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**PANEL III:
VOTING TECHNOLOGY AND ELECTION ADMINISTRATION**

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JAMES BAKER: Ladies and gentlemen, we will continue this session with our third panel. The third panel will be concerned with voting technologies as well as the administration of elections. Our first speaker is Jim Dixon. He's not here yet.

RALPH MUNRO: He's coming in a second. I think we'll start with David Dill.

MR. BAKER: Maybe we'll start then with David Dill of Stanford University, then the Honorable Ron Thornburgh, secretary of state of the state of Kansas, and Professor Richard Hasen, professor at Loyola Law School and co-editor of Election Law Journal. When he arrives, we will then work Jim Dixon into the mix. He is vice president of governmental affairs for the American Association of People with Disabilities.

ROBERT PASTOR: (Off mike.)

MR. BAKER: Well, we'll go ahead and start with Professor Dill then while Mr. Dixon gets settled. Professor Dill?

DAVID DILL: President Carter, Secretary Baker, members of the commission and guests, I am grateful for this opportunity to address the crucial issue of electronic voting in American elections. The debate about electronic voting should not be about whether election fraud has occurred, is occurring, or even will occur. It should be about the transparency of our elections, and by transparency, I mean the ability to do independent checks on the conduct of an election and the results of that election. Ultimately, this debate is about public confidence in our democratic system.

The real job of an election is not to convince the winners that they won, which is often very easy, but to convince the losers that they lost. (Scattered laughter.) So it is not sufficient that election results be accurate. The public must know that those results are accurate. That can only be achieved by making election processes as transparent as possible.

Unfortunately, paperless e-voting technology is almost totally opaque. No one can scrutinize critical processes of the election such as the collection of ballots and the counting of votes because those processes occur invisibly in electronic circuits. Voters have no means to confirm that the machines have recorded their votes correctly, nor will they have any assurance that their votes won't be changed at some later time. The basic problem of e-voting can be understood without an in-depth knowledge of computer technology. A helpful analogy is, suppose the voters dictated their votes privately and anonymously to human scribes and that the voters were prevented from inspecting the work of those scribes. Few would expect such a system to be accurate on simple,

common sense grounds. Obviously, the scribes could accidentally or intentionally misrecord the votes with absolutely no consequences. Without accountability, a system is simply not trustworthy, whether or not computers are involved.

The technological problem with computerized voting is simple. You don't need a Ph.D. in computer science to understand it. Computer systems are so complex that no one really knows what goes on inside them. We don't know how to find all the errors in a computer system. We don't know how to make sure that a system is secure or hasn't been corrupted, especially if it can be corrupted by its designers. And we don't know how to ensure that the systems in use are running the software they're supposed to be running. Technologists have not been able to solve these problems even with measures that are far more sophisticated and costly than those used in the design and certification of voting equipment. There is strong agreement among computer technologists that what I just said is true. For example, the Association for Computing Machinery, the largest professional organization of computer technologists, adopted a position against paperless electronic voting after an internal poll showed that 95 percent of their membership agreed with the position. And I'll comment that this is a community that generally can't agree whether the sun rises in the West or in the East.

What can we do about this problem? Returning to the analogy of the scribe, that system can be made trustworthy by having the voter fill out his own ballot or by allowing each voter to check the ballot filled out by the scribe. We can have a trustworthy voting system if, instead of a futile effort to ensure that voting equipment is error free by design, we empower each voter to verify that his vote has been accurately recorded. In other words, we need voter-verified paper ballots. The call for paper ballots is not based on nostalgia. Paper has specific properties as a technology that are difficult to replicate in electronic media. For example, most voters can verify the contents of a paper ballot without computer mediation. Paper can be written indelibly, and the procedures for handling critical paper documents are easily understood by ordinary poll workers and by voters.

Paper is also not a magical solution to our election problems, but at least understandable procedures exist for ensuring the accuracy of an election conducted with paper ballots. In particular, the ballots must be protected, and the processes for storing, transporting, handling, and counting them must be transparent. Ideally, members of the public and non-governmental organizations, as well as political party representatives, should be able to observe all of the important steps of an election, including the testing of machines, operations in the polling places, counting of votes, and auditing and recounting.

One of the most important practices that could be adopted would be the routine auditing of elections by choosing a small random sample of the ballots and manually counting those ballots. This practice would make a valuable distinction between audits, which are routine checks on the quality of elections, and recounts, which have become increasingly politicized. Routine random audits would often catch procedural,

equipment, and personnel problems in uncontroversial elections so that those problems can be fixed before they potentially affect an election outcome.

Abandoning paperless e-voting would not be a major sacrifice. Precinct count optical scan voting, in which a voter marks a paper ballot that is counted by a machine in the polling place, is widely used, highly accurate, and much less costly than touch screen voting. Furthermore, computerized ballot-marking devices are becoming available that can make these machines fully accessible to voters with disabilities. In summary, paperless e-voting technology – paperless electronic voting is a technology that is fundamentally hostile to election transparency. No one can tell what is going on inside the machines, and there are no procedural changes that can remedy this flaw. Instead of seeking a technological quick fix to our election problems, we should return to paper ballot systems and focus our energy on making our elections more trustworthy by improving election practices. This can be done at reasonable, perhaps even at reduced cost, and without reducing accessibility to voters with disabilities or non-English speakers.

The November 2004 election went more smoothly than the 2000 election only because the margin of victory was greater than the margin of litigation. Electronic voting could have been at the core of the dispute. In addition to local disasters because of flaky electronic voting machines, we collected hundreds of reports from all over the country of odd voting machine behavior, including machines that selected the wrong candidate and machines that sporadically left candidates off the ballots. The vast majority of these problems have been left uninvestigated and unresolved. Our democracy is too precious to entrust to an ill-conceived and flawed technology. I hope you will recommend that we avoid doing so. Thank you.

MR. BAKER: Thank you, Professor Dill. Let me repeat what was said this morning. We have four panelists. We have an hour. That's ten minutes a piece so that we can have 20 minutes for questions. Professor Dill, I'm not saying that because you went over. In fact, you finished under your time. I just wanted to remind the additional panelists who might not have been here this morning. Now Mr. Dixon, if it's all right, we will turn to you. Jim Dixon is vice president of governmental affairs for the American Association of People with Disabilities. Mr. Dixon.

JIM DICKSON: Good afternoon. Would somebody be kind enough to give me a one-minute warning?

MR. BAKER: Yes sir.

(Cross talk.)

MR. DICKSON: I have two disabilities. I'm blind, and I'm blunt. (Laughter.) This commission is a very good idea, and I'm very pleased to have been asked to speak. However there is a major concern that we have, which is that there is not a person with a disability, with disability experience and interests on the commission. I brought this to

staff's attention and was told that their people doubted the figure that people with disabilities are 20 percent of the population so I included in my testimony cites to the census, which is the source of that data. And if there is any doubt, I would highly recommend that the commission bring forth – ask someone who's an expert in census data to come in and speak.

Not all disabilities are visible to the rest of the population. In fact, most disabilities are invisible and still require the need – a touch screen device to vote independently. Most people with MS can walk, but not very far. People – probably more than the blind in terms of high numbers – people who need the audio to be able to hear and vote independently are people with learning disabilities, cognitive disabilities. Currently touch screens are the only certified, tested, and proven equipment that offers access to people with disabilities. Many people say there are accessible paper systems coming. Well, so is Christmas. When we ask when, we never get an answer.

I've worked around elections in non-partisan ways for 22 years. We have to first develop standards. That process has started. The optimists think it'll be done by the end of this year. Then the standards – after standards are developed, it typically takes industry two years to develop products that will meet those standards. It then takes another year plus to go through the certification process. There were new voting system standards adopted in April of 2002. We're in April of 2003 [sic], and there are only four systems that have been certified to those 2002 standards. Three years have gone by.

I am going to relate a couple of quick stories that happened to me because they typify what happens to hundreds of thousands of people with disabilities all the time. Third party assistance does not work. The very first time I voted, the poll worker said loud enough for the entire polling place to hear, "You want to vote for who!?" I have had poll workers say to me, "You voted for president, governor. Nobody knows these state legislators. I'm really busy so let's stop." Well, I never stop, but a lot of people do. In 2004 in Ohio there was a gentleman using a wheelchair who also breathed oxygen through a respirator. He waited in line for two hours. He had two hours of oxygen left. It took him an hour to go home. It looked like it was going to be two hours still until he got to vote. He asked the poll workers if he could please vote. He was told no. He was faced with the choice literally of dying or not voting. He chose not to vote. This kind of stuff happens all the time. Barbara Arnwine referred you to the Election Protection database. There are some 4,400 incidents of people with disabilities in that database, and there are hundreds, if not thousands, that still have not been loaded into the system.

The point that I want to emphasize about DREs is we have two other laws that affect people with disabilities, and they have not yet been enforced. In '84, Congress passed the Accessible Polling Place Act so people with wheelchairs could get in. Sixteen years later, maybe 30 percent of the country's polling places are wheelchair accessible.

In '93, Congress passed the Motor Voter law, which requires that agencies like Medicaid and rehab offer the opportunity for people to register to vote the same way DMV does. Many of us don't have any reason to go to DMV besides the distance

problems. Most agencies are not doing that and have not done that. Last year, we compared over 1.7 million individuals with disability interests against the voter files in 10 states. 56 percent were not registered to vote, and this is 12 years after Congress passed a law that said when we sign up for Medicaid, we're supposed to be able – get the chance – to register and vote. To put off the HAVA deadlines is just going to be the third time that we have been promised accessible voting and not been given that opportunity.

There was a huge need for objective hard data. We have people calling for the addition of verified paper trails. This is the kind of paper that they're talking about using for the actual ballots. This was what was used in Nevada. If somebody could give this to the committee – I wonder how it's going to be counted and counted accurately and handle-able. To require by law something be placed in the polling place when it has never been tested, when it has never been subjected to a recount, not only discriminates against people with disabilities, it's irresponsible.

The accessible touch screens are also very important for those who have limited English, for those who somehow survived our school system without learning to read. All together there are 33 million Americans who could vote independently were there accessible machines in the polling places. This myth of a stampede to buy these machines; I'd only wish it was true. Currently only 14 percent of Americans had the opportunity to vote independently on a secret ballot in the last election. Most of the touch screens that are in place in this country are obsolete junk. The 2001 MIT Report reported that most of the old DREs have a higher residual error rate than punch cards. In the famous case in North Carolina where 4,000 people voted and the machine did not record their vote which was horrible – that was an old machine. Had that county purchased a machine that is accessible, it would have been impossible for those 4,000 people to cast a ballot. The machine would have shut off when the memory was full.

MR. PASTOR: You have one minute.

MR. DICKSON: Recommendations. The Department of Justice needs more resources in order to enforce all three voting related laws for people with disabilities. We need hard data. Kennesaw State in Georgia has done a wonderful job working on the machines, certifying them, making sure they work correctly. We need a Kennesaw State University in every state. It needs to be permanently funded. Many of my colleagues have called for full funding of HAVA – I think it is very important that we recognize that we need permanent, ongoing funding for the administration of elections in this country. Thank you.

MR. BAKER: Thank you very much Mr. Dickson. Now we'll hear from Ron Thornburgh, Secretary of State of the State of Kansas.

MR. THORNBURGH: Thank you Mr. President, Mr. Secretary, members of the commission. I appreciate the opportunity to be before you today. And I'm honored that – to have the chance to do so. I appear before you today on behalf of the great state of Kansas as well as the National Association of Secretaries of State of which I'm a former

president as our my friends Former Secretary Monroe and Former Secretary Priest. So we appreciate the chance. I hope as the commission continues its work, you will continue to call upon election officials from both the local and state level as you continue to reflect the debate. The most accurate way to reflect our system, its successes and its flaws, is to talk with those whose job it is to ensure a fair and accurate and safe election system.

To be an election official today, it's no great secret as to walk a tight rope between your citizens, the federal government, your state government, your local government, and the watchers of the system is a very narrow band to follow indeed. As we implement the Help America Vote Act, we find ourselves yet again with the tightrope narrowing somewhat. Now that that law is on the threshold of being implemented, we now see a number of chances or a number of requests to change the Help America Vote law yet again, as well as other elements of federal law. Let me make this very clear. Your work is incredible important. It is vital that we review election systems, especially following a presidential election when we can look at the entire structure and the entire system. Understand that what you do is incredibly important, but as we see the commission do its work, I think it will almost come without fail that there will be more proposed federal legislation as the work of this commission progresses.

Let me be very clear. The single, greatest fear of states at this point – in my opinion – is in the expanded federal role of election administration through expanded regulation and micro-management of the details. We are moving the election structure from the counties and from the states to the halls of Congress and to regulatory oversight, and I personally think that is a move in the wrong direction. Regulated uniformity in this case does not guarantee success. Through the Help America Vote Act, there is a great move to outline outcomes and objectives with the states using the best of their ability and the locals using the best of their ability to reach those outcomes. What works for New York City does not work for Cawker City, Kansas, home of the world's largest ball of twine, by the way, if you're looking for vacation plans this summer. (Laughter.) We have to understand and appreciate the great differences in the United States of America whether we're talking about legislation or whether we're talking about our geography.

Congress passed this landmark legislation, the Help America Vote Act, which was designed to improve election administration in our country. HAVA has already had an enormous impact, even though it has not been fully funded and only partially implemented. To put it simply, HAVA is working. We need to continue to implement and continue to improve upon that particular system. Days before last year's election, *USA Today* predicted that states' efforts to improve voting access would dramatically reduce the number of spoiled ballots. Following the election, a Cal Tech/MIT study released in February said that the number of votes lost through administrative error was reduced by 42 percent. Now that's a dramatic number. It is not nearly where we need to be, and it is not nearly good enough. But I point that out simply to remind you that we are making progress, and we're moving at breakneck speed to be ready for the next 2006 election cycle. We have the opportunity to fully implement HAVA by December 31, 2005. So that gives us about eight months to continue getting ready and making dramatic

changes to the central voter registration system as well as to the election management systems as well as to the voting machines themselves.

Certainly our system is not perfect. I would be the first to admit that as would any election official. This year we saw too many long lines at the polls which led to the horrific problem that Mr. Dickson described earlier. Large numbers of provisional ballots were cast. Now let me just say that I believe provisional ballots are a great strength of the system. They are the redundancy that's built into the system to allow it to work. However, having that said, last year's election was a success overall. To change the rules yet again would only lead to more voter confusion, which would only create more of the very issues that this commission is working so very hard to eliminate.

HAVA's working, and the law should be allowed to succeed. In 2004, every state was compliant with HAVA's provisional ballot mandate. I am confident that we can continue to increase the use of provisional ballots and in fact, the successful use of provisional ballots. And I would determine a successful use of a provisional ballot as a ballot that was in fact, counted upon a review of the qualifications of those voters. Last year, approximately two-thirds of provisional ballots were counted. I believe that number will get even better as we implement the central voter registration databases required in HAVA and as we continue to do a better job of managing our databases as well.

Now I've heard some advocacy groups call for uniform standards that will require provisional ballots to be counted no matter where they were cast in the state. I can tell you that the long lines and the confusion that you saw in 2004 will only get worse if a local election official cannot tell you how many people are going to show up at that polling place or how many ballots they are to predict. You're asking us to write a game plan, but not telling us what game we're playing at that particular point. And until we have more sophisticated technology, a voter who goes to the wrong polling place will not have the ability to vote for down ticket races, which are just as important to our republic and our democracy as that of the presidential and the statewide races.

Some of the same advocacy groups support uniform voting systems, capable of producing a voter verifiable paper trail. If the federal government were to dictate a single uniform system for the entire country, we would most certainly be left with an unwieldy system that would become archaic overnight and almost impossible to change. Technology changes in a heartbeat. Any uniform system will be quickly become outdated and would be very costly to replace.

Now as with provisional ballots, a single system doesn't fit every voter, everywhere. Voters in the United States used approximately five different voting systems in 2004. The disability community will tell you that modern, high-tech systems without the voter verifiable paper receipts make voting accessible, which is wonderful progress and we absolutely must do, but then we can't overlook the concerns of the technological community about the concerns of the security of those same systems. The National Institute of Standards and Technology should be allowed to continue its work on guidelines for all types of equipment to provide solutions that can ensure the security of

the system without dictating certain types of technology. Very simply, what I would say if the requirement is that each voter have the ability to verify that their vote was counted the way in which it was cast, make that the outcome, make that the objective, but don't tie my hands by telling me I have to use a big chief tablet and number two pencil to do so. As technology changes, we will have new advances that we cannot sit in here today – even imagine what our ability to do is going to be in just a few short years. To tie my hands and tell me I must use a piece of paper to do so, I think, endangers the system.

In his 1983 State-of-the-Union address, President Reagan said that one of the goals of his presidency would be to restore to states and local governments their roles as dynamic laboratories of change in a creative society. The nation's election reform progress owes much to our federal partners providing broad objectives and funding, but we have also benefited greatly from the successful experiments and innovations of state governments. We can certainly do more to reach out to voters and to drive greater voter turnout in this country, and we will. Unfortunately, with the limited federal funding for election reform, soft expenditures like voter education initiatives and poll worker training programs will most likely be the areas to suffer the most. The states may be forced to reply on help from outside groups to continue these efforts. We must succeed in getting all of the money promised by Congress for the Help America Vote Act if we want to continue to manage these programs at the state level and to maintain their integrity. Thank you again for the opportunity to appear before you today. I look forward to answering your questions.

MR. BAKER: Thank you very much Mr. Thornburgh. Professor Hasen have I pronounced your name right? Hasen?

MR. HASEN: Yes, Hasen. Yes. Thank you.

MR. BAKER: Please.

MR. HASEN: President Carter, Secretary Baker, distinguished members of the commission, and guests. Thank you so much for the opportunity to address you today on vital election reform issues. In the 2004 election, the United States came much closer to electoral meltdown, violence in the street, and constitutional crisis than most people realize. Less than a two percent swing among Ohio voters, about 100,000 voters towards Democratic candidate John Kerry away from incumbent Republican President George W. Bush would have placed Ohio and the national election for president well within the margin of litigation. And it would have gotten ugly very quickly. Allegations of voter fraud and voter suppression were rampant on both sides. And even though Kerry conceded the election the day after Election Day, public confidence in the U.S. system of election administration is now quite low.

It should go without saying that public faith in the integrity of the election system is a cornerstone of democratic government. Yet the data, though volatile, are quite worrisome. According to a post-election NBC News/Wall Street Journal poll, more than a quarter of Americans worried the vote count for president in 2004 was unfair. Just

before the election, a Rasmussen Report poll shows 59 percent of Americans believing there was a lot or some fraud in American elections.

And there's a partisan dimension to this issue. Consider the trends in figure one in my prepared testimony, which shows that in the most recent elections, 13.6 percent of Americans believe the most recent presidential election was somewhat or very unfair with Democrats much more likely than Republicans to believe that there's a problem. But this is not just a Democratic problem. Consider the views of Washington State Republicans, where a bitter election contest has left the Democratic candidate for governor at least for now in the governor's seat. The January 2005 poll of Washington state voters found that 68 percent of Republicans thought the state election process was unfair compared to 27 percent of Democrats and 46 percent of Independents. It's hard to escape the conclusion. The views about the fairness of the process are driven at least in part by the outcome that recent elections have produced. If that's so, we should not be surprised to see large numbers of Republicans indicating a lack of faith in the national election process if the next close election features a Democratic squeaking by to gain the presidency.

The bad news from the story of election 2004 is that things are not likely to improve enough for 2008. Although voting technology has improved and continues to improve, the extreme partisanship and close division of the American electorate, coupled with the electoral college system, make the possibility of another razor-close and presidential election in one or more battleground states fairly likely. After that, mix election administration incompetence in a widely decentralized system of election administration with a patchwork of inconsistent rules. 13,000 separate election jurisdictions according to the Carter-Ford Commission. What's worse, since Bush versus Gore, losing candidates have become more willing to resort to election law as part of a political strategy. The number of election law cases in the lower courts has risen dramatically compared to the period before 2000, from 60 in 1996 to 252 in 2002. It all adds up to a recipe for electoral meltdown. To avoid litigation, a close election requires an election administration system close to perfection. Yet we are far from perfection.

I argue for three reforms that could significantly lower the risk of electoral meltdown. First, I advocate registration reform, in particular, universal voter registration conducted by the government, coupled with a voter identification program. Registration issues appear to be the single largest subject for election related litigation. For example, 32 of 52 of Electionline's 2004 Litigation Survey involved registration cases. There's been a wide partisan divide on election administration between Democrats who've expressed concern about voter suppression and Republicans who've expressed concern about voter fraud. The registration reform I advocate can alleviate both of these concerns, minimize the potential for and political rhetoric regarding voter fraud and eliminate a great majority of potential litigation surrounding presidential election administration.

Under my proposal, the federal government would take on the task of voter registration much like it does in conducting the census in reaching out to register all

eligible voters. It would then issue voter registration cards with biometric information such as fingerprints, as is done today in Mexico. The nationwide database will eliminate double voting across two states, assist in quickly identifying voters for purposes of provisional ballots and help restore faith in the election process. Because the cards would contain biometric information, voters could show up without ID at the polls and still have their votes counted and verified. The cards certainly raise privacy concerns, but as I argue in my longer paper, the incremental privacy costs of the card are small compared to the potential gain in voter confidence they would likely achieve.

Second, I advocate a transition to non-partisan election administration. The non-partisan solution aims to create both the actuality and the appearance of neutrality in election administration thereby bolstering the public's faith in the process. Australian candidates serve as good models for reform in this regard; although not necessarily their nationalization of election administration. States should adopt rules that are consistent with non-partisan administration such as the code of conduct set forth by IIDEA, the International Institute for Democracy and Electoral Assistance. The idea code would prevent for example, a secretary of state or other chief elections officer from being co-chair of his or her party's presidential election committee or from taking a position on a pending ballot measure in the state.

To assure a truly non-partisan chief elections officer, I advocate that non-partisan administrators be chosen statewide through nomination by each state's governor subject to a 75 percent approval of both houses of the state legislature. The broad supermajority requirement will ensure that the person is one of great integrity who can garner support from both Democrats and Republicans in the state. Trust in the system will increase public confidence as well as minimize litigation by giving courts a reason to defer to election administrators. Public faith in non-partisan administration will also lessen the heat over questions such as where the state should move to electronic voting systems. Unfortunately, things seem to be moving in exactly the wrong direction in some places. In states like Florida and Maryland, we have seen partisan battles to make election administration more, rather than less partisan.

Finally, courts have an important role to play in minimizing electoral meltdown. The key here is to encourage courts to be more willing to entertain pre-election litigation and much more wary of entertaining post-election litigation. To the extent that election administration problems can be recognized in advance, pre-election judicial review prevents future harm from occurring, rather than putting courts in the position of trying to undue the bad effects of past harm. Just think of someone going to court before anyone voted in Palm Beach County in 2000, claiming that the butterfly ballot was overly confusing. In addition, the costs of post-election review are large. The pressure put on courts to decide arcane election law questions when the outcome of an election, especially a presidential election, is huge. And the appearance of partisan decision-making is inevitable.

These three changes, registration reform, non-partisan election administration, and a shift in the timing of court challenges will not eliminate close elections, but they

will lessen the possibility of election meltdown to a great extent and increase the confidence of the public in free and fair elections. The challenges facing this country are complex. I urge the commission to take the time necessary to carefully consider the costs and benefits of alternatives to lessen the chances of election meltdown. Thank you for your time.

MR. BAKER: Thank you very much, professor. We'll now go to questions from the commission and I will begin the process, if I might, by asking Secretary Thornburgh if – I heard you loud and clear about the expansion of the federal role in supervising elections and conducting elections, but let me ask you if you would have any problem as a sitting secretary of state, with interoperable statewide registration databases if the federal government paid for the cost of the software? Would you have any problem utilizing that software in the state of Kansas so that your statewide registration database would be interoperable with statewide registration databases in other states?

MR. THORNBURGH: Well, Mr. Secretary, if I may speak about the theory behind that. I think in theory that it's a great way for us to move forward. In fact, I've had some extraordinary preliminaries so let me highlight that if I can – some very, very preliminary discussions with my neighboring states about the opportunity to share databases and writing to XML standards – and the fact that I would even talk about those standards should be frightening enough. But the concept for states to have the ability to work together is a good concept. Now I am in the middle of an RFP at this point, writing a new centralized voter registration element in the state of Kansas, as I know all of my other state partners are doing as well. And to take what has been tens if not hundreds of millions of dollars that have been spent within probably the last 12 months and turn that over immediately, I think would be extraordinarily difficult to do as we have asked our counties to just go through a conversion process and then to ask them to convert, yet again, immediately following, I think would be difficult.

MR. BAKER: Even if you didn't have to pay for it?

MR. THORNBURGH: (Chuckles.) Would you be willing to tell my county clerks, Mr. Secretary? (Chuckles.)

MR. BAKER: I don't know whether you're giving me a yes or a no. (Laughter.) Maybe you've given me a maybe.

MR. THORNBURGH: You know honestly, sir, I think that is the answer; that it is a maybe. I think the concept of where you're going is a good concept, and there is a way in which to get to it. I just can't draw you a roadmap right now because we're in the middle of this particular conversion at this point.

MR. BAKER: Thank you very much.

PRESIDENT CARTER: I'd like to ask Mr. Thornburgh another question. I couldn't quite understand whether you were for or against the paper ballot follow-up to

the DREs provided the federal government doesn't tell you exactly which one you have to purchase. Do you have an inherent objection to having a paper printout after someone votes on an electronic machine?

MR. THORNBURGH: Mr. President, I'm sorry I was not clear on that. Let me state very clearly, I speak for myself and not for the National Association of Secretaries of State. I have concerns about the requirement of a voter verified paper trail. I think it takes a class of individuals, the disabled community, and sets them apart where they would no longer have the ability to verify the way their vote was counted, leading to some of the very issues that Mr. Dickson so eloquently described earlier. In addition to that, I would be opposed to specific legislation requiring a piece of paper as the audit trail. If we want the ability to require an audit and the ability for a voter to know that their vote was counted in the way in which it was intended, then let's make that the objective. It may very well be that paper trail is the way in which to get to that objective, but I would ask that you don't handcuff me by requiring a piece of paper so that future technologies which we may not be aware of today, we would have the ability to take advantage of as well.

PRESIDENT CARTER: I don't think any law would be permanent in that it couldn't be changed in the next 20 years or five years or 10 years if new technology comes out. We've seen this done in other countries where you punch your – actually do a touch screen. And then when you get through, you examine it to make sure it's accurate and then you punch a button. And it records your vote, and then a paper ballot comes out, and you examine the paper ballot and put it in a ballot box. And then with an audit subsequently, either by random sample or whatever, you just compare the paper ballots with the touch screen ballot. That seems to be a good guarantee that what you want to have actually occurs. And I know the disability part – it puts that at a slight disadvantage unless there is some sort of an audio follow-up in preference to the paper ballot.

MR. PASTOR: Mr. Thornburgh, if a citizen or a university in Kansas were to come to you and say, we would like to assess the quality of your registration list by doing three tests, a test of registration list to the eligible registered voters, a test of the voters to the registration lists, and a test for duplicates. Would you be willing and open to such a test?

MR. THORNBURGH: Absolutely. I would be open to such a test. Voter registration records are open records, and we make them available on a daily basis and would certainly be interested in that kind of an analysis.

I can say that following the implementation of the Motor Voter law in the mid-eighties, we've seen a dramatic change in voter registration in the quality of our databases around the country. On the one hand, Motor Voter has done exactly what it prescribed to do, and that is provide the opportunity for millions more Americans to register to vote. On the other hand, it reduced my ability to keep the lists clean. We have counties in this state and – I'm sorry, in this country, in which we have greater than 100

percent voter registration without that county's ability to remove excess voter registrations. We have to do a better job of finding the balance there.

Having said that, I would say the voter registration roles in the state of Kansas are adequate. They could be better and in fact, we have to continue to work within what the federal law allows us to do to make them better. Unfortunately again, my – I'm somewhat handcuffed with my ability to keep the lists clean at this point. And should there be some movement on Motor Voter, I think that would do as much to clean up the issues as much as anything.

MR. PASTOR: How often do you audit the list, and how do you assess the quality of it?

MR. THORNBURGH: Could you tell me what you mean by how often do we audit the list? How often do we do a mailing to ensure the address of a voter and that the voter still lives there?

MR. PASTOR: Well, just – the three tests that I mentioned before which is one way to assess the quality of the list – do you try those three tests to see if the list is well, and how often would you do that?

MR. THORNBURGH: I can tell you that within the state of Kansas, we do not do the three tests that you outlined before on a regular basis. There are a series of required mailings from the county election official that would verify the address of a specific individual, and once that is returned, then we can move someone from an active list to an inactive list and there's a whole series that goes through there. But the three specific audits that you outlined would not be a common practice, not only in the state of Kansas, but I believe in any state.

MR. BAKER: Yeah. Betty Castor.

MS. CASTOR: Mr. Thornburgh, something that you said confused me a little bit because I'm from Florida, and last year, we had early voting. And when I went to vote at an early voting site, we have 170 precincts, but there were only 10 vote centers throughout the county. But we have three congressional districts, three state senate districts, a number of house districts and county officials, and we didn't have any problem voting down list when we went to vote at those centers.

MR. THORNBURGH: May I ask what type of voting system – is it a touch screen voting system?

MS. CASTOR: Yes, a touch screen.

MR. THORNBURGH: Okay, as Mr. Dickson stated, and Jim, correct me if I'm wrong, but I think your number was about 30 percent of Americans vote on DREs?

MR. DICKSON: Yeah, 14 percent are accessible and do a well job of counting. 30 percent is the total number, but 16 percent of those things are idle.

MR. THORNBURGH: Okay, and my point would be that using a touch screen system, you have the ability to pull up any ballot in the county or perhaps even any ballot within the congressional district. In the state of Kansas, we have 105 counties. 80 of those counties use either an opti-scan or a paper ballot. Actually, I'm sorry let me correct that. 102 of those counties either use a machine-read paper ballot or a hand-counted paper ballot. To provide those into any polling place in any satellite voting system creates security issues, creates cost issues and staffing issues as well. The direct recording equipment – I believe we are going to see a day when that becomes part of the process in every polling place in America. We are going to see more satellite voting take place in this country, and then we are going to see advanced voting continue to increase as you related in your experience.

MR. BAKER: All right. We've got three commissioners that would like to ask questions: first of all, Congressman Michel, then Senator Daschle, then Ralph Munro.

MR. MICHEL: Well, thank you Mr. Chairman. Jim Dickson this is Bob Michel speaking. I believe you testified before our commission in Michigan; I believe it was the last time around –

MR. DICKSON: Yes, sir.

MR. MICHEL: -- and you expressed your disappointment that we had no one on the commission who has a physical disability, and I just want to assure you that with former members of Congress here, all whom have had something to say with the Americans with Disabilities Act over a one time or another, and the sensitivity of the issue of the disabilities among all these members that I know on this commission, that your testimony and what you've brought to the commission's attention when you tested before and today will surely be taken into account to again have a highlighted area in our report as we did last time with respect to the deficiencies that do prevail out there in the country to handle this matter of secrecy of a vote for those of you who are suffered the misfortune of being blind or – for whatever reason. And I just wanted to give you the assurance that your desires are going to be well-represented on this commission, even though there are none of us currently who are either blind or physically disabled as we serve on this commission.

MR. DICKSON: Thank you, sir.

MR. BAKER: All right. Senator Daschle?

MR. DASCHLE: Mr. Dickson, related to what Congressman Michel has just said, I can recall some of the discussions about how we phrased the opportunity for the disabled to vote. And the term was enhanced access. I'd be interested in your observation as to whether or not that is an adequate goal or whether equal access ought to

be a more appropriate ultimate goal, and in your view, what we need to do to achieve equal access if indeed that is more appropriate than simply enhanced access.

MR. DICKSON: Thank you, sir. Equal access absolutely. Enhanced is not – that says we moved forward. It doesn't establish parity and equality. I'm going to answer the question about what we need, but I want to just point out that we have a huge problem in this country of low voter turnout, and we shouldn't forget that. And it is our belief in the disability community that if the system is made accessible and easy for us to use, that will increase turnout. We have seen that in other fields. When the ADA was being discussed and the matter of curb cuts came up, Congress did the right thing and said that that shall happen, but there were lots of people saying it's going to cost too much, there aren't enough people in wheelchairs – I'll bet many of you who traveled here today used a suitcase on wheels. That would not have existed in the numbers that they exist now without the Americans with Disabilities Act and making things accessible to people in wheelchairs.

First to answer your question about what do we need – we absolutely need the January 1 deadline held and enforced for accessible machines. We need, frankly we need, a date certain by whichever polling place will be wheelchair accessible. And we need the databases to be – that are going to electronically connected to the Department of Motor Vehicles – to be electronically connected, at a minimum, to state Medicaid offices. When Congress passed Motor Voter, the record shows that Congress recognized that people with disabilities are less likely to go to the Department of Motor Vehicles. It put in section seven: disability agencies offering voter registration. The floor argument actually says we're doing this so there will not be a growing disparity in the registration rates between the able-bodied public and the disabled public. Because that section has not been enforced, we in fact, have a greater disparity today in the voter registration rates than we did – what was it – 15 years ago when the law went into effect, when the law was passed. States are currently spending federal money to build new databases, and they are not linking it electronically to Medicaid. And that needs to be fixed.

MR. BAKER: Thank you, sir. Mr. Ralph Munro.

MR. MUNRO: One thing about my old friend Jim Dickson is that you better listen to him or he'll find you later and track you down. (Laughter.) I was vaccinating children for polio about 300 miles south of Addis Ababa in Ethiopia, and my friend picked up the phone and it was Jim Dickson calling me, looking for something related to this issue. So Jim, we appreciate you immensely.

MR. DICKSON: Thanks.

MR. MUNRO: And Ron, you're exactly right on technology. Technology is moving ahead much faster than we realize, and we've got to stay flexible. My quick question to you professor is, have you ever compared the performance – and this gets real iffy of how you do this, but, have you ever compared the performance of elected election officials as opposed to appointed election officials?

MR. HASEN: We're just starting to look into these questions, I have not.

MR. MUNRO: I'd love to help you. (Laughter.)

MR. HASEN: I'll tell you one thing I was very surprised to see was that there is not a single chief elections officer of the state who's elected in a non-partisan election.

MR. MUNRO: That's right, and there's a reason for it. And I'd love to help you work on it because – I'm not arguing with you, but I think you're going to find that Democrat or Republican or third party whatever they have to be, if they're elected, they're way out in front with ideas and issues and so forth. And if they're appointed, they're often back checking with their boss every 20 minutes to see if it's okay to advocate something.

MR. HASEN: I believe the most important question is not elected versus appointed, but if you're talking about appointed, how is the person appointed? If we look to the model of the Canadian or the Australian system, you see that those that are appointed are given a lot of independence they have, control over their own budget. They have the kind of tenure that a judge would have and so they could be removed only for cause. And this could – if you know the Canadian chief election administrator, John Pierre Kingsley, you know that he's out in front and he's flying all over the country to make sure that elections go well. So I wouldn't say that it breaks down to elected versus appointed.

MR. MUNRO: Well, I'd love to help you.

MR. DICKSON: Could I just add a brief comment?

MR. BAKER: Please, Mr. Dickson.

MR. DICKSON: This is more in the way of information. There is a serious problem at the ground level regarding the two party watchdog system. Election officials say all the time that they have a very difficult time finding representatives of two parties to cover the polling places, to sometimes be there even in the county headquarters on election night. And I just want to put that on the table for something to be thought about.

MR. BAKER: Thank you very much. Mr. Ladner.

MR. LADNER: I just want to say as the university president how refreshing it is to hear a faculty member professor say that there are great failings in his academic discipline about the status of computing. But seriously, I do want to acknowledge the insight of one of our co-chairs, Secretary Baker, who said earlier this morning that, as we're putting the ideas in the top of the funnel, as we get towards the narrow end, certainly we want to be sensitive to what actually is practical and how we can influence

laws and decisions and so forth. Nevertheless, each of you in your own way has alluded to something like, we don't know what technology will invent, et cetera, et cetera.

I would just like to have your response – Professor Dill in particular – and Professor Hasen also mentioned about this biometric identification, et cetera, et cetera. I was asked to serve as an ethicist with some other scientists at a famous laboratory not long ago to look at the question of how we can establish identity through brainwaves and what this does to personal privacy issues and all kinds of things. With the rapid acceleration of what's happening in homeland security and lots of other things, we already know that you can take a small thing, smaller than your fingernail as being used in the military onboard our ships where 3,000 men and women have their whole medical histories, their whole financial, their whole banking, et cetera, et cetera, on that little chip. And it's used regularly for identification for transactions et cetera et cetera. I sometime have the feeling that we keep alluding to technology, and yet, we tend to talk about the whole voting process as if we were still working on the wheels of a horse-drawn carriage when people are building automobiles sort of thing.

Are we looking at the right thing here in terms of you don't want to be too idealistic, but the rapidity with which our technology is transforming our environment, our ability to do business, et cetera, et cetera? Should we have a small task force subcommittee something in which people are bringing us more information about our cutting-edge abilities to leapfrog some of the issues we think are really entrenched issues, you know, national identity cards, et cetera, et cetera, et cetera; whereas a simple turn of technological advance may make some of those issues obsolete? Is that a possibility from your standpoint?

MR. DILL: I think it's very important to know what tech – you're right. It's important to know what technologies are coming down the pike that could affect the process. I'd like to comment a little tangentially on this though that how we arrived at where we are today. There's a general problem in America and policymaking that often the decisions that policymakers make, have to do with issues that may be somewhat deeply technical. And they often don't have enough expert advice and objective advice on those technical issues. And I think that's been a problem in the voting domain, and it's how we ended up in a situation in where we now have this massive debate over electronic voting. While we should be looking at those technologies that are coming down the pike, I think that policymakers in general and this commission in particular, need to seek out the best, most objective, and most expert advice on the various technology issues.

I think when you get into biometrics, something I'm not an expert on, but a lot of these issues become somewhat controversial even in a technological community. How well they actually work and what about the effects on things like privacy. For example, if you're using biometric fingerprints, you have a database of fingerprints for everybody in the country so that you can validate them when they vote. What are the – whose gonna be upset about that and will it be justifiable? So my advice is, really go to an extra effort

to seek out advice on the technology and to think through the consequences, not just do the geez-whiz-wow thing, with something new.

MR. HASEN: I would just add that the issue is one more of trust than technology. And that if we have trust that our election officials or election administrators can make the right decisions – that our system with the goals of neutral election administration – the technology will follow. We have to be able to send some of those issues over to them and trust that they will actually choose rules that will be neutral and fair to all voters.

MR. BAKER: Thank you very much. Raul Yzaguirre.

MR. YZAGUIRRE: Mr. Jim Dickson, this is Raul Yzaguirre. I'm with the – (inaudible) – National Council of La Raza. For the last 30 some odd years, I've worked with the conference on civil rights and with the disadvantaged community. I want to share with you and give you some comfort that there's at least one member of this panel who also has two disabilities. One of them – I have Parkinson's, and second one, I'm a Democrat. (Laughter.) But I want to assure you that I'm on the board of the Parkinson's Action Network, and I've personally been involved – this is a good day for me. I'm walking and I'm talking and I'm writing, but there are days when I understand exactly what you must be going through or at least partially what you're going through, and I can assure you, that I will be very attentive to your kinds of issues.

MR. DICKSON: Thank you very much.

MR. BAKER: Shirley Malcom?

MS. MALCOM: I wanted to turn to the issue of the technology because I agree. I think to a certain extent we get stuck there because we don't always know what the questions are that we need to ask. I mean, right now, we're dealing with the situation of voluntary versus required, proprietary versus open source. I mean there are lots of choices here and we are on one side versus another that might in fact give us some assurance that the black box that is there actually follows a certain – will give us something that we can in fact trust. So I guess the question is that rather than getting into the question – Hi, Jim – (chuckles) – of DREs with or without paper, what other ways would we have beside a paper trail that we would believe, that we could believe in terms of verifying? I mean, that's one question.

But the other is that if we could imagine it, we may be able to invent it. See the problem is that right now, we're caught in what is as opposed to moving to what could be or what could be invented or what could be developed. So what could one envision that it would take in order to introduce this? I have also heard some discussion about concerns that the current machines carry clocks, which presents its own problems. And I wanted to see if there was some position that you might have on that.

MR. DICKSON: On the question of other technological solutions, there are several things that are being thought of and being looked at, but I have to emphasize that this process is likely to take years and years. I wouldn't be at all surprised if it was a decade before we had something that satisfied everybody. And we do not want to have to wait. Professor Selker – Ted Selker at MIT – has done work with audio verification. He actually did an experiment with people from the public who were asked to find the error. He programmed computers to do the wrong thing. And more of his test subjects caught the error with audio than with visual inspection. There are other variations on audio or visual feedback. Put an external device on the machine that collects the data and have the verification read from that external device as opposed to having the verification read from within the DRE.

MS. MALCOM: David?

MR. DILL: This is really a short term versus the long term question here. I think that the future voting technologies are really an exciting thing, but we're up against deadlines where people have to make purchasing decisions of equipment, which needs to be certified before the end of the year basically. And so, for that, the question of what will be is not so important as what ifs. For the particular things, you know, what are the technologies that we would believe now, certification aside, I have heard descriptions of I think, probably everything that people have proposed that has even remotely practical. And frankly, and sadly, I haven't seen anything that is trustworthy enough that doesn't involve papers somewhere in the process that can be reviewed by the voter. There are a lot of different ways to do that, but I just can't find another way to do it where somebody can convince me or sort of any reasonable technologist with a little background in computer security that the system is guaranteed honest.

The audio verification of Ted Selker is an interesting idea. Catching errors is one thing – first of all, that system isn't manufactured and isn't certified. Catching errors is one thing, but being able to audit the system after the voter has said that this does represent their correct ballot is something else. So depending on the idea that you can have experts review magnetic tapes and see whether there is a forgery or not, which I think might be difficult to do for a lot of areas. External verification devices are an interesting idea. I've had several conversations with people who have proposals for this. Nobody has been able to answer some of the most basic questions I can ask about it, so I think it's not there yet.

Another solution that was proposed was a little more plausible, a really advanced cryptographic method such as that of Vote Here, where Mr. Munro is on the board. And those things have the problem that they're quite complicated. Even the expert computer scientists I go to with one exception, will not put their reputations behind it. And then we get into the question that people always ask me which is how will my mother understand this system and why should she trust it. And since I can't answer that question, I can't really endorse that approach, either.

MR. BAKER: Thank you very much professor. Sharon Priest.

MR. PASTOR: Thank you, Mr. Secretary. Ron, at the risk of putting you at odds with every county official in the country – (laughter) – do you think that if voter registration were centralized at the state level and then sent to the counties for precincting, that that would help in terms of list maintenance? You would be able to deal with people who were moving from county to county or place to place within the state, but still leave precincting a local issue.

MR. THORNBURGH: I do think – and you're right, you have just set me up with every local election official in America – but that is exactly the way we have defined the RFP in the state of Kansas for our central voter registration system, in which it will become a state record that is shared with the counties as opposed to the system we've had forever, which is county records that are shared with the state. And so, we continue to see the advances in the technology that allow this to happen. Simply having the broadband strength to push that information to the counties is something that was not available to us five years ago. Now we have it and now we're able to take advantage of that. The communications are vastly superior than they've ever been before, and now we're able to take advantage of that.

That's why I'm very intrigued by the issue of the leapfrogging of technology. Instead of talking about where we are today versus where we could be, I think that's a fascinating concept and could perhaps be the most important work for this commission is to talk about what could be in the future. I can tell you that I take very seriously, when the Department of Justice tells me, I have to have something in place by January 1 of next year. And with all due respect to this commission, I will probably follow what the Department of Justice tells me to do. (Laughter.) And so, while we need your input and we need your help, the opportunity to move forward with where technology could take it is just extraordinary. And I would certainly encourage you to continue that discussion.

MR. BAKER: Thank you very much. Any other questions from commissioners?

MR. LADNER: I'm just curious if could just follow very briefly. You seem to endorse uniformity at the state level relative to the counties, and yet you gave this very vivid metaphor of the world class string ball county you had there – (laughter).

MR. THORNBURGH: World's largest ball of twine.

MR. LADNER: Yeah, ball of twine. Sorry. Sorry. (Laughter.) I'm not familiar with it compared to the New York Yankees home of something, and yet, surely your counties must be equally diverse in Kansas compared to your major urban centers and so forth. Why would you not expand that same uniformity on a national level? You seem to be against that.

MR. THORNBURGH: Sir, if I can be very blunt. The reason we created the uniformity in the central voter registration is because the federal government told me to do so. I think there are some advantages and there are some benefits, but when we have

counties as varied as a half a million people in the greater Kansas City metro area to our smallest county that has about 1200 residents, obviously there are vast and distinct differences between those. And we have to be able to account for that. I do believe that there are some significant differences in that when we built the election management system, it was a voluntary county decision to become a part of that election management system. They could manage it the way they wanted to, but the database had to follow the XML standard as required by the state of Kansas. Going back to what Secretary Baker had said before, I think those same kinds of systems could potentially be developed at the national level that allows us to do what we do best at the state and at the local level, yet if we can drive to uniform standards to share that information nationally, I think there could be some extraordinary benefit to doing so.

MR. BAKER: Thank you, Mr. Thornburgh. I'll conclude the questioning by asking Professor Hasen if I understood incorrectly when he said we ought to encourage litigation before – (laughter) – elections and not after.

MR. HASEN: Well, I don't want to encourage litigation at all, but to the extent that we're going to have litigation, if you allow – suppose you see a problem with an election and you don't say anything about it. You wait till afterwards. You essentially have an option on whether or not to sue. If you see a problem in advance of an election, there's a confusing ballot, like the butterfly ballot or there's likely to be some problem with the memory cards as we saw in the Carderock County example. Better to solve the problem before the election because after the election, judges have to make decisions about arcane issues of election law when the stakes are so high. And then the legitimacy of the election system is on the line, the legitimacy of this court is on the line –

MR. BAKER: I would agree with you, I think, provided you see the problem. And with the butterfly ballot, of course, no one saw the problem until they started counting the votes on the ballot. So I'm not sure that's an example that I would use. I agree with you as a generic matter. If you see a problem, far better for the administration of elections and the administration of justice, if you could take it on before the results are known.

MR. HASEN: And that actually happens in the case of the interpreting some provisions of HAVA. There were questions about voting in the wrong precinct cases. It was much better that those were litigated before the election because if would have had a close election, that could have been the determining factor in who would be the next president, and nobody would want to be going through that again.

MR. BAKER: Sure, absolutely. This concludes ladies and gentlemen, our third panel. We will now have a private meeting for an hour or so. And I want to thank all of our panelists for being here and thank all of you in audience for coming. Our next meeting will be at the James Baker Institute at Rice University in Houston, Texas on June the 30th. We look forward to seeing you there.

MR. PASTOR: Let me just ask, if those of you who want to come back for the press conference, we ask if you could come back and sit down by four o'clock. And the press conference will start soon after that. Thanks very much.

(End of panel.)