

TUNE IN TO THE
SOUND OF DEMOCRACY

Justice Talking Radio Transcript

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Elections are the heart of democracy. It is the way “we the people” choose our leaders and hold them accountable. But since the November 2000 elections when flawed voter registration lists, obsolete voting machines, and poorly designed ballots marred the electoral process, public confidence in our voting system has declined. Although Congress enacted the Help America Vote Act of 2002, one in three Americans still question whether their vote will be counted accurately. On this special edition of Justice Talking we travel to the Carter Center in Atlanta, Georgia to talk with former President Jimmy Carter and members of the Commission on Federal Election Reform. A conversation with former Secretary of State James Baker is also featured. The program, co-sponsored by Court TV, is co-hosted by NPR’s Michel Martin (sitting in for Margot Adler) and Court TV’s Catherine Crier.

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MICHEL MARTIN: This is Justice Talking. I’m NPR’s Michel Martin, in this week for Margot Adler. The protracted 2000 presidential election led many voters to question whether their ballots were counted accurately. And since then, charges of election fraud, concerns about the accuracy of voting machines and demands for reform have continued. Confidence in our election system has clearly been shaken. But some people are trying to fix that, among them former President Jimmy Carter. After the news, we’ll hear from President Carter and other prominent political leaders, both Republicans and Democrats, who are trying to rebuild confidence in U.S. elections. Don’t go away.

MICHEL MARTIN: This is Justice Talking. I’m Michel Martin; Margot Adler will be back next week. Confidence in our elections was shaken for many Americans by the 2000

presidential election. By the 2004 race for president, one in three Americans questioned whether his or her vote would be counted accurately. In this special broadcast, we went to Atlanta, Georgia to the Carter Center, where we asked what can be done to build voter confidence in U.S. elections. Former President Jimmy Carter is among those fighting to improve the way our elections are conducted. He is co-chair of the Commission on Federal Election Reform, along with former Secretary of State James Baker, III. The Commission includes Republicans and Democrats and it has put forward more than eighty recommendations on everything from the way polling stations should be operated to the presidential primaries schedule. We won't have time to go through them all, but during this hour we will focus on a few of the most important and provocative suggestions from President Carter, Secretary Baker and other members of the Commission.

To cover this important topic, Justice Talking teamed up with the Court TV program "In Pursuit of Justice." My co-host from Court TV is Catherine Crier.

It's fitting to begin today's program by hearing from former President Jimmy Carter. Since leaving the White House, President Carter has dedicated much of his time to monitoring elections around the world and here at home. He was awarded the Nobel Peace Prize for his humanitarian work in 2002. From the Carter Center in Atlanta, here is Court TV host Catherine Crier and President Jimmy Carter.

CATHERINE CRIER: How and when did you first get involved in the issues affecting the way elections are handled?

JIMMY CARTER: Well, the first time was when I ran for the Georgia Senate and the election was stolen from me. And I learned on a crash basis every possible violation of election laws that could be perpetrated under the old election system in Georgia. And so I was immersed in election fraud and what to do about it from the very earliest time I was in politics. Since then, with the Carter Center being formed, we have tried to expand our influence around the world to troubled elections to make sure they could be honest and fair, trusted by the people themselves under the most difficult circumstances. And we just completed our 62nd election, among the Palestinians as a matter of fact, in January.

CATHERINE CRIER: Palestinians, Haitians, very, very recently... what sort of progress and what are still the major areas of reform you're looking at in other countries?

JIMMY CARTER: Most of the countries have moved beyond what the United States has. Almost invariably, they have two or three criteria to meet that we don't meet in the United States. First of all, a central election commission with uniform procedures throughout the entire country. Secondly, they don't depend on massive quantities of money for the candidates to present their views, their platforms, to the people. Most countries require that any qualified candidate has an equal opportunity to go on television and radio without spending an enormous amount of money for sixty seconds and thirty second TV spots.

And third, within the country itself, there is usually a very dependable way to cast ballots and to have those ballots counted without any question about the integrity of the process. For example, some of the more advanced countries like Mexico and Venezuela have long had electronic voting machines. After the votes are counted, the people can look at a paper printout and make sure that the electronic is just the same as the actual paper. And if there's a question raised later on, they can certify the results. None of those provisions apply in the United States.

CATHERINE CRIER: It seems pretty simple though.

JIMMY CARTER: Yeah, they're simple rules, but hard to get them implemented in this country.

CATHERINE CRIER: Politically, I think, campaign finance reform, we could debate and discuss for a very long time, and I understand the complexities there. But something like a central commission to overview the entire country, what's such a problem with that?

JIMMY CARTER: Well, our country is a federalist system where each state really has the ultimate authority under the Constitution for conducting its election. And we've moved one step beyond that almost in an unprecedented way after the debacle of the 2000 election. President Gerald Ford—a very distinguished Republican president and my close friend—and I presided over a very elaborate system of ballots between the Republicans and Democrats, and we've made a number of recommendations. And to our pleasant surprise, many of them were adopted in the Help America Vote Act or HAVA. And for the first time really in history, the Congress moved in a definitive way to setup some basic standards for conduct of elections. Two major provisions, just to save time: One was try to have uniform systems for registering voters within each individual state, and second, to have some kind of electronic voting machines to replace the paper ballots and the punch cards as you know that got so much bad publicity in Florida.

CATHERINE CRIER: Are there other major areas, if you were to rewrite HAVA, or obviously in the work that you're doing here on the Commission, are there other areas we need to be paying serious attention to?

JIMMY CARTER: Well, that's why the 2004 election reform system was setup. After that election, it was obvious that HAVA had not been completely implemented. Secondly, there was no provision in HAVA that required adjacent states to have a uniform system between them. For instance, Alabama has a completely different system than Georgia does. And the two electronic voter lists are not compatible. So we recommended that they be made compatible over a period of time. Another thing was, as I already mentioned, we didn't have the paper ballot backup to prove that the electronic tabulation was accurate if there is a major problem. And there were other questions that have come into discussion. One was that in key states, like in Florida in 2000 and I would say Ohio in 2004, the secretaries of state responsible for conduct of the election were known to be highly partisan. And the results of elections were cast into doubt because there was not an objective, fair, balanced system for conducting elections. You can't prove that those

leaders were dishonest. But they were obviously and overtly committed to a particular political party.

CATHERINE CRIER: How can you be a co-chair of a particular candidate's campaign and be in charge of monitoring the election?

JIMMY CARTER: You can't. You can be in charge of it, but you can't be trusted if the election goes the other way. [applause]

CATHERINE CRIER: The perception of justice is as important as justice itself, and the same thing with elections.

JIMMY CARTER: And there's another very serious problem in the presidential elections. I took advantage of this when I ran in ancient times, but the way the primary system is conducted now, for both the Democratic and Republican Parties it is heavily loaded towards the first few contests in America. So our Commission computed that by the time a particular candidate is chosen to represent the Republican or Democratic Party as their candidate for president, only eight percent of the American voters have had a chance to cast their ballots. The thing is over early in the process.

So we've made a very good recommendation, I think, our commission did, based on a long-standing recommendation of the council...organization of secretaries of state. And that is to go ahead and go along with Iowa and New Hampshire—which is kind of precious to me, I won both of those a long time ago—but then after that to have four regional contests so that an entire block of the nation, about a fourth of it, could vote. And then a couple of weeks later, a different group would vote. And then do that four times. And then at the end of that presidential process, the next time, four years later, they would rotate. So there wouldn't be any favoritism shown to say the East Coast or the West Coast. That was another...

CATHERINE CRIER: Just Iowa and New Hampshire.

JIMMY CARTER: That's right. Well, Iowa and New Hampshire—we didn't touch that because it was so fraught with emotion.

CATHERINE CRIER: Okay. What's happened since the Commission's report? Where are we if we're updating this course now?

JIMMY CARTER: As far as the Congress goes, nothing—to summarize. [applause] But, there are two other major, and I would say dominant, realms of making decisions. One is among the people themselves. And I hope that everybody watching this program and all of those that you influence will look at what has been recommended as described very briefly in this session. And also to realize that state legislatures, state governors, state secretaries of state and others will move to enforce and to implement the recommendations of this commission.

So I would say that state legislatures are the ones that are going to move first. In this highly-charged Washington environment where Democrats and Republicans can't agree on anything, it's very unlikely that they will have another legislative session that would produce a HAVA or an update on HAVA. So I think we're going to have to depend upon the state legislatures and the influence of the general public. My fearful prediction is that when we reach 2006...

CATHERINE CRIER: Which is essentially tomorrow.

JIMMY CARTER: Just in a few months, we're going to see some more problems. And then when we reach the next presidential election, there are going to be additional problems that might cause a crisis of confidence equal to what we experienced in 2000. I hope that won't happen. At least, I believe that a lot of states are moving to a more uniform and active voters list. And I think a lot of states are now moving independently on requiring a paper ballot backup for electronic machines. And 26 states have already passed a form of voter ID. Eleven more states are now considering it, and I think within the next three or four years, almost all fifty states are going to move to some kind of voter ID. They'll still be diverse unless they agree on the uniform system.

MICHEL MARTIN: President Jimmy Carter speaking with Catherine Crier of Court TV about federal election reform. We'll hear more from President Carter later in the program.

MICHEL MARTIN: This is Justice Talking. I'm Michel Martin in for Margot Adler. Coming up, former Secretary of State James Baker tells us about how the Republicans on the Commission on Federal Election Reform ended up supporting the recommendation to restore voting rights to ex-felons. Stay with us.

MICHEL MARTIN: This is Justice Talking. I'm Michel Martin; Margot Adler will be back next week. Today we're talking with members of the bipartisan Commission on Federal Election Reform. We've already heard from former President Jimmy Carter. Now let's hear from his co-chairman, former Secretary of State James A. Baker, III. I joined him at Rice University in Houston, Texas where we sat down to speak at the James A. Baker Institute for Public Policy. I asked him why he thinks so many American voters have become skeptical, even cynical, about the way elections are run in this country.

JAMES BAKER: You know, it's sad, particularly for me, to see less than 51 or two percent turnout in American presidential elections. And then in countries that have not enjoyed our long tradition and history of democracy to see a greater percentage turnout. So I think anything we can do to increase confidence in our federal election system will be beneficial. And that's what President Carter and I tried to do here.

MICHEL MARTIN: But given that you're, you know, you're a veteran of, what, three presidential campaigns?

JAMES BAKER: Five.

MICHEL MARTIN: Five presidential campaigns, and certainly a lot of involvement at the state and local level before that. Isn't it odd in the way that Americans are so cynical about the system now, when in the past, you know, you had outright fraud? You had voters who were denied access to the ballot by means of terrorism. I mean groups like the Ku Klux Klan who made it their business to keep people from voting. So why now is it that Americans are suddenly so upset?

JAMES BAKER: Well, I can't answer that except to say to you that it was a loss of confidence in the system. People don't think their votes are going to be counted or counted properly. A lot of people think there is fraud in the system. For instance, in 2004, you had 45,000 people registered in New York and in Florida, duplicate registrations. Now, a lot of people said there's not a lot of fraud in the system. There may not be. I don't agree with that. I think there is fraud in the system. But if you can address the idea that there is fraud, you can then increase and enhance confidence in the system. Because people have a minimum or low regard for the system if they don't think it's fair.

MICHEL MARTIN: You seem to be able to...you and President Carter seem to be able to put partisanship aside in addressing these issues. But increasingly, the public feels that political leaders cannot. Why is there a sense that partisanship has taken over this process, that people can't put their individual party interests aside?

JAMES BAKER: It's not that it's taken over the election process; it's taken over the process of public service and governance. Washington is ugly today. It's sort of a zero sum game. When I first went up there in 1975, you could be a political adversary with someone without being a political enemy. We badly need to get back to greater bipartisanship in our governance. You're not going to have bipartisanship in campaigning—you shouldn't. That's a blood sport. As they say, politics ain't bean bag, and that's a contest. So you need to have, obviously within the confines of law and regulation, an exercise in confrontation. And that's as it should be. That's the way democracy works. But then once the elections are over, we need to get back to a spirit, if we can, of bipartisanship in governance.

MICHEL MARTIN: You know, you've talked a lot about the need for people, each party, to kind of move beyond its position. Because in some ways, the debate has been stuck with each side kind of defending the position that they believe most advantages them. How did you get beyond that with the Commission, which was evenly divided?

JAMES BAKER: Well, we got beyond that with the Commission because we had a lot of people on that Commission who were interested in making recommendations to promote good practices, good federal election practices. We all did. We supported some things,

we Republicans, that we normally would never have supported. The Democratic members of the Commission supported some things that they normally would never have supported. And we had a consensus. I mean, there were three dissenting votes on the photo ID, and that was the only dissent on all the 87 recommendations.

You know, it's been a Republican position for a long time that felons...that we should leave to the states the issue of whether felons should have their voting rights restored. And it's a reasonable and a rational one. Wait a minute. We're not talking about voting rights here. We're talking about the administration of justice. And if state X wants to say, as a matter of punishment, in the administration of justice in that state, that someone who's convicted of a felony should not have the right to vote ever again, that's a matter of the administration of justice. And yet we came up with a recommendation that the voting rights of felons who have served their sentences and their probation and have not been convicted of a capital offense or offense requiring them to register as a sex offender should have their voting rights restored.

MICHEL MARTIN: How did you arrive at that position? That is a very provocative position.

JAMES BAKER: Because we had Democrats on the other side coming up with a good practices recommendation for photo ID, something that they had...that their party had historically been against. The Republican Party has historically been against restoring voting rights to felons. So what President Carter and I tried to do with this Commission, and I think did successfully, is move our respective parties to a centrist consensus position.

MICHEL MARTIN: What would it take to achieve a sense of urgency around these issues? I mean, it seems that once we, you know...you have an election, like the 2000 presidential election which was disputed for, you know, almost three months...

JAMES BAKER: Yeah, that's why you've got the HAVA Act.

MICHEL MARTIN: ...and then you have the Help Americans Vote Act which came in the wake of that. But then in the 2004 election, there were still problems, maybe not related to the Help Americans Vote Act. But you still have people waiting in very long lines. You had inadequate voter lists.

JAMES BAKER: That's why we...that's why our Commission did what we did—because there are still improvements that need to be made in our federal election processes. That's what we lay out in 87 recommendations. Now, you're asking me how did we get that passed through the Congress, that sense of urgency?

MICHEL MARTIN: How do you get to a civic culture where people really want every vote to count? And how do you get a sense of urgency in the political system to institute these changes?

JAMES BAKER: You air this program that you're producing right here in as many places as you can air it. And then people will say, yeah, that's a good report. Yes, we ought to call upon our congressmen and our state legislators to enact those recommendations. They're good recommendations. But Congress today is not...they are in a mood to do something in the aftermath of 2000 because it was such a once-in-a-lifetime kind of thing for the country really. The sense of urgency and imperative is not there now. But there are still plenty of things that we need to do to improve our federal election system. And the more we can focus on those things, the more attention that is brought to those things with programs such as this, the more likely it will be that they'll be willing to confront these problems. Nothing is more sensitive or more difficult for Congress or the state legislators, because you have such a divide here on this business of access versus integrity. And it was that that I think President Carter and I were successful in putting aside, that sterile debate. Because greater confidence in our election system, which is derived from better procedures against fraud and better procedures to increase access, will mean we'll have greater voter participation.

MICHEL MARTIN: That was former Secretary of State James Baker. He co-chairs the Commission on Federal Election Reform with former President Jimmy Carter. I spoke with him at the Baker Institute for Public Policy at Rice University.

MICHEL MARTIN: This is Justice Talking. I'm Michel Martin in for Margot Adler. For today's program, we joined forces with Court TV to look at the American election system and to consider the changes that might address voters' growing distrust of the system. Now let's return to the Carter Center in Atlanta where President Jimmy Carter was joined by a panel from the Commission on Federal Election Reform, including Dr. Robert Pastor, executive director of the Commission, Kay Coles James, former director of the U.S. Office of Personnel Management, and Tom Phillips, former chief justice of the Supreme Court of Texas. Georgia Congressman Jim Marshall also joined them. Court TV host Catherine Crier started off the discussion with Commission co-chair President Carter.

CATHERINE CRIER: President Carter, we talked a bit about voter IDs checked in different states. What are the problems that are occurring with the present system?

JIMMY CARTER: Well, the Commission didn't find any real problem with unwarranted voters coming forward and casting their ballots. But there are a few cases where this does occur and it creates doubt about the system. And as Secretary Jim Baker pointed out so clearly, it's a concern of the Republicans that somebody might come in and vote who's not qualified to vote. Although it's not a major actual number of fraudulent cases—they rarely come up—there's this doubt created. And there's no doubt in my mind as a Democrat that we do need to have some uniformity of voter registration and identification at the polls.

Georgia, for instance: I vote in Plains, Georgia, and I can go there and vote in one of two ways. One is by showing them my driver's license, which has a photograph on it. Or I can go to the polls, to the courthouse, if I don't have a driver's license and I can get a special certificate like an ID card that I can take to the voting place and cast my ballot. And I would presume that other states have very similar systems. But the fact is that there's some doubt about the uniformity around the country, because all fifty states can do what they want to.

CATHERINE CRIER: Well, Dr. Pastor, give us an idea of how many states require voter ID now, say, as compared to four years ago.

ROBERT PASTOR: Four year ago, there were 11 states that required ID. Today there are 26. And there are an additional 11 states that are considering ID. So what we're seeing with each of those 26 states, plus another 11, each one has different criteria. But as President Carter and Secretary Baker pointed out, we are concerned about existing laws, such as the State of Georgia's, which does not provide the access and the facilities to ensure that a larger number of people can register and have their ID. And so, therefore, we recommended a strong affirmative action and resources by each state, so that we can increase the number of people who are registered, increase the number of people who have legitimate photo identification as well.

CATHERINE CRIER: Tell us about that, because the critics of voter ID, and we certainly heard that comment all the way around, are worried about discrimination against poor and minorities. What do you think about the three ideas, the Commission's proposals to overcome that?

KAY COLES JAMES: You know, think back to a very close election and your candidate loses. What we hope as a Commission is that what we've done with our recommendations is encouraged confidence in the system at all levels, so that in that very close elections, with a voter ID, people can have the confidence of knowing that everything was done to make sure that it was handled appropriately. In terms of minorities, quite frankly, I strongly endorse the recommendations, because it was my desire to make sure that there was a level playing field and that minorities and poor people in this country were not in a second tier, that everyone had the same ID and it would actually increase the number of voters who were able to go in and exercise their right to vote. You remember how excited we all were when we got that first driver's license. I'm looking forward to the day that everyone is excited when they get that ID that says they get to vote. Every poor kid in America, every minority in America, every rich kid, every American should see that ID as access to one of the greatest privileges this country has to offer—the right to vote.

CATHERINE CRIER: But are you satisfied that the proposals put forth will reach people who don't have, for example, driver's licenses?

KAY COLES JAMES: No. We really care about that deeply, which is why you see in the discussions and also in the recommendations that we went overboard to say that states

have an obligation to aggressively go out with the mobile units to make sure that poor people and minorities have access. We were concerned about...some people have said: Is this a hidden poll tax? We think it should be free. No one should have to pay for this. There shouldn't be any barriers to getting this ID. Don't miss the point that Congress has already passed legislation that says, you know, with the real ID, that has to do with national security and whether or not we need identification. And so we say use that same mechanism and that same system so that we all have the same access to the greatest privilege of voting.

CATHERINE CRIER: Tom, the Commission proposed some major changes to voter registration. Why is that necessary?

TOM PHILLIPS: The Help America Vote Act was the first time the federal government got involved in voter registration at all. And they required the states to make a list of all their voters. That has certainly helped the process of eliminating multiple registrations and getting dead voters, moved voters off the roles. But it has not solved it, because some states devolved the responsibility of keeping this uniform list down to their individual counties and localities. In the average election, somebody wins 60 to 40, no problem. When the crisis of confidence comes is when you have a close election like the presidential race in 2000 or the Washington governor's race in 2004. Then it's absolutely essential that America, as the oldest and greatest democracy, have a system that the world can have confidence in as well as our own citizens.

CATHERINE CRIER: Tom, you were a state chief justice and on the other hand working on a federal commission. Is this going to mean a much, much larger role for the federal government in all elections?

TOM PHILLIPS: No, it's really a very incremental amount of federal intervention. America is a federalist system. And the principle responsibility for registering and maintaining voting roles and conducting elections remains with the states. But we do believe there are times when the federal government needs to pass some laws that require uniformity among the states. And usually, this goes along not just as a mandate, but there's a carrot as well as a stick. Generally, as with the Help America Vote Act, there are financial grants that can be given to the states that will encourage them to participate in making the system more uniform and more secure.

CATHERINE CRIER: One final question, Congressman Marshall: Is Congress going to do anything about this?

JIM MARSHALL: Well, President Carter said earlier that Congress has done nothing thus far. We did the Help America Vote Act in 2002. We provided money. There's legislation right now that would require paper trails. My guess is that Congress will focus on those things that effect federal elections before it will try and dabble in state elections. We do have a federalism concept. And I think Congress is respectful of the state's historical role and its rights under the Constitution for sure.

And so what I suspect is that there will be incremental change that will focus principally on the federal needs where federal elections are concerned. And that, with time, particularly if the Commission's recommendations are adopted by the different states and we do see some uniformity crossing the country, with time, there maybe federal intrusion insisting upon uniformity that goes beyond federal elections, maintaining all the while Constitutional rights that are guaranteed for citizens. That is a federal role. The federal government has played that role in the past and will continue to do so in the future.

MICHEL MARTIN: This is Justice Talking. I'm Michel Martin. We just heard from former President Jimmy Carter, Kay Coles James, Tom Phillips and Dr. Robert Pastor. They are members of the Commission on Federal Election Reform. Congressman Jim Marshall also joined them. They were speaking at the Carter Center in Atlanta, Georgia. Coming up: more on ways to fix our election system, a system weakened by the lack of voter confidence. Stay with us.

MICHEL MARTIN: This is Justice Talking. I'm Michele Martin in for Margot Adler. Voter suspicion about the accuracy and fairness of our elections has led some leaders to call for major changes. Former President Jimmy Carter and former Secretary of State James Baker are co-chairs of the Commission on Federal Election Reform. The members of the Commission have come up with more than 80 recommendations on ways to build confidence in our election system. On today's program, we've teamed up with the Court TV Project "In Pursuit of Justice" at the Carter Center in Atlanta to look at some of these proposals. Participating from the Commission on Federal Election Reform were former President Jimmy Carter, Dr. Robert Pastor, executive director of the Commission, Kay Coles James, former director of the U.S. Office of Personnel Management and Tom Phillips, former chief justice of the Supreme Court of Texas. Max Cleland, a former senator from Georgia, also joined us.

An audience of community leaders and activists joined us at the Carter Center, and they were eager to participate.

MARY SPECT: My name is Mary Spect. I'm a student at American University. I wonder how electronic voting plays into all of this. Will electronic technology make detecting fraud easier? Or does it present a more serious opportunity for people to hack in and commit more serious fraud?

JIMMY CARTER: It's a problem that cuts both ways. Certainly in terms of ferreting out multiple voter registration, the technology helps. And we got a lot of testimony on the Commission from computer scientists that we're frankly concerned about the quality of and integrity of the way the machines were constructed. And we made recommendations about all these data codes going to simple repositories where they can be looked at by scholars under certain secrecy agreements to further give people confidence that the vote is fair.

And, of course, one of the main reasons for the voter-verified paper trail being advocated by our Commission and a bill being introduced in Congress is just that, a check against the electronic voting to not only enhance voter confidence, but if a state so chooses, the paper vote being the actual ballot of record in the event of a recount. [applause]

MICHEL MARTIN: President Carter, the average number of election challenges from 1996 to 1999 was 96 per year. But in 2001 to 2004, the average was 254 per year. Why is that?

JIMMY CARTER: Well, I think the election in 2000 created so much furor and discouragement and dissension in our country, even political animosity in our country, that the issue of whether each person's ballot was counted properly was raised in minds all over the nation. So in the past when there was a question, most people said, well, I'm the only one that that's happened to. I won't file a lawsuit. I think after the Florida debacle, people did begin to say, well, maybe this is happening everywhere, so I'm going to file a lawsuit on account of it. So I doubt that there have been any massive increases or substantial increases in the number of problems between 2000 and 2004, but as we go one year to another, people's consciousness of the fact that something's wrong with our voting system has caused them to file a lawsuit. So it's just a matter of more litigation based on about the same amount of potential or actual problems.

MICHEL MARTIN: Senator Cleland, I want to bring you into the conversation, but I have a quick question for you, Dr. Pastor. If I go to the bank and I deposit my check, I get a paper receipt to take with me. Why can't I do that when I vote?

ROBERT PASTOR: Well, because if you get a paper receipt to take with you, you may very well show that to somebody who's offered you money to vote for the right candidate. And that's illegal in this country. And the secrecy of the ballot is key to the accountability of the electoral process. [applause] What that means is that the American voters should be permitted to see how they voted and make sure that that ballot will be counted. But they shouldn't be permitted to take that ballot with them to show other people.

MICHEL MARTIN: And what about voting on the Internet? I mean, if I can order a houseful of furniture online and any number of shoes, which I have done, why can't I vote online?

ROBERT PASTOR: The Pentagon has done probably the most intensive study on how to vote by Internet. And they concluded in their most recent study that it is simply not secure. The Internet is not yet a mechanism that we can be sure that somebody wouldn't hack into it and alter all the election results.

MICHEL MARTIN: Senator Cleland, by any standard, you've been a participant in some very bitterly contested elections. Do you believe that these technological improvements will address the kind of bitterness that sometimes has attended to our elections, and if not, why not?

MAX CLELAND: Well, first of all, they have to. There is no substitute for making our interaction with our political process safe and secure and something that the American people have confidence in. And by the way, on that point, with all due respect to the people from Texas here, and they have that burden to bear, I'm from Georgia and I'm proud to be with my president who for thirty years has fought for the security of the ballot and the safety of the ballot. [applause] So, I might say that my concern is not so much that these machines can be hacked through the Internet, but they can be hacked by a computer technician who knows more about it than that voting official. That's my problem. [applause]

MICHEL MARTIN: The Commission also recommended some steps to improve or to enhance the participation of the disabled voter. And one of them was to send absentee ballots on a regular basis, unasked, to voters who have identified themselves as disabled to the Elections Commission. How does that square with the other objective of the Commission which is to diminish the perception of fraud if not the actual fact of fraud?

MAX CLELAND: You've got to watch just sending out ballots in the mail. It's not like a credit card where you just send somebody... "for everything else there's MasterCard." You know what I mean? This is the elections process. That ballot is sacred. And where fraud crept in when I was secretary of state was through the absentee ballot process. Not by somebody physically presenting themselves at the election booth. Now, I think the election booth should be accessible. I think the access to the election precinct should be accessible. I'm not so much worried about a whole bunch of people getting so motivated that they're going to come to the voter precinct and present themselves fraudulently. No. What I'm worried about is the proper counting of that ballot and that voter intent through a computer system that is verifiable only by a computer geek, not by the voter and by the election officials. That's where I worry. [applause]

MICHEL MARTIN: Kay Coles James, you were speaking earlier about the shortage of poll workers. I think you estimated there was something like we were 500,000 poll workers short on the last election. You also mentioned that many poll workers are senior citizens, that we over-rely on senior citizens to do this important work. But why didn't the Commission take it a step further and recommend that voting be moved to Saturday when more people are likely to be available? [applause]

KAY COLE JAMES: ...or make election day a national holiday. There was a great deal of discussion about that. Well, you have to remember Saturday for some people is a religious holiday and it's a very sacred day. To some individuals, it would be entirely inappropriate.

MICHEL MARTIN: And what about the idea of making Election Day a national holiday? [applause]

KAY COLE JAMES: Well, there were many of us on the Commission who thought that was a good idea. And we believe that in the interest of democracy. But again, you have to remember that elections are in local control. It is not a federal holiday. Elections by our

Constitution are controlled at the local level. And I think because we have such a high regard for our Constitution in this country, we thought maybe we should listen to that.

JIMMY CARTER: In foreign countries where these changes have been made, there's been very little benefit derived from it. Maybe two or three percent increase in voter turnout. And it's not really worth a nationwide ugly debate about making those changes in order to get a tiny increase. So because of that, we decided unanimously to stick with the present system.

MICHEL MARTIN: Okay, thank you. Tom Phillips, I think this is a question for you as a judge. Isn't there an inherent problem in having partisan officials involved in election administration? [applause]

TOM PHILLIPS: Well, there certainly can be a perception problem. And it particularly can be a perception problem when there's some reality behind the perception. From time to time, and I want to emphasize it's the exception and not the rule, most partisan election officials take that election role very...they respect it a lot, and they stay away from party events. But we have had some state secretary of states who have been campaign chairs on both sides in presidential and gubernatorial races in their state. And in the event of a very close election, that leads to questions. But this goes back to our history. The country had locally-run elections before it was even a country run by the government and not by some outside nonpartisan commission or agency. And frankly, I think this would be about the toughest reform to enact. Because you're looking at hundreds and thousands of election administrators across the country who are also elected officials and telling them they're out of a job. I really think our time is better spent on looking at where there are real problems with the way voters are registered and their votes are cast and the votes are counted. And I know some disagree.

MICHEL MARTIN: Let's hear it.

JIMMY CARTER: Michel, I don't disagree with what he just said. But I think it's good to point out again that the recommendations made here are not going to be implemented nationwide all at once. But when a state, an individual state, approaches the question of whether we have had too much of partisan involvement in our elections, we gave them a very good recommendation on a standard, practical way to resolve the issue. That is, let the governor, Democrat or Republican, select a person to be the administrator of the election process. Obviously, hopefully a blue ribbon selection. And then require that a two-thirds vote in the legislature approve that particular person, which means that you have an overwhelming chance of a bipartisan agreement. All of us, Democrats and Republicans, trust this person to be in charge of our election. That's a very practical way. And maybe one state here and one state there over a period of years will adopt this procedure to replace obviously biased officials that we've seen in the past.

MICHEL MARTIN: Quick question: None of these are really quick questions, because all of these deserve rich answers, but I would be remiss if I didn't ask about the Voting Rights

Act. What was the Commission's decision on whether the Voting Rights Act should be extended, senator?

MAX CLELAND: Yeah, the Commission did discuss the Voting Rights Act, and viewed it as vitally important for our country, and recommended that it should be extended in 2007. [applause]

MICHEL MARTIN: You're listening to a special broadcast of Justice Talking. I'm Michel Martin in for Margot Adler. This program was brought to you from the Carter Center in Atlanta where we talked about federal election reform.

MICHEL MARTIN: Next question?

STACY HOLLOWAY: Hi, my name is Stacy Holloway. And my concern is not so much about the lack of poll workers, but the lack of access to vote. There were very many of us who worked with WAND here, our local chapter of WAND, during the election in 2004.

MICHEL MARTIN: And that is what? I'm sorry.

STACY HOLLOWAY: Women' Action for New Direction. What we did was that we took people, picked them up, took them to the polls, took them home. And over and over and over again, the disparity, and there is no other word that would describe it, between the number of voting machines in various areas compared to other areas was just incredible. [applause] And in the areas of the City of Atlanta where there's very large, poor African American, mixed population, there would be three or four machines in a polling place with lines wrapped around the blocks. And two of the machines were broken.

MICHEL MARTIN: Well, thank you. That's a very important question. How would the Commission's recommendations address that? I think you saw this with your own eyes. This is your direct reporting. This is not hypothesis on your part. How would the Commission address these sorts of questions of disparate access even to the machine?

MAX CLELAND: Well, I think this is a product of excessive, some could say dysfunctional, decentralization. Like with our school system, when you have the local school boards making decisions, whether it's on election machines or on education, those communities that are wealthy will obviously have better machines and better schools, and those communities that are not will have neither. I think the Help America Vote Act and our Commission's recommendations really recommend that the states retrieve a lot of the authority that they had devolved over time to the community.

And through the funds that come from the federal government to the states, one hopes that the states will then ensure a much higher degree of fairness all over the state as they use their funds for the purpose of voting machines around the state. I think that's one way of doing it over time. But it is a real problem throughout our country. And it's not just on voting machines obviously. It's on education.

TOM PHILLIPS: In Texas, we recently passed legislation that requires a certain number of machines at a polling place based on the vote turnout in the last similar election and also in early voting which is increasingly popular in our state. We used to have the same problem of disproportionate number of early voting centers in some parts of the county, and that's been regularized. You can't have more than twice as many in any one Commissioner's precinct as you have in another.

MICHEL MARTIN: And that's a state law.

TOM PHILLIPS: And that's a state law. And so we hope that the states will look at these. If they're going to keep partisan election administrators, and I just argued that probably they're going to, the states will give them guidelines so that they won't be tempted to make an election more convenient for some persons than others.

MAX CLELAND: It also points out how important those who administer elections at the state and local level are. And in many states, there's the secretary of state office, which is the lead in terms of elections. Maybe now one of the most important offices in America is the secretary of state's office. We've got to pay attention to those kind of things.
[applause]

MICHEL MARTIN: That concludes our discussion of federal election reform which was taped at the Carter Center in Atlanta, Georgia. I would like to thank Catherine Crier from Court TV for joining me for this very special taping of NPR's Justice Talking. To learn more about election reform, go to our website, justicetalking.org. Thanks also to Court TV's Scoot McPherson, Fred Cambria, Rosie Calico, and Lee Tenenbruso. Justice Talking is produced by Kathryn Kolbert, Kara McGuirk, Erin Mooney, Ingrid Lakey and Viet Le. Gary Gehman is our webmaster. Laura Sider coordinates outreach and Angela Clinton coordinates our educational programs. Engineering by Indre Recording Studios. I'm Michel Martin from NPR. Margot Adler returns next week.

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