is a kind of prediction of events that might or might not happen. We can get more information about this without wagering the whole future of the Republic. And I think -- and I hope Sandy would be behind this, too. This group and what's being done here today is a wonderful start. But why don't we have a -- and get maybe the Saurus (ph) people would fund or somebody -- have a mock constitutional convention with adults chosen -- you know, maybe the League of Women Voters could be involved -- in every congressional district.



See if we can send somebody, have them meet in secret the way that the Framers of the Constitution did and see what they come out with. It would be -- it would be a fascinating sort of heuristic to see how well they could do.

And, secondly, I think it would spread and generate the kind of debate that I think everybody on this panel would like to see about how our Constitution works and engage ordinary people. Because if you sort of showed them a new Constitution or a radically altered Constitution, one could hope they would say, you know, "Shazzam! Why have you done this?" And then maybe there'd be some discussion about the underlying values behind it. But I think this is something that we could do without any great risk. And it might lead us to change our minds about whether this is a good idea or not.

MR. STEELE: I just wanted to -- a couple of points on this. First off, I really do appreciate Sandy's view of the jury process. The only question I have is: Have you served on a jury lately? I mean, that process is dramatically different than what we see on paper. You're dealing with two classes of people: Those who want to get out of it, and those who want to get on it for all the wrong reasons. And I think that that is one of the dangers that you have to kind of watch for as you sort of develop what this process is.

We are very much motivated by the "I" and not so much the "we." And I think that there has to be, leading up to some type of convention, an educational process. And I only note one example of why that's important.

I remembered in 2000 -- irrespective of where you happened to be on the outcome of that election, what struck me and stunned me, quite frankly, were the number of American citizens -- I didn't care how old they are or what their background was or where from the country they came -- who did not fundamentally understand how we elect the President of the United States, fundamentally did not understand that they're not electing the President; they're electing electors and what that meant.

And so I think before we get on this very slippery slope of opening up our Constitution and, most importantly, our nation and its history and its legacy and not -- not just that but its future to this convention process, that we focus on the re-education of American citizens, since this is no longer about landed gentry. This is no longer about, you know, 62-year-old white men who own, you know, half of -- half a state. But it's about women and minorities. It's about young and old. It's about the people we call Americans who will have a profound say and role in what the future of this great experiment we call the United States will be about.



And I want us to be very careful and very smart about that. And I think it begins with educating our own first about who we are and why we have done what we have done before we figure out what we need to do next.

MS. STROSSEN: Under-enforced. But I think it's really important to understand that no matter how well-articulated a system of government we might come up with, how many rights we might guaranty as a matter of theory, it is not a self-executing document. It depends on people who know, for example, what their constitutional rights are, on government officials who know what people's constitutional rights are and are willing to stand up for their rights and to enforce their rights.

I think from an individual rights perspective, one of the best constitutions that was ever written was the Constitution of the former Soviet Union. Did it mean that people there had rights? Absolutely not. So my concern, as somebody who is always trying to translate the wonderful ideals in the Constitution into reality, is that we don't get so obsessed with words on a piece of paper but we spend more of our energies in encouraging and empowering people to use the tools that are already there in the Constitution to call the President to account, to call the Congress to account, to make sure that it is really providing -- living up to the great potential that it has.

MS. CRIER: Garrett, let me ask you to take on the issue of what such a convention should address. Because what Nadine is saying -- I think there are a lot of principles. And every time they think of -- Congress saying there's some new law, oftentimes I say, the laws are already there to do what you're trying to do. Quit trying to make headlines. There are a lot of things that already exist if we force them to take those steps.

What sorts of things did Larry bring up that really would mandate -- rather than the amendment process, as long as it might take, or legislative action that would require a constitutional -- or should require a constitutional convention?

MR. EPPS: Well, I hope you won't find me excessively unresponsive. I think most of --

MS. CRIER: You can avoid the question.

MR. EPPS: As a law professor, you know, it's my job to take your question and repeat it back in incomprehensible form. I think -- I don't know any of the reforms I saw in the book that couldn't be addressed through the Article V process. And, as Larry says in the book, a constitutional convention changes only the front end of the amendment process. They still -- each amendment -- it's for proposing amendments. So writing a whole new Constitution, I think, is not in --



MS. CRIER: It still has to get ratified.

MR. EPPS: Yes. Well -- and a whole new Constitution is not what they're supposed to be doing. They're supposed to propose amendments, which then would still have this very difficult process of amendments in three-quarters of the states.

Now, the one caveat I have to -- and the things I would like to see reformed are exactly the kind of things that Sandy's talking about, structural things. I believe the President should be elected by popular vote. I believe the right to vote should be written into the Constitution so that every citizen has that right to vote.

We can disagree on the wisdom of any given reform. But I will tell you something that concerns me. And Justice Alito touched on this in his address. The constitutional convention of 1787 was in part a deliberative body, and it was in part a coup d'etat because they went in without authorization from Congress to write a new convention -- Constitution. They wrote a new Constitution, and they got the people to ratify it by a process they made up that directly contradicted what was then the Constitution of the United States.

I worry that a constitutional convention, particularly one held in the full glare of TV with O'Reilly and Olbermann debating every night about what the convention did and so forth, that it might -- it might easily lead to something similar. And I don't think we want to live through a coup d'etat. I think there are important structural issues. And those are the ones I'd like to see addressed. I don't -- I don't think the Bill of Rights needs tinkering with or narrowing. But I think that -- that various ways in which parts of the government are selected and relate to each other need change. But I think it can -- it can be done and in either case would be done by individual amendments.

MR. LANE: Well, I see this as a great opportunity for lawyers to become even more pundits. They could be on these shows every night doing a play by play of what was happening at the constitutional convention so it would be another good job --

MR. EPPS: Can you get me on Court TV?

MR. LANE: You'd be on every --

MS. CRIER: No problem.

MR. LANE: You'd be everywhere. I mean, I think basically -- I don't want to put words in Larry's mouth. But as I understand Larry's proposals, they are balanced. So, in other words, he takes a little power from the legislature, adds a little power here. So the reason he's calling for it as a constitutional convention -- again, I've listened to him talk about it -- is because you have to do it all at once to keep the



balance of power. So I think that's why he himself thinks it should be a constitutional convention beyond being a way to focus on the Constitution.

MS. STROSSEN: Well, it could still be a package of amendments the way the Bill of Rights was.

MR. LANE: No, no. I'm not arguing -- I'm not disputing that. I'm just -- you could do these -- every one of them could be done -- every one of them could be done by amendment. And the war power thing could just be done by the legislature acting as they ought to and as they should.

MR. EPPS: I think if Congress were to pass a law convening a convention that consisted of Larry, it very well might be a really -- you know, we haven't seen so much brain power since Jefferson dined alone. But my guess is that that's not going to happen.

MS. STROSSEN: But the weight of authority is that even if the call for a convention were relatively limited to a particular amendment or particular set of amendments, that that cannot be controlled, that once the convention convened --

MS. CRIER: Correct.

MS. STROSSEN: -- it's what's called a runaway convention. They could change everything, including, as happened with our current Constitution, the amendment process itself.

MR. LEVINSON: Well, let me continue to play my role of the outlier. First of all, why not leave this up to Congress to do it? One answer -- actually Garrett has given and Larry gives -- because this is all tied together in an intricate package. The other is that one doesn't have to disdain a single member of Congress in order to say that they're extraordinarily busy dealing with pressing issues of the moment. And they really don't have the time to take off a year or two in the really serious study of these kinds of issues. And that's just built in. You don't get Congress's attention on most of these issues unless it is a crisis.

And so one of the question -- I mean, I think the Constitution, in certain respects, is like driving a car with bad brakes and slick tires. But we've gotten home safely in the past. So, like teenagers, we can say, "Well, we'll do it again." You look at 1948 or 1968, changes of very few votes would have thrown those elections of House of Representatives. And we would have had the crises that a lot of people are waiting for. You can go to a lot of other examples. So it may be -- as a political scientist, I think I'd predict we're going to have to have the train wreck before we get people's attention because if you simply say, Look, these are dangers that are present in the Constitution, people will say, But they really



haven't happened yet. Yes, the Constitution did generate a war that killed two percent of the American population. But, you know, that's not going to happen again. And it's not. I don't think the Constitution is that serious a threat right now. But I do think that the tone of complacency that runs through this panel guaranties that we are going to have to wait for the train wreck to happen.

MS. CRIER: What if you -- if you could take Larry's book and make it your own right now, what are the structural issues that you would say are calamitous and thus need attention now?

MR. LEVINSON: Okay. Let me give you just two. I give different answers at different times depending on what I really do think are the most important. Right now I think clearly the way we elect Presidents and the Electoral College in all sorts of ways. Ranging was mentioned this morning, the emphasis on a few battleground states.

My wife and I split our time between Massachusetts and Texas. We never know if there's a presidential election going on. No candidate has any incentive to visit us -- to the fact that there is a possibility that the Electoral College won't work. It could have happened in '48 or '68. It could have easily have happened in 2000.

How are deadlocks resolved on the basis of a one-state one-vote rule in the House of Representatives so that Wyoming has the identical voting power as the 53 Representatives in California? I think this is a constitutional crises waiting to happen.

But my current view -- and this is going to sound political and I suppose it is, but constitutions structure politics. I think it is very dangerous to have a Commander in Chief of the United States Armed Forces in which most of the public has demonstrably lost confidence and there is increasing reason to believe that most of the Armed Forces have lost confidence.

Most political systems -- and you don't have to go all the way to being a parliamentary system -- most political systems would have ways to get rid of a Commander in Chief that's --

MS. CRIER: Do you want a recall vote, the opportunity to recall?

MR. LEVINSON: California has a recall. Other systems have votes of no confidence. Incidentally, with regard to coup, I think the current Succession in Office Act by which a Republican could cede a Democrat -- Republican Speaker of the House can cede a Democrat, or as is currently the case, a Democratic Speaker of the House could cede a



Republican -- I think it's both unconstitutional and terrible policy. I think you should have a shift of party only after winning an election.

But here -- and that was a parliamentary system. But here you look at the UK. When Margaret Thatcher, the most important peacetime Prime Minister in the history of the UK, was perceived to have just gone too far and to be a liability, they threw her out almost overnight, replaced by John Major who won the next election. I'm quite confident, frankly, that if we had a vote of no confidence procedure, George Bush would not remain President very long, that the Republican party supports him to the extent they do because they have no alternative within our structure of government.

MS. CRIER: You said 1968. There are other examples of that. Let me go down the line, and Michael, just ask -- you can certainly comment on that. But are there one, two -- three issues that you say are worthy of immediate national debate in the structural arena?

MR. STEELE: First off, I would just -- I think that Sandy makes the general point that I've been trying to focus on. And that is, you know, at this moment, these are two issues that are important to him that he sees that needs to be addressed. Next year it's a different moment. And this is the challenge you face because we are at war, and people have angst about the war and the performance of the President. Then how we elect the President -- going back to 2000 -- how we keep him in office -- dealing with, you know, your particular angst about his performance -- becomes the thing that we need to address constitutionally. And that's the slippery slope that we can find ourselves on where we begin to either emotionalize or politicize the constitutional process.

And what I've always admired about this process, given the ugly history of this nation, particularly with respect to African-Americans and other minorities, is that somehow we manage to work our way through.

Now, I can tell you that for a number of folks in my community, a constitutional convention would hold a whole different set of issues for us that we'd have to wonder whether the folks in this room really want to talk about. And so you got to be prepared for that, folks. When you start to open up this box, it's not just about your issue. It's about my issue, too. And I grew up in a part of town where those issues are very different. And so this is the slope we'd better be prepared to get on as a nation.

So you can talk structure all day long. Structure ultimately leads to what I feel and what I think and what I believe this country should do about reparations, what this country should do about its insistence in sustaining the systemic roots of slavery and segregation and the view of a lot of people.



So how does a country kind of grow out of what it's into now into this -- this new era where you're going to put all that out there to deal with in two years? And my suggestion is: You're not. At least not effectively, certainly not well. And so I'm less concerned about the structure -- structural arguments at this point because I don't think that really deals with what people are really thinking and really feeling in terms of what they want to see fundamentally changed about the United States. And that's why it's important for us to first understand what this country is about before we can go down that road.

MS. STROSSEN: When Sandy talks about those of us who are opposing a constitutional convention as being complacent, I have to disagree. I think Mike better describes that feeling, which I would describe as one of angst, to use your word, or anxiety; and that is, you know, Sandy says, Well, we're going to have a constitutional crisis if we don't have a constitutional convention. But a constitutional convention, by definition, is a constitutional crises.

Once a convention is called, that means everything is up for grabs. What's going to happen with foreign relations? What's going to happen with the stock market? What's going to happen with anything? Everything is up for grabs.

Now, on the specific issue that Catherine asked, What structural change would we like to see -- and I believe that there are structural changes that can continue to be made through the alternative amendment process, either individually or in groups. And I will say, speaking only for myself and not at all for the ACLU, which has not taken a position on this, of the various reforms that Larry proposes, the one that has not been talked about, other than in a negative sense -- I find it extremely intriguing and worthy of discussion -- is the idea of having fixed limited terms for Supreme Court Justices and perhaps for other Federal Court Judges that was referred to by Justice Alito from a negative perspective.

But I think it really is clear in terms of the demographics that the amount of time that Supreme Court Justices are now serving is so much greater than has been in the past and so much greater than had been contemplated by the Framers -- thanks to Marbury versus Madison and other developments that perhaps were not contemplated by the Framers, there is an enormous amount of power in the Federal Judiciary, which I -- please don't get me wrong. I think it is very important structurally that we do have individuals -- officials who are not directly accountable to the Electorate, who can be counted on structurally to stand for neutral principles -- including those that are in the Constitution -- and not be subject to concerns about where the -- which way the political winds are blowing. But I think the idea of having such long unlimited terms is something that could well be re-thought.



MS. CRIER: Nadine, just so you'll know, I supported it in an earlier panel today. I'm with you. Eric.

MR. LANE: I'm going to agree with something that Sandy and Larry have said, although not in terms of the convention but in terms of issues. I think the issue of presidential power is not only the most significant issue today but in the understandable concern we have about a long War on Terror is going to be the most important issue facing America and American constitutional structure over the next 10 or 15 years. I have no doubt about it in my own mind. And I would suggest to you this is not partisan. President Clinton had some of the same ideas when during his presidency.

But I would suggest to you the willingness, without embarrassment, of the Vice President of the United States to justify actions by the President as "monarchical prerogatives" is something that already demonstrates to us we are far beyond where we might have been a number of years ago, that you could say that the reason the President can do this is because of "monarchical prerogatives." The powers of a king is really a troubling notion.

And even the Democrats, whom were able to pass, although it only a six-month extension of the Patriot's Act, in one night. Now, whether you favor a Patriot's Act or you favor the war in Iraq or maybe you think that the post-war efforts have been wonderful, it's amazing that anybody could tolerate a system that -- a democratic system that allows these kinds of decisions of our lives of our citizens and lives of people of other countries and resources of our citizens to be, you know, used without any debate.

And I see this as the single-most serious threat to our democracy right now. And as long as this War on Terrorism is going on, it's going to continue there. So I think Sandy's -- to say that this isn't just this day's flavor. This is going to be a problem for a while. And I don't know whether his solution makes sense, but I certainly think this ought to be --

MR. STEELE: Can I -- Can I -- just to follow up on that, does the constitutional convention solve the problem you just described?

MR. LANE: I'm not arguing --

MR. STEELE: No, I'm just -- I'm just saying, does a change in the constitutional structure solve that problem? Is that how Congress decides to make decisions, in the dead of night, without exposing itself to the people of this country and the presidency running as it freely decides without, again, accounting to the people of the country or --



MR. LANE: I don't -- my answer to that is I don't know. I mean, Sandy and Larry -- and they can speak for themselves -- seem to think that we need a constitutional amendment. I don't know if we need a constitutional amendment for that. I don't think we need a constitutional convention for that.

But if you're listing issues -- I don't want to abstract by this point and just merely start listing issues that we care about. This is a threat that exists at this moment. So, to me, whether or not -- you know, Congress could do a lot about it. But having a discussion about it, whether the discussion ended up having Congress fight back or whether the discussion ended up in some kind of constitutional amendment, we still ought to be having a discussion about it.

MR. LEVINSON: Yeah. Larry suggests a six-year presidency, as did Lloyd Cutler in the 1980s. I think this is a terrible idea, unless it's combined with a mechanism for a vote of no confidence. At that point, I think it becomes a genuinely interesting idea worth extended discussion because one of the things that Larry points out is that if Presidents from day one simply spend all of their time campaigning, then we lose something. But it does seem to me -- I think all of us agree it would take a constitutional amendment. We can't do it by statute.

MS. CRIER: Garrett.

MR. EPPS: I just -- on a point of privilege, indeed, I have to acquit myself of the charge that I'm complacent because I don't support a constitutional convention. I think that quite far-reaching reforms -- I've been writing for some time about them -- and they're very similar to ones Sandy is advocating -- I believe we have a better chance of getting them in the same fashion through the Article V process than through a constitutional convention.

And the constitutional convention is an untried mechanism that strikes me, reading Larry's chapter on it, because he says, Well, of course we do this; and then we'd have this rule, and then this and this. It could go badly off the rails. I think that we can get debate going on the very serious problems I see more easily through the Article V process. And I agree with Sandy and with Eric that the most important thing we need to look at is the way the Executive Branch is elected and functions.

I suggest we had the train wreck. It occurred in the year 2000. And it was followed by what I consider to be a coup d'etat and the imposition of a President who wasn't really elected. He may have gotten the most votes. In Florida, we'll never know.

But the -- Justice Alito mentioned The Three Stooges. America today seems to me a little bit like Curly. We're trying to paint a wall, and there's this bucket



swinging back and forth marked Article II, The Presidency. And it keeps hitting us in the head and knocking us down. And then we look around; we don't see what it is, and we go back to painting. And it comes back the other way and hits us, and we never notice that there's a grave design defect in our executive system. And we really do need to address it, and I would like to do that through the Article V process.

MS. CRIER: Lance.

MR. CARGILL: I think the particular question you asked is, Are there structural problems that are so calamitous right now in our political system that would warrant a convention? And, again, in a word, I would say no. I certainly -- again, all of us could -- could have a litany of changes we'd like to see in the political system. In the book, several ideas that I really love -- in Oklahoma we have term limits I think that serve the state very well. I would love to see those on the federal level, not just for the judiciary but the legislative branch as well.

The constitutional balanced budget, we have that in Oklahoma. We'd love to see it at the federal level. But, again, those are changes that can be addressed in the current amendment process. And the potential benefit of any of those structural changes, I think, are outweighed by the potential risks and costs of the -- of the full-blown convention.

MS. CRIER: We have microphones. And in just a couple of minutes I want to start calling on people in the audience. If you want to take your place at the microphones if you have any questions -- this is going to be a much lighter note -- possibly lighter note, ending on how seriously you take the question -- but I think worth asking. Should there be an amendment to allow naturalized citizens to run for office?

MR. LEVINSON: Yes.

MS. CRIER: Arnold wants to know.

MR. LEVINSON: That's a good example, actually, of a very, very obscure procedural part of the Constitution that is having tremendous consequences this year. Because each and every one of us knows that if it weren't for this part of the Founders' Constitution, which has not been effective by any subsequent amendment, Arnold Schwarzenegger would be running, either as a Republican or as an Independent. But he'd be a serious force.

Given my own politics, I wouldn't cheer Schwarzenegger on. But I think it's disgraceful that the reason he can't run for the highest office is because he's a



naturalized citizen. We either believe that all citizens are equal -- there are no second-class citizens in the United States -- or we don't.

MS. CRIER: Does anybody disagree with that?

MR. STEELE: Yes. I disagree. Sorry. You know, I just -- it just doesn't feel right to me for a whole host of reasons. And I just -- I mean, I appreciate the idea. You know, Arnold I know well and, you know, would love the idea of his running. But, you know, he's -- he's not born here. He's not -- as we framed it under our Constitution. And I think -- I think -- fundamentally, I thought -- when it first came up, what struck me was, given the times that we live in and given the nature of the enemies that we have to deal with, I just would be very suspicious of the process and just very concerned about -- about saying, Well, you've been here 20 years, now you can be -- now you can run the country.

MS. CRIER: But you'll remember, the Manchurian candidate was American-born. All right. Let me go over here --

MR. STEELE: No, exactly. No, exactly. No, no, no. That's exactly my point. Yes, that's exactly my point so --

MS. CRIER: Let me go to this side of the room now.

FROM THE AUDIENCE: Thank you very much. After President Nixon resigned, President Ford famously declared, The Constitution works. And my question is: Do you agree with that statement now in hindsight? And was Watergate the train wreck that you've talked about? And, if so, why has the Constitution survived since then?

MS. CRIER: Does anybody want to take that up?

MR. LEVINSON: Yeah, I can start. I think what worked was the peculiarity of divided government. That is, if you have a Democratic Congress and Republican President, the Democratic Congress will, in fact, engage in oversight over a Republican President. We saw in the late 1990s, if you have a Republican Congress and a Democratic President, then Congress, not for Madisonian reasons -- Madison was absolutely wrong when he said that members of Congress would just naturally engage in oversight because Madison didn't think there'd be political parties. But when you have divided government, you get lots of oversight. And Richard Nixon, thank God, was the victim of that oversight. We had no oversight in this country between 2002 and 2006. No, the Constitution did not work between that period, and we're paying an immense price for it. Now, because of divided government, we are getting some oversight.



MS. CRIER: But it was also the Howard Bakers and the members of the Republican party who had the political courage to go to their own President and get him out of there.

All right. Over here.

FROM THE AUDIENCE: We talked about polarization. And in this country we're led to believe that there are two cultures. There's like a red culture and a blue culture. There's a liberal culture and a conservative culture. There's a culture that likes beer, and there's a culture that likes wine. But I don't think this is an explanation of our politics. I think this is a creation of our politics. I think we're led to believe that we're more divided than we actually are.

All three panels -- it was actually kind of funny -- like a Conservative would agree with a Liberal, and then you guys would laugh because you're not supposed to agree. But I think that's -- I think that's sad that that's funny because educated people should be able to agree without sort of conflicting their identities.

So my question is: How can we sort of rise above this like partisanship? How can we give our public discourse a higher integrity than it has now?

MS. STROSSEN: I can speak as the head of an organization that has always been staunchly non-partisan. We never endorse or oppose any official or candidate precisely because we know that the values that are important to us, civil liberties, completely cut across all party or ideological lines.

And, you know, some examples have been given here; for example, for my liberal friends who love to think that if Al Gore had been duly-inaugurated as President, things would have been different post 9/11. I could not disagree more because before 9/11, the worst terrorist attack on U.S. soil was the Oklahoma City bombing. And as has been alluded to, President Clinton and then Attorney General Reno reacted exactly the way Bush and then Attorney General John Ashcroft did and, in fact, the way every Executive Branch has always reacted in any time of national crisis, regardless of political party.

And some of our strongest allies -- I was not joking when I said it is conservative to conserve the values on which this Constitution was founded. The ACLU has always worked with extremely strong conservative Republicans, individuals, as well as citizens' groups. You know, one of our strongest allies -- not only post 9/11 but before that -- has been the National Rifle Association, right, traditional gun owners' groups, some of them still called religious rights groups -- right groups. We might disagree on particular issues. Certainly we disagree strongly on particular issues. But on individual privacy, on restraining government power to invade people's private lives, we agree.



So I think the really important thing is to look at an issue-by-issue basis, to look at it candidate by candidate and not to make these crude and over-simplified distinctions, as you say, between red states and blue states, Liberals and Conservatives, Republicans and Democrats. It's kind of -- it's an oversimplification, and it's an insult to the nuance and complexity of all the myriad issues that we face.

MR. STEELE: I think you hit it right on the head. And what you described is a process in which a whole lot of people make a whole lot of money. And they thrive on it. They live on it. And I think, having gone through this process as an elected official in my State of Maryland, having run for the United States Senate and having paid attention, very close attention, to the people of my state, both liberal and conservative, white and black, you know, whatever their situation happens to be, what I have found is that we have been drawn into these polarizing corners in which we refuse to communicate with each other, where I presume, because she is with the ACLU, that she thinks and behaves a certain way; and when you look at me, you presume, because of color of my skin, that I think and believe certain things.

And that is not the America that I want for my children nor the America that you, as a young leader, should help -- you know, should lead in the future. And so I think the opportunity is here for us to take a closer look at how we engage in the body politic and where we, as citizens, decide enough is enough. And the one thing that I have determined, as you look at this presidential election that's beginning to unfold, the American people are very much at that point where they're saying, Enough is enough.

Change means a whole lot more than what Hillary, Barack, Giuliani or Thompson thinks it means. And they'd better pay close attention to folks like you and those out here, who when they say "change," are looking for real change. Otherwise they're going to change a whole lot of folks who are now coming to Washington thinking that they got a job.

(Applause.)

MR. LANE: I think there are a number of issues that we -- I don't like the word "polarize," but there are a number of very significant issues on which Americans disagree. We don't have a consensus on them. And they are -- they are at the level at which government operates. So of course we all want to be one; and we want to, you know, live together and be peaceful and exchange ideas.

But the truth is at the level at which government operates, regulating conduct, transferring wealth -- at those levels we have a lot of disagreements. And we



have for the last bunch of years. You can see it every day, med -- you know, on taxes, on Medicaid, on abortion, all of these issues. And we do disagree on them.

The problem is that we've turned that disagreement almost into fear-mongering. If these guys get in, then this is going to happen to you. And the political candidates have used that fear-mongering to divide people in order to make them scared in order to benefit by winning for -- running for office and -- you know, political office. And that's on all parties. There are people in both parties that don't. But there are a lot of people on all levels of government that do.

And so, again, it's one of these kinds of -- sort of centripetal forces that happen in the country. And people get success from it, and they use it again. And they get success on it. And so you see these presidential candidates right now, you know, just on the verge of all starting to play on these kinds of fears that people have.

So I think that we should be trying to think of ways to hold political people accountable, political officials accountable -- you, of course, excepted -- accountable for those kind of things.

One last confession -- I'm seen as a liberal by people, but I drink beer.

(Laughter.)

MS. CRIER: Over here.

FROM THE AUDIENCE: Hi. Mr. Steele made a comment about the prospect of having to educate -- create an educational program before any kind of convention or set of changes to the Constitution would take place. And I want to comment on that, and then I have a question. And then I'll try to be brief.

This day started with a group of students coming up before everyone, recited the abbreviated Constitution, and then talking about how the Constitution is the second-most important document ever written. And I thought that was kind of ironic in light of the topic here and wanting to, you know, fairly radically change this document. And that reminded me of something that Professor Levinson had written in his book about the reverence that we're brought up with for the Constitution and for the Founding Fathers and how this is taught to us over and over again from a very early age. And I never realized the extent that that is drilled into our heads until I was in law school reading the records of the federal convention. And I saw one of the delegates -- I think it was from Georgia or South Carolina -- say something to the effect of, Well, why are we debating this so much? This document's not going to last more than five years anyway. And I almost dropped the book on my foot.



And I guess my question is: No question the Constitution is a very important document. It accomplished a lot. But do we have to take a more fundamental look at how we're educating students from the ground up in public schools before law school, before even college, about how we look at the Constitution and, more generally, about how we look at our -- our system of government, which is not a true democracy, by any stretch of the imagination? And do we have to examine that very fundamental level of education before we can really think about bringing a citizenry to a position where they're ready to make some of the changes that are being advocated here?

MS. CRIER: Of course, we're not a true democracy. We're a Republic. Thank God. And you want us to strip away our myths and teach them the truth at the same time?

FROM THE AUDIENCE: Crazy thought, isn't it?

MS. CRIER: This is getting tough. Anybody want to take that up?

MR. EPPS: I would like to say that there was a suggestion made earlier in the program that we should have more civics teaching in high school. And as someone who has to teach law students what the Constitution actually says and how it was actually brought into being, I totally oppose that because my students who had civics come into class and they're channeling these entirely mythical statements about the Constitution and how it's perfect; it was framed in 1781; the Framers -- these far-seeing men, you know, were saying -- taking each other by the arm and saying, You know -- you know, some day the United States will reach from sea to sea, and we'll have interstate highways.

And they -- I have to say, Have you even read it? And most of the time they haven't read the Constitution. They have read their textbook about what a great document it is. And so I think we do need to change the way that we teach the Constitution. And the first thing, I think, is everybody -- lawyer, non-lawyer -- I don't care. Read the thing, and see what it really says. So I'm with you.

MR. STEELE: Yeah. I would absolutely agree. I think, quite frankly, the way you really begin to appreciate the myth is to understand the truth of it. So I think if more and more of our middle school and high school students read that passage and read that -- what the delegates at that time thought and how they thought it would only last five years so why are we even bothering. And then here we are, 200 plus years later, still talking about this document and seeing it as a living and breathing record of this -- of this -- of this nation, then they will, I think, have a better appreciation and sense of the importance of it; and certainly moving in or towards a convention of the type that we've been discussing, then maybe saner heads will -- will prevail. And all those interests that I started talking out -- talking about in the beginning will somehow be dampened, and the real structural



changes that we have discussed will get done. Otherwise, you got a mishmash. And I really think you struck a good point there.

MS. STROSSEN: And I have to come back to that you can't teach it as an abstraction. It is creating a system of government of "We the People." And going back to that comment about five years, Ben Franklin famously said -- you know, when he was asked, "What have you accomplished," he said, "We've created a Republic, if you can keep it." And "We the People," including starting with kids in grade school, can make a difference -- not just in, you know, knowing what it says but insisting that it has some meaning in their lives.

And I'm not exaggerating. You know, the ACLU gets -- maybe not five-year-olds. But kids in middle school -- certainly Mary Beth Tinker was 13 years old when she wore a black arm band and went all the way to the Supreme Court and got the Court **to say, you know, the Constitution does not stop at the schoolhouse gate. But it does stop at the schoolhouse gate if kids don't know about the First Amendment -- not just the First Amendment as an abstract promise but that gives them some right and, by the way, some responsibility.**

MS. CRIER: Well, what Nadine and Eric both said is we are not a nation bound by blood or religion. We are bound by ideals. We are bound by principles. And if we don't know and to some degree share those principles, then what binds the nation?

MR. LEVINSON: Let me pick up, though, on that question, one aspect. I'm very pleased to say that I don't think there's a single sentence in my book that engages in Founder bashing because I think given the political exigencies of the moment, they did, if not a fine job -- because it's already been pointed that there are some aspects of something he said in the Constitution that were distinctively unfine, but they did the best they could, given the situation they could.

My question is: What about the Constitution of 2007, not 1787? I think that Larry and I have both made a mistake, frankly, in over-emphasizing Thomas Jefferson. It's more understandable with regard to where Larry comes from than where I come from. But Jefferson was a noted hot-head. There would have been no Constitution, I suspect, had he not been in Paris, safely away from the Philadelphia convention.

I now wish that I had emphasized more the James Madison of the 14th Federalist Paper who said, "What really makes Americans great is that they're not fixated on the past. They're willing to engage in remarkable change." He evoked the revolutionary generation, which, after all, overthrew the British government. He also led the way in ignoring the Articles of Confederation. And it seems to me that it's that spirit of James Madison that should be taught -- not that we have to



be as ruthless with regard to the present Constitution as Madison was to the Articles of Confederation but that Madison, like Jefferson, was willing always to ask, What has this done for us lately? What is it likely to provide in the future?

And he was not a Burkian. He was not somebody who said, "Well, this is just the way we've done things." It's -- you know, it's not put us over the cliff yet so we'll just go on until it does. This was a really interesting political thinker like Thomas Jefferson. But, of course, Madison is always thought to be the moderate and safe one of that particular couple instead of the hot-head Jefferson.

MS. CRIER: It's a wonderful point to reach because it was a provocative question then; it is a provocative question now. Thank you very much. That's all of our time.

(Applause.)

MEG HEUBECK: Great to be here with all of you today. But the discussion about constitutional reform has been going on across this country in the nation's schools since Constitution Day on September 17th.

I'm proud to be here as the director of instruction, but I'm really proud to be here as a YLI teacher, one of the 34,000 teachers across this country that use YLI programs to encourage civic engagement and so that our students know the names of the Supreme Court Justices and the three branches of government and so much more.

For 10 years while eye has been doing civics all year every year, not just in election years, not just when it's convenient. Our novel approach this year took the form of the mock constitutional convention. So through YLI lesson plans, the mock constitutional convention ballot that was on our online -- on our web site, through this civil discourse, this debate and discussion, students across the nation have been discussing a lot of the issues that you have been discussing here and debating today.

Our Constitution Day activity lasted more than one day, so starting in September and we're finishing now and culminating with our mock constitutional convention. Nearly a half a million votes were cast in our mock constitutional convention, making it our most exciting and most successful project to date.

Our teachers made it happen by using our mock election tool kits, lesson plans, their own creativity -- we had teachers that did dramatic re-enactments of the original constitutional convention in their classrooms. One student used -- or one teacher used "The Times They Are A-Changin'" by Bob Dylan to start these discussions with their students. So they were able to take our materials and really



use them creatively to get students excited about the mock constitutional convention.

I came across a quote that was really inspirational to me when thinking about government and government teaching, which was, “The solution of the mess of democracy is more of it.” And the second part is most important, which is, And more time set aside to make it work. And I think that's what YLI does. We try to show teachers with the busy standard-laden education that they have how they can make more time for civics and civic education.

What you're going to see is a videotape that encapsulates what our teachers have been doing for the past month. There will be more to come. And if you visit the -- the web site, you will see more clips as they are sent to us from teachers from across the country. Thank you and enjoy the short program.