

Appendix A

Designing Citizens Panels and Related Methods

In the body of this book, I have tried to concentrate on ways to promote healthy democracy while giving only passing attention to how the ideas were developed and what tests were done on some of the key parts along the way. This appendix contains both some of the history of how the ideas were developed and some of the key tests of the process done in the late 1990s through 2001.

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Section 1

Do Voters Respond to Citizens Jury Evaluations?

One of the key assumptions of this book is that voters will pay attention to citizens panel findings that are relevant to an upcoming election. This attention need not be universal, by any means. So long as five or ten percent of the voters are prepared to switch their votes on the basis of what they learn from a citizens panel, that is sufficient to make the method a significant factor in elections. The problem with most democratic reforms is that they lack political power. So what reason is there to believe that a political reform based upon citizens panels will have any power?

The only direct test of this was in 1990 when the Jefferson Center did a study to see what the reactions of the broader public might be to the conclusions of a Citizens Jury that evaluated candidates on their stands on issues. This was the Citizens Jury on the 1990 Minnesota gubernatorial elections, done in conjunction with the League of Women Voters of Minnesota. Because the project had involved such a large number of people from around the state, we had a very large jury pool from which the jurors had been chosen. Out of the original randomly selected group of over 700 people, 522 had been willing to give us their names and addresses. After choosing 72 to serve as jurors (there were six regional hearings of 12 people each), we had 450 people remaining to use as a test group to learn about public reactions to the project.

We decided to mail out to them the results of each of the regional Citizens Jury projects that had been held around the state during the primary. Then, we sent a second mailing with the findings of the statewide hearings. Finally, after the election was over, we conducted a survey to discover what they thought of the jurors' findings. The results were as follows:

What do you think of the Citizens Jury as an electoral reform?

- 47% A very good idea
- 10% A so-so idea
- 1% A poor or very poor idea
- 20% Paid no attention
- 22% No answer, refused, or not reached

Did the Citizens Jury reports help you in making up your mind on how to vote?

- 35% Helped decide how to vote
- 19% Did not help decide how to vote
- 4% Don't know
- 20% Paid no attention
- 22% No answer, refused, or not reached

We then compared the votes of the 35 percent who said the reports helped them decide how to vote with the 19 percent who said it did not. The results are shown below. Since the statewide Citizens Jury came out strongly in favor of Carlson, it is clear that this was a strong influence on how people voted. Those who said the report did not help them in their decision voted almost like the state as a whole (which voted 49 percent for Carlson, 46 percent for Perpich). We analyzed these results by party to be sure that it was not a simple case of Republicans paying attention to the Citizens Jury findings while the Democrats ignored it. We found that Democrats and Republicans were distributed equally between the two groups of respondents.

	Helped decide vote (35%)	Did Not Help Decide Vote (19%)
Carlson	59%	39%
Perpich	26%	39%
Would not say how voted	15%	22%

If the reports had been sent to the whole state and all voters had responded in the same way, then, assuming that those who would not say how they voted split equally between the candidates, Carlson would have received 56 percent of the vote and Perpich 42 percent. These results can be played around with quite a bit. If, for example, we had

checked the sample to see how many normally voted and then applied the results only to voters, then those paying attention would surely have been more than 35 percent, since it is likely that voters would pay more attention than nonvoters. Another way to say this is that the 42 percent of the 1990 sample who did not answer or paid no attention surely had more nonvoters among them than voters. So it is reasonable to assume that if this information had been sent only to voters, the percent who were helped to decide how to vote would have been higher than 35 percent. How much higher is anyone's guess.

But if results like these were found in a voters guide sent out to all households in the state (as is done in a number of western states), then the number paying attention might well go over 50 percent and the effect on an election could be considerably greater than the one discussed here. (As noted in footnote 9 of Chapter 4, 62 percent of Washington state voters find the voters guide useful in making up their minds on how to vote.) In other words, this study shows that the project potentially could have a very strong effect on the outcome of an election.

Equally interesting was that only a small percent of the sample would have preferred it if the jurors had made a recommendation about which candidate to vote for, instead of simply evaluating candidates on their stands on issues. If you remove from the survey the 42 percent who paid no attention to the reports, then among those remaining were 8 percent who would have liked recommendations on how to vote, 87 percent who did not want recommendations, and 5 percent who did not know. Clearly the people preferred getting information that could help them make up their own minds, rather than getting a direct suggestion.

Section 2

Will the Public Like the Citizens Initiative Review and the Citizens Election Forum?

It is fine to discover that citizens panels could have a strong effect on an election. But would the citizens of a state ever want to adopt a campaign reform like this? Any reform that aims at empowering a trustworthy voice of the people must rise to the challenge of keeping the effort free from the influences of political interests. Could the people of any state ever be sold on the idea of adopting such a reform? After all, campaign finance reform is very difficult to get adopted, and that idea has been around for close to a century.

To answer this question, we commissioned two focus groups and three surveys between 1997 and 2002.

In 1996, when the IRS ruling came through and prevented the Jefferson Center from running further projects that rated candidates on their stands on issues, I decided to continue working outside the Jefferson Center to find some way to implement a project in which citizens panels would report to voters. I hired Doug Nethercut, a man with 20 years experience in the nonprofit world, and he and I set out to see what we could learn. We determined to do our checking in a state having the initiative process, because anything we designed was more likely to be adopted through the initiative process than through a legislature, assuming support could be found for it in the state.

Doug and I decided that Washington state looked like a good testing site. So in 1997 we hired the firm of MacWilliams, Cosgrove, Smith and Robinson to conduct four focus groups, two in Yakima and two in Seattle.¹ We wanted to see if any rhetoric existed that could successfully promote the idea in an initiative campaign. If there were any

quick slogan that might work, would it hold up under an hour or so of closer examination? We named our reform the Citizens Election Forum and set out to see what would happen.

Almost all of those who commission focus groups have a product or service they want to sell. This makes it tempting to set up the meetings to do the best job of presenting the product or service. But stacking a meeting in favor of your proposal only leads you to fool yourself. So the focus group sessions were carefully designed not to sway people to favor the need for electoral reform or the Citizens Election Forum. We started with a free-flowing discussion of elections and politics to let the participants express themselves and to see that, indeed, we wanted to hear what they had to say without influencing them one way or another.

After about 20 minutes, the moderator said that we wanted to learn their views on two different approaches to reforming the electoral process. The following two reform proposals were presented to the participants:

- A. Reduce the power of big money in elections. Place limits on campaign contributions and offer public financing of campaigns in order to reduce the influence of big money in elections in Washington state.

- B. Put elections back into the hands of the people. Give average citizens the opportunity to:
1) learn about the issues facing the state of Washington and recommend what should be done; 2) interview candidates to find out how they would handle these issues; 3) rate the candidates. This will all be carried live on TV, reported on the radio and in the newspapers, and the results will be mailed out to all voters.

The moderator then handed out three envelopes to the participants, labeled “A,” “B,” and “me.” In the “me” envelope were five one-dollar bills. Participants were asked to consider what they might like to give to electoral reform. They could give funds to A or B, or keep the money by leaving it in the “me” envelope. They could also divide the funds among the envelopes. The totals for all four focus groups were: “A,” \$55; “B,” \$98; and “me,” \$32. At the end of the evening when participants were asked to reallocate funds after learning in detail about the Citizens Election Forum, the amount allocated to it (“A”) dropped to \$96.

We were naïve enough to think that a result like this would sell the Citizens Election Forum to anyone who came across it. We even invited the leader of an electoral reform effort to attend the two focus groups in Seattle. She was completely unimpressed and paid no attention to our efforts. Other attempts to generate interest in Washington also failed. We simply did not have a good plan in place for making contacts and getting our ideas across.

We then spent several frustrating months trying to use our contacts in Pennsylvania to get something going there. When that did not pan out, we decided to step back and work more on the basic concept.

It was not until 2002, after the creation of the CIR (see Section 5 below), that we were far enough along with our plans to commission another set of focus groups. Although the focus groups in 1997 showed that people liked the idea of rating candidates on their stands on issues, this might not carry over to having citizens panels evaluate initiatives. Also, it was important to know how people would feel about an idea that could be proposed in their state, as opposed to the hypothetical introduction of the CEF considered in 1997. If the proposal seemed likely to be introduced, would they really want to pay for it and see it as part of government?

This time we worked with two groups of consultants: Pyramid Communications in Seattle, who in turn recommended that the focus groups be conducted by the firm of Davis & Hibbitts, Inc., a marketing and communications research firm located in Oregon. We decided to hold focus groups in Bellevue (a suburb of Seattle), Spokane, Yakima, and Vancouver. The goals we listed for the focus groups were as follows:

1. Discover what initiatives mean to the people of Washington, concentrating on what they have to say in their own words.
2. Discover what they think of Initiative Juries and the Initiative Jury Project. (*This was what we were calling the CIR at the time. One of the important things we learned from this focus group was that the participants did not like the name “jury.” As a result of questions about naming, we came up with the name Citizens Initiative Review.*) Do they like the idea? Would they vote for the proposal if it came before them as an initiative?
3. What suggestions do they have for naming our main concepts?

With regard to the first question, most participants said, when asked directly, that they like the initiative process. But they also have many misgivings about the method, especially with regard to getting sufficient information (60 percent of the participants said they did not get sufficient information on initiatives) and finding unbiased information.

Questions about the CIR took up a major portion of the focus group discussions. The participants were asked about the concept in general, and about specific aspects of it. The following table shows a comparison of the totals for all four groups for the five different descriptions presented to them.

Group Totals for Dislike/Like for Different Project Ideas

	General Description	Group Selection	Information Distribution	Organization & Funding	Evaluation & Sunset
I dislike this idea a lot	3	2	—	2	1
I dislike this idea	4	5	3	7	6
I'm neutral about it	9	11	6	9	11
I like this idea	18	16	25	17	16
I like this idea a lot	6	6	6	4	6
No response	—	—	—	1	—

Source: Davis & Hibbitts, Inc.; December 2000

The description of information distribution got the highest “like” marks from the participants. Otherwise, the number liking and disliking the different ideas remained constant throughout the discussion. A number of participants said their overall support for and level of comfort with the concept increased the more they learned. On the other hand, some participants indicated they liked the concept less the more they learned.

At the end of the focus groups, the participants were asked a couple of final questions, now that they understood the concept better.

If it actually came to a time when the Initiative Jury Project was proposed as a ballot initiative, would you vote for it?

No	4
Perhaps	1
Yes	33
No response	2

Would you sign a petition to get the idea on the ballot?

No	5
Yes	34
No response	1

As with any focus group, we were interested in the qualitative data gathered, that is, the specific responses given by people as reason for their answers. Although this was a rich source of commentary, it did not lead us to redesign the concept as a whole. We did discover that some participants who were a little hesitant about the concept as a whole were persuaded to support it because of the sunset provision.

The main change coming out of the focus groups was the changing of the name from the Initiative Jury Project to the Citizens Initiative Review. It was clear that many of the participants did not like the idea of calling it a jury.

The results of both focus group projects made us feel confident that the CIR could succeed in the state of Washington. But we felt that it was important to get a mandate from the people before going ahead. This was why we asked the League of Women Voters of Washington to host a Citizens Jury project on the proposal. Not only did we want the overall approval of a microcosm of people, but we felt that some key parts of the proposal, such as the level of funding, should not be decided by us, but rather by the people of Washington.

After the Citizens Jury was held in May of 2001, we saw the need for commissioning a survey to find out in detail how people in Washington would react if the CIR were placed on the ballot. At this point we were working with Sue Tupper and Kelly Evans, two consultants very experienced with initiative projects in Washington. They recommended two survey companies, one in Oregon and one in Massachusetts. We chose Moore Information of Portland, Oregon. Only later did we discover that the company does polling largely for Republicans. Although we always want to be sure that we are not identified with any political party, we were assured that their work was widely respected, so we continued to use them.

The interviews were conducted October 13–16, 2001, among a representative sample of 500 likely voters chosen from a list of likely voters. Potential sampling error is plus or minus 4 percent at the 95 percent confidence interval. Those surveyed consisted of 34 percent

who had voted in all four of the last elections, 39 percent who had voted in three of the last four, and 27 percent who had voted in only two of the last four. The overview presented by Moore Information started off as follows:

Generally speaking, Washington voters are positive about the state's initiative process. Most voters (84 percent) vote on all or most ballot measures, and a wide majority (66 percent) are satisfied with the current initiative process. The most endearing quality of the initiative process is that it provides a voice for the people. At the same time, complaints about the system are most likely to point to perceived flaws in the measures themselves and resulting court battles which often end up overturning a measure's passage. Importantly, a lack of information about ballot measures is not a leading concern or complaint about the state's initiative process.

The most important result was the test of the "ballot title." In Washington, there is a set format required for stating the nature of the initiative to be voted on. The number of words is limited and there is a specific format to be followed. This is the "title" that is placed on the ballot and, for some voters, is the only thing they will know about the initiative should they choose to vote on it. The wording of the title is therefore very important. A rule of thumb is that the ballot title should get at least 60 percent support before those proposing it risk gathering the signatures to have it put on the ballot.

We discovered that this rule of thumb has been around for a long time. When we asked Moore Information about the data to support it, they gave us information on eleven initiatives that had been on the ballot in Washington from 1996 through 2000 where they were aware of initial polling results on the title. The data, as shown below, is not especially supportive of the rule of thumb. Although support of over 60 percent certainly is desirable, clearly the majority of those initiatives with less than this (at least in the sample we were given) still passed. It seemed to us that if the opposition was not too strong, it would be possible to go ahead with less than 60 percent support.

Initial survey results	number of initiatives	number passing	number failed
Support over 60%	3	3	0
Support 50% to 59%	5	3	2
Support under 50%	3	2	1

The question about the CIR was stated as follows:

Here is a proposed initiative for the November 2002 ballot.

The measure concerns citizen review of statewide elections. This measure would establish citizens panels of randomly selected Washington residents to review initiatives. An independent commission would oversee the citizens panels, distribute their reports, and provide for evaluation and audits.

If a vote on this proposed initiative were taken today, would you vote “yes” to support it or “no” to oppose it? WAIT AND ASK Do you feel strongly about that?

	Initial responses	Final responses
Strongly Yes	26%	29%
Yes	26%	29%
(DON'T READ) Don't Know	18%	10%
No	9%	9%
Strongly No	20%	23%

The initial responses were given early in the survey, which consisted of 58 questions, plus demographic questions. Then, after a variety of pro and con statements had been read, the question was repeated. From the point of view of pollsters, it is the initial response that is critical in assessing the likely reactions of voters to an initiative. We were not pleased with these results, given that only 52 percent of the initial responses were favorable. But the poll also showed that the pro statements received considerably more support than the con statements. This, plus the increased support in the final responses, and our

assessment that a major campaign against the CIR was not likely to be mounted, led us to decide we had enough support to go ahead with the attempt to gather signatures to get the CIR on the Washington ballot in 2002.

It was also clear to us that a better ballot title would bring more support to our cause. For this reason, we went over the survey and the focus group results carefully and constructed a new ballot title. This was tested by Moore Information on January 15–16, 2002, in a sample of 500 likely voters in Washington. We used a “split sample” methodology to test out two different titles. Here is the main part of the report we received:

Title One: The measure concerns voter information on statewide initiatives by citizens panels. This measure would establish an independent citizens panel to review each initiative, and report findings in the Voters Pamphlet. The citizens hear testimony, deliberate, and report their reasons for and against the initiative.

Title Two: The measure concerns citizen review of statewide initiatives. This measure would establish independent panels of Washington citizens to review and provide voters with information about initiatives. The Secretary of State would publish the citizen’s reports in the Voters Pamphlet.

The results are shown in the table on the following page. As can be seen, Title Two came out slightly ahead of Title One, although this difference is within the statistical margin of error. Oddly enough, the two titles received an equal level of support when read first, so that whatever advantage Title Two might have come on its second hearing. Importantly, both titles received majority support among all demographic subgroups and in every region of the state. Although the results are not statistically significant, we still decided that we should use Title Two in proposing the initiative.

Results of Survey of January 2002

Title One	First reading	Second reading	Totals
Support	56%	54%	55%
Don't Know	18%	15%	17%
Oppose	26%	31%	28%
Title Two			
Support	56%	60%	58%
Don't Know	20%	13%	17%
Oppose	24%	27%	25%

We found these results encouraging, but still not as high as we had hoped. But at least we were able to get the support up to 56 percent on the first reading. This survey was done just at the time that we learned we were not going to be able to go ahead with the CIR project in the state of Washington for lack of funds. We let Moore Information know, and thought that was the end of our professional relationship, at least for a year or more. Therefore, we were surprised when we received a message from Moore Information in August stating that they had, on their own initiative, decided to see what voters in Oregon think of the CIR. They posed the following question to a sample of 340 Oregon voters on July 29–August 1, 2002 (giving a potential sampling error of plus or minus 6 percent at the 95 percent confidence level):

Here is another proposed initiative for the November 2002 ballot. The measure concerns citizen review of statewide initiatives. This measure would establish independent panels of Oregon citizens to review and provide voters with information about initiatives. The Secretary of State would publish the citizen's reports in the Voters Pamphlet. If a vote on this proposed initiative were taken today, would you vote "yes" to support it or "no" to oppose it?

The results were that 62 percent supported it, 12 percent opposed it, and 26 percent were unsure. We, of course, were very pleased with this. Not only was the support level over 60 percent, but the opposition was less than half of what we found in Washington. Beyond this,

we were delighted that Moore Information had done this on their own. They did not charge us for asking the question. Bob Moore, the principal, said that he found himself interested in the CIR and was curious about how it might fare in his home state. We were very pleased with his interest in a novel proposal to make democracy work better in Oregon.

This greatly encouraged us about the possibility of trying the CIR in some other state. In light of this, we asked Moore Information if they could tag a question on to a survey that they might be doing in Colorado. Moore did not have a survey going in Colorado, but recommended we contact The Tarrance Group, which does polling there. They were willing to tag our proposed ballot title onto a survey done in September. They posed the ballot title (slightly revised) to a sample of 500 likely voters on September 22–25, 2002. Here is the question and the results they obtained:

Now, thinking about potential initiatives that may or may not appear on the ballot this November. There is one proposal concerning citizen review of statewide initiatives. This measure would establish independent panels of Colorado citizens to review and provide voters with information about initiatives. The citizens' findings would be included in the blue book which is sent to all residents of Colorado.

If the election were held today, would you vote — (ROTATE)

— Yes, to support it, *or* — No, to oppose it?

- Sixty-three percent (63%) of Colorado voters indicate that they would vote “yes, to support” the initiative, while twenty-five percent (25%) would vote “no, to oppose it.” There are twelve percent (12%) of Colorado voters who are undecided on this proposal.
- Support for this proposal is quite strong throughout the state, standing at better than 60 percent in every media market in the state. Support for the proposal stands sixty-two percent

(62%) among men, and sixty-four percent (64%) among women voters. There is very little difference in support based on age, with over 60 percent of voters of all ages indicating that they would vote in favor of the proposal.

It will be noticed that we had to change the question for Colorado. It was asked late enough in the year that all of the initiatives had been qualified for the ballot. If we had retained the original lead-in sentence, this might have been confusing or misleading to well-informed voters. Also the voters guide in Colorado is not issued by the secretary of state, as in Oregon and Washington. Instead, it is put out by a commission of the state legislature, and commonly referred to as the "blue book." This means that we do not have exact comparability between Colorado and the other two states. Nevertheless, the results are encouraging here, too, even though the opposition is at the level found in Washington, rather than the low level found in Oregon.

1 It is well-known that political views in Washington differ considerably between the Seattle area and the area east of the Cascade Mountains. This is why two of the focus groups were conducted in Yakima.

Section 3

Making the CIR Trustworthy (Designing the Infrastructure for the CIR)

The key to the success of any of the reforms proposed in Part 2 is that the process established to deliver an authentic voice of the people be trustworthy. This means not only that the public must learn to trust the process, but that it is designed and run so that over the long run it operates in a way that deserves trust. As noted in Chapter 4, this problem of keeping those in power trustworthy is a very old one that has never been solved well. One need only look at the American presidency over the last three or four decades to see that the problem of trust has been central to the problems of American democracy.

Why, then, do I believe it is possible to create a trustworthy organization involved with politics? One answer is simply that things have gotten so far out of hand with the behavior of political elites that the time is ripe to try something new. In bad economic times, those dealing with the stock market always look for the bottom of the market as the time to buy. I believe we are close to the bottom of the trustworthiness of our political leaders and there is a great deal of room to create something that will work better.

The main thing I have done in trying to build a trustworthy institution is to start in a new place. The last thing one should do to build a new significant practice is to try to fix the worst problem first. Yet the problems with the presidency are so great that this is where many are tempted to start. Instead, we must start modestly and give more power to the trusted structure only as we see that the methods we are developing are successful.

The development of a trustworthy structure is something I have been thinking about since the early 1970s. At the time I invented the Citizens Jury process in 1971 (see Section 6 below) I was serving on two nonprofit boards: the African-American Institute in New York City and the Minneapolis Legal Aid Society. The former was my opportunity to be part of a group of powerful people and watch how they conducted their affairs on the board. The chair of the board was the president of the Rockefeller Brothers Fund. Others on the board included Nicholas Katzenbach, attorney general after Robert Kennedy; Arthur Goldberg, former Supreme Court justice; Vernon Jordan, at that time head of the Urban League, and a number of prominent businessmen. I resigned after five years because of the games that were being played. Powerful people appeared to be using the organization for inappropriate purposes and these problems were being ignored. The Legal Aid Society was not nearly as high profile an organization, but still it did win a \$200 million case against the U.S. Department of Agriculture at the time I was serving as president of the board. Although the organization conducted its affairs in an honorable way, I was aware that the staff basically ran the show and that we on the board were to a fair degree a rubber stamp for what was being done.

In other words, as I started dreaming about creating an authentic voice of the people that would be empowered, I was not just a graduate student sitting in the library and reading about how to make politics trustworthy. The experiences I had on these two boards, plus others I have served on since, have made me very alert to who is running the show and what is really going on. I approach any organization with considerable skepticism; indeed many feel that my level of skepticism is too high. One staff member of the Jefferson Center said I was the most cynical optimist she had ever encountered. Many who worked at the Jefferson Center felt that I overemphasized the need to operate in an unbiased way. It took me years to learn (with the help of a very skilled consultant from the field of organization development) that the avoidance of staff bias could not be achieved simply by the zeal of the person heading the organization.

Instead, it has to be designed into the operations of the organization and then honed through careful training of the staff, so that they all buy into the needed behaviors.

This means that the structure proposed to keep the CIR operating in a trustworthy way is the culmination of about 25 years of experimentation and reflection. The length of time spent, of course, says nothing about the success of the effort. But it is important for the reader to know that the structure proposed for the CIR is not something slapped together in a short time to meet an immediate need. As late as 1996 I was still making significant mistakes in how I conducted myself at the Jefferson Center so that each Citizens Jury project was conducted with minimal staff bias. I learned that it is not enough to have a clear set of rules about how things are done. It is not even enough to require that the staff be committed to these rules. It is a matter of getting the staff to work together to understand one another's approach to designing projects and to be able to take time off from projects to review performance in a reflective and nonthreatening way. Often a skilled organizational development consultant is needed to help the staff meet its goals properly. In other words, the production of a trustworthy and authentic voice of the people is more than the intellectual task of putting the proper framework in place. There is the basic human dilemma of getting an organization to be dedicated to serving others while still maintaining staff morale. Clearly too much selfishness in an organization can make it a nasty place to work. But striving for too much virtue can make people dishonest about their feelings and lead to some staff being judgmental about those who appear not virtuous enough. An unusual level of honesty, both with oneself and others, is required to minimize biases while maintaining morale. There is something almost saintly about this task, and that should alert us to the difficulties. The history of religion provides a long lesson on how poorly saints fit into organizational structures and how often the organizations deviate from the high goals the religion professes.

This section deals more with the problem of avoiding biases introduced by the staff than the problem of maintaining morale. This is not a proper balance. The efforts any organization takes to avoid staff bias must be offset by comparable efforts to nurture the staff so they feel supported in the difficult tasks they must perform. The more stressful the tasks, the more support is needed. Conversely, the more a staff pulls together to support each other, the more likely that an "agency point of view" can develop, resulting in biases in carrying out normal functions. The art we were striving for at the Jefferson Center was that of providing sufficient nurturance so the staff was motivated to provide quality service, while at the same time exercising sufficient attention to bias so that we could build an institution citizens will trust.

It is no mean task to create an institution that will function in a trustworthy way in the political arena. The classic study by Robert Michels² of the tendencies toward oligarchy of the European socialist parties is just one of the many works indicating that it should not be surprising if an institution engaged in the push and pull of politics falls short of meeting the idealistic goals it proclaims.

But for the CIR or CEF to succeed, the staff must come relatively close to meeting such idealistic standards. Since it is so rare for the staff of any organization not to impose its own values on the product they deliver, it will take exceptional work on the part of the staff and the board of the organization to maintain relatively high standards of fairness and convince the public that they do so. This is one of the reasons why the goal for the staff is to minimize staff biases, rather than pretend that biases can be eliminated completely. Perfection is not required, merely a good enough effort so that the views of the randomly selected citizens are the predominant factor in determining the final recommendations.

An Instructive Failure

Those involved in building new democratic processes should be engaged in work novel enough that some of the things they try do not work. One of the experiments I undertook at the Jefferson Center was the "Oversight Committee." The purpose of this committee was to empower former

jurors to review the Citizens Jury process itself. Starting in 1993, we brought together former jurors from four different Citizens Jury projects and charged them with reviewing the quality of the future projects conducted by the Center. The Oversight Committee lasted barely three years before it was disbanded as a failed experiment. Nevertheless, this experience provided valuable information for the design the commissions proposed to oversee the Citizens Initiative Review, Citizens Budget Review and Citizens Election Forum.

The main problem was that I was too eager to empower former jurors to do whatever they wanted. I made the mistake of not making clear what their role would be with regard to the board of directors. Were the jurors merely advisory to the board, or were there some suggestions they could expect to recommend directly to staff? Also, who had the say over how the jurors organized their work? Could they organize it as they wished, or could the staff or board tell them how to go about their tasks?

The jurors decided to engage in direct evaluations of each Citizens Jury project that the Center conducted. This seemed a fine idea, but it turned out not to work especially well. Most of the jurors had had no training in such a task, and they selected their criteria on an ad hoc basis. In retrospect, I see how foolish it was to expect people with no special training to spend five days observing and evaluating a complex set of hearings. Also, in the late 1990s, I discovered that industry had learned it is more effective to design quality into a the way a product is made or a service delivered, rather than try to achieve quality by an inspection process done after the fact. What worked least well was the way the jurors conducted their own affairs. They liked what they were doing and extended their terms of office so that they could continue to work at it. Also, the jurors' discussions were not moderated by trained facilitators, as is the case with Citizens Jury projects. One of the most powerful members of the group started exercising his influence in meetings held outside the hearings. He rarely spoke in the hearings, but would glance at others to indicate that he expected them to vote the way they had agreed in discussions the previous evening.

It would be wrong to imply, however, that staff was without fault in this situation. Much of the maneuvering that some members of the Oversight Committee engaged in arose because they thought that the staff of the 1993 Citizens Jury project on the budget had used inappropriate methods in selecting the four members of the Oversight Committee from that project. The argument surrounded the question of whether the staff of that project (largely female) had inappropriately rigged the election to ensure that two women and two men were selected to serve on the Oversight Committee.

We had no good way to deal with this. The staff members who had allegedly miscounted the votes were no longer at the Center. The conclusion of the board of directors of the Jefferson Center, and that of a majority of the Oversight Committee, was that nothing could be done about this past behavior and that the best that could be done would be to take steps to correct this kind of problem in the future. This was done: Whenever votes were taken on a paper ballot, a spokesperson from the jurors was always present to help staff count the votes. But a strong minority of the Oversight Committee continued to feel that the staff was not honest with them and could not let go of the incident.

This was a case of taking people out of a situation in which they performed well and placing them in a poorly designed situation where neither they nor the staff performed well. Each one of the former jurors had performed very well in the setting of a Citizens Jury, but that experience did not translate into playing an effective role on a board with some power to say how things should be run. Under these circumstances, the Oversight Committee members fell back on the way they operated in their everyday lives, rather than the way they had acted for the five days of a Citizens Jury. The most telling critique by Jefferson Center staff of the Oversight Committee was that committee members conducted their affairs like a typical political caucus rather than like a Citizens Jury. But the staff also fell back into a typically defensive mode of operating, saying that

it really was not any of the business of the Oversight Committee to try to put any of the staff “on trial.”

This experience made clear that it was not a good idea to have a group of former jurors operating separately from the board of directors. If former jurors are to be empowered to review the operations of a citizens panel, then they should be full participants on a board of directors working together with others, rather than being a group off to the side whose powers vis-à-vis the board were not at all clear.

Guidelines for Creating a Trustworthy Structure

Reflecting on experience, a few key guidelines have emerged regarding what ought to be done if one wants to create an organization that is able to minimize its own biases when conducting panels, while at the same time operating in a healthy way. I have not written a single formal paper laying out these guidelines, but they have been woven through the 1,200 essays that I have written since 1976 as my personal reflections on how to create a trustworthy voice of the people that also has sufficient power to make a difference in the political system of a state or nation.

Do not give too much power to the entity to be trusted.

In 1976 I designed a new democratic system in which citizens panels would make policy, much as a legislative committee might do. But this would give citizens panels much too much power, and the likelihood of continuing to run them in a trustworthy way would be low. Within a year I gave up on the idea. The best thing to do with citizens panels is use them to recommend a policy option or a set of candidates to those who do have the power to make the decision. For years the Jefferson Center tried to do this with policy makers, with relatively little success. But the attempts made by the Center to provide information to voters met with much more success. Nevertheless, the CIR still places the citizens panels in an advisory role. It also is a modest one. The CIR does not make recommendations to the public on how to vote; it merely reports what the participants concluded after taking a close look at an initiative. The public can then do with this what it wants at election time.

The recommendations in this book that the CIR be set up before the CEF reflect this caution about giving too much power to the entity to be trusted. Although I am convinced that the CEF can be set up properly, it still is wise to start off with the easier task and make sure it is working properly before going on to something more challenging. The CEF will give the public more power over our government, but it also requires that the staff make many more judgment calls than are likely to be required of the staff of the CIR (see the comment in Chapter 5 on “An Important Technical Concern”). Power indeed corrupts, and the steps for giving greater political influence to citizens panels must be taken very carefully if trustworthiness is to be maintained.

Create a balance of power

Clearly one of the best aspects of the U.S. Constitution is the balance of powers it contains. There are several balance-of-powers elements worked into the way the CIR is supposed to operate. The staff is overseen by an executive director, who will have considerable authority to see that the affairs of the organization are conducted properly. Some of the aspects that will keep the organization healthy are built into its structure, such as the dedication of funds for retreats and training. But the executive director will be overseen by a board, made up in such a way that there is a balance of power between those who are political insiders and those who have been chosen first through random selection and then by their peers on the Evaluation Panel. The terms of the board members are limited, so that membership does not become entrenched. Finally, by having a sunset clause, the whole entity will cease to operate unless the public really wants it to continue.

Give everyday citizens the ability to observe directly what is going on and give them the power to change things.

This is a key aspect of the board structure. As the CIR is proposed, six board members will be selected from the Evaluation Panels and only four board members appointed by the governor and secretary of state, with the secretary of state (or a designee) chairing the board.

The presence of everyday citizens is essential. Currently there are too many layers of power between the public and those who run our governments. One of the major strengths of a market system running properly is that the consumer has considerable power over the ultimate products delivered. But in a democracy you can't shop around for a different government unless you move out of the state or the nation in which you live. Therefore, ways should be sought to give citizens a direct say in maintaining the quality of the democracy in which they live. The CIR, CEF and CBR all give people drawn directly from the general public the opportunity to do this. Panelists are also rotated so that a constant supply of fresh viewpoints is brought to bear on the operations of these democratic methods.

As noted in Chapter 4, and discussed more fully in Section 5 below, the jurors of the 2001 Citizens Jury spent quite a bit of time trying to decide what the correct balance should be between everyday citizens and political insiders on the board. It remains to be seen whether they set things up to achieve the proper balance. But their goal was clear: have enough everyday citizens so that effective citizen control is exercised over the commission, while still giving enough power to political insiders so that they feel an investment in the CIR.

Let me now turn to the specific steps that were taken to design the infrastructure for the CIR and the CEF. The basic structure discussed in this book and embodied in the initiative proposal found at www.cirwa.org was actually designed before we even thought of the CIR. As noted in Section 2 above, the 1997 focus groups in Washington were run to test public reaction to the CEF. The two efforts at designing the infrastructure in its final stages were done through an interesting juxtaposition of work by professional planners and review by a randomly selected group of citizens.

Public Strategies and the River Falls Citizens Jury

By the end of 1997, it was clear that we were going to get a chance to conduct a citizens panel through a class at the University of Wisconsin–River Falls. The task of this citizens panel was to review several methods of electoral reform, one of which was the CEF, and say which they liked best (see Section 4 below). This motivated me to get a professional review of the board structure I had in mind for the CEF. After reviewing several potential groups, I decided to engage the services of Public Strategies, Inc., a national consulting firm located in St. Paul, Minnesota. The best known partner in this group is Peter Hutchinson, who has had a long career in public service, including serving as the head of the Dayton-Hudson (now Target) Foundation, the commissioner of finance in Minnesota, and the superintendent of the Minneapolis public schools.

One of the tools the firm uses is called a “design lab.” When faced with a novel problem, they bring together experts in the area for one or two days and let them go at the problem, first by brainstorming, and then by attempting to build a solid proposal. Although the firm makes no guarantee that this can be done in a day or two, they do promise that it will help one understand the problem better and learn how difficult it is likely to be to overcome it. They brought in five people very skilled in the workings of government, including two former commissioners (department heads) in Minnesota government. We spent a day going over the question of whether there was any way to run the Citizens Election Forum out of government without having it become a victim of political pressures.

By the end of the day, working with some of my suggestions and bringing in a number of their own, they built a proposal for how the Citizens Election Forum could be run properly as a governmental entity. They proposed that the CEF be set up as a public corporation, an entity used in Minnesota for things like the state zoo. It would have an independent board, but receive government funding. There would be extensive citizen evaluation of the project each year and

some of the citizens involved in the evaluation would be involved in selecting the board. Their suggestion was that the nominations for the board come from former governors and supreme court justices. Finally, they suggested that the funding for the project come from a check-off on the state income tax.

The design worked up by Public Strategies was presented at the citizens panel hearings in River Falls. Panelists liked the idea of funding through an income tax check-off, but they agreed that this should be delayed for eight years until the public was familiar with the project. For the first eight years funding should come out of general revenues. But there were strong objections to having all the board members nominated by former governors and supreme court justices. It did not take much discussion with the panelists to come up with the alternative suggestion that the nominations for the board should come both from members of the state legislature and from the citizens panels themselves. These nominations, in turn, would be reviewed by participants in a special citizens panel, with two board members selected annually to serve three-year terms.

To me, this result is one of the most exciting things to come out of the River Falls project. There is a widespread view that Americans have little to no interest in governmental structure and, if they did, all that would happen is that they would mess it up. Here is an instance where a group of randomly selected people listened carefully to a proposal for a new governmental entity, picked out an aspect of it they did not like, and then suggested how it could work better. This is certainly not the first time that a citizens panel and a group of experts worked together to come up with a solid proposal. Indeed, it worked so well in Wisconsin that we incorporated something like this directly into a Citizens Jury project run in 2001 in the state of Washington.

Planning Prior to May 2001 Citizens Jury

Once it was clear that the League of Women Voters of Washington was prepared to host a Citizens Jury in May 2001, we needed to create a specific design for how the CIR would be set up in Washington. Although Public Strategies, Inc. had helped us design the basics in 1998, and the group in Washington that met in July 1999 had indicated this would probably work (see Section 5), now was the time to review what had been done and to adapt it so that it would function properly as an entity of state government in Washington.

Over the next three months six people worked collaboratively to produce a sound structure. The team who worked on this besides me were:

- Marc Greenough, an attorney for Foster Pepper Scheffelman, a respected Washington law firm. One of Marc's specialties was writing initiatives. He did the background work to ensure there would be no legal problems in setting up the CIR as an entity of state government.
- Jerri Fosdick, a well-known organization development consultant in Minnesota. Her clients range from Target Corporation to a foundation in Britain. She has consulted with the Jefferson Center since the late '80s and knows well the kinds of challenges faced by a small staff attempting to remain neutral as they set agendas and facilitate the Citizens Jury hearings.
- Pat Benn, a former teacher and consultant on novel methods of decision making in Minnesota's schools. She served as president of her local teachers' union, one of the leaders in the state in democratic innovations. As my wife, she has consulted on many of the Citizens Jury projects and served as staff in a couple of them.
- Doug Nethercut, executive director of the Jefferson Center, 1998 to 2002. Doug was very familiar with the challenges that must be faced in running Citizens Jury projects in a trustworthy, yet cost-effective way.
- Michael J. McCormick, former assistant director, Washington State Department of Community Development, and a leading consultant on planning and growth management.

Pat, Doug, Jerri and I started the work by reviewing the existing structure as it emerged from the hearings at River Falls. We realized that we needed a considerably more sophisticated proposal than that one, since we had to go beyond the general outlines of a plan to something that could actually be put into a bill or an initiative, and that would be detailed enough to lead to a well-run agency, without being so detailed that it would break down in practice. After several meetings and memos, we finally constructed a document to send Mike McCormick so that he could do his work in Washington.³

A few aspects of the proposal are worth some comments here. One of the challenges for Mike was to come up with some way of allocating state funds to the CIR. It is well-known that a favorite tactic for undercutting a political reform is to underfund it. Therefore, we wanted to be very explicit about the cost of the CIR and where funding should come from. The estimates of cost were worked out by Doug and Mike, the former borrowing on years of experience from the Jefferson Center regarding the costs of a small office that conducts citizens panels, and the latter checking with friends in state government to ensure that these expenditures seemed reasonable from the Washington point of view. Mike produced a detailed budget showing the minimum and maximum yearly expenditures.

The reason for the maximum and minimum was that we wanted to give the jurors a choice about levels of expenditures. We felt that this was one of the key choices that should be theirs. But we also wanted to be sure that the lowest cost could still fund an agency that would do quality work. The difference between the low figure of \$700,000 and the high of \$1.4 million was basically the difference between what it would cost to evaluate two initiatives a year and a maximum of eight. There are some basic costs (office, board of commissioners, core staff, training of staff, etc.) that are needed no matter how few initiatives are evaluated. That is why the evaluation of eight initiatives is so much cheaper per initiative than the evaluation of two.

After a number of inquiries, Mike decided that the best source of funds was interest on the general fund. The state always invests its revenues as soon as they come in, meaning that every year something like \$70 million in interest is generated. This is the one source of revenue in the state that could be said to “belong” to everyone in the state, and therefore would be a good source to pay for the CIR. Thus, we proposed to the jurors that the legislature should be directed to use these funds for the CIR, with the amount something that the jurors themselves should decide.

Another key task that Mike undertook was to review various laws and regulations to ensure that the CIR would comply with them. He also pursued the question of where in government the CIR would function best. We had always hoped that it could fall under the jurisdiction of secretary of state. Mike confirmed that this made sense from the legal point of view (this office being charged with overseeing elections) and also from the point of view of the office staff. He visited with the current secretary of state, Sam Reed, as did Pat and I in a separate meeting. Although Reed was somewhat guarded in his comments about the CIR, he clearly had no major problems with its being located in his office. He even pointed out that there was a precedent for having an independent board located within his agency.

The other major point that Mike reviewed was the makeup of the board of the independent commission. Since 1998 we had wanted a board of commissioners that would consist of people appointed by members of previous citizens panels and people appointed by elected officials. Our first suggestion was that there be a six-person commission; three from previous citizens panels, one appointed by the secretary of state, one by the majority leaders in the legislature, and one by the minority leaders.

Mike went along with these suggestions for awhile, but then began to raise questions. He felt there should be a larger board of commissioners. We agreed. After further discussion, we all began to feel that it probably was not a good idea to have appointments from legislative leaders, as these appointments were likely to be too political. He also pointed out that if the secretary of state did not have sufficient appointment powers, then s/he might not feel enough investment in the CIR to give it strong support. We agreed that this was a good idea in Washington, where the

secretary of state's office has a long-standing reputation of putting the fairness of the electoral system above political concerns. Mike also felt that the governor should have a role in the appointments. In the end, we came up with the idea of having a ten- person board, with the secretary of state (or designee) serving as the chair. The chair would not vote, except to break a tie.

This brings us to the evaluation panel. This is a key part of the infrastructure. The idea is that each citizens panel that evaluates an initiative should choose a few of its members to serve on an evaluation panel, which would meet at the beginning of the following year. The evaluation panel should be made up of 8 to 16 members. This means that if there were only one citizens panel conducted in a year, the panelists would select eight of their members for the evaluation panel. If there were five citizens panels, then the panelists would each select three of their members; if there were eight citizens panels, they would each select two of their members.

There are three tasks for the evaluation panel to perform:

1. Review the conduct of the citizens panels and the CIR staff in general during the previous year.
2. Make recommendations to the board regarding any changes in procedure they would like to see.
3. Select two of their members to serve on the board of commissioners for three-year terms.

The first task, although it may seem quite straightforward, raises some interesting questions about effective citizen control of entities that are supposed to serve them. The powers of the evaluation panel are consciously limited. The Jefferson Center experience with the oversight committee in the 1990s was in our minds when Doug, Jerri, and I sat down to design the evaluation panel. How could we design an appropriate role for them? Jerri and Doug agreed that it was a good idea to have the panel select two of their members for the board of commissioners. Introducing two of them to a board situation where others were used to serving on boards would allow the panelists to learn how to function in a role that would be new to most of them. It would also mean that, clearly, the power lay with the board. Randomly selected citizens are going to be empowered, but not so much by the role they play on the evaluation panel as in the role they play on the board. What then should be their role in evaluations? It was here that Jerri spoke up strongly. She felt it was important that panelists not be placed in the role of gathering information, but be given the task of reviewing objective data that already had been gathered through carefully designed means. Therefore, she suggested that the staff of the CIR be mandated to gather information. This already is a standard element of the Citizens Jury process with regard to gathering evaluations by the jurors of the citizens panel on which they have served. But the information should be expanded. There should be evaluation forms given to each witness, which they would fill out as soon as they had completed their testimony. A survey should be done after the elections are over in November to learn how useful voters found the evaluations of the citizens panels, and whether voters would like any changes in the information provided. There should also be a review of fiscal accountability (either an audit or some other kind of clear and objective review by an outside party) and evaluations of the training that is done for the staff and board.

The expectation is that panelists will be able to use these staff-generated evaluations, together with their own experiences, to come to solid conclusions about how well the CIR was conducted in the previous year. This review should take a couple of days, at the end of which the panelists would know each other well enough so that they could do a sound job of picking two of their members to serve on the board. Evaluation panel meetings would be facilitated by a trained moderator, just as the citizens panels are. Note that this moderator must be very sensitive to serving panelists and not directing them. Those people on the evaluation panel will be among the most sophisticated of the panelists, and they will be alert to any attempt by the moderator to steer the discussions in a way that avoids the problems that the staff and board may be having. The first

thing the members of the evaluation panel should do upon meeting is to work out an agenda that will allow them to cover the important matters to their satisfaction.

One thing which must be scheduled into their hearings is a time for the executive director to appear as a witness before the evaluation panel. If need be, the panel can also request an appearance by the secretary of state. The evaluation panel should be sure to review the report from the previous year's evaluation panel before hearing from the executive director so that they can ask questions about any recommendations that have been made.

By the end of their meetings, the members of the evaluation panel will have completed their report to the board and selected two of their members to serve on the board. Clearly, if they state in their report that some changes in operations are needed, the two people they have selected for the board will be sure to want these changes to be considered carefully and carried out by the board, if appropriate. Although any one board can refuse to act on the suggestions of an evaluation panel, should the board do this for three years in a row, they are likely to find themselves with a majority of commissioners who are irritated by this failure to take action. It would be quite likely at this point that the executive director would be fired and a new one hired to carry out the suggestions. In other words, the evaluation panel has real power, but there is also a check against their being able to take rash action in any one year.

Such was our thinking as we finished the design of the evaluation panel. What the jurors thought of it is discussed further in Section 5.

- 2 Robert Michels, *Political Parties; a sociological study of the oligarchical tendencies of modern democracy* (Collier Books, 1962. originally published in French in 1914).
- 3 There is considerable documentation on what we were thinking as we designed a specific infrastructure for the CIR in Washington. The key documents are:
 - A. Building the Structure of the Citizens Initiative Review. This document reflects the suggestions of Jerri Fosdick and Doug Nethercut.
 - B. Memo from Ned Crosby to Mike McCormick. This is the memo that described the things we wanted Mike to consider as he was doing his work to fit our ideas in with the current operations of state government.
 - C. Draft of April 12, 2001, by Mike McCormick. This was Mike's proposal after he had completed interviews with some dozen state employees, current and retired, and had completed considerable research. This was not the final version presented to the jurors in the May Citizens Jury. That document had some further revisions, also the footnotes were removed or incorporated into the text for ease of reading.

Section 4

The Citizens Panel on Electoral Reforms, River Falls, Wisconsin

Section 3 discusses how the infrastructure of the Citizens Election Forum was designed. As mentioned there, a chance to explore the concept of the CEF as a whole arose when we stumbled across the opportunity to conduct a citizens panel in April 1998 in Wisconsin on different approaches to electoral reforms. The idea of involving students in a citizens panel on electoral reform was met with enthusiasm by both the political science department and the chancellor at the University of Wisconsin–River Falls. This would be run like a Citizens Jury, but conducted outside the Jefferson Center so as to avoid IRS problems.

The River Falls faculty and administration turned out to be very cooperative. An agreement was set up whereby 18 people would be randomly selected from the two counties in which River Falls was located: Pierce and St. Croix counties. The panelists were stratified on age, education, gender, race, geographic location and political affiliations and attitudes. People familiar with the Citizens Jury process would be hired as consultants to help with the selection process and setting up the hearings. The hearings would be conducted by experienced facilitators. The students and political science faculty would help somewhat in this, but their main function would be to

monitor the fairness of the project. This was especially important because I provided the funding for the project through a grant to the University of Wisconsin–River Falls. The jurors were made aware of this and were urged, along with the students, to be alert to any biases. The hearings would take place using the standard five-day model used by the Jefferson Center.

We were pleased to learn that there were four electoral reform efforts being discussed in Wisconsin and that these mirrored reforms under discussion at the national level. Wisconsin already had some relatively tight laws on campaign contributions, but there were a number of ways to get around these. A fair amount of discussion was underway to figure out what, if anything, should be done to tighten or change the campaign finance laws. The project decided to pay the four main reform efforts \$2,000 apiece to ensure that senior people would present the proposals to the panelists. Because the four organizations were not able to have a senior person present all five days, I hired a recent college graduate as my assistant, so that he could make some of the presentations along with me. This ensured that the Citizens Election Forum was not given an edge in terms of having a more senior person making the presentations.

Three of the four proposals were similar in that they took the existing system in Wisconsin and modified it to some degree. These proposals were as follows:

- **The Handrick Proposal.** This was presented by Rep. Joe Handrick, chair of the Committee on Campaign Finance Reform in the Wisconsin State Assembly. He presented a plan that reflected the work being done on that committee, but chose to identify it with his name, since the proposal had not been formally adopted. It represented a moderate Republican approach.
- **Wisconsin Democracy Campaign Proposal.** This proposal was presented by Gail Shea, director of the campaign, and Hans Detweiler, an associate. Theirs was basically a moderate Democratic proposal.
- **Wisconsin Citizen Action Proposal.** This was presented by Roger Bybee, the leading person working on this for Citizen Action in Wisconsin. They called their effort the Clean Money Campaign Reform. It was similar to reforms already adopted in Maine and Vermont.

Each one of these proposals had a clear statement of goals, along with a number of specific details about how the proposal would work. But these details get rather confusing and are not really needed to understand the basic thrust of what was being suggested. Perhaps the best way to indicate the differences between these three is to examine what they proposed to do for races for the Wisconsin Senate.

Comparing Three Proposals for the State Senate

<i>Proposal</i>	<i>Spending limit per candidate</i>	<i>Public funding available</i>	<i>Source of the public funds</i>
Handrick	\$100,000	Min: \$25,000 Max: \$45,000	Increase check-off on income tax to \$3. Use funds from general revenues if needed to meet \$25,000
Democracy Campaign	\$100,000	\$50,000	Increase check-off to \$5. Use general funds if needed to meet \$50,000
Clean Money	\$60,000	\$60,000	General revenues after initial \$2,500 raised in small amts.

All three of these proposals were voluntary. A candidate could decide to take public money or not. A novel feature of the Clean Money proposal was an “equalizing” feature. This provided that if the opponent of someone who accepted public funds were to raise more than the \$60,000 limit proposed for the Senate, then the candidate accepting public money would get more in order to equal what the opponent had raised. This would go up to three times the limit for the Senate, or \$180,000. This was done in order to discourage candidates from rejecting public funding in hopes of being able to outspend the candidate on public funds.

The fourth proposal was from the Wisconsin Christian Coalition, presented by its Chair, Brent Pickens. This took a libertarian approach. It would do away with spending limits for all statewide offices and with public funding as well. In place of the spending limits and the public funding, there would be an extensive and efficient reporting method so the public could easily learn who was contributing to a campaign and how much. It also recommended measures to make voting more convenient for citizens, including uniform polling place hours, a uniform state voting system and a requirement that employers provide time off for voting.

Finally, I presented the Citizens Election Forum, as described in Chapter 5. The major difference between the description of Chapter 5 and what was presented in River Falls had to do with the makeup of the board of commissioners (see the end of Section 3 for a discussion of how the River Falls citizens panel dealt with this) and some technical details regarding the workings of the evaluation panel.

The five days of hearings at River Falls went very well. All of the key presenters of the five electoral reforms showed up and made good presentations. When you are asking significant people in the political arena to spend several days in a rural part of the state quite a distance from the capitol talking with randomly selected citizens, this is no small accomplishment. The agenda was typical of those used by the Jefferson Center: a half-day was devoted to each team’s proposal, with the time divided equally between pro and con views and time for questions by the panelists. There were panel discussions by the witnesses, the panelists deliberated, and then issued their findings and recommendations.

In order to track the panelists’ views, they were surveyed twice on their response to the five electoral reforms. The first time was right after each half-day’s discussion of a proposal had concluded. They were asked to rate the proposed reform on a five-point scale: “I like it a lot,” “I like it,” “I feel neutral (or have mixed feelings),” “I don’t like it,” or “I don’t like it at all.” Then, ten days after the project was completed, the same survey was sent out to the panelists to see what their views were after they had been away from the project for awhile. To summarize the results, a score of 5 was given to the highest rating and a score of 1 was given to the lowest. The ratings turned out as follows:

Reactions of Panelists to the Five Electoral Reform Proposals

	<u>Initial Ratings</u>	<u>Final Ratings*</u>
	Mean	Mean
Wisconsin Citizen Action	3.1	2.8
Handrick Proposal	3.6	4.3
Christian Coalition	3.8	3.4
Wisconsin Democracy Project	3.9	3.5
Citizens Election Forum	4.8	5.0

*Only 13 of the 18 panelists returned the forms sent to them in the mail.

These results were very encouraging to us. One thing that still is not easy to assess is whether the fact of my paying for the project had any influence on the views of the panelists. Those working on the project felt that this bias in favor of the Citizens Election Forum might well be

counteracted by the perception that I was “one of those Minnesotans from the Cities” who wants to push his ideas on the rural people of Wisconsin who live near the Twin Cities. Such a bias would have inclined them to give the Citizens Election Forum a lower rating than the Wisconsin proposals. But the panelists did not sense any biases in the way the project was conducted. On the standard question about bias, 16 were “very satisfied” that the project had been conducted in an unbiased way and two were “satisfied.” This is quite a bit better than the average score received by Citizens Jury projects over the years. With regard to their feelings about the project as a whole, 17 were “very satisfied” and one was “satisfied.”

One of the interesting sidelights of this project was the low rating given to the Clean Money proposal of Wisconsin Citizen Action. This is the proposal that has been introduced into Arizona, Maine and Massachusetts through initiatives and adopted by legislative action in Vermont. What made a proposal that was so successful in such a diverse group of states do so poorly here? It should not be the rural makeup of the panelists, since Maine and Vermont are largely rural states. Perhaps the low rating resulted from the determination of Roger Bybee to convince the panelists of how much corporations were ripping off the people of Wisconsin, something that may have led the panelists to discount his ideas as too left wing. Although I took no pleasure in the poor showing of the Clean Money proposal, it did give me hope that the Citizens Election Forum could find broad acceptance in America if it could come out so much better than a reform already adopted.

Section 5

Designing the Citizens Initiative Review

The CIR emerged from the thinking of a number of people. My original thinking about using citizens panels to evaluate initiatives goes back to an unpublished manuscript, *Towards a New Democracy*, which I completed in 1980. That book, the major part of which proposed a whole new form of democratic government, was so far ahead of its time (or odd, depending on your point of view) that it stood no chance of being published. As the Jefferson Center moved ahead to conduct Citizens Jury projects for policy makers in the current system, I gave little thought to the book. It was therefore a surprise to me when someone said, “Why not use citizens panels to evaluate initiatives?”

The background leading up to the CIR has been spelled out above. Section 2 discusses the focus groups conducted in Washington state in 1997, Section 3 reviews the building of the infrastructure, and Section 4 describes the citizens panel on the Citizens Election Forum conducted in 1998. It was in the fall of 1998 that Pat Benn and I decided to work as partners in the effort to find a state with leaders interested in empowering citizens panels to provide trustworthy information to voters. We reviewed states with the initiative process and chose four as the most likely to be interested in our proposals: Colorado, Maine, Oregon and Washington. We went to Maine in early 1999 where we were received with polite interest by a number of officials but with no great enthusiasm.

In May 1999, we went to Washington to visit our daughter and her family who live there. We also met with Mike Lowry, a Democrat, and governor of Washington from 1992 to 1996. When we presented the CEF to him, he was quite enthusiastic and said he would run it by Ralph Munro, a widely admired moderate Republican then in his last term as secretary of state. A week or so later, Lowry called us to tell us that Munro generally liked the Citizens Election Forum, but felt it was a mistake to run it as part of government. Lowry said he had similar concerns himself. Our response was to ask him if he would help us do in Washington what we had done in Minnesota. We then related what had happened when Public Strategies, Inc. had held their day-

long design lab on the questions surrounding the CEF as a governmental entity. Would he be willing to host a day-long event with a few key civil and political activists that included both Republicans and Democrats to review the Citizens Election Forum? The topic for the day would be: Should it be a governmental entity and, if so, how could this be designed to work properly in Washington? Lowry agreed to try to set it up. The interest shown by two prominent officials and the willingness of Lowry to help set up a meeting of key people led us to put off visiting Colorado and Oregon. The presence of our family in Washington made working there even more appealing.

That summer a day-long meeting was held with ten people, all deeply involved in Washington politics—a group of moderate Republicans, Democrats and Independents. Included were the president of the League of Women Voters of Washington and the director of elections of the office of secretary of state. We engaged a skilled moderator to keep us all on task. Pat and I spent a great deal of time preparing for the meeting, focusing our presentation on reasons why the CEF should be run out of government. It therefore surprised us when the questions dealt with the basics of the proposal, such as what a citizens panel is and how the panelists are selected. We realized that we are so used to citizens panels that we had forgotten how novel they seem to some people when it is suggested that everyday citizens play a major role in the political system. As we neared the break for lunch, Mike Lowry asked whether this method could be used on initiatives. Would we be willing to consider using citizens panels to evaluate each statewide initiative that qualifies for the ballot? After all, he said, what is really driving the politics in Washington is not the governor as much as the initiatives that are being passed. When the discussion continued after lunch, it took only about an hour for everyone to agree that it was a good idea. They also, however, suggested strongly that we do a pilot project to show what a citizens panel on an initiative would look like. Did we think we could find a way to conduct a citizens panel on a specific initiative to introduce the concept in the state? We said we would try. We made a few attempts on our own to find ways of getting a pilot project going, but these did not work. Therefore, at the end of 1999 we engaged the firm of Gogerty Stark Marriott to help us sell the pilot project. A respected and successful public affairs firm, they counted Boeing and Weyerhaeuser among their clients. Don Stark, the senior partner who took on our project, thought there was a good chance we could find the funds. He pointed out that recent events were on our side. In November 1999, an initiative had passed that cut the fees on license plates to an even \$30 for all vehicles. This led to a significant drop in taxes. It was opposed by business, labor and “good government” groups. Even though the groups opposing it allegedly spent over \$2 million, while proponents spent a great deal less, the measure passed by 56 to 44 percent. He thought that business and labor might be ready to consider something that would give the voters trustworthy information on initiatives, and that might help voters understand better what the impact of their vote would be.

Don Stark introduced us to a number of well-connected individuals, including meetings with key representatives of Weyerhaeuser and Boeing and other business leaders. We met with some 30 leaders from various groups that spring and addressed another 30 or so in carefully designed presentations. Almost everyone with whom we spoke said they liked the idea. We also had an excellent meeting with labor. Rick Bender, president of the Washington State Labor Council, invited us to make a presentation to the executive board of the labor council. Mike Lowry came along to introduce us to the more than two dozen people who were there, and that contributed to what we felt was a very favorable reception.

As the spring passed, we learned that labor was more supportive than business, but they were reluctant to contribute to a pilot project to demonstrate the Citizens Initiative Review unless it was supported by business as well. We agreed that support from both business and labor was important for the credibility of the project. By May, with no support evident from business and no major individual donors on the horizon, we had to admit that we were unable to raise the funds for the pilot.

As we neared the end of our unsuccessful effort, we asked Don Stark why business and labor were not prepared to spend \$200,000 to test out a method that might make it less likely they would need to spend another \$2 million. He had a story for us. In the early days of Stark's career, they had as a client a local business owned by a firm on the East Coast. The local firm was rather inept in public relations and frequently needed the help of Gogerty Stark Marriott to get them out of trouble. Finally, Gogerty Stark Marriott went to the East Coast office with a plan for them to be put on retainer to prevent the troubles from arising, rather than having to perform rescue operations all the time. They pointed out that the proposal would save the firm quite a bit of money.

The east coast office turned down the offer. Why? Because there was nothing in the budget of the firm for something like this. The contact person in the firm on the East Coast found it easy enough to explain to his superiors that fires needed to be put out. It would not be easy to explain why a new budget item for long-term consulting should be added. So the offer was turned down, even though a solid argument could be made that it would save money.

Refining the Proposal

One thing that happened along the way was that we changed our basic presentation. We discovered that it was relatively easy to describe the Citizens Initiative Review to people whom we met, without having to resort to the broader concept of healthy democracy. We even had had cards made up with Healthy Democracy on them. But once you begin to concentrate on a specific political reform, then bringing up the broader concept of healthy democracy seemed to complicate things, rather than making the ideas easier to present. So we stopped using the cards and no longer mentioned healthy democracy. In retrospect, it might have been wiser for us to start with the broader approach and then move on to the CIR.

The design of the CIR also evolved as we met with people. Originally, we had kept the idea of consultation with the jury pool, a key element of the Citizens Election Forum. But as we met with more people, I finally saw that this was not a good idea. In retrospect, we should have dropped the consultation with the jury pool as soon as we switched from evaluating candidates to evaluating initiatives. But I was so taken with the possibilities of expanding the dialogue of the citizens panel that I could not bring myself to part with it, in spite of the challenges Pat and our advisors put to me. We did learn that it was the most difficult part of the Citizens Initiative Review to describe to people. This made me prepared to drop the idea for the pilot project, but still include it in the proposal itself.

Then I began to see that it was not just complexity that made the CIR difficult to explain; it was that consulting with the jury pool did not really make sense. After all, it was the citizens panel that would hear the testimony on an initiative and reach conclusions. It was not necessary to build a consensus around a new idea where dialogue with the public was in order. It was a matter of an informed group of citizens reporting directly to voters about what they had learned about an initiative. Keeping the consultation with the jury pool simply added an unnecessary layer to the project.

Here was an instance where the work we did with a public affairs firm to promote an idea actually helped me gain insights into my ideas and improve them. (Pat saw the inappropriateness of this without the consultation.)

As we met with various political, business and labor leaders in Washington, we had an interesting discussion of whether the CIR should be set up as a private, nonprofit organization or as an entity within government. At first blush, it would seem obvious that it should not be set up as part of government. There is a long history of regulatory commissions set up to regulate some industry or some activity of public concern where the commission gets taken over by the very people it is supposed to regulate. Given this sorry experience, why would we even consider setting it up as some sort of governmental entity, no matter how independent one hoped it might be?

The main answer lies in finding the best way to provide a reliable source of funds. The CIR will cost somewhere between \$700,000 and \$1.4 million a year to run, depending on how many initiatives are on the ballot.⁴ Where would this money come from in a way that would not prejudice the operation of the CIR? Many people think that foundation funding would be a reliable source and would not bias operations, but this is not possible, since foundations are not allowed to fund political activities of this sort. It could be done legally by churches, but surely this would raise problems of church and state, which everyone would rather avoid.

This leaves businesses and private donors as the likely source of funds. But our experience, and the experience of organizations like Common Cause, showed that raising money for a procedural reform from a large number of small donors is virtually impossible. It might be possible to raise the needed money if business or labor or wealthy individuals could be convinced to contribute, but in this unlikely circumstance, we would run into problems of credibility with the public. Also, discussions with business and labor leaders in the state showed us that even those people who liked the CIR were skeptical about our finding money for the CIR from their organizations. A key meeting for us was with Jeanette Hayner, majority leader in the Washington Senate in the 1980s. She was one of the few Republican leaders who had managed to keep the respect of both Democrats and the right wing of the Republican party. After we had presented the CIR to her, she said she liked it as a whole, but felt that it was a mistake to make it part of government. This presented a challenge to us. Ms. Hayner was the kind of person whom we wanted as a supporter of the CIR. Did we really have to make it part of government? We decided to do our best to take a fresh look at our proposal.

Out of this came an idea. Why not propose that the Citizens Initiative Review be set up as an independent commission within government, but with a “sunset provision?” This would mean that after something like five to eight years the commission would terminate and would need to be enacted into law again if people really liked it. This would have two advantages. If the CIR did not work well, then it would go out of business and not hang on as a useless expenditure of public funds. And if it did work well, then the public would understand it well enough so that the funds could possibly be raised from many donors to run it as a nonprofit, should that seem the best way to continue it.

Once it became clear that we were not going to be able to conduct the pilot project, we were faced with what to do next. It was tempting to give up in Washington and move on to some other state. If we could not raise funds for a pilot, how would we ever raise an even larger amount for an initiative campaign to get the Citizens Initiative Review adopted into law? On the other hand, we realized that most people with whom we spoke liked the basic proposal. Also, we felt an attachment to Washington and many of the people whom we had met who liked the proposal. Wasn't there some other way besides a pilot project to show that the CIR was appropriate for Washington?

So Pat and I took the obvious step for us. Since we believe that a Citizens Jury is the best way to start building an authentic voice of the people, we decided that we would try to find a neutral host to conduct a Citizens Jury on the question of whether the CIR was a good idea for the state of Washington. And the obvious candidate for the neutral host was the League of Women Voters of Washington. Using the help of Lucy Steers, a savvy public affairs consultant who was a long-time League member, we approached the League and asked whether they would consider this.

Approaching the League

Our decision to ask the League to conduct a Citizens Jury project on the CIR raised an interesting problem of integrity. How can such a project claim to be fair when the major proposal to be reviewed is the pet project of those paying for the event? At the Jefferson Center in the 1980s the staff had discussed what to do if an advocacy group approached us and offered to pay for a

Citizens Jury to review its own proposal for the solution to some problem. Was there any way to do this without the Center selling out to the advocacy group?

Since we wanted to run projects for which someone was willing to pay, we wanted to find a way to do this while maintaining our integrity. We decided that we would undertake such a project under the following circumstances:

1. The advocacy group and the Center would agree on an advisory council that would oversee the project to ensure its fairness.
2. The agenda and the charge to the Citizens Jury would be worked out in advance to the mutual satisfaction of both the Center and the advocacy group. It was important to ensure that the advocacy group would be able to learn what they wanted, and the Center had to ensure that the jurors would be able to deal with the important questions. Our favorite example of a biased charge was one that we could imagine a transportation department proposing: "Would you like to see the new freeway between Portland and Seattle be built in Corridor A, B or C?" The problem with this question was that it presupposed the need for a new freeway. Now if a broad-based advisory council were unanimous that a new freeway was needed, such a charge would be acceptable. But if the need for a freeway were itself a major point of contention, then such a charge would be completely inappropriate.
3. The advocacy group would place all of the money for the project in escrow before the project began (or would make a direct payment of the total amount to the Center).
4. The advocacy group would pledge not to make claims about the results that went beyond what the jurors had decided. If the freeway question had been put before a Citizens Jury and the jurors had chosen Corridor B as the best route, the advocacy group could make no claims about the jurors wanting a new freeway in general, unless there had been an opportunity for the jurors to discuss that broader question after hearing pro and con witnesses.

Pat and I decided these were good guidelines for us to use in approaching the Washington League. After several meetings with various League representatives, the board of the League appointed a committee to meet with us at the end of January 2001 to see if a contract could be signed between the League on one hand, and Pat and me as the advocacy group on the other. It turned out that there was a major difference between the League and us. They wanted an agenda that concentrated on the question of what was the best way to solve the problem of initiatives. We wanted an agenda that asked the question: "Do you think the CIR is a good idea? If so, then please modify it to suit the needs of Washington and then take a final vote on whether you want it in the state."

Our reason for not wanting to deal with their question was one of time and money. We wanted very much for the jurors to have the time to modify the CIR to their liking. And we felt they would need three days to do this. But the League's proposed agenda would require at least four days to decide between various proposals to deal with initiatives. We did not have the money for two Citizens Jury projects, and experience has shown that you cannot bring in people for a seven- or eight-day project without cutting down markedly on the willingness of people to participate. We did not want a Citizens Jury composed of students and retired people.

Beyond that, we did not want to have the CIR be labeled "the best way to deal with the problem of initiatives." Given the broad public support for initiatives, this would make it look as though we somehow were opposed to them. Furthermore, this would bring up one of the problems of using the League as a sponsor. Although we thought they were professional enough to serve as neutral host, the League had gone on record as opposing some of the initiatives sponsored by Tim Eyman, a well-known sponsor of anti-tax initiatives. An agenda that asked what to do about the

problem of initiatives would raise questions about the neutrality of the League in a way that a simple concentration on the CIR would not.

After some debate, the League finally agreed to host a Citizens Jury with the agenda we preferred, so long as we would pledge not to make the claim that the jurors had decided that the CIR was the best reform available for making initiatives work better. Our insistence on having the jurors spend three days on the details of the CIR stemmed in large part from our belief that there were some parts of it that should be decided only by a legitimate group of Washingtonians. Most especially, we felt it was not appropriate for a small group of people who advocate the CIR to decide how much should be spent on it. That really was a question for a broader group of Washingtonians to decide. The same was true for the makeup of the commission that would oversee the operations of the CIR.

The contact we signed with the League stated that the first two days of the Citizens Jury would be devoted to the question of whether the CIR in general was a good idea—something the jurors would like to see in Washington. The jurors would vote at the end of the second day. If a majority voted yes, then the project would continue for another three days to fine-tune the process. If not, then the jurors would go home after two days. Pat and I would select a few people to appear with us as proponents of the CIR. The League's task was to find witnesses who opposed the CIR or who favored other proposals for bringing trustworthy information to voters on initiatives. Both sides would be given equal time. The League would set up an advisory council to guide them and we would pay for the whole project upon the signing of the contract so that there was no way after that time that we could influence the course of the project by threatening a withdrawal of funds.

We all agreed that the project would require close monitoring if bias in favor of the CIR were to be avoided. Part of the problem is that we know all of the people who know how to run Citizens Jury projects. The League was willing to undertake a novel project like this only if they got help in running it. And it could not be called a Citizens Jury without the involvement of the Jefferson Center. It was finally decided that both the Center and a team of consultants from Pennsylvania would work on the project to help out the League. The team from Pennsylvania consisted of two women, Susan Ruether and Tam St. Claire, who had played a key role in the running of the Citizens Jury projects conducted in Pennsylvania and Washington, D.C., in the early 1990s. They were very professional, but also friends of ours because of past work together.

I won't go into every detail of how the project was planned out. But a whole series of questions had to be dealt with. Should the jurors be told that Pat and I were paying for the project out of our own resources? If they were told, it might bias the project in our favor because it would make us look generous. But if they were not told, then they would not be aware of a potential source of bias in the project that they should be watching out for.

One decision the League made, about which Pat and I were uneasy, related to paying the jurors if the project were stopped after two days. The League decided that if a majority voted at the end of Day 2 that they did not like the CIR well enough to continue working on it, then the jurors should be paid for a full five days even though they would only work two days. We felt this might incline a few jurors in favor of voting against the CIR at the end of two days. If there were strong support for the CIR, this would make little difference, but if the vote were close, this might cause the CIR to lose. The League agreed that this would create a challenge for us, but felt that this was one way to show that the agenda was not biased in our favor.

Suggested Topics for Discussion during Phase 2

This list of questions was prepared by project staff. Participants should feel free to add or subtract their own suggestions, and set priorities for the discussion. Their suggestions will be followed as closely as possible, depending

on what witnesses have been scheduled to appear on which days. The times when these topics have been tentatively scheduled is shown in italics.

Topic 1: Location and structure of the CIR (*Tuesday morning, May 22*)

- A. Location: Should the CIR be within the Secretary of State's Office, or an independent commission?
- B. Board composition: How should members be nominated and who should chair the board?
- C. Office structure: What staff are required and what tasks will they handle?
- D. Funding process: How should the budget be set and to whom should the board be fiscally responsible?
- E. Sunset: Should there be a sunset provision? If so, when should it kick in?

Topic 2: Financial issues (*Tuesday afternoon, May 22*)

- A. Budget: How much is needed for the CIR?
- B. Source of money: Where shall it come from?
- C. Reporting: Who should audit the CIR?
- D. Unexpended funds: Should these carry over to the next year?

Topic 3: Citizens panel options (*Wednesday morning, May 23*)

- A. Name: Is "Citizen Panel" the best name for these groups?
- B. Size: Should the panels consist of 18 or 24 people?
- C. Selection: Should participants be selected at random from the population at large or only from registered voters?
- D. Assignment: What should the citizen panels be asked to do?
- E. Scope: Should all initiatives be covered? If not, how will the decision be made?
- F. Privacy: Should citizens panels be allowed to deliberate in private if they so choose?

Topic 4: Experts (*Wednesday afternoon, May 23*)

- A. Experts: How should it be determined who will speak for and against the initiative? Should both advocates and neutral resource experts be invited to speak?
- B. Constitutionality: Should opinions on this issue be required to be part of the CIR?
- C. Fiscal impact: Should opinions on this issue be required to be part of the CIR?

The May 2001 Citizens Jury on the CIR

This Citizens Jury project was certainly one of the most interesting and exciting that has been conducted. Experienced staff who were present had the feeling that the jurors were as fully engaged as in any project they had witnessed. A good bit of this feeling surely came from the fact that the jurors were given the chance to have a significant say in building a method intended to make democracy work better, and that it actually stood a chance of being enacted into law. Many proposed laws and regulations go through public hearings, but the people attending those usually care a great deal about the subject at hand and they rarely are given more than a day for their comments. Seldom does a crosssection of the public get the chance to review a proposed law for five days and make changes in it if they wish.

This section will not go through all of the decisions made by the jurors during the five-day event. A copy of the report on the project is available at www.cirwa.org. This report contains not only the full recommendations of the jurors, but also details on the project such as who the jurors were, what the agenda was, the full evaluation of the project and who the witnesses were. Two videos of the event have been made: a ten-minute overview, and a video lasting for almost two hours showing in more detail how the jurors went about making their decisions. These may be purchased by contacting us through the same Web site.

One interesting aspect of the project was that Pat and I, as the activists promoting the CIR, made it clear that we were not turning the whole CIR planning process over to the jurors. One obvious thing we did was to ask them to work off of the plan for the CIR that we had spent the previous four months designing. Furthermore, we informed the jurors that they and we each retained certain powers. If they had voted against the CIR at the end of Day 2, that would have been the

end of our efforts in Washington. Furthermore, we would not go ahead with the CIR after they had had a chance to shape it unless their final vote was a strong majority in favor of it. We did not define exactly what that meant, but we had in mind that we needed at least 16 votes in favor in order to launch a campaign to get the CIR enacted into law.

But we pointed out to the jurors that if they were to make changes in the CIR that we, as professional democratic planners, could not accept, then we would not feel bound to work for something we did not believe in. For example, if they were to cut costs by suggesting that the citizens panels that reviewed the initiatives be run only for one or two days, then, given our experiences with the method, we could not in good conscience support that.

This was a delicate matter. Some of the League staff asked us how we could commission a project like this and then tell the jurors at the end that we were not going to carry out their plan. If the jurors knew that we held a veto over the final design, wouldn't that undercut the validity of the whole project? They would be forced to do whatever we wanted to get us to act on their proposal. Finally, it was decided that the jurors should be told that their primary task was to come up with a plan they liked, without any restrictions from us. We would not comment if the jurors did something we did not like until the very end, after they had taken their final vote on the whole package. At that point, we could indicate what part of the recommendations, if any, we would not act on. They would then take a final vote on our modification of their proposal. If a large enough majority approved it, we would go ahead with that. If not, we would not promote the CIR in Washington, although some other group was welcome to do so.

As it turned out, we liked all of the jurors' proposals, so this whole discussion was moot. But it is important for those interested in this exercise to realize the degree to which we involved Washington's citizens while also placing limits on the degree to which we were willing to accept their recommendations. This is similar to the way in which the Citizens Jury process was conducted by the Jefferson Center and how citizens juries have been run in Britain. There is no case in which the officials for whom the project is conducted have committed in advance to following every recommendation made by the jurors.

This leaves an important question. Did the jurors really get an opportunity to express themselves freely? The best way to answer this is by looking at evaluations of the project. The single most important evaluation of a Citizens Jury project is the one in which the jurors state, in answer to a standard question, how satisfied they are with the fairness and lack of the bias of the project. We felt that as long as two-thirds of the jurors were very satisfied with the job, then the project was run in such a way that the jurors really did get a good opportunity to express their views without being manipulated. In this project, it turned out that 71 percent of the jurors were "very satisfied," 25 percent were "satisfied," and only one person (4 percent) felt "neutral." No juror was dissatisfied. Also the personal comments of the jurors, listed in the final report, were all very positive.

As explained in Chapter 4, the first two days of the Citizens Jury project were devoted to a pro and con discussion about the CIR as a whole. If a majority of the jurors had voted against the CIR at the end of Day 2, then the project would have come to an end. If a majority voted to continue (as they did), then the jurors would spend the next three days going over key aspects of the CIR, indicating whether they wanted to make any changes in the way the CIR was being proposed. The "Suggested Topics . . ." on the following page is the sheet given to the jurors to help them think about key questions regarding the CIR. It was part of a 23-page briefing book the jurors were given at the beginning of Day 3. They were given the opportunity to add to the list if they wanted, but no one did so.

One of the topics on which they spent the most time was the make-up of the board of commissioners. When the jurors voted 23 to 2 at the end of Day 2 to continue working on the CIR, it indicated that they rejected the major argument of opponents that the CIR should not be run as a part of government. But the structure of the board of commissioners gave the jurors an opportunity to decide how much to insulate the board from those close to the political scene.

The structure of the board is described in Chapter 4. Briefly, six members on the board of commissioners are selected from among people who have served on previous citizens panels, two are appointed by the secretary of state and two by the governor. The secretary of state (or a designee) serves as chair. The way this structure evolved is described in Section 3 of this appendix. But the jurors in the May Citizens Jury had the opportunity to change this if they wanted.

The major change considered was suggested by one of the jurors. He proposed that the secretary of state and the governor each appoint only one member to the board. This would create a balance on the board of six commissioners who had served on citizens panels and three who were political insiders. The argument in favor of this was that having the secretary of state (or designee) serve as chair already gave the insiders a lot of power. The six commissioners coming from the citizens panels would need time to figure out what was going on. They would be outmaneuvered if there were five commissioners who were political insiders, even though the citizen panelists had a slight majority in numbers.

The argument made against this was that the secretary of state (or designee) would vote only to break a tie. This would mean that the majority of everyday commissioners over political insiders would be six to four. That should be enough to prevent any domination by the insiders, given that the people selected from the citizens panels to serve would be those viewed by their peers as the most capable of protecting the process and making sure it serves the public interest. If the majority is six to two (or three if you include the chair), this will not give the insiders enough representation. It is important to have enough experienced people on the board so that there is a commitment by the secretary of state and the governor's office to the CIR process. The commitment of these key officials to the CIR process is crucial.

The discussion over the makeup of the board went on for about an hour. Most of the jurors spoke up on one side of the question or the other. When the vote was finally taken, it was unanimous in favor of the six-four-and-one makeup of the board.

In another discussion, the jurors came up with a novel solution to the question of how many initiatives should be reviewed during the CIR's first year of operation. Pat and I suggested that the staff limit themselves to reviewing only two initiatives in their first year of operations. The jurors had some reservations about this, feeling that it would be difficult to explain to the public why only two initiatives were examined when there were more on the ballot. (For example, in 2000 there were six initiatives on the ballot.)

Here the jurors were playing an interesting role. They could understand the need for the new staff to warm up, given that they themselves were experiencing the complexities of a citizens panel and they trusted us that a new staff should not be overburdened. But the jurors also were looking at this with fresh eyes and could imagine that the public as a whole would find it difficult to understand why only two initiatives were evaluated. Were we really sure that only two could be done? We had to answer that this was our best judgment, but that it was possible, if the staff were appointed promptly, that they could do three.

During this discussion, Marc Greenough, the attorney we were relying on for legal advice, was present. He pointed out something that we did not realize: it would probably be seen as illegal (unconstitutional) if some initiatives were subject to a review process and others were not. A very good argument would have to be made for leaving some out and considering others. The solution Pat and I had made up for this was to run a first citizens panel to consider which initiatives should be reviewed, should there be more than two initiatives on the ballot that year. But the jurors thought that was cumbersome and would be difficult for the public to understand.

Finally one of the jurors, Chris Johnson, a heavy equipment operator from Sedro Woolley, Washington, suggested that if there were more initiatives on the ballot the first year than the staff could handle, why not select those to be reviewed at random? Greenough agreed that this would meet the legal requirements and the other jurors liked the idea. So our original suggestion was modified so that their report reads:

The Citizens Jury recommends that all initiatives be examined. As the CIR process is gearing up in the first year, there may be more initiatives than the newly trained staff can cover. It is suggested that as many initiatives be covered as can be done in a high quality way. The Citizens jury voted 23–2 that if there are more initiatives than can be handled, random selection will be used to identify the initiatives to be reviewed that year.

Although the jurors did not suggest any topics that were not on the list presented to them, they did interpret at least one of the questions differently than we had expected. On Day 2, one of the witnesses had proposed that all initiatives be reviewed for constitutionality by a panel of judges. This is important because quite a few initiatives are ruled unconstitutional after they have been passed, much to the irritation of those who proposed them and those who voted for them. The staff thought that perhaps the 25 jurors would want to add something like this to the CIR. As it turned out, there was a strong feeling on the part of some jurors that the citizens panels should *not* be allowed to make any comments on constitutionality.

This led to one of the most animated discussions held by the jurors. Those who believed that the jurors should not be allowed to consider questions of constitutionality made two main points. First, the panelists are not competent to make judgments about constitutionality. This is something requiring a professional judgment and it would be wrong for the panelists to comment on matters where even lawyers and judges disagree. Their second point was that they feared that panelists could be misled into opposing initiatives that would be found constitutional if voted into law. (In Washington, the state Supreme Court rules on initiatives only after they are passed.) The jurors who felt this way were those who really liked the powers given to the people of Washington by the initiative process; they did not want these powers curtailed in any way.

This discussion took place during a time when neither Marc Greenough nor Mike McCormick, the two expert witnesses present during the last three days, were present. Thus, the discussion was carried on almost entirely among the panelists with no witness commentary. Those jurors who felt that the panelists should be allowed to comment on constitutionality did so mainly on the grounds that both witnesses and panelists would see it as their right to discuss this. How could anyone tell a group of panelists that they were not allowed to say something? Furthermore, would a provision be written into the CIR proposal saying that no witnesses could raise the issue of constitutionality? This would make the whole process look absurd, a limitation on freedom of speech during hearings where advocates are expected to make their best arguments. And, if witnesses were allowed to discuss constitutionality, then how could you tell panelists that they could not comment on this?

One example given was by a juror who was clearly opposed to gun control. He felt that initiatives might be proposed to further gun control and that the major argument by those wishing to keep the freedom to bear arms was that a limitation on freedom was unconstitutional. He therefore made a strong pitch that it would be inappropriate to adopt a guideline that might prevent the opponents of gun control (and any other group in a similar position) from making their best argument.

The discussion of this question was often heated and went on for almost an hour. It was the last major discussion the jurors had before they went on to fine-tune the wording of the CIR for the final report. What they finally decided regarding constitutionality was stated in their report as follows:

. . . the jurors felt strongly that the panel should not attempt to determine constitutionality. If jurors want to refer to any arguments concerning constitutionality, they must do so in terms of the reasons behind the arguments. If constitutional issues arise, the citizens panel report will include a statement making it clear that the CIR does not make any final judgment concerning constitutionality.

A Citizens Jury to design any kind of program in some detail, as was done in the last three days of these hearings, is one of the trickiest Citizens Jury projects to conduct. We felt that the jurors were very pleased that Mike McCormick and Marc Greenough had been available during the last

two days to advise them on technical matters that virtually none of the jurors had dealt with before. But it is never easy for someone to be a neutral witness. The long video has a 25-minute section showing how Greenough worked with the jurors as they discussed cost of CIR and where the revenues should come from. Should there be a new tax, or should it come from interest on the general fund? Both jurors and staff felt that Marc did an excellent job of serving as neutral staff to the jurors, but it would be reasonable for someone to be skeptical until having watched the video. It is in this kind of session, as much as any place, that biases can slip into the Citizens Jury process. The citizens panels being proposed under the CIR to review initiatives will be much easier to run without bias, given that the panelists are not required to make any proposals, but merely to evaluate an existing proposal after hearing pro and con witnesses.

4 In Washington state in recent times the number of initiatives has ranged from two to six. In Oregon in 2000, there were 21 statewide initiatives and one referendum on the ballot. In 2003, as we were testing the waters in Oregon during difficult economic times, we reduced the budget to \$400,000 a year, but this would have allowed for only two initiatives to be evaluated every biennium.