

**NATIONAL COMMISSION ON FEDERAL ELECTION REFORM**

**TRANSCRIPTS OF THE FIRST PUBLIC HEARING**

**Carter Center  
Atlanta, Georgia**

**March 26, 2001**

## PANEL 1: Perspectives of Elected Officials

### Witnesses:

<b>Asa Hutchinson (R-AR)</b>	<b>United States House of Representatives</b>
<b>Cathy Cox</b>	<b>Secretary of State, Georgia</b>
<b>Bob Irvin</b>	<b>Georgia General Assembly</b>

**President Carter:** I would like to call the meeting to order. This is the National Commission on Federal Election Reform. On my right is Lloyd Cutler, who is co-chairman with former Senator Howard Baker. Senator Baker expressed his regrets that he can't be with us this morning. But he will be with us at the next meeting in April. My co-chairman is a very good friend of mine, Jerry Ford. A subsequent meeting will be held at the Ford Library as well.

This is a great honor for the Carter Center to have this commission meet here. I don't think there is any more important subject than democracy in the United States. Most Americans have taken our democratic processes as a given until last November, when we saw the debacle in Florida. For some weeks, almost months, we didn't know who should be the President of the United States. And I think that the particular set of problems, and the long tedious effort to unravel the questions, made vivid in every American's mind the fact that we have some ways to go to return to the original concept: that each American could vote, that votes would be counted accurately, and that we would be given an equal chance to express our own opinion and our choice of our own leaders.

I have been through an election of that kind myself. In fact, I have written a book about it called *Turning Point*. My wife wanted me to announce that the book is still on sale. My first election for State Senate was in 1962, right after the Supreme Court ruled that one-person, one vote should prevail. Before that Georgia voted—and some other places too voted—county by county. The county where I had a problem was Quitman County, down on the Chattahoochee River. We had a situation where a vote in that county counted 100 times as much as a vote here in Atlanta, in Fulton county. There was a political boss down there who knew all the intricacies of the Georgia code. A ballot box was stuffed and 126 people voted alphabetically in my election, all against me. A number of those who voted were dead, others were in prison.

Out of that came an answer, which I won't tell you in advance, but I wound up in the State Senate. Although I was not an attorney, I took the lead in writing a new election code for Georgia. During a debate there was a very interesting amendment, opposed to my election reform proposals. That amendment was by Senator Bobby Rowan, who is from a little town called Enigma, Georgia. Bobby Rowan's amendment said that no Georgian who had been dead more than three years would be permitted to vote in a general election or primary election. That amendment was heavily debated in the Georgia Senate because some people felt that after a person, say a man, died, his wife and children could for at least three years know how he would have voted were he still been

alive. So in some ways, we have come a long distance since 1962. But in others, we have maybe regressed.

A number of people who work here at the Carter Center, including my wife and I, recently returned from a trip to Guyana, which is a small country, as you know, on the northern coast of South America, just north of Brazil in Western Surinam or east of Venezuela.

We had there perhaps as sharply divided a country as there is anywhere in the world. About half of the people are Indo-Guyanese brought there first by the British as indentured servants. Almost half are Afro-Guyanese brought there by the British as slaves. Those two ethnic groups basically comprise the two major political parties, and they have been in contention now for over fifty years. There were 441,000 registered voters, of which 370,000 voted, an 88% turnout. I would guess that the error rate was less than .1 or .01%. The number of voters per voting place was severely limited. The people went to the polls and voted. The votes were counted—paper ballots, by hand—and then the returns were submitted.

The Carter Center has participated in about 30 elections of that kind around the world. Next month we will be in Peru. We go there as monitors with no authority, but we express our views thoroughly. We think this commission will bring about a situation similar to that in other countries where voter turnout is high, votes are counted accurately, and people have confidence in the election system. I might say in closing that the Carter Center has standards for participation as a monitor of an election, and the United States of America would not qualify at all. We would not consider going into a country which had the same provisions.

**Mr. Lloyd Cutler:** Let me add just two footnotes to what President Carter has said. The first is that I have worked for and with him for twenty-five years. I suppose it is a sign of my advancing seniority that this is the first time he has ever carried my briefcase. And second, when we persuaded President Carter and President Ford to become honorary chairmen of this enterprise, he personally edited the first press release to make clear that he was going to be an active honorary chairman. And as you can see from his remarks today, which encompass a whole gamut of what we hope to cover ourselves, he is very much on top of this vital, vital problem. In order to stay on schedule as best we can, I think we should move directly to the panel unless the other members of the commission would like to say something first.

**President Carter:** If not, our first panel will commence now; it is scheduled for one hour. There are some flashing lights in front of us. The opening statements by the panelists will be five minutes each. We will start with our distinguished guest from Arkansas, Asa Hutchinson. Congressman.

**Congressman Asa Hutchinson:** Thank you, Mr. President, Chairman, distinguished members of the panel. I would like to thank you for the opportunity to speak on this important subject and for your commitment and dedication to this task. I would like to

do three things this morning. First, I would like to talk about some Arkansas experiences as President Carter did in reference to Georgia. Second I will talk about some of the things that are happening in Congress. Finally, I would offer some humble recommendations to this commission.

I have served as both as a state and county election commissioner. And so in that capacity, I have great sympathy for the challenges faced by election officials across the country. Arkansas has made some great strides in the past few years. When it comes to voting equipment, 65% of the state's 75 counties have optical scan machines, which compares to the national average of 27%. I think this is a good sign for Arkansas. When it comes to punch card systems, as had so much difficulty, only 9% of Arkansas counties still use punch card systems, which opposed to the national average of 36%.

Despite these good efforts, Arkansas does have its share of problems. It has had problems in the past. In fact in reference to what President Carter was talking about, we had a former county sheriff write "How I Stole Elections." It was not—I hope it was not—a best seller across the country, but it sold well in Arkansas. Some of the problems that we experienced recently in Arkansas were really the result of an increased voter turnout that we can all have some sympathy for, but should be anticipated.

In Garland County, which is a fast growing area southwest of Little Rock, the companies that provided voting machines did not provide enough of the number of official pens for the optical scan ballots, and the sheer volume of people that showed up to the polls that day overwhelmed the poll workers. By 7:30 in the morning, the lines were long. People got discouraged when that happened and went home. Poll workers left the polls and tried to locate additional pens. At another point in the day, misfed ballots jammed some machines, but the repair personnel were too few and too spread out to fix any of the problems quickly. A few precincts were sent ballots that would not feed through the machines. So some of these problems created frustrations among the voters and, as I see it, some of them went home simply out of frustration. All of these situations could have been avoided with more training, and more planning in anticipation of Election Day.

Another problem that we encountered in Arkansas that was sort of interesting was a result of our early voting law. In Arkansas you can have early voting. The law says it will be available to any qualified elector who applies to the county clerk during regular office hours fifteen days before the election. Many people took this to mean that you could vote from 9 to 5 on any day that the clerk's office is generally open. It so happened that close to the election, on Saturday and particularly Sunday, there were busloads of people coming from certain locations that were going to the clerk's office on Sunday because they had opened it up for voting that day. That caused a little consternation because that was not considered regular voting hours. Well, they indicated it was regular during election season, "We always open it up on Sunday." But that problem, and debate that occurred after the election, reflected some discriminatory results from the election, which occur whenever you have greater access in some counties than in other counties.

I don't bring this up simply to rehash what happened in Arkansas, but to use it as an example that sometimes a disagreement over the interpretation of state law can cause disparity for voters. Uniform standards and practices within a state are necessary to assure equal representation under the law. The states themselves need to take the steps necessary—including calling a special session of the legislature—to address some of these equal protection problems.

After the last election, I, like some others, were in Florida during that recount. I will never forget the story of a foreign journalist who I heard talking on one of the talk shows. This foreign journalist was asked about the impression in the other countries about what was happening in the United States. He said no one is upset because it was a close election or because it took 36 days to figure out who won. What was distressing to other people was that they looked at the United States of America, the oldest democracy [**GAP IN TRANSCRIPT**]

I will conclude very quickly. I think it is appropriate to set some broad guidelines, like to ensure that there is appropriate access for people with disability, to ensure compliance with the equal protection clause. But beyond that, I think the states should be left with broad flexibility to carry out their mandate in carrying out and administering elections, as has been traditionally happened in our country.

**President Carter:** We are going to come back and have time for discussion. The next speaker will be Cathy Cox. We are very proud of her. Tell us about the experiences in Georgia, or whatever you wish to say.

**Secretary of State Cathy Cox:** Thank you, Mr. President. I appreciate the opportunity to participate in this very important hearing this morning. As Georgia's Secretary of State, I serve as the state's chief election official. I am one of the many election officials around this country who is deeply concerned about the problems that exist in our current system of casting and counting votes. So I am very pleased that you have selected Atlanta and the Carter Center as the first stop in your series of hearings around the country.

Your visit is particularly timely from my perspective, because just last week the Georgia General Assembly passed my comprehensive election reform package created to address many of the weaknesses in Georgia's election systems. With the passage of our Senate bill last week, Georgia has taken a bold step on the path to more fair, accurate, and user-friendly election systems. In fact, we believe with the passage of this bill, Georgia may become the first state in the nation to enact a uniform standard of voting by the elections of 2004.

As the presidential election drama unfolded in Florida last November, one thought was foremost in my mind: there but for the grace of God go I. Because the truth is, if the presidential margin had been razor thin in Georgia—and if our election systems had undergone the same microscopic scrutiny that Florida endured—we would have fared no better. In many respects, we might have fared even worse.

Like Florida, we have several types of voting systems in Georgia. Like Florida, we had thousands and thousands of ballots that registered no vote in the presidential race, what we call an under vote. In fact, nearly 94,000 votes for president in Georgia were not counted, either because the people chose not to vote for president, or because they made a mistake that voided their ballot, or did not have their vote counted by the machinery we use. That is an under vote or error rate of 3.5%, a number that compares unfavorably to the Florida under vote rate of 2.9%, and what has been reported as the national average under vote rate of 1.9%.

That brings me today to the crucial issue for any group that is reviewing the aftermath of November's elections, that is, how we cast and count our votes. For many decades—even centuries—numerous Americans have fought for the right to cast a vote. Now that all American adults have that right, it is shocking to learn that many of those votes are not being counted. All of the ideas for election reform are important and worthy of discussion, but nothing is more critical than assuring that our votes are actually and accurately counted.

Since November, we have spent a great deal of time analyzing the votes that occurred in Georgia, especially Georgia's undervote, and the variations that occurred from county to county—and even from precinct to precinct. We prepared a report for our Governor and General Assembly that offers insight into a whole range of issues. Let me focus this morning on just one of those, the under vote performance of optiscan systems as compared to the punch cards. Optiscan is the type where you fill in the circle or fill in the ends of an arrow. Although optiscan systems offer satisfactory performance in some counties, in many locations optical scan under vote rates are extremely high well above the averages of many of the more antiquated systems. In fact, 21 optiscan counties in Georgia had under vote rates of 5% or higher. One optiscan county had an under vote rate of 15%. One precinct had an under vote rate of over 20%.

In addition to our overall analysis of all Georgia counties, we were especially interested in the differences in under voting that occurred by race. So we studied presidential under vote percentages in 92 predominantly black precincts and compared those to predominantly white precincts in the same county. We found that, across the board, under votes are higher in predominantly black precincts than in white precincts in the same county using the same equipment. We called this difference an under vote gap. But the biggest surprise is that this under vote gap was higher, yes higher, in counties that used the optiscan system than in those that used the punch card system.

The reasonable question that one would ask when presented with these findings is, why? Why are voters in predominantly African American precincts more likely to cast an under voted ballot and why is this variation even greater in optiscan precincts than in punch card precincts? Truthfully, we do not know the answers. Anecdotally we know the kinds of errors that people can make on an optiscan ballot. Sometimes voters put a check mark or a "x" on that oval instead of filling in that oval, and the machine will not read their vote. We often saw ballots where voters who were really intent on making sure their vote

counted wrote in on the write-in line the same name of the candidate that they circled or penciled in the oval for. The machine counted that as a vote for two different people and discarded their vote.

We believe that electronic equipment—systems that are flexible, accurate, prevent over voting, and feature a paper audit trail—presents the best option for improving the reliability of our election systems. I am grateful to Congressmen Hutchison and many other members of Congress for the support that they have put forward already to help states upgrade to more modern equipment.

I know that time is short this morning, but let me quickly address two additional issues that are critical in this debate. The first is the issue of under votes and why they occur. Some observers suggest that under votes in the presidential race simply reflect the conscious decision of voters to skip that race and make other choices down the ballot. Our data strongly suggests otherwise. In fact, in 13 Georgia counties that compute duplicate votes or over votes as a category, these inadvertent duplicate errors constituted 61.5% of the total under vote. These are not people who chose to skip over the presidential race.

In addition to duplicate votes, it is unquestionably the case that additional numbers of voters attempt to make a selection but because of their error or flaws in the computing mechanism their vote is not recorded. When we compare Georgia's under vote performance to other areas in the nation that use more modern equipment, we see an enormous disparity in our respective under vote quotes. In Clark County Nevada—which is Las Vegas—they use electronic voting equipment and the under vote rate there on election day was only 0.21%, a rate 16 times lower than Georgia's. I simply do not believe that the good people of Nevada are 16 times smarter than the good people of Georgia. I believe that the critical difference in Las Vegas is that voters there are using equipment that reduces the opportunity for a voter mistake or a computation error.

Mr. President, I know my time is up and I have other issues that I would like to bring up about other studies that have been done on electronic equipment. But I am so grateful that you have given us this morning to put these issues on the table this morning. I look forward to your debates during the year.

**President Carter:** Fine. You will have a chance in a minute, Kathy, to let you say them. Bob you are next. This is a distinguished Republican member of the Georgia legislature. It is a pleasure to have you here to continue the discussion.

**State Representative Bob Irvin:** Thank you, President Carter and members of the Commission. Like the others, I would like to thank you for the time you are putting in on this and the serious bipartisan way in which you are approaching the issue. Most of the attention nationally—and this morning so far in this discussion—has been on accurate counting of votes and on the machinery for doing that: voting machines, ballot design, and things like that.

But there are two halves to a free and fair election. The first half is that the votes must be honestly cast. The second is that after they are honestly cast, they must be honestly and accurately counted. And I would urge this commission to focus on both halves of this issue—not only the second half, the counting half. This is, in my view, the opportunity to address election integrity as a whole, because it is now put on the table and it is something that otherwise does not get a lot of attention. Fraudulent voting, like inaccurate voting, happens mostly in the dark and it only comes to light in very close elections like we had some of this past fall. Even then, it only comes to light, mainly, when a defeated candidate is willing to spend enormous time and energy to pursue it, to try to locate people who have voted fraudulently, and to create enough attention that you eventually may get an investigation.

People often say that the penalties are high for fraudulent voting and that there is an opportunity to investigate it. In most cases, that does not do the job because the burden is on the defeated candidate to do the initial pursuing. Most defeated candidates do not have the time or money to do that, and don't, frankly, have the stomach to do that. Because unless they think that it will actually overturn the result of the election, they just don't want to spend the energy on it. They are typically going up against whoever is the entrenched local control group of the county. That is exactly what President Carter discovered down in southwest Georgia in 1962. So I would say to you that I hope you will consider creating safeguards to close the holes in the law that allow for fraudulent voting. To simply say that we hope to catch it and punish it after the fact is not enough.

My experience is only in Georgia, so that is what I am speaking from. Fraudulent voting happens in a number of ways. It does not happen very often, Mr. President, in the way you found it in 1962. But it still does. In 1998 in a state Senate race in northwest Georgia, we had a ballot box show up the day after the election that somehow had been missed. And sure enough, it changed the outcome of the election. In 2000, we had 350 people—more or less—who voted in a House election in Cobb County who didn't live there anymore. We know they didn't live there anymore because one of the candidates sent a first class mail piece to these people 10 days before the election and they all came back. He wasn't trying to catch anybody; he was just trying to control the timing of the election. He lost by 200 votes.

There was a survey referenced in something I read that University of Wisconsin college students—many, many of them, something like 15% of them—said that they had voted more than once, some as many as five times. But by far the most common way to vote fraudulently today is absentee ballots. The elderly and the infirm are victimized by people sitting and supposedly giving them advice, who are, in fact, marking the ballot for them. We had instances of this in Georgia in 2000.

Dead people still vote. There was an investigation by the *Atlanta Journal-Constitution* last fall that found that some 5,000 people who had voted in recent year in elections in Georgia that were dead. I talked to the reporter who did the investigation. They suspected that there were more, but these were the only people they could prove were

dead because they were the only social security numbers they could find on the records and could match up with death certificates.

People register and vote who are non-residents, and in some cases who are non-citizens. I had a person ask me the first time I ran in a special election in 1993, "I know I can vote in federal elections but can I vote for you in a local election?" And I said to him "You can't vote in a federal election. You are a citizen of Kenya not a citizen of the United States." And he said, "Oh, but I have voted in a federal election." He just showed up with a driver's license and they registered him and he voted.

Some of these problems were created, unintentionally I think, by the Motor Voter Act. Some were simply created by a desire to make voting easier. But our principle should be that we should make it as easy as possible for everyone who is entitled to vote, as hard as possible for anyone who is not entitled to vote at all, and as hard as possible for anyone to vote more than once.

I have three suggestions that I would like to make to you before I quit, and I see that my time is up. First, I suggest that we require that people register in person. Mail in registration is an open invitation to non-citizens, non-residents, dead people, and so on, to be registered. People should have to register in person and they should have to show photo identification when they register.

Second, when absentee ballots are requested, they shouldn't be delivered en masse to any location. Somebody ought to be able to bring in a bunch of absentee ballot requests but all the absentee ballots should be delivered one by one or mailed one by one to an individual person. Nobody should be given a mass of absentee ballots to take, for example, to a nursing home.

Third, I would urge you to require photo identification for anyone who votes in person. Obviously that is not practical for someone who votes by mail. But for anybody who comes to a polling place on election day or who goes to a courthouse to vote ahead of time, absentee, I suggest you consider requiring photo identification. You have to have photo identification to get on an airplane. You have to have photo identification to cash a check. You have to have photo identification to buy a beer. It seems to me, requiring photo identification to vote is not a burdensome requirement. Today, in most cases, election fraud does not occur on Election Day. It occurs before Election Day in the absentee ballot process in most cases. I urge you to focus on that and pay attention to it.

**President Carter:** Well, I think everyone in the auditorium has seen the quality of these presentations and I know that there is a great eagerness to discuss the points or ask questions. And now I turn to the members of the commission. Bob.

**Representative Robert Michel:** Congressman Hutchinson, I just wanted to ask one question about the \$1.5 billion that is proposed. I don't want to sound like John C. Calhoun, but could you address the whole question of how states—and more particularly counties, where many of the officials have control over the election process now—would

receive this money? Do you envision strings tied to the \$1.5 billion as it goes to the states and the counties?

**Congressman Hutchinson:** Minimal. My approach is that the states ought to have the maximum amount of flexibility as long as this money would go toward modernized election equipment; that is satisfactory. I think that, because of the concern about access for disability, if there is taxpayer's money going to the states, they ought to be able to say that there is going to be access for the disabled in compliance with the Americans with Disabilities Act [ADA]. Second, I think there might be some minimal certification that equal protection provisions will be met. But I would be in favor of allowing maximum flexibility to the states. I would suggest that this money go in a matching sense—75%, 25%. This money should not be just to the state election commission. Counties, municipalities should also be able to apply for funding directly to make sure that it doesn't just go simply to one particular area.

[unclear]: Thank you, sir.

**President Carter:** Bill Richardson and then Slade Gorton.

**Secretary Bill Richardson:** First, I want to commend you on your work, especially the language in the Budget Committee; I think that is important. But I must say I am troubled by what I see as perhaps a minimal push to the states to do something. It would strike me that you would want to at least tie to—what Mr. Seigenthaler said—tie some of the money to the states taking some steps to create uniform standards. I think if you just do it on equal protection or disability, we have a problem in this country—besides what Representative Irvin said—that not enough people are voting. And I worry about Representative Irwin's suggestions about Motor Voter curtailing what I see as the ability of Americans to vote. So combining what Cathy Cox said—she basically said that electronic voting may be the best way to insure less fraud and more voters—why don't we tie some kind of performance standards to the money?

**Congressman Hutchinson:** And that is a good debate. There are going to be many good arguments made for different standards to be applied. I would suggest that this commission make one recommendation to Congress as to what our federal role is but also to have a separate set of recommendations for the states because they need to address many of these issues. When I said satisfaction of the equal protection clause could entail uniform state standards, that is a fair debate. I believe that Senator Dodd and Congressman Connors have a bill that would require each state to provide that they have provisional voting, which makes sense to me. So that might be one that could be considered as a requirement as well. So as you start hearing the good cases you are going to add to that list of requirements but I just think there must be some hesitation because we don't want to micro-manage from the federal level each of the elections. With the electoral system, there is still going to be some flexibility within the states but with some basic standards, I hope they will be minimal, but they should be included in those requirements.

**President Carter:** Senator Gorton.

**Senator Slade Gorton:** Ms. Cox, I guess I have the exactly opposite concern from that which was expressed by the two previous questioners. Will the state of Georgia—or you or Mr. Irwin—refuse to make the changes you think are necessary if you don't get federal money to carry them out?

**Ms. Cox:** Well, that is the one little, I guess, question mark that is left in our legislation that was passed last week. It does mandate that Georgia would move toward a uniform system of voting equipment by 2004 and the state would begin to pick up the responsibility of paying for that equipment rather than the counties. But some selective language was added to the legislation, which says "subject to funding." I do feel like our governor is very supportive of this move. The legislature did not fund it in the budget that passed at this session because they were waiting to see how much federal money would be available.

I have been supportive of Congressman Hutchinson's legislation, and our own Senator Max Cleland has a bill that would provide funding. I went to Washington right before the end of the year to support legislation introduced by Senator Charles Schumer that would provide a good funding mechanism. We are trying to do everything we can to position ourselves to be first in line for whatever federal funding becomes available. We have a plan now in place and will be ready to move hopefully with a state match for the federal funding.

**Senator Gorton:** I am sure you will be happy to get the federal money. My real question is this: if you don't get the money will you abandon the reforms?

**Ms. Cox:** Certainly I would hope not. Unfortunately, the Secretary of State does not get to write the state budget in the state legislature. I have to depend on the good graces of the General Assembly. But I believe that they are supportive. I believe that when we have been able to break down this 94,000 undervote and show individual legislators how many of those votes came from their county, it raised some great awareness that there were problems on their front doorsteps, not 250 miles on the other side of Georgia.

**President Carter:** Cathy, do you feel that uniformity within Georgia is the crucial issue?

**Ms. Cox:** Yes sir, I do, in part for the reason that you mentioned. We have no ability now—with four different voting mechanisms in the state—to do any kind of education effort because it varies from county to county and system to system how you vote. We can't do any type of effort to tell people the way that a ballot will look or the way that equipment will work. I think that we could greatly minimize this error rate by just showing people how to use the equipment accurately.

**President Carter:** Congressman, do you think that that is a minimum requirement, that there be some uniformity instead of giving money to individual counties to further fragment the issue?

**Congressman Hutchinson:** I can't think of an argument against that. Let me put it this way: I certainly would like to listen to the debate, but at this point—particularly under the latest Supreme Court case *Bush v. Gore*—I think they raised the equal protection arguments very clearly. It makes sense. I mentioned the great progress we made in Arkansas with the optical scan and fewer typical machine punch card ballots. But if you noticed there are about 25% of the counties that are not in either one of those systems, which means they use paper ballots. So, I think that there is a good case—and Cathy made the point about education—that it is hard for the state to educate its citizens when you have so many different county systems. This would be a huge change and a huge expense for the states because there are so many different systems that are out there. I think that it is something that you should look at.

**Representative Irvin:** Let me answer Senator Gorton's question about funding. I think there is probably a little bit of a game of chicken here. Because if we say we will do it without any federal funding, that of course indicates intent on the part of Georgia to address this issue. But then that might reduce the inclination of the Congress to send money. So what you want to say is something that indicates that you are seriously interested but also indicates that you possibly can't do it without federal money. And I don't know how to say that exactly. I agree with Secretary Cox; I think we are seriously interested, but at the same time we passed a resolution, House Resolution 434, asking for federal money. As a footnote, I will say that at my request the House inserted in that resolution a request that this money could be spent on things that would reduce voter fraud as well as on new mechanisms for voting equipment. I will also say, as one other footnote, that Secretary Cox has agreed to appoint a task force on voter fraud, which I appreciate and commend her for doing. I think we are interested. I think that the state is moving forward. But I sure wouldn't want to say anything that would indicate we don't need the federal money.

**Senator Gorton:** I have a question about electronic voting and provisional voting regarding the issue of the secret ballot. How do we protect the privacy of the ballot if it is all recorded on the provisional vote or if it is all recorded on the electronically operated vote?

**Ms. Cox:** If I might address the electronic voting system. One of the problems I have with optical scan ballots, even though some of the optical scan machinery can be programmed to kick back a ballot if a voter made a mistake, someone has to look at that ballot to tell the voter where they made a mistake so that they can revote. This clearly violates the secrecy of the ballot.

On electronic equipment, most of the types provide feedback that you don't get from other voting mechanisms. For example, on a touch screen mechanism, after you press the name of the candidate you want to vote for, that name might light up so you know that the machine registered your choice. After you go all the way through the ballot, it would show you a screen with all of your choices and allow you to correct any mistakes or oversights before you leave that voting booth. Then the ballot, all of your ballots, are

recorded both on a computer disk and on an independent audit trail—at least in the systems I would like Georgia to use—so that you have a double verification of the vote. Now, you may have to set aside some other independent machine just for provisional ballots. We don't have a law in Georgia that allows provisional voting. However, you would probably—if you did it on an electronic system—set up a system that would identify a ballot to a person so that you would be able to delete that vote if that provisional ballot or provisional voter was found not to have the right to vote. But for the most part, it would be sort of anonymously recorded on a computer disk and an independent audit trail.

**President Carter:** So in that system the scanning would tell the voter that you have a mistake on your ballot and you would have to correct it, right?

**Ms. Cox:** Optiscan can be programmed that way. The ones in Georgia right now are not programmed that way, which could contribute to some of the higher undervote rates. But if you program them, for example, to kick it back if they had a double vote, then generally somebody has to look at it and show them where they made a mistake, and that violates the secrecy of the ballot. Otherwise, you have a voter standing there not knowing necessarily what they did wrong.

**Ms. Colleen McAndrews:** I am Colleen McAndrews from California, where I practice political and election law. Almost every two years for the last ten years, I have ended up in election offices the day after the election, monitoring those absentee ballot counts and the provisional voting process. I have seen all of the machines in operation and sort of know the strengths and weaknesses Ms. Cox has explained here. When I try and evaluate the machines and try and come up with one size fits all around the nation, in California we have counties as small as a couple of thousand voters up to Los Angeles with 12 million residents and maybe four or five million ballots counted.

I really can't come up with which machine is going to work best, whether it is the touch screen machine that we have in an experimental program in Los Angeles County or the optical scanner, which has problems. Now we learn that the punch card may have more accuracy than the optical scanner. Then, of course, in Los Angeles County we have over 25% of the voters voting absentee, which means that they are sitting in their homes without access to these machines. We have to have a system that will count that 25% absentee ballot and provisional ballot accurately. So I am not sure we are going to get to something totally uniform, the same machines all over the county.

When I was thinking about this prior to coming today, I thought, we need to back up and recognize that the problem is often times human error or people flaws? How do we get people prepared to walk into a polling place or sit in their home and vote effectively prior to Election Day on a range of equipment? Then I started thinking about the fact that I had to take civics in high school, but California did away with requirements for government or civic classes about ten or fifteen years ago. So I am curious, in Arkansas and Georgia, what sort of civics requirement or government requirement do you have in high school? Should we be stepping back and thinking about the concept that democracy

has to be learned by each generation and are we somehow failing to train or educate or teach people prior to when they come into the voting place? This also goes to the poll worker training. If we are going to change technology around the country in the next two years, are you going to build into the expenditure of funds the idea that you are going to have massive poll worker training as well as voter training prior to people confronting these new systems?

**Ms. Cox:** I think to a great extent we have failed our children and younger adults in instructing them in the importance of the privileges and responsibilities of citizenship, which primarily revolves around the act of voting and being an informed voter. But I also think that we have an equal responsibility to provide a voting system that minimizes to the greatest extent possible the opportunity to make an error that is going to happen under any type of system that we have. That is why I like this electronic system the best—because it is the only type of system that gives you some feedback and confirmation that you voted the way you wanted to vote and that it registered the vote you intended to make.

We are working in Georgia. Three years ago, we began a civics program with our Department of Education, in conjunction with the Secretary of State's office that we have tried to put in place in all of the schools. It is voluntary, not mandatory. We also have a number of private-public partnership programs, like Kids Voting USA and the Student Mock Election, things that really do involve the students in the act of learning about how to vote. Kids Voting USA—if you are familiar with that program—has a very well developed curriculum in the schools for K-12 that teaches the kids about voting, and the issues, and the candidates. On any election day, the children actually go to a polling place to vote in their own special little booth provided they bring along an adult registered voter. So they have these dinnertime discussions leading up to the election about how they are going to vote and asking their parents will you come with me so that I can vote. We have actually seen an increase in voter turnout in some of the Georgia counties that have used the Kids Voting program. We are doing everything we can short of a mandated program in the school systems to try and raise up a generation of more active voters.

**Congressman Hutchinson:** If I could respond to that as well. I agree we need to do better on civic education, but we need to provide a great deal of education when it comes to voting in the polling booth. The Secretaries of State do a great job in that arena, but I think you are correct in saying that if we invest more money at the federal level, we also need to include an investment for education. I would suggest that you might take the Office of Election Administration in the Federal Election Commission and have them set up the best practices for the states, where it is not a mandate but a guideline that could be followed. Second, they have voting machine tests and they make recommendations in that regard. You raise a good point in reference to the standards. You should have to have the same machine across the state and perhaps we would go with an equal protection requirement but leave it to the states to be a little more flexibility as to how to comply with that, maybe setting a percent error rate as the standard rather than mandating

that the same machine be used in every location because as you point out, you have small counties and large counties and it is impractical to have the same machine.

**President Carter:** Congressman Michel.

**Congressman Michel:** First I applaud you Colleen for bringing up that element in the discussion because we as a commission have not really touched on that yet. I think it really ought to be considered in our deliberations. Now Congressman, as an old budgeteer and appropriator, when you are talking about federal funds with respect to distribution to local communities or states to solve part of the problem, I just don't know how there is really that much money available to really make a serious impact. And the second question obviously would be: how would we go beyond the state level in distribution of that kind of money with all of the thousands of communities that would be inclined to look to the federal government for assistance? And to follow up on Slade Gorton's question, doesn't that inhibit the states from moving aggressively now, from thinking, "Hey, they are talking seriously about federal money in the bank someplace. Why don't we just defer until we find out what is available for us?" That is my concern. More specifically, do you think there is support in the Congress for a standardized national ballot that would be implemented under Article One, I think it is paragraph four, of the Constitution?

**Congressman Hutchinson:** I think it is really too early to tell, Mr. Michael. I think Congress is looking at recommendations of commissions such as this. Your recommendations carry a great deal of weight as to what type of standards and guidelines are recommended. Second, there is debate in Congress as to whether our own special select committee will look at this. But I think we are still formulating those opinions. There are certainly some that would advocate that position. Your points in reference to the budget are certainly appropriate. \$1.5 billion is not, I would say, the lion's share of what is going to be needed in our country and it is going to be a gradual process. It is not going to be a "one election is going to cure it all" type of approach. So in my judgment what that \$1.5 billion represents is an investment, a financial partnership that is historic in nature because we haven't done that before. And I don't think that will discourage the states from assuming their appropriate role because that is simply a start for them.

**Representative Irvin:** Let me deal with that issue as well, because we are not talking about full federal money when dealing with this issue. We are talking about matching money, not even 50/50 matching, money but something less than that. But I will tell you something that I suppose you already know, that in a state budget process there is almost no argument that is more powerful than to say if we don't appropriate this than we are going to fail to draw down federal matching money. And federal matching money is a great inducement for states to do things. And if you said in the legislation that the states had to do x-y-z in order to be eligible to receive the money, I think it would be an inducement to the states to go ahead and move down the road rather than to wait.

**Senator Gorton:** Two subjects, Ms. Cox. First, are you so convinced that one system is better than any other—no matter how large or how small the county—that there should

be a single system across the United States, or a single system even in the state of Georgia. You pointed out yourself and we have the evidence from Los Angeles and Florida now says that we will never use another punch card. There are many places in the country that think that punch cards are actually more accurate, at least if the machines are kept up well. Are we at a point where we should say that there is just one way that people should cast votes all across this country and mandate that even on a state-wide basis?

**Ms. Cox:** I do believe that from the state level that there is a great advantage in having one type of system state-wide. Number one, as I mentioned before, is the ability to educate all of the voters within the state on how to cast a vote accurately and to make sure that it counts. And although we have counties in Georgia that vary from about 2,500 in population to Fulton county with almost a million in itself, I do believe there is one general type of system that is better than the others and generally it is electronic equipment. Now within that area of electronic equipment there are a number of different types. Some are like a computer in which you touch a screen. Some have a screen with buttons on the side.

**Senator Gorton:** But you are going to have to have just one if it is going to be uniform.

**Ms. Cox:** Well, I agree. I agree. And what we are going to do in Georgia under the legislation we passed this last week is try out different types of electronic equipment in various city elections this November as pilot projects. We will put together bi-partisan commissions that will oversee those pilot projects. They will evaluate what equipment works and doesn't work, what people like and don't like and look at what is going on on the national level and what is coming up.

A lot of the big technology companies that could easily transition into making voting equipment never have because there has been no market. But now because there is a market, many of the big tech companies are quickly preparing to present voting equipment that could provide very attractive alternatives. I'm not certain that we should mandate uniform equipment on a national level because some states have been very innovative. Oregon for example, now I hope you all know, doesn't even open precincts anymore. They mail every registered voter a ballot and that voter casts that vote at home at their convenience and mails it back in. Oregon would be most distressed to have to go back to a voting in person system where they open polling places. And I don't think that the Congress should do anything to stifle that type of innovation within a state.

But I definitely believe, as Congressman Hutchinson said, that the holding from the *Bush vs. Gore* case in the U.S. Supreme Court now puts a very strong burden on states, within the confines of a state, to insure that all votes have equal standards for counting. In fact, in Georgia, we have already been sued, the Governor and I—in one of the first lawsuits filed after the November election—in a lawsuit that seeks to enjoin all future Georgia elections unless we can establish under the *Bush vs. Gore* standard that we have equal standards for counting votes. I am hoping that our legislation and our plan will, perhaps,

satisfy the court that we are trying to take care of our own house. But I think there is a lot to be said for uniformity within a state.

**Senator Gorton:** I think there is one other subject that we haven't covered at all. And if it weren't for that subject I don't think we would be here at all. In Florida we had this extremely close election, and for several weeks thereafter disputes over not how to count votes but what votes to count. To put it mildly, judgments were highly subjective in nature, not only varying from county to county within in counties. In fact, people are still counting in Florida, counting ballots in that respect. What do any of you propose in that connection? With ballots that, no matter how well we have done it, somehow or another seem to be questionable? And that would clearly be true in a place like Oregon or Washington where 60% of the votes are cast at home or California where 25% of the votes are cast at home? My own view on this subject is that any objective rule is better than any subjective rule, and that once in a closely divided election you have people making subjective determinations about how a given person cast a vote, you get highly partisan and highly inaccurate. Do you think that in close elections we ought to have hand recounts with individual people, citizens, making judgments whether a particular vote was cast for Cathy Cox or Asa Hutchinson? Or should we have some way to bring finality to with an objective machinery?

**President Carter:** Let me caution you to be brief with your answer because we have to move on to the next panel.

**Ms. Cox:** Mr. Gorton, in my personal opinion I would generally trust the human intellect over the machines intellect any day. To give you a specific example on an optiscan ballot, and number one in Georgia, we don't have any law that allows a manual recount unless that there is a court order that because there is a particular problem. But we saw ballots in certain counties where someone wrote or penciled in the oval for a particular candidate and out of their zeal to get that candidate elected they also wrote in the same name of that candidate on the write-in line. Now the machine totally discards that ballot.

**Senator Gorton:** It easily could have been reprogrammed to solve that.

**Ms. Cox:** Well, you really can't. The machine can't make that determination. Any human who worked at that ballot manually would say that there is not doubt about who they intended to vote for. It is not a doubt of this candidate or another. It is all for the same candidate. But that doesn't count in Georgia under our current law. So it all goes back to the mechanism you use for counting the ballot which is why I like this electronic equipment. It doesn't leave much of anything to a subjective determination. There is no piece of paper to look at and say what did they intend to push. It registered, they got feedback before they left the booth, and they had a chance to correct any errors.

**President Carter:** One other point, Slade, is that in some entire nations much bigger than Georgia they have uniform voting procedures with a uniform ballot. Bill, can you wait until later or not? We need to move on to the next panel. Can you all stay until this

afternoon? We are going to have some more flexible time this afternoon and maybe have some questions. Cathy, can you?

**Ms. Cox:** Yes, I can probably leave and come back.

**President Carter:** That would be fine, if you could come back after lunch because we have a little bit of flexibility this afternoon but we need to get our other panel done this afternoon.

**Representative Irvin:** I am heading back, but I really appreciate the opportunity to testify.

**President Carter:** We really appreciate you all coming. You can see that you have put your fingers on exactly the kind of things we need to discuss and given some great answers.