

**United States Election Assistance Commission
Panel Discussion**

**Journalists and Election Officials: Working on Behalf of
America's Voters**

National Press Club of Washington
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VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Panel Discussion of the United States Election Assistance Commission (“EAC”) held on Wednesday, October 15, 2008. The Panel Discussion convened at 1:00 p.m., EDT. The Panel Discussion adjourned at 4:00 p.m., EDT.

PANEL DISCUSSION

CHAIR RODRIGUEZ:

Good afternoon. Welcome to the United States Election

Assistance Commission meeting of October 15, 2008.

Please rise and join me in the Pledge of Allegiance.

[Chair Rosemary Rodriguez led all present in the recitation of the Pledge of Allegiance.]

CHAIR RODRIGUEZ:

Thank you for joining us today. Today we have the honor of hosting distinguished journalists and election officials in a discussion about how we all might work together on behalf of America’s voters.

This is an exciting election year, and Americans are engaged and registering, and in some cases, already voting in record numbers. The EAC has been working to make sure that all voters have the information they need to participate.

Today we’re switching gears and we’re going to talk about the end of the process and how and when we get results. And

again, I thank our experts today, particularly our election officials who are in the midst of running elections today.

As you know, Secretary of State Kurt Browning from Florida was unable to join us today, and I thank, particularly, Secretary of State Chris Nelson from South Dakota for stepping up to the bat.

We are going to be joined by a group of women from North Africa and the Middle East, at some point during the discussion. They're here studying election processes, and I'd like to welcome them.

And finally, I'll end my comments by introducing a wonderful journalist and an old friend, Mr. Greg Dobbs, who is the Chief Correspondent at HDNet "World Report." He joined HDNet after 23 years at ABC News and he's won awards for his work, including his work in Colorado as the host of the public affairs show "Colorado State of Mind," on Rocky Mountain PBS. Greg, thank you for joining us and I'll hand the panel over to you.

MR. DOBBS:

Thank you. Nobody ever had the courage to hand a panel over to me before.

Good afternoon to all of you. As Rosemary said, and I'm going to take the liberty of referring to everybody by their first names with their permission because that stretches the capacity of my memory, I worked for ABC News and HDNet and between them

have either covered news or produced documentaries in more than 80 countries, mostly countries behind the Iron Curtain, back in those days, otherwise mostly countries in the Third World beyond the curtain of Western development. And I tell you that because, maybe more than most, I appreciate few things more than the opportunity to vote, the liberty to vote. And that's what this day is about because voting is the lynchpin of democracy. For some people it's the most cherished Democratic right.

Because our national elections, in recent years, have run into a few bumps, some took the form of hanging chads, some took other forms, and there's no inarguable proof that outcomes would have been different without those bumps, but because of that, many voters would have felt differently and thought that their Democratic rights were being bettered protected if two things had been in place. Number one, voting procedures that would come as close as they can to ensuring that if we exercise our right to vote the vote will count; and number two, voter education to help ensure that everyone understands the challenges, the complexities and, of course, the solutions that hopefully are in place to mitigate them. In other words, how the system works.

And that's why we're doing this today. This is something that's never been done before. The U.S. Election Assistance Commission has brought together key officials from a couple of

states, including, as you all know, the State of Ohio, which was at the heart of the storm just four years ago, and a couple of journalists who have worked on the big stage to compile and convey election information. And so, we're going to talk with them about how it happens, how the sausage is made and how much better that sausage ought to be now than it's ever been before.

Frankly, I'm told that it's the Commission's hope that this is going to generate some stories in the media about how the system works. And why is that important? Because many states have this year adopted new voting techniques. In some cases they did it anyway. In some cases they did it to be in compliance with fairly new federal law. And because, it looks not only like we're going to see a record voter turnout next month but also that we're going to have more new voters than we've ever seen before. And that leads to the most important reason for doing this.

A final editorial note. The elections aren't about candidates. The elections aren't necessarily even about their policies. They certainly aren't about political parties or hanging chads. Elections are about the people who vote and what they get for their vote. So it's important for everybody to understand, and hopefully for those of you are in the media they'll understand it through you.

Now let me introduce the key players who are here and then I'll give you an outline of what we plan to cover in detail in these

next few important hours. And then, believe it or not, we'll go ahead and cover it. For the four of you who are actually on the panel, meaning those who are not the Election Assistance Commission Commissioners, I'd like each of you, after I reduce your lives to two or three sentences by way of introduction, I'd like each of you to answer a very simple question. Have fun with the question. And it will be this. And I'll introduce you one at a time and then ask you to answer it. This is to give somebody some kind of quote to use tonight or tomorrow morning. What do you most look forward to on the 4th of November and what do you most dread?

We'll start with the Secretary of State from Ohio, Jennifer Brunner, who is not only Ohio's first (female) Secretary of State but would probably like me to tell you she was not Secretary of State four years ago in the election of 2004. She's been a judge, she's been a member of her own county's Board of Elections, a special prosecutor for election fraud and for 13 years as a private attorney practiced election law. She is involved right now, has been involved, as you all probably know, in a federal lawsuit. A decision came down yesterday. Is that correct?

SECRETARY BRUNNER:

Last night.

MR. DOBBS:

And we will be asking you about that a little later, but I said have fun with it. I don't think you're going to have much fun with that beast, so we'll hold off on that for awhile. But she has publicly said that her top goal is to inspire, ensure, restore confidence in Ohio's election procedures.

So, Jennifer let's start with you. What do you most look forward to on Election Night and what do you most dread?

SECRETARY BRUNNER:

Election Night or Election Day?

MR. DOBBS:

Both.

SECRETARY BRUNNER:

Election Day, I actually go and vote myself in my precinct. And I think what inspires me is looking at the turnout, especially in a Presidential election and looking at people from all walks of life coming together at a polling place and understanding and being able to see that this is the one time when everyone is truly equal because one vote counts no more than another vote. And that is Democracy in action. And call me a little bit pollyanna, but it gives you the chance to see why we do what we do.

The thing I probably dread the most is that there will probably be at least one lawsuit to try to keep the polls open past 7:30 and we'll have to deal with that.

MR. DOBBS:

Do you have procedures in place to deal with it? Have you got contingency plans?

SECRETARY BRUNNER:

We do, actually. We've actually produced a quick reference guide for all of our poll workers in the state. And we have specific instructions on what happens if there is a court order and how they are to conduct themselves and the fact that after 7:30, anyone who votes who was not already in line, votes a provisional ballot under HAVA. So we have them prepared. But we've been in a lot of discussions with the attorneys for the Presidential campaigns and we hope that we've prepared them well enough that they won't feel the need to seek that kind of extraordinary relief.

MR. DOBBS:

HAVA, for your information, if you don't know, is the Help America Vote Act, a fairly recent passage.

Okay, now let's go to the Secretary of State from the great State of South Dakota, Chris Nelson, who was elected to his office in the year 2002. He's also been a state election supervisor. He did that for 13 years. And he's a representative of the National Governor's Association on the Advisory Board to this U.S. Election Assistance Commission. And for good measure, I read last night, he runs a part-time cattle operation in South Dakota. So I can't tell

you you won't get any bull from him, but hopefully it will be the right bull.

Okay, the same question to you Chris.

SECRETARY NELSON:

That's a fair introduction, thank you.

You know, as election officials, we work for two years to put together Election Day, and so Election Day is kind of like our Christmas. It's when it all comes together. But if I had to answer what's my absolute favorite part of that day, I'm right where Jennifer's at. And it's walking into my own polling place and being able to participate in that process just like every other citizen in America. That's the highlight.

So far as what I dread, it's always that phone call that says some precinct worker, in some precinct, some place in the state may not be doing everything right, and we've got to try to figure out, is that the truth or is it not the truth and try to deal with that type of situation. That's -- that's really the biggest fear that we have.

MR. DOBBS:

Is it fair to say that you can anticipate everything on earth except human error?

SECRETARY NELSON:

I think that's accurate. And we do try and -- you know, every election official stresses training. Training, training, training,

passing on the proper procedures. But there's always that chance that somebody decides, "Oh I've got a better way of doing it," and that's the fear that they'll go off in that direction.

MR. DOBBS:

Okay. Next up is Pam Fessler, who is a correspondent, she's sitting to my immediate left, for National Public Radio, here in Washington. She's on the National Desk, and she reports mostly about homeland security, Social Security and election reform. Pam was also one of NPR's White House correspondents in the Bush and Clinton Administrations. Before that, the 1996 election, she was NPR's chief election editor and coordinated all the network's coverage of Presidential, Congressional and state elections. So, Pam thanks to you for being here. She lives here in Washington. She's the only Washingtonian on the panel. And the Commissioners, of course, come from other places but they are now condemned to live, for awhile, in the nation's Capitol.

Pam same question to you. What do you look forward to the most from your point of view?

MS. FESSLER:

Well I know as a journalist I'm not supposed to be sappy, I'm supposed to be cynical, but I must admit that I get -- that the thing that I look forward to most is exactly the same as the Secretaries. I still get a chill up my spine when I go in and vote. After all the

coverage for the past two years and the blogs and the counter-attacks and attacks, it just is so refreshing to go into a voting place and to see a line of people, you know, just actually making the final decision.

The thing that I dread most, also as a journalist, I kind of look forward to it too, there's always some unexpected thing that's going to happen in an election. I dread that I might miss it; that I might, while we're focusing on maybe one thing that's going on in one state, we might miss some really crucial thing that's going on in another state that might actually affect the outcome. But I also dread that, you know, there could be some big disaster in the election process that, will sort of, further undermine public confidence in the system.

MR. DOBBS:

Okay. Finally, in this opening round, Don Rehill, who is the Deputy Director of Election Tabulations for The Associated Press. I'm going to tell you firsthand, having -- personally having covered Presidential elections beginning in 1972, when ballots were brought by covered wagon to the election office, there's no single agency more important than The Associated Press in helping all the other agencies that disseminate information, get that information. Don is Director of Election Tabulations. His first election in that capacity, as I understand it, but in fact for five years before this he was, and

still is, AP's Manager of Election Research and Quality Control. He's responsible for the many election research reports that AP distributes to its clients which are indispensable, and he's involved in all of AP's election tabulation procedures. He's been at this since 1984, first with the News Election Service, which was a predecessor of what followed. That's a given in the dictionary. He was a researcher but he eventually became the Director of Research at the Voters News Service, and he's here today from New York.

What do you most look forward to and what do you most dread? You've got a big operation planned.

MR. REHILL:

We do have a big operation. And I guess I'm looking forward to it being, I think it's probably going to be the election of a lifetime for me, as far as the turnout. And I'm looking forward to watching the polls, as the polls close across the country, watching the returns fill up in the AP summaries and watching our reports get generated until we have returns from all 50 States, in these hundreds of races that we're covering, thousands of races really.

What I most dread, is that we're still doing it, like Friday or Saturday.

MR. DOBBS:

Why?

MR. REHILL:

Well,...

MR. DOBBS:

Human nature?

MR. REHILL:

...meaning that -- well, by that time people will be exhausted. And meaning there will be significant races not called by that time; too close to call, lawsuits as Secretary Brunner alluded to, potential recounts. We will still be on duty days and days later with virtually no sleep. So I'm not looking forward to that if it goes that way.

MR. DOBBS:

Okay. Well, thank you to all of you.

And now let's start. And I'm going to tell you first, just run down a bunch of bullet points, of what I infer you may need to know and certainly what the public needs to know.

Number one, about the technology of voting in the year 2008. The question, if you had to come up with a single \$64,000 question, it would be, is it reliable? Or is it more reliable than before? If the results come in a little more slowly than you'd like, if the results come in a little more slowly than you're accustomed to, is that a bad thing or a good thing? And to the degree that I understand it, the answer might surprise you.

Some people are going to vote in traditional ways of course, which means, on Election Day they go to their polling place. And some are going to vote in what are called non-traditional ways, which means they will have voted by Election Day, or else on Election Day without being certain that their ballot will count -- be counted on Election Day. That's what was referred to by Jennifer as a provisional ballot. And there are a lot of questions about that. How are these non-traditional votes counted? When are they counted? What's the impact of those votes on the results? Might they make a difference?

We're going to find out, as I said before, how the sausage is made on Election Night, both from election officials and from the journalists who help you get it. And how do the results flow from the local precinct, for example? How do they get from there to either your TV screen or your computer monitor? And in the case of non-traditional voting, the local election office has to be the first source of those things. So how does that stuff get to the media? How does that stuff get to the public?

And we're going to talk about broadcasting exit polls on Election Night. That's a controversial topic, and I think you can expect to see more exit polls. We live with six time zones when you go clear out to Hawaii and the Aleutian Islands from which we can see Russia. How useful are these exit polls? How accurate

are they? And some would ask, as a legitimate question, how ethical are they?

And finally, recounts. The basic question is when are they called for? How are they triggered?

We're going to cover all that. And one thing you'll want to know is that we will take a break roughly in the middle of this session, which is going to go until 4 o'clock. If these people are good, I'm just going to go out for coffee and be back to say goodbye. But we're going to take a break somewhere in the vicinity of 2:30, 2:45, give you a 15-minute chance to stand up and to also give C-SPAN, which is broadcasting this right now, a chance to change its tapes, because if one thing in life is true in the year 2008, it is that this will be seen again. It is also, by the way, tomorrow, going to be Web cast at eac.gov, which -- Election Assistance Commission, www.eac.gov.

So now, let me begin with one or two more general questions and then go to these bullet points. And I don't care who answers. And I would just remind the four of you that you should treat this as if we're sitting around a dinner table. The way people talk at a dinner table is not for one to give a speech and then for another to give a speech, but rather just break in there. If you have a question, if you have a comment, if you think somebody is wrong, if you think somebody makes comments that require your

elaboration, please just jump in there. That makes it's just the most interesting kind of conversation.

So question number one. I'm going to parrot Tom Brokaw from the second Presidential debate of last week when he characterized, remember toward the end, the question he said had a zen-like quality. And this is not unlike the question I already asked you, but this is a little more serious because it's actually pretty important and its implications are true. What don't you know and how will you learn it? Anybody want to tackle that? Well let me ask you about the bailout then. What don't you know and how will you learn it?

MS. FESSLER:

I would say, I mean, we don't know, the public doesn't know, journalists don't know, what is the thing that could potentially go wrong on Election Night. Every year -- every Presidential election, and some of the mid-term elections, there's something different that pops up that we didn't know about, that we didn't expect whether it's obviously the hanging chads in 2000, whether it's the incredibly long lines that we're seeing in some places, including Ohio in 2004 that might have affected the outcome. There's something -- every time there's going to be a surprise, and we don't know what it is. And we also usually don't know it until the very last minute. There's so much that happens within that 24-hour period. Maybe it's

deceptive voting practices. There's always something that happens that nobody anticipated in that last 24-hour period, or maybe even the days afterwards, as well.

MR. DOBBS:

Is it fair to say, to the second part of the question, how will you learn it, that the only way to learn it is by it going wrong and creating, at least, a mini-catastrophe?

MS. FESSLER:

I think for journalists, what it is, the way you find it, is sometimes it's just a little thing that happens here and then it happens here and then it happens here. And you have to kind of, keep paying attention, and then you start putting the pieces together. It might be something that's not really on anybody's radar screen at first, but then you start seeing it appear in multiple voting places. I imagine the election officials probably do see it or hear about it before we do. But sometimes it's just -- you just have to keep your radar out all, you know, all throughout the election -- on Election Day.

SECRETARY NELSON:

And I would concur with that. The thing that we don't know is, what's going to pop up that nobody expects, but that's really part of our job to make sure that we do everything we can to make sure that doesn't happen. And there's really two ways we do that. One is by training and being incessant about training the local election

officials. And secondly, by testing, especially when we talk about the voting machines, the ballot tabulators, the return mechanism to get the data from the tabulators to the State level. It's testing, testing, testing and testing all the different scenarios to make sure that there's no surprises out there that we haven't figured out.

MR. DOBBS:

But what Pam just said is that it's inevitable that there will be a surprise. If history is any guide, there will be a surprise. Do you have a list of things that you hope won't be a surprise but expect might pop up that you might not be able to feel you can protect against?

SECRETARY BRUNNER:

I can give you an example. In November of 2007, Ohio was conducting a special Congressional election. I believe it was the primary for filling the vacancy of the seat of Paul Gillmor who, unfortunately, passed away when he was in office. We had one county in the district, it's a 16-county district, that lost its voting machines in a flood. So it borrowed voting machines from another county but that county said, "You're on your own to supply the memory cards." Well, none of us knew that the election officials went to an Internet site and bought memory cards that were substandard. So during the day and on into the evening the

machines were intermittently failing, voters were being turned away, and that was certainly something we didn't know.

And in terms of Pam's point of view with the media, what we did was to get ahead of it and be proactive in terms of telling the board, "Here's how you close the polls. We don't want you to go through the regular rundown with the machines. Simply close them up, bring them to the Boards of Elections. And here are three different ways you can tabulate the votes starting in this way." And so, as we issued each directive to that particular board, we shot that out to the media. So, for us there were things that we were kind of glad the media didn't know. And we were able to count all the votes. I personally, was there until about seven the next morning on the phone every hour to that director of the board. But again, we would have had no idea that the board would not have purchased the right memory cards, which then had this ripple effect on the rest of the election process.

But for us, we looked at it as a very good dry run for the March primary and to be prepared. And it enabled us then to work with the Attorney General's Office, and actually, at the special general election to have those attorneys go to those counties and view the election tabulation process, so that when we got to March we had 30 attorneys in place. We had them posted in different

places throughout the state, so that if we ran into a problem similar to this we were ready to go and knew how to deal with it.

MR. DOBBS:

You just referred to “dry runs.” Does the training -- and you used the word “training, training, training” -- the words. Do you do it that way? Do you actually do rehearsals, dry runs just to get people used to it?

SECRETARY BRUNNER:

We sure do.

SECRETARY NELSON:

Yes. So far as training the poll workers, they go through those types of actual scenarios in their poll worker training. And at the state level, where we don't deal so much with poll workers but actually with collecting the election results, we go through dry run tests, having counties enter data for all of their precincts, all of the candidates, all of the races. And we do that multiple times to make sure that on Election Night those numbers are going to flow up in a perfect fashion.

SECRETARY BRUNNER:

With our Election Night reporting system, in 2004, in a very short period of time, the Secretary of State's Web site took 42 million hits from people checking the results. So, we built our Web site -- our election reporting Web site for this year to sustain an even higher

number. And we are in the process right now of stress testing that to see how much it can take before it would break down and go to a backup server.

MS. FESSLER:

One thing I was also going to say that is, an unexpected thing that seemed to pop up, at least in the last couple of elections, and that has to do with ballot design. You don't know what is going to happen that there's something in the way a ballot is conceived and put together that might affect the outcome. And that certainly seems to be the case in Sarasota -- the Congressional race in, was it Sarasota County, Florida, in which 18,000 people didn't vote for the Congressional race, and it's believed that -- a lot of people believe that it was because the way the ballot was designed.

We had in L.A. County, during the primary, there was a little checkmark that people who were -- if they didn't put a checkmark on the top that they were voting Democrat or Republican in the primary, than everything they voted below didn't even count. So, there are always -- and I assume the election officials, you do test the ballots, but I guess you can't test for everything. Is that the case?

MR. DOBBS:

Do you do beta tests? A lot of voting techniques have changed since the last two elections.

SECRETARY NELSON:

So far as the design of the ballot, the types of ballots that we use and they're all optical scan ballots, that's a pretty standard format. And so, do we actually test that format with voters? No, but we obviously take feedback as we go through elections.

You know, the other thing that I want to point out is, state election officials have got a very good network of trading information. And we do everything we can to learn from our counterparts and when we see some issue, like Jennifer has just talked about, we learn from that and make sure that we've taken care of any of those kind of issues for the next election. And that's very valuable to us.

SECRETARY BRUNNER:

As far as the ballot layout, our state law requires the Secretary of State to prescribe the form of the ballot. So this year we attempted to work with outside experts. We provided them, in a seminar type setting to election officials, but then we took the best suggestions or sort of best practices that we could find and prescribed that. But even when you do that, you'll still find that there will be objections to the way a particular county decided to split the race between two columns. Or there has to be certain size type face and you'll see another county where they made a mistake and instead of 12 point they did 11 point. So they have to go back and reprint their ballots,

and some of those have already gone out to absentee voters. So it is an ongoing process. And I do think as society changes that always needs to be looked at because people have different influences on them that make it easier or harder for them to understand a ballot layout.

MR. REHILL:

One thing we have noticed during the course of our pre-election research, is that many, many more counties in virtually all the states are putting out sample ballots on their Web sites, which I think is a great public education kind of tool. The voters can become familiar with what the ballot is going to look like before they even get to the polling place, or vote absentee of course. So I think that helps.

MR. DOBBS:

You have those on your Web site?

SECRETARY NELSON:

Yes.

MR. DOBBS:

And in Ohio?

SECRETARY BRUNNER:

We do.

MR. DOBBS:

Now we have three Commissioners up here, one of whom is, in fact, herself, a former Secretary of State, but she's a current former Secretary of State without a voice. She has laryngitis. So let me confine it to the two who can speak. To what degree, and I'm asking for my own education, as well as that of anybody else, to what degree are there mandates about the form of the ballot? If it's a statewide mandate in Ohio to have a particular kind of ballot, or in South Dakota, how does that figure with federal law?

CHAIR RODRIGUEZ:

Commissioner Hillman?

COMMISSIONER HILLMAN:

You caught me on that one. I don't believe the Help America Vote Act mandates the ballot layout. But what the Election Assistance Commission has done was undertake a very comprehensive study, not only of ballot designs but also of the designs of signage and other poster type information to inform and educate voters. And we have provided samples, camera-ready copy samples to election officials to be able to use. And it takes into consideration everything from, you know, education level and people who, perhaps, don't read as well as others do and other languages that need to be taken into consideration, because the ballot is an issue. I mean, I was in Ohio in 2004 and had an opportunity to look at what I think was still then a punch ballot and it was a long card with

little type and you had to select from there, and then your voter booklet was on the side. So you read the booklet and had to go to the card to punch. And in some counties there were well over 60 or 70 items on the ballot. I know I would have quit after the top of the ticket, and I'm an ardent voter. I mean I love this stuff. But to ask voters to go through that process, read the book, go back to the card, you can imagine the human error that would come up. So ballot design and ballot layout was recognized under the Help America Vote Act as very important.

And the one thing the Act does provide, is to say that when a voter completes the ballot, before they leave the polling place, they have an opportunity to know that that ballot has been accepted. If they overvoted, voted for more people than they should have or more items than they should have, or if they marked their optical scan ballot incorrectly, the machine would not accept it and kick it back and the voter would have an opportunity to correct that. And the touchscreen electronic machine will not allow a voter to vote for too many things. And it will keep prompting you, "Do you mean to end this now? You haven't completely filled out this page." Those kind of prompts.

So while there's some hesitancy about wanting to trust or rely on the electronic touchscreen machines, they really do provide wonderful opportunities for people with disabilities, seniors and

others who may have a hard time manipulating a pencil because it does allow you to sort of walk through and it will prompt you through. And it's kind of hard to make a mistake when you're voting -- it happens, I'm not saying it doesn't happen -- but it is hard to do that on an electronic machine.

MR. DOBBS:

It's probably appropriate to do a couple of -- or a few definitions right now because if you've always lived in one venue then you may not know what another form of voting device is about.

So touch -- who wants to define -- anybody. Who will define touchscreen voting technology, just to describe it to people?

MR. REHILL:

Well, that would be the kind of technology you use almost every day when you go to the ATM and take money out of the bank. You're literally touching the screen. And you cast your vote by touching a part of the screen, usually with your finger, occasionally with a stylus, but usually with your finger. And it prompts you, as the Commissioner was saying, to go -- that when you haven't completed a race, it lets you know that you skipped a race. If you try to double vote, it will not allow you. And at the end, it asks you to confirm all your choices. And then you, basically, hit "submit" or something to that effect or "cast." "Cast the ballot" I think often is what it says, and then you have actually cast your ballot.

MR. DOBBS:

When you think about it, in the Presidential race if you have touchscreen technology, and you liken it to an ATM, you're doing the same thing. You're saying, "Which guy is going to take more money out of the bank?"

Okay, how about optical scan technology. That's what you use in South Dakota.

SECRETARY NELSON:

Optical scan is a paper ballot where a person fills in an oval, or some other mark in order to actually make their choices. And then that paper ballot is run through a high-speed scanning machine that actually takes an image of that ballot and determines how those votes were cast.

MR. DOBBS:

On the face of it Chris, with respect, that does not sound like it has the same protections as touchscreen voting.

SECRETARY NELSON:

So far as the areas of overvoting and undervoting, many election jurisdictions actually have a machine at the polling place that you can insert that ballot into and it will give you those warnings, whether or not it's been overvoted or undervoted, and give the voter a chance to make a correction.

MR. REHILL:

We call that optical scan at the precinct, as opposed to centrally counted optical scans, which some counties -- a lot of counties have, where they have to take the ballots at each polling place and drive them to a central tabulation point. Obviously, at that point the voter doesn't have a second choice if they fouled up the ballot, if they voted twice on a race. But the ones at the precinct, the voter does get immediate feedback when it goes into the machine and they can get a second chance.

MR. DOBBS:

Okay. Am I right or wrong, and I don't know, it's not a rhetorical question, that there are no more voting machines, lever-operated voting machines in practice?

MR. REHILL:

New York still has them.

MR. DOBBS:

New York still. Where else? New York does have them?

MR. REHILL:

Yes.

MR. DOBBS:

So federal law has not eliminated that, because they were problematic to a lot of constituents.

COMMISSIONER HILLMAN:

Well, the federal law did require -- because of the requirements of a voting system, it's almost impossible to use a lever or a punch card ballot -- a lever voting system or a punch card ballot. And so, states were provided funding under the Help America Vote Act to replace the older systems with the newer optical scan or touchscreen electronic voting systems. Let's just say New York is a little behind schedule. They -- all states were to have been in compliance by January 1 of 2006, those states that accepted the funding. But still, even if a state did not accept the funding, they still had to have a voting system that met the requirements of the Help America Vote Act, with respect to notifying voters about overvoting, with respect to having a paper record that could be audited, which is different than the paper that a voter would see. I mean, that may be an issue that you will touch on later. But all voting systems have to have the votes recorded in a way that they can be audited after the election.

MS. FESSLER:

Although I was going to say -- point out, I mean it is true that some election officials, at least ones that I talk to, who have purchased new equipment, either the direct recording equipment, the touchscreen machines, or some of the optical scan equipment, sometimes they'll say, "You know, we had punch card machines for 40 years or lever machines forever and we never had any

problems.” And they kind of bemoan the days, sometimes, that they had to update their equipment.

MR. REHILL:

I don't think there's any problems with reliability with the lever machines. They were always considered, I agree with Pam, very reliable. It's just that they don't make them anymore and you have to cannibalize parts to maintain them. It's also kind of awkward, in New York, because it used to be, at least, I'm not positive if this is still the case, that all the races had to fit on one facing. So you had a million little levers to hit in one board essentially. But as far as reliability and recording voter intent, it was always considered pretty reliable and it did have a canvas paper trail at the end, before they were calling it a paper trail.

MR. DOBBS:

Well, where I live in the State of Colorado, they were not so reliable just a couple of cycles ago, as memory serves. And then again, nothing is perfect and nothing is full proof.

I don't know that -- am I missing anything? We're down to, really, three forms of voting on Election Day itself, which are touchscreen, optical scan and, at least in New York, maybe some place else, the old-fashioned voting machine where the curtain shuts behind you and in the privacy of the booth you cast your vote

by pulling on levers. Am I missing anything before we move on to non-traditional voting, meaning what people exercise at home?

MR. REHILL:

Well, there are some punch cards still out there. There are. Idaho -- a few counties in Idaho still have punch cards and there are a great many...

MR. DOBBS:

Are these Florida-style punch cards?

MR. REHILL:

Yes. There are a great many jurisdictions, counties or towns and cities in New England, where the ballots are paper ballots hand counted. There is no voting equipment. The election official is the voting equipment essentially. There's a lot of those. So...

SECRETARY BRUNNER:

There's also something known as a balloting marking device. It's -- the trade name is AutoMARK. And that's used, essentially, by the disability community, so that the voter takes a ballot that's already printed, inserts it into the machine or it's inserted in for the voter, and there's a bar code on the ballot that the machine reads, so it identifies which ballot it is. It then translates the ballot to a screen that allows the voter to use a touchscreen. And that machine actually fills in the ovals for the voter, ejects the ballot and the voter

is then able to put it through a precinct-based scanner like other voters.

MR. DOBBS:

Go ahead.

CHAIR RODRIGUEZ:

And there's, Greg, phone -- possibilities for blind voters to use phone systems in a couple of states and in Puerto Rico.

MR. DOBBS:

Can we infer from all these answers that we've gone well down the road toward the best system we can conceive but we're not there yet, the simplest ballots, the most full proof ballots to prevent overvoting and so forth?

COMMISSIONER HILLMAN:

I don't know if we're well down the road, but certainly the construction of the Help America Vote Act gave responsibility to the Election Assistance Commission to work with many stakeholders; election officials, scientists, the National Institute for Standards and Technology to develop standards that would well serve the election process and work with the manufacturers to develop systems that would meet those standards. And it's really a first step, if you will, for the Federal Government. And so, unlike other areas of testing and certification, the Federal Government's role in testing and

certification began just within the last couple or three years after the passage of the Help America Vote Act.

And there's a lot to be done. I think personally technology has -- holds great promise for what can happen. I mean, younger people want to be able to vote from their iPod or something. I don't know, I don't use an iPod. But -- and so we have to have the conversations to bridge that divide between what people call protection of the ballot and protecting against fraud and abuse to taking advantage of technology and the securities that can be put into the technology, so that elections are about the voters.

MR. DOBBS:

If I were going to vote from my iPod, as a measure of the music I like, it would probably give me a choice between Dewey and Truman, which would not be a good thing.

How do you convince voters -- I'll ask the Secretary -- no, actually, I have a question for Don first. With all these different forms of ballots, some are going to be tabulated more quickly than others, obviously. Do you anticipate that in your collection of information?

MR. REHILL:

We do. We actually survey just about every county in the country and a lot of the towns and cities in New England about a number of things, their Election Night expectations and reporting procedures

and their voting equipment. And it's not that simple anymore, about voting equipment, because most counties and towns have more than one piece. They might have a DRE or the touchscreen for people that vote Election Day and optical scan for absentees and the AutoMARK optical scan ballot marker that Secretary Brunner was referring to, for the disabled. They might have three -- a lot of counties have three different types. Some have five different types of voting equipment. We survey all the counties. We get what types of voting equipment they have and what they use it for, what types of voters use that equipment.

And we know that some are faster than others, as far as getting the returns to the county tabulation center and from there to the Secretary of State, for instance. For instance, optical scan at the precinct and the DREs, both have the capability to be transmitted electronically to the next level up, although the way it's implemented now, it requires extra programming and extra software, and most counties don't implement that. They still hand carry the cartridge or the memory chip to the county tabulation center. So it's the same as carrying ballots. It takes time to get there, but they do have the capability.

Some counties with DREs or optical scan at the precinct can zap their -- the polls close, they run their totals at the precinct, they hit a button and it gets transmitted to the county and then from

there often to the Secretary of State, if the Secretary of State is doing a tabulation. But optical scan, centrally counted, paper ballots, the older technologies like punch cards and lever machines, those are, sort of, by definition, going to take awhile to be tallied in a central location in the state.

MR. DOBBS:

Do you, as Secretaries of State, even think in terms of speed versus accuracy? Accuracy, of course, is paramount but speed is pretty darn important, too.

SECRETARY NELSON:

We look at both, but obviously, accuracy is the number one criteria. It's got to be right. Certainly, we want to get the numbers as quickly as we can.

South Dakota happens to use the central count optical scan methodology, and that has a lot of advantages from a management perspective because we don't have to train thousands of election workers on how to operate and maintain the scanning machines. That's all done centrally at the courthouse. But it has that downside that you literally have to transport the ballots to the courthouse before you can begin the counting process.

MR. DOBBS:

That's a downside, and correct me if I misunderstand your intent, only from the standpoint of people getting information...

SECRETARY NELSON:

Time.

MR. DOBBS:

...as fast as they can?

SECRETARY NELSON:

Exactly.

CHAIR RODRIGUEZ:

Well, and Secretary Nelson faces some geographic challenges. I had the opportunity to visit South Dakota this summer and I was in the car all day just going from one point to another, particularly access to Indian reservations. And so, this is not a speedy process, at least I can attest in his case.

MR. DOBBS:

I said earlier that a key question in my mind is, are we dealing with a good thing or a bad thing if election results come in slowly. And you can argue either way. How would each of you argue?

MS. FESSLER:

Well, I think that, even from a journalist viewpoint, accuracy is the most important thing, because nobody wants to do what we did in 2000 where people are calling the race for one candidate and finding out ultimately that it went the other way. But the public does want to know pretty early on, and I think that's why so much attention is paid to these Election Night results, even though they're

not the official results. The official results usually don't come for another week or two weeks...

MR. DOBBS:

Weeks.

MS. FESSLER:

...or whatever. One thing for most -- at least nationally from our perspective, we're really only talking about maybe a dozen states, or 15 states, where we're really focusing a lot of the national attention on, especially in the Presidential race, because it's pretty much determined. You can kind of tell where some of the States are going to come out, fairly, you know, early on Election Night because they're not necessarily battleground states. I mean, obviously, Ohio is doing to be some place that everybody is going to be looking at. And if it's close, it's close and you just can't call it early on. You just have to wait until the results -- you get enough information that you can call the results.

SECRETARY BRUNNER:

Well, with speed, you want an orderly process. And generally what you find, if you're sitting in the Capitol of your state and waiting for these returns to come in from the county, is that if the county has a delay it usually means there's some kind of a problem because there has to be reconciliation of the ballots that occurs at the precinct before the ballots can be gathered. And in Ohio, they're

taken by a bipartisan team to the Board of Elections, the ballots and the memory cards. In some cases, in the smaller counties, they bring the whole machine and let the Boards of Elections take the memory card out. When you see you're getting a delay, it generally signifies there's some kind of problem going on in that locale. And so, you want things to move along. You're not necessarily looking for a rush, but you want a steady stream of the votes coming in as they come in from around the state.

SECRETARY NELSON:

And let me just emphasize, if there is some delay and it indicates there's some issue going on out there, the last thing we want is for them to just give up and send the results in. We want them to resolve the issue, make sure the numbers are right before they come in.

MS. FESSLER:

I'm actually curious. How much pressure do you get -- I mean obviously you get public pressure and from the media, you know, "Well, what's the result? What's the result?" But do you get a lot from the campaigns and the candidates, as well?

SECRETARY NELSON:

Simple answer, yes.

SECRETARY BRUNNER:

In our case, no. In fact, in the March primary, we had political campaigns that wanted to delay and keep the polls open longer. So they were battling it out in front of a federal judge in Cleveland, unfortunately, until after the polls closed. And then 20 some polls were required to be reopened, but it was difficult to communicate, and so, not all the polls were reopened. And the number of voters who voted in that extra time that was given by the judge was less than five.

MR. DOBBS:

Chris, you have been the Secretary of State for a previous Presidential election in the year 2004. Jennifer you were not. But to the degree that you can anticipate your response to pressure, do you expect there's going to be? Or in your case, do you remember feeling the pressure to get those results out as quickly as you could, or maybe faster than you wanted to?

SECRETARY NELSON:

You know...

MR. DOBBS:

How do you respond to it?

SECRETARY NELSON:

...I want the results out as quickly as anybody else does and so, yeah, that pressure is there but we simply do the best that we can

and work to make sure that when we get the numbers that they're right.

I just want to reemphasize something that Pam said, and we have to remember all the numbers on Election Night are unofficial. That's all they are. There's provisional ballots to be added in after that point. In some States there's absentee ballots to be added in after that point. Corrections to be made. The day after election, election officials are pouring over their numbers to try to find out, is there anything that wasn't right, and those corrections get made. And so what we get on Election Night is simply unofficial numbers.

SECRETARY BRUNNER:

And our State law requires all unofficial results to be in by noon the day after the election. That's a deadline that they have to meet. The ballots are then locked -- they are then secured, locked up in a room and they are not disturbed until it's time to do the official canvas, which is about two weeks after the election.

MR. DOBBS:

What does that mean, "all unofficial results"?

SECRETARY BRUNNER:

Well, the unofficial results are the votes that come in and that are counted Election Night and on through the night until noon the next day. And they're supposed to be -- any ballot that was voted that's eligible to be counted for the unofficial results, so I'm excluding

provisional ballots or the military/overseas absentee ballots. And this year in Ohio, if an absentee ballot is mailed by the day before the election, if it comes in up until ten days after the election, it's eligible to be counted in the official canvas. I hope I explained that well enough.

MR. DOBBS:

I'm going to ask all of you, perhaps, to shed more light on it. We're talking now about -- we're segueing into non-traditional ballots and that means absentee voters, it means early voters, it means non-felonious inmate voters, it means military voters. What am I missing?

CHAIR RODRIGUEZ:

Provisional.

MR. DOBBS:

Provisional -- the provisional ballots, and I'm going to ask somebody to define that. I could do it, but everybody else could probably do it much better. So those are the non-traditional voters. Some of those may have been counted by or on Election Day. Some of them clearly will, if experience is any guide, and if the systems are designed this way, will be counted after Election Day.

So before we get to those questions who would like to just briefly define the provisional ballot, which is a fairly new provision? Provisional is a new provision. It existed in Ohio, perhaps to the

chagrin of some people, I think, in 2004, and elsewhere, but it's the consequence of federal law to give people who are feeling disenfranchised an opportunity to argue their case by casting a ballot to be verified later. Who will define it?

SECRETARY BRUNNER:

I can. A simple way to look at it is, sort of a "just in case" ballot. If a voter is not on the voter rolls and is adamant that this is their correct voting precinct, and of course, our poll workers are trained to ask the poll worker -- to ask the voter, "Where is it that you live?" And there's a precinct finder. They can direct them to the correct precinct. But sometimes a voter says, "No, absolutely, I know I have to vote here." The voter is able to vote a provisional ballot that goes into a secrecy envelope and on the outside of the envelope, then, it identifies who this voter is. And then during that ten-day period after the election, the election officials have the opportunity to verify that eligibility of the voter. And in more cases than not the voter is eligible, but it's just in case their vote wouldn't count. It's on a provisional ballot and it can be segregated. Just in case their vote would count, they'd been able to vote a ballot where in the past they would have been turned away.

MR. DOBBS:

Don, I don't want to ambush you because you may not know the answer to the question, but because your responsibility is the

Deputy Director of Election Tabulations at The Associated Press is to look at the big picture of all 50 states and to look at every voter in every constituency, how many, roughly, in terms of percentage, numbers, whatever you can come up with, how many ballots are not counted by the closing of the polls on Election Night?

MR. REHILL:

By the closing of the polls or...

MR. DOBBS:

Yes.

MR. REHILL:

Hum. Most of them are not counted by the close of the polls. It takes hours for the state to finish...

MR. DOBBS:

Stupid phraseology of the question.

MR. REHILL:

But by the end -- let's call it the end of the Election Night...

MR. DOBBS:

Yes.

MR. REHILL:

...we generally count -- call -- our unofficial Election Night we call until noon the next day Eastern time for a big national election because it's a long night, basically until noon the next day.

And typically -- I know in 2006, 6.7 percent of the eventual total vote in the United States cast for the federal elections were not included in the report available from all the states, as of noon on Wednesday. So that's a significant chunk of absentees not counted yet and provisional ballots not counted yet, accounts for almost all of that difference. So it's significant.

MR. DOBBS:

Would you agree with my instant conclusion that it's probably going to be even higher this year?

MR. REHILL:

I think, perhaps it might, because there's already sort of rumblings on a lot of people's radar screens. There's a huge surge, it looks like. When we see all the closing numbers of registration, I think we're going to see that registration has gone up to record levels in the U.S. and in a lot of states. A lot of new voters and we're going to see, perhaps, more provisional ballot situations on Election Night than we have in, like in 2004 and 2006, certainly. So that means more not counted on Election Night.

And absentee voting and early voting are going up in percentage every election, essentially. I mean, it was like 15 percent in 2000. It was 22-1/2 percent in 2006. And I wouldn't be surprised if there were a big spike in this election. There's already like four states that are more than 50 percent absentee -- advanced

voting, absentee, early, whatever you want to call it, including Oregon which is 100 percent.

MR. DOBBS:

More than 50 percent of registered voters?

MR. REHILL:

50 percent of the votes cast are absentee, early.

MR. DOBBS:

Really?

MR. REHILL:

Yeah.

MS. FESSLER:

And the rules of when provisional ballots are counted differ from state to state. So, some might count the provisional ballots, you know, relatively soon after Election Day, but others, I believe, it's -- some are a week or two, right? There's even a longer period of time.

MR. REHILL:

Some are up to December.

MS. FESSLER:

Right. And if we have a very close election, if there's one pivotal state with these provisional ballots, it could come down to the counting of those provisional ballots in a key state. And we don't

know how long that's going to take, especially if there are challenges.

SECRETARY BRUNNER:

Of course, if you're in a state where you can register and vote on the same day you don't need provisional ballots because the person is right there in front of you. In fact, in Minnesota they don't even worry about it.

CHAIR RODRIGUEZ:

Speaking of, right there in front of us, the Secretary of State of Minnesota is sitting here in the front row and nodding.

MR. DOBBS:

That's who you are. He's looked so much more knowledgeable than all the rest of you, I just didn't know why. So welcome.

CHAIR RODRIGUEZ:

Welcome Mark.

COMMISSIONER HILLMAN:

Greg, one important thing on the provisional vote is, that the voter can find out if their provisional vote was counted. They can follow-up after the election when all the provisional votes...

MR. DOBBS:

That is federal law...

COMMISSIONER HILLMAN;

Yes.

MR. DOBBS:

...that they can determine that the vote has been counted.

MS. FESSLER:

Can I also bring up something else on provisionals, though, that isn't really talked about too much? But a lot of voters do go into the polling place, they're not on the list, they can't find their names and sometimes poll workers will say, "Well, why don't you vote a provisional?" And they go -- they leave the polling place thinking that it's going to be counted. And some people have actually called these placebo ballots, because voters, you know, are led to believe or thought that it's something that's going to count, but in fact, maybe they're in the wrong precinct and it will not be counted if it's in the wrong precinct or there's some other problem. So there are a lot of problems with provisional ballots that don't get as much attention as they should.

MR. DOBBS:

When that happens, is that disenfranchisement? Or is it unfair to call it that?

SECRETARY BRUNNER:

Well -- and there are other issues with provisional ballots, as well. That kind of problem that Pam just cited has more to do with poll worker training than anything else. But the other kind of unintended consequence of an excessive number of provisional ballots is, that

it tends to extend the lines and extend the period of time for voting by all the voters in the polling place. In Ohio, for example, we know that it's a minimum of four poll workers, two Republicans, two Democrats, in each precinct. And generally, what the Boards of Elections do, is assign one of those poll workers to be the poll worker in charge of provisional voting. So, if there is an effort by one party or another to push more voters into that category of being provisional voters, whether it's by voter ID, whether it's the issue of the voter registration database and if someone decides to take that and really push that and use that as a way to flag voters to move them into provisional voting, what you inadvertently do, or maybe purposely do, is to create sort of a clog there in the voting -- in the lines. And studies are out there that show the longer a person waits in line, the more likely they will be disenfranchised because either they won't be able to wait in that line that long a period of time or other voters who are coming to vote in that precinct will balk and say, "I'm not going to get in this line. I may come back later," but they may never make it back.

MR. DOBBS:

A bit of a digression, but you just used the word "line" and I'm curious. In view of the number -- the percentage of people who, evidently, in some places, that have been measured already are voting non-traditionally, meaning voting prior to Election Day itself,

do you expect lines to be longer or shorter than they have been in the past? Forget the length of ballots. In my home State of Colorado, we have not only a Presidential race and a U.S. Senate race and state legislative races, and local, school, mill levies, but we have ten, count them ten, Constitutional amendment proposals and four other ballot initiatives. So the thing is about a half a mile long, which has prompted, according to what I've read and it includes me for the first time in my life, people to vote early. So in a way, I'm reducing the length of the line. That was a personal tale, but what do you see in terms of the big picture?

SECRETARY BRUNNER:

You can talk about Ohio and long lines because if you looked at 2004, we were sort of known for that around the country, especially in Knox County, where Kenyon College was where too few voting machines were assigned to precincts where there were records numbers of college students who registered and were voting, and some college students waited as long as ten hours to be able to vote.

What I have a real concern about, in this particular Presidential election, is, when we look back at the Ohio experience in 2004, where the long lines were the hallmark, where, in counties where they were using DRE machines, direct recording electronic machines, an earlier generation than what we have now under the

Help America Vote Act. But it's a simple issue of supply and demand. It takes a certain amount of time to vote on these machines, especially the ones we have now, where you go from screen to screen to screen and you cannot submit your vote until you've gone through every screen. And so if you have a lot of ballots...

MR. DOBBS:

You can't even stop early and say, "I don't want to deal with all these local issues. Record my vote"?

SECRETARY BRUNNER:

Unless you go, "Continue, continue, continue"...

MR. DOBBS:

Yeah, you still have to go through the cycle.

SECRETARY BRUNNER:

...and ignore all the little warning lights that flash and make you nervous. And so, the question is, do you have enough machines? Are they allocated properly? Are you looking at circumstances like recent purges, new registrations, previous voter turnout, number of ballot issues on the ballot, the length of those ballot issues. And then the other question that we looked at is, what if the machines break down? And then, if you have just one line and you've got a certain number of machines, it's not going to move any faster

because it takes a certain amount of time to vote on those machines, no matter what.

So what we did, was to require back-up paper ballots in the amount of 25 percent of the people who voted in the last Presidential election in counties using the electronic machines. And then, we went a step further, because we understand that you could have two lines going to the cash register at McDonald's but if it's just one cash register they're not really going to go any faster. And I don't mean to liken voting to going to McDonald's, but the point is, is that we have pushed our election officials and they have worked very hard to come up with polling place configurations where there can be two lines, two places to sign into a poll book, one check off list for the voters, so that we -- if people want to vote a paper ballot, they can. They can get in this line. If they want to vote on a machine, they can get in this line. And we do think that that will allow the lines to move more quickly.

SECRETARY NELSON:

In South Dakota we simply don't have the phenomenon of long lines and a lot of that has to do simply with population, but part of it has to do with the fact that we use the optical scan ballots. We are in no way constrained by the number of machines that might be at any given polling place.

The other thing we are seeing, having said that, is an increasing number of absentee voters and every absentee voter is one more person that doesn't have to walk through the polling place and take some of that pressure off.

MR. DOBBS:

Pam and Don, do you accept, I don't want to turn it adversarial, but do you accept that if there are long lines, it's likely that there's nothing officials could have done about it?

MS. FESSLER:

Oh, no, I don't necessarily accept that at all. I think that a lot of it is the allocation of equipment. A lot of it is done based on past performance in precincts, and that doesn't necessarily predict what future performance is.

I think in Franklin County, Ohio, they seem to be doing something interesting. They were also trying to -- they actually hired a line analyst to look at, you know, using queuing theory, what was causing the long lines and maybe how they could better allocate the equipment. And one thing they came up with, which seems common sense, is that some places just have longer ballots, so it's going to take people a lot longer and maybe you should put more equipment there; not just put it based on the number of registered voters.

I do think that, you know, like all local governments, they're constrained by resources. I mean I'm sure that a lot of local election officials go to their boards or to their county commissions and say, "You know, we really need more money for machines," and they say, "Oh well, you know, we only have this election once every two years," or whatever, "we can't afford it." So whose fault that is, I don't know.

SECRETARY BRUNNER:

The only thing that's interesting for us is that there are two functions of government at the county level that have to be funded to the needs no matter what and a court can order that, and that is...

MR. DOBBS:

Under federal law.

SECRETARY BRUNNER:

...the court system -- this is under state law.

MR. DOBBS:

Under state law.

SECRETARY BRUNNER:

And that's the court system and that's the election system. So if we have a local Board of Elections that doesn't have the resources it needs to accomplish what it's required to under federal and state law, it has the ability to go to the court and the court orders the county commissioners to provide them with the money.

But my experience is the county commissioners who do the funding take as much pride in the election process as the election officials, and generally, they are very cooperative and do everything they can to ensure that they have the resources that they need.

MS. FESSLER:

But that's Ohio. That's not every state.

SECRETARY BRUNNER:

No, no.

MS. FESSLER:

Actually can I ask a quick question of Secretary Brunner? I'm just curious...

MR. DOBBS:

But first I want you to give me the name of that queuing analyst. I want to give it to United Airlines.

MS. FESSLER:

I'm actually curious, you know, with this court decision that came last night and the possibility, you know, of what you might have to be doing as far as your voter registration list, if you think that's going to cause long delays at the voting place on Election Day.

SECRETARY BRUNNER:

The Boards of Elections, now being 20 days before the election, many of them are at the point in time where they are ready to print their poll lists or the signature poll books. So what -- and this has

been an interesting odyssey because we first -- this order came about in a case dealing with a five-day window that was already upheld by the Supreme Court of the State and by a Federal District Court, as well as, then later on the 6th Circuit Court of Appeals. But it sort of morphed into an issue about observers for early voting and then it morphed into this issue about the voter registration database.

This was a database that we inherited from the previous administration. We have been doing the checks, but the argument was that, apparently, they didn't like the format that we were providing the data to the counties and felt that the counties should have an easier way to search the data. So essentially, we had a federal judge who said, 'You have to do this.' Then a three-judge panel of the 6th Circuit last Friday said, "No you don't." And then, the Plaintiff, which is the Ohio Republican Party, asked for, what's called an en banc decision, meaning, all of the judges on the 6th Circuit to look at this issue. And last night about 7 o'clock, in a nine to five vote, 50 pages worth of decisions, some concurring, some dissenting, the consensus was, you have to do it. And essentially what they want us to do is to provide a list of people in Ohio, by county, to each county Board of Elections, where the voter data, as far as the driver's license number or the last four digits of the Social

Security number, do not match what's in the State Bureau of Motor Vehicle records or the Social Security Administration records.

And the Help America Vote Act is really an administrative law that was intended to maintain -- to help maintain voter registration databases and not to determine voter eligibility. I think what the Republican Party wants to do is to attempt to use this data as a tool to determine voter eligibility and lower the rolls who were - - the number of people on the rolls or push them into provisional ballots. Originally the request of the Federal Judge was that we supply this information by October 12th because today, October 15th, is the deadline for challenging voters. So they've already missed that challenge deadline.

And, really, all that's done when there's a non-match is to contact the voter and try to get that information correct in the records but not to go any further to try to disenfranchise the voter. It remains to be seen what the Federal Judge will do beyond this temporary restraining order, which has a limited period of application. But I anticipate looking at the initial pleadings from the Republican Party that they will attempt to get an order from the judge to push these folks into provisional balloting, and we discussed some of those ramifications.

What's a little disconcerting is that one of the decisions of the lead judges in favor of keeping the judge's order in place, says

he doesn't see anything wrong with forcing these people to vote provisionally. And so, that remains yet to unfold. And as you can imagine, I'll be working very hard to protect the ability of people, who through no fault of their own there may be a mismatch. And, actually, the Secretary of State can't even control that matching process. Anything that goes to the Social Security Administration is sent by the Bureau of Motor Vehicles. We don't know what their checking process is. And we simply get it and it's put back in our database and listed as a non-match for whatever reason.

So it's not -- it's not the best thing for our voters, but I will run the interference that's needed to protect our Boards of Elections, so that they can continue to do the work in the trenches to get our citizens ready for a good election. And, you know, you'll probably see more court decisions come out of this.

MR. DOBBS:

I will deliver an epilogue that should have been a prolog. A Federal Appellate Court yesterday, I think it was a nine to seven decision...

SECRETARY BRUNNER:

Nine to five.

MR. DOBBS:

Nine to five, I'm sorry, they used the term, "essentially useless" to refer to the system, and correct me if I'm wrong, "for verifying newly

registered voters; verifying the eligibility.” Is that correct? They used that phrase.

SECRETARY BRUNNER:

They may have. Again, if a particular voter were in question, all they had to do was look in the database, and if there was a flag as far as a non-match they could see it. Their beef was that, and the Republican Party’s beef, was that, they wanted one more search capability to be able to find those non-match voters. To me, it’s akin to another form of caging like we saw in Ohio in 2004, where you could get returned notices that the Republican Party sent out to voters that weren’t forwarded and then start to challenge those voters on their eligibility, based on, perhaps, a data entry error at the Board of Elections, the fact that a voter may have forwarded their mail while they were on vacation; things that had nothing to do with the actual requirements for eligibility to vote, which is, are you 18? Are you a citizen? Have you lived in Ohio for 30 days? And do you live in the precinct where you’re appearing to vote?

MR. DOBBS:

And I don’t think we’re going to take that further because that is a different level of concern with respect to elections than you, and it introduces a partisan element that is full well important to understand, but not for the sake of voter education overall, in the case of the U.S. Election Assistance Commission.

SECRETARY BRUNNER:

I knew I could get you off this question.

MR. DOBBS:

You did a very good job of it. I'm going to go back to -- and you know, we're working a little bit against the clock that I can barely read from here -- I'm going to go back to the specter of a lot of people voting non-traditionally and go to Don Rehill of The Associated Press. To what degree, especially in close races -- now you may or may not notice those of you have observed elections from the front of your TV set or your computer screen over the last few cycles, that sometimes it's an individual, a news organization saying, "We called this race." And the most important calls, in most people's minds, I think it's fair to say, are going to be the individual swing states in the Presidential race. And in some cases, it's The Associated Press. I'm going to be here in Washington, actually, on Election Night working with Dan Rather on HDNet, which is the High Definition Television Network, doing election results. And we rely on you. When the AP calls it, we call it. We may take some credit, but basically we take your call. So to what degree do you take into account the non-traditional voters?

MR. REHILL:

It's a huge variable. We know it's a huge variable and we're very conscious and very careful about it. Everybody from -- the people

that “make our calls” in our Election Night system are the bureau chiefs. We have a decentralized bureau structure with bureau chiefs in every state, analysts in Washington, D.C., who will really take sort of co-responsibility for a lot of the top-of-the-ticket offices; President, Senate, Governor, U.S. House and they work with the bureau chiefs. They’re well aware of all -- we do a lot of research and we provide that research to both of these parties. And they’re well aware of the history in that state of absentee, early, provisional voting, how many they cast, when they usually count them, how do they count them, how do they release absentees. We ask that on a county level. We find it out on a state level. We have all kinds of archives going back to 1964 with official votes. And we provide as much intelligence information as we can to the parties that are making the calls, and we get it into our system with the assistance of the election officials on Election Night.

One of the really important parts of our work with election officials is, we would have a stringer in a county getting the results. The polls close at 8 o’clock. A few minutes later we get the first report from maybe ten precincts reporting. Our stringer calls it into our system and it goes -- if it gets past all the vote checks in our system and gets past our analyst, it goes out to the world in all kinds of formats; newspaper, ampa, digital, hosted, graphs, everything. It goes to all these different customers. 20 minutes

later, an hour later, they call with another report with 30 precincts reporting and more votes. And it keeps on going like that.

By the end of the night, we want to do what we call our verification process, whereas, we want to speak directly, if we can, with the election official or have the stringer speak with them and ask questions like, "How many absentee and early votes are outstanding? How many provisional ballots do you -- are cast? If you don't know now, when will you know that?" So we know -- because in some states it's still true, sort of, that when you have 100 percent of the precincts reporting, you have close to 100 percent of the vote, but that's not true almost anywhere anymore.

MR. DOBBS:

Because of the non-traditional voting.

MR. REHILL:

Because of all these other votes, yeah. In Washington State, I think, there's 30 percent of the vote outstanding after they go to 100 percent of the precincts reporting the next day. They're still counting absentees. They have postmark requirements for absentee ballots.

So we're very conscious of the number of votes outstanding, how much is included in the report that we have now, how much is outstanding and when can we get more information. And with the help of the election officials, who are obviously completely critical to

us for providing this information and getting into our system through our stringer, we're able to make an intelligent decision about whether we can characterize or call the race.

MR. DOBBS:

Do you know by some point on Election Night after the polls have closed, this is a question to the Secretaries and the journalists, do you know roughly the percentage of votes that will not yet have been counted? So if it seems like a close race, you know, it's within a couple of percentage points, and my God you know that ten percent, 20 percent, 15 percent haven't even been tabulated yet, there's just no reason to call the race.

SECRETARY NELSON:

You know, I found Don's comment earlier about six percent of the votes come in after Election Day, and that's an amazing figure because in South Dakota, it would be about two one-hundredths of one percent would come in...

MR. REHILL:

It's zero.

SECRETARY NELSON:

...would come in, yeah, after Election Day. We make sure we've get everything in on Election Night, and so it's a very small number. But obviously other states are much higher than that.

MR. DOBBS:

What's it in Ohio?

SECRETARY BRUNNER:

It's going to be harder to predict this year because this will be the first Presidential election where anyone who wants to can vote an absentee ballot, what we call no-fault absentee voting. And in addition, this will be the first election where the law is effective that late returned absentee ballots that have been postmarked before the election can be counted during the official canvas.

What we're looking at doing in Ohio, is, actually sort of, creating two buckets for counting the votes; one for the absentees or paper ballots and one for the electronic results. We've been tracking with our election officials, for instance, during the first week of absentee or early voting, how many ballots have been sent out, how many were voted in person, how many were voted during sort of an overlap period between absentee voting and the close of voter registration. So we might be able to do some rough statistical projections, but not having the prior experience with these other two types of absentee issues it will be a little more difficult to tell.

SECRETARY NELSON:

If I could just ask, so all the absentees that come in through Election Day they're counted and included with the Election Night. And then as those absentees come in over the next few days are they counted on a daily basis, or do you wait until the deadline?

SECRETARY BRUNNER:

What -- they're actually checked for eligibility, prepared and then when we do the official canvas between the 11th and 15th day after the election they're counted at that time.

MR. DOBBS:

Mark, a quick question to you, the Attorney General from Minnesota.

SECRETARY BRUNNER:

Secretary of State.

SECRETARY RITCHIE:

Secretary of State.

MR. DOBBS:

Excuse me, I knew -- well it doesn't sound like I knew that, but I did know that. What's the percentage in your state? Do you know?

SECRETARY RITCHIE:

Well, provisional ballots are illegal in my state.

MR. DOBBS:

Provisional ballots are illegal in your state.

SECRETARY RITCHIE:

We do not accept ballots that do not apply before Election Day, so the last mail delivery is the end of voting. All absentee ballots are run in the local precinct at that moment, and so we have essentially zero.

MR. DOBBS:

Okay. Since I already threw C-SPAN for a loop once by asking you a question without their microphone being under your lips, let me throw them for a loop a second time because I think they probably just lit for the head table here. But I'd like a show of hands among those of you who are eligible to vote here in the United States of America, how many of you will go to vote on Election Day? Would you raise your hands? Just show me. I'll try to characterize it if C-SPAN cannot see it.

Okay, and how many of you will have voted before Election Day? Would you say it's roughly 50/50? Maybe it's -- and this is too small a sample.

CHAIR RODRIGUEZ:

More absentees.

MR. DOBBS:

Because whole Presidential elections have been forecast on the basis of a sample as small as this, so why can't we draw some conclusions here today?

Okay. The big picture before we move on, and we shall take a break in about 15 minutes, for about 15 minutes as well, what is the big picture when it comes to the impact of non-traditional ballots on both tabulating the results and announcing the results from any of you, public officials or journalists?

MS. FESSLER:

I would say, from my perspective, the one thing that I'll be looking for is, I think that there will be a lot of challenges on some of these non-traditional ballots, both the provisional and the absentee in these close states. If the rest of the voting is close and it's a very tight tally on Election Night, I think that we might see a lot of legal challenges.

SECRETARY BRUNNER:

Further delaying the final result.

MR. REHILL:

I would agree.

MR. DOBBS:

You agree.

SECRETARY BRUNNER:

One of the tactical advantages to pushing more people into the provisional status is that it does delay the tabulation of those votes and it also gives a would-be challenger more time to investigate the underlying circumstances to try to invalidate that ballot.

MR. DOBBS:

Uh-huh.

SECRETARY NELSON:

And let me not pick on Ohio, but in reality...

MR. DOBBS:

But go ahead.

SECRETARY NELSON:

...you know, if the Presidential election comes down to, you know, 20,000 votes in Ohio and there's 100,000 provisional ballots sitting out there, we all understand how many attorneys are going to descend on Ohio to try to help the county officials figure out which of those ballots are countable and which are not. And that's going to be a battle of all battles.

MS. FESSLER:

And that's why that legal decision was so important last night, how that's going to play into what, you know, local officials are going to have to do with these voters who were in fact flagged for not having a match with the Social Security records or the driver's license records.

SECRETARY BRUNNER:

I can attest within less than a four-week period there have been eight separate actions filed regarding this election. And I was predicting eight total, so I had to take it up to 12 now. And it may surpass 12, I don't know. That's just before the election. I don't know about after.

MR. DOBBS:

You know, we could probably guess that Ohio, having been in the spotlight four years ago and now with some pre-election legal

challenges, that if there are problems they won't be in Ohio, they'll be in someplace else where we're not looking.

SECRETARY BRUNNER:

That's what all the election officials in Ohio hope.

MR. DOBBS

Yeah, I'll bet you do.

CHAIR RODRIGUEZ:

I have a question. I wonder if the outcome is clear, based on results from other states, will Ohio be as contested, do you think? Or is this going to play out to the very end?

SECRETARY BRUNNER:

Well, it appears from the way things are right now that Ohio is very contested. When you just listen to sort of the political rhetoric out there, they say that no Republican has ever won the White House without winning Ohio and the only time that a Democrat has won the White House without winning Ohio, there have been a few instances, but they consider Ohio a must-win State.

When I campaigned for Secretary of State, I said if I'm doing my job right, no one will ever know my name. I don't know what happened.

MR. DOBBS:

Don, I'm going to ask you a question and your answer cannot include South Dakota, Minnesota or Ohio. Are there any other

states that you look at and see this is a place where there might be problems? And if so, why?

MR. REHILL:

Well, there are a handful of states that have photo ID requirements for voters when they come to the polling place. I know Georgia, I think Kentucky, Indiana. I think it's been well publicized and they've been through a primary -- a state primary or two with this same law, so perhaps it won't be a shock to the voters that they have to have a photo ID when they get to the polling place, but I think it's always interesting and you sort of expect to see maybe more provisionals in those states that have those laws. So that's the one thing that comes to mind.

MR. DOBBS:

Pam, let me use NPR as a microcosm of all the major sources of information that Americans will have on November 4. How does it work there? How do you gather your results? Do they all come from Don's operation? Do they come independently, a mixture of the two, or what?

MS. FESSLER:

It's basically a mixture of the two. We have -- as you probably know, we have public radio stations all around the country, many with reporters who will be covering local races, who will be at the Secretary of State's Office, election headquarters. So we draw

information from them. We also have our own correspondents in the key states.

We, quite frankly, do base a lot of our -- when we're actually calling races, we do base most of that on AP, on the AP results. We tend to be, I would say, err on the side of caution. We don't call a race unless we feel pretty confident about that. In 2004, we were one of the last to call Ohio because it was -- the vote was quite close.

We also have a number of our elections' editors, who have been in this field for a long, long, long, long time and they're looking at everything. They're looking at the Secretary of State Web sites. We're making calls out. And if they see something that just doesn't sound right, then we'll be much more reluctant to call something.

MR. DOBBS:

For example what, say in the past, didn't sound right and made you reluctant to call?

MS. FESSLER:

Well, I would think, in Ohio in 2004, because there was a lot of polling places that were open late. It was a very -- you know, obviously it was a very crucial state and the vote tally came down, for the Presidential race anyway, was quite close.

The other thing I think that we see ourselves serving our listeners more and analyzing what's going on, you know. What --

who's voting which way, what kind of -- whether women, young people, old people how they're voting, trying to put it in some kind of context rather than, "Oh, we declare this State has gone for," so and so and, "This State has gone for," so and so. That's not really our kind of bread-and-butter. It's more, we would like to think anyway, the in-depth analysis.

MR. DOBBS:

I think we'll take up exit polls, as a matter of fact, right after our 15-minute break which will begin in just a few minutes.

A general question to people on both sides or in both categories. What do you need to know from each other? What do you need to know from election officials? What do you need to know, if anything, from the media?

SECRETARY NELSON:

What we need to know from the media is, what's the best way to get the results to you quickly. And we've been able to work very closely with the AP to directly feed information into their system and also with our local media, what formats do they need it in. And once we know that, then we customize our outputs to what they need.

MR. REHILL:

Absolutely. We do that with South Dakota, with a number of states, where we actually take electronic feeds when the state does their

own tabulation of the unofficial vote on Election Night. We look at that and we try to get a feed, if we can, and that very often we use as the comparison for our stringer network. And it's a quality control measure. We have two sets of results there. We can make doubly sure that what we're putting out makes sense. And the South Dakota feed is fantastic and it's a great tool for us.

We -- at AP we start fairly early soliciting and researching information from the county election officials and the state election officials so that we can put out a lot of pre-election research reports and get our database built and get everybody onboard that needs to know about Election Night, because a lot of the people that are going to be working on Election Night, they don't turn their attention to it until the week before, two weeks before. We're collecting information so we can give them the best research those two weeks before, but it takes months to compile it sometimes, including doing those county surveys that I mentioned, official votes, in-depth research on the rules in each state, everything from provisionals, to recounts, to write-ins, to ballot order. We have all kinds of election administration rules and calendars and deadlines in our own research database and sort of a common vocabulary because the states use slightly different terminology from calling one thing to something different in another state.

So we ask a lot of the election officials, to be frank with you, as far as information and they -- and we have a great relationship with them and we try to not overburden them when they're about to have an election. Like for instance, if we're interested in questions about the general election and they're having a state primary in September, we know, like, back off. Leave them alone. They're going to be quite busy here for the next two weeks and we'll get to them after the primary. But we have a very good relationship with election officials on the state and county level and the town level in New England.

MS. FESSLER:

And I just want to add, you know, to what Don said. I think that if election officials -- because most media outlets don't have the resources at AP and you know that so many of us are relying on AP that it is crucial, you know, if you have to only go to one news outlet, I can't believe I'm saying this, but you know it really should be AP because...

MR. REHILL:

I'll second that.

MS. FESSLER:

Yeah, I bet you would.

MR. DOBBS:

You will deny that if quoted in court.

MS. FESSLER:

Right, at least it's not being televised. But I'd say the other thing that would be of use, I think, to the media in general, is that if there are problems and you do see red flags and something suspicious, it would be good to try and share it with the media. As much as you may not want to because it might reflect negatively on how the election is being conducted, I do think it is important to be as open and honest and immediate with any news that you have that something is going awry, because it is important for people to know and be able to analyze what they're seeing.

SECRETARY BRUNNER:

We found that to be the case in 2007, when we had the county with the faulty memory cards. We -- as soon as we issued a directive, we were shooting that out to the media so that they knew exactly what was happening as it was happening. And I have to give credit to the AP reporter. He stuck in there until seven the next morning with all of us and was writing a story.

And I know Election Night of the March primary, I regularly went in front of the reporters and told them what was happening, told them problems that were happening in particular counties. And I think it works better for everyone, because then you have a more transparent process.

MR. DOBBS:

Five minutes left before the break and I'd like to ask somebody, maybe a combination of you, just to do what I promised we would do, tell them how the sausage is made from somebody casting his or her vote on Election Day to most Americans sitting at home listening to the radio, watching TV, or sitting at their computer screens finding out how that state has gone. Just the flow of information. Who will address that?

SECRETARY NELSON:

I think it's going to be a little bit different for each state, but in our state where we centrally count the optical scan ballots the voter puts their ballot in the ballot box. The box then goes to the county courthouse at the close of the polls. Those ballots are run through a high-speed optical scan counting machine. The results are then printed out. And we have a statewide reporting system. And in some counties they can literally electronically upload the results directly into our system, and in other counties the counties hand enter the results precinct by precinct into that system.

And then the dissemination method coming out of our system is really threefold. We obviously have the Web site for the public, we have the feed that goes directly to The Associated Press and then some customized XML type files that local media can access.

MR. DOBBS:

Are there any -- there are obviously some modifications at the first part of the process in your case because it doesn't -- it isn't centralized the same way in Ohio.

SECRETARY BRUNNER:

No, but in any of the counties the votes are tabulated in the precincts and they're recorded on small memory cards. Those memory cards then are taken to the Board of Elections where the totals are accumulated in the server at the Board of Elections. When the Board of Elections has all precincts reporting, including the absentee ballots and for the counties using the DRE machines, including the backup paper ballots, then...

MR. DOBBS:

Tell what DRE means.

SECRETARY BRUNNER:

Direct recording electronic touchscreen voting machines. Then the Board of Elections transmits it online to the Secretary of State -- they're doing that actually as they're coming in. And so what you'll be able to see when you look at our Web site that night is you can see a map of the State of Ohio. If you want to look at a particular county, you can click on that county. You can see how many precincts are reporting. There will be all kinds of ways that if you want to search it by candidate or you want to search it by county, you're able to do that.

MR. DOBBS:

Okay, now let's move to the dark side. That information is then in your hands both as a disseminator to the general public and as a -- dual disseminator we'll call you. What happens then? Does it go through more filters, not analysis, but just filters?

MR. REHILL:

Well with that AP system we have the stringers that are calling in the results usually in almost every county, and in the case of South Dakota we have the feed as well. And our stringers try to add value to the report, meaning that they have the kind of questions that I alluded to before: "How much of the absentee is included in this report? How much is outstanding?" Any kind of notes about voting equipment problems. That would get passed along by the stringer and get into either our tabulation database or through alerts to our members and customers. But, yes, the result would get -- a stringer calls up, it goes to one of our four vote tabulation centers. They talk to an operator. They say, "I'm calling from Adams County." They give them an ID number. The operator puts it into a computer screen. It brings up the appropriate races for that county. They say, "I have this many precincts reported. Here's the" -- and then they get prompted, "Give me the votes for President, Senate, Governor, U.S. House," all the way down to amendments, State Legislature, Attorney General, sheriff. We go way down the ticket.

We do the whole ballot. Most people are mainly interested obviously in the top of the ballot, but AP does all the races. We'll be doing 6,500, 6,800 races in this general election in 4,600 and change reporting units across the country and being able to give all those results to our customers who buy the National Report.

Anyway but, yeah, the stringer is calling the operator. The operator is trying to enter this stuff. It does have to get through quite a number of filters, quality control checks before our system will accept it. Simple-minded things like you can't put in more precincts than exist in the county. You can't put in more total votes than there are registered voters in the county, but also much more sophisticated checks, like based on the party history in that county. If it's a 65/35 Democratic county and all of a sudden you flip the percentages for the Presidential race, it's going to say, "We're not saying this is wrong, but it looks kind of strange. Can you confirm that"? And the operator is required to make sure they didn't flip the candidates. We have checks on past turnout, short of the total registration expectations. We always expect the precincts and the total votes to go up in each cumulative report, sort of by definition. So if there's a drop in the votes or a drop in the precincts, that can't go in routinely. It has to get -- we usually have to have the supervisor talk to the election official and figure out, did the county

drop the precincts or did we somehow have a vote entry error that caused, you know, us to have this drop.

And once the report does make it past all those filters it has to go through a bunch of quality control analysts who are immediately pouring over it looking at our county data looking for things -- for suspicious data that still might have made it through all those system checks. So by the time it gets through all that, it's pretty scrubbed clean.

And it goes out on our wire immediately. The difference from the old days is, it's almost instantaneous. Once it gets past our vote checks and it gets into our system, you know, it's up there on the CNN big board on their election coverage. It's up on everybody's board. NPR has it immediately. So we have no -- we don't have the luxury of being able to say, "Oh, we have a problem in Adams County. It looks like we have an extra digit for somebody. We'd better check that out and chase it down before somebody notices." It's going to be noticed immediately if anything like that happens, so we are pretty rigorous about our checks and our quality control. So...

MR. DOBBS:

Don, if you can't answer the question, just say so. Pam, anything to add before we break?

MS. FESSLER:

No. I mean, I pretty much said it. I mean we use AP's, obviously, their information. But we have a huge room about this size, a huge studio in which we are broadcasting live from there on Election Night. We usually start around five, six o'clock and we go until most of the polls are closed. I think Hawaii we might not always be still on the air for. And we bring in all this information and we have a lot of calls out to reporters, to election officials who are around the country. So we combine AP's information with all this other information that we are gathering for our broadcast coverage.

MR. DOBBS:

Okay, everybody I have the privilege of covering the space program for HDNet, amongst other things. And I bring it up because one of the things that's fascinated me, hearing each of you speak of your plans for Election Night is that, you know, the astronauts train for between one and two years for one flight that's going to last typically about 14 days on the space shuttle. And they train for a couple of years to make sure everything is right.

And we all watch Presidential candidates and candidates for other public office campaigning for months, if not years, in the case of the Presidential campaign, all for one crescendo on Election Day. But what you don't often think about are all the election officials who have been putting pieces in place for so long, and all

the people in the world of journalism who have been doing the very same.

Okay. We're going to take a break and it's now, by my watch, three minutes after 2:30 Eastern time. And we'll resume in 15 minutes time. And do pushups, check your cell phone messages and we'll see you in a quarter hour. And we'll talk about exit polling.

[The panel recessed at 2:38 p.m. and reconvened at 2:50 p.m.]

MR. DOBBS:

Okay, that was a short minute.

During the break Commissioner Donetta Davidson who has laryngitis, if you weren't here at the beginning of the session you don't know that but you haven't heard from her and that's why, but she whispered the following to me because I ended the last session pointing out that I get to go to every space shuttle launch and anchor from Cape Canaveral. And I always have interviewed each set of shuttle astronauts in Houston before the launch and get to know a lot about how they've spent the last couple of years training for one launch and one pretty darn short mission -- and pointed out that in the world of politics, in the world of voting, in the world of journalism when it comes to big events like this, the same thing

applies; that people spend years, at least months, preparing for one single event. And she said to me, there's a big difference between what the election officials here do and what the journalists do and what the astronauts do, which is that if anything seems to be less than perfectly ready, in the case of the space program, they scrub. They put it off. It costs us money, but they scrub. And you can't scrub an election. Each of us probably can think of a few elections we wish had been scrubbed, but that's very personal.

COMMISSIONER HILLMAN:

Greg, might I also add that earlier when the Secretaries were talking about the fun part of Election Day and how it's, and I think it was Chris about Christmas Day. But to think that the most important day of two years of planning and you are literally dependent on thousands of volunteers to carry it out with precision, I don't know that there's any other enterprise in the United States that is as significant and important as voting that relies 95 percent, or more, on volunteers. And those are the poll workers and election judges who agree to work that day to help people vote.

MR. DOBBS:

You know, while you were saying that I was running through my mind, because I love debate, and I was going to come up with something to rebut your assertion, but I can't. I can't.

COMMISSIONER HILLMAN:

Yeah.

MR. DOBBS:

It's a good point.

Chris Nelson, the Secretary of State from South Dakota, suggested that we had not provided all the information we ought to provide on the subject of provisional ballots. It's a phrase that, it's probably fair to say, most Americans have never heard and could not define. And yet they play a very important role, not only in the final tabulation of the vote, nationwide, but also in the protection of people's voting rights. So, Chris, what do you think was missing that people need to understand?

SECRETARY NELSON:

You know, just a couple of points. I want to follow-up on one thing that Jennifer said about what a person who comes into that polling place and is not on the registration list what they're actually told by the election officials. And that statement from the election officials is crucial to deciding whether or not they get a regular ballot that's counted on Election Night or a provisional ballot. And one of the things that we've done is we've provided a canned statement so that if that election official has any doubt in my mind, "What do I tell that voter?" they can go to that statement, they can read it off and they know that they've given the voter exactly the right information.

And that's something that, you know, I've encouraged my counterparts to adopt something like that.

The second thing I'd say is, the provisional ballots are handled differently in all of the states. Some states, you know, hand out provisional ballots. If there's any issue, "We'll just give them a provisional and we'll sort it out later." Other states, like South Dakota, we go the other direction. We want to do everything we can to avoid the provisional ballot, everything we can to get a real ballot, regular ballot...

MR. DOBBS:

Avoid the need for a provisional ballot.

SECRETARY NELSON:

Exactly, avoid the need. And I tell my election officials, my goal in South Dakota is to some day have zero countable provisional ballots, because that means our voter registration list is perfect. In the last general election we counted 90, a very small number compared to other states. My goal is zero.

MR. DOBBS:

Well you, of course, have the faces of four Presidents looking down upon you, so you have to get it right.

SECRETARY NELSON:

That's right. Absolutely.

MR. DOBBS:

You make an important point, and maybe we should elaborate a little more, and that is that, provisional ballots are required in every voting venue in America but it is up to each state to administer the dispensation and collection of them.

A question to one of the two talking Commissioners. Why? Why doesn't federal law mandate some sort of uniformity when these provisional ballots have been so problematic and controversial in the past? I know you didn't write the law, but you probably understand it.

COMMISSIONER HILLMAN:

Well, I think that was one of the things in the negotiations that it was agreed would be left to the states, since the states have been delegated the responsibility to administer federal elections; that the law requires provisional ballot but would leave it to the states to determine how that would be best implemented.

One of the responsibilities of the Election Assistance Commission is to compile data to report to Congress, annually, about key sections of the Help America Vote Act and how they're working. And so I wouldn't be surprised if in 2009 Congress doesn't revisit some of the key provisions to see whether there is a better process.

MR. DOBBS:

Any other thoughts on what else -- not necessarily that you hope, you may hope for a lot -- but that you think Congress seriously might revisit in terms of election law?

COMMISSIONER HILLMAN:

One of my favorites that I hope Congress will revisit is, the law authorizes up to \$30 million in research on the technology, and funds were never appropriated. So the Election Assistance Commission has never been able to do study and pilot projects on the new technology that's evolving for both, voting systems, as well as the Statewide voter registration databases. And so I hope that -- this is a very difficult time to talk about, you know, where do you find another dollar. But we are asking election officials to experiment with new voting systems, if you will, and if they find it doesn't work then they have to go back to the drawing board and look for yet another voting system. So hopefully there will be another look at that.

MS. FESSLER:

I would just like to add, I think that it's pretty clear that another thing that Congress probably should revisit is this whole issue of how the states should be cleaning up its voter registration databases, which is why Ohio and other places are running into legal problems. They were required to come up with the state databases. The law is not exactly clear on how the states are supposed to match new voter

registrations against the Social Security database or their driver's license databases and what you do if those names don't match. And that's leading to a lot of the issues that are coming up in this election. It's clearly something that needs some type of a national or federal guidance.

MR. DOBBS:

Okay, exit polls. You probably all know what they are, but I'm going to give you a few examples because on, what was it called, Super Tuesday I was -- as I said, I'm going to be on Election Night here in Washington with Dan Rather -- I was in Los Angeles with Dan Rather where we broadcast to the nation on HDNet what was happening, the results on Super Tuesday. And, of course, there were states in the Eastern time zone and states in the Western time zone and states in between. And this is one form I found looking through my files and it's an exit poll form, and I don't even remember its origin.

But my job on the broadcast was to pop in from time to time, Dan was interviewing analysts and experts, and I would pop in with exit polling information. And I wasn't real comfortable with that, and I think I probably share that with a lot of journalists. I wasn't comfortable because as soon as we had some exit polling information from certain states in the Eastern time zones that had -- time zone that had already closed their polls we were -- I was going

on the air and saying, "Here's how people are voting." And that will inevitably influence some voters in the time zones where the polls haven't yet closed, either because they see a trend that is or isn't to their liking, they may not show up at the polls themselves. There are all kinds of reasons why it may have some impact on the final outcome vote-by-vote in an election.

So this is a form. And, you know, we would get these, I guess, faxed in or we scanned them, or something, but here are a few questions that people are asked after they voted, you know. "Are you," and it asks about race. "In today's Republican Presidential primary," in this particular case, "you just voted for," and it had the list of the, how many were there at the time, seven Republican candidates on Super Tuesday. "Which of these four issues influenced your vote?" In this case it said, "Illegal immigration, Iraq, the economy, terrorism." "How much does it matter to you that a candidate shares your religious beliefs? A great deal, somewhat, not much, not at all?" And a bunch of other questions. This is just two pages of them here. And those -- it was left to me arbitrarily to decide which ones were just plain interesting to people and which ones might be interesting particularly because they would have some impact on the outcome, because a lot of people would vote on the basis of, let's say, religious affiliation or, let's say, issue orientation, or whatever.

But the discomfort comes because, you know, there was still the Central time zone, the Mountain zone and the Pacific zone. So, exit polls, they are controversial. Some people wish they would go away. Some people wish they would be, you know, banned from the face of the earth. But on the other hand there's a great hunger for that information. One question I suppose is, do you think the hunger is really out there in the general public, or is it just hunger from the journalists who love to get into every detail? What do you think?

MR. REHILL:

Well, I think there is a hunger for the demographic and issue information. Certainly, there's the amount of studies and articles that are based on it, newspaper articles, magazine articles, in academic journals, years later they're talking about exit poll results, you know. I mean, some of these in a general election they ask for, you touched on a bunch of the variables, age, race, income, union household or not, were they full-time workers, party ID, by ideology, by religion, by church attendance, by military experience, whether you have children, gun owner, whether you're gay. All these variables you can cross correlate with how these people voted for President according to what they told the exit pollster, of course. And it's a fascinating piece of social science, I think, is the bottom line.

MR. DOBBS:

But do you have any discomfort? I did it because I wanted to get a check at the end of the week, but do you have any discomfort with it?

MR. REHILL:

Well, I'm not sure what you were -- what you were uncomfortable. Were you uncomfortable releasing exit poll results from Eastern States because Western States...

MR. DOBBS:

I was uncomfortable knowing that I might be influencing somebody's vote with a piece of...

MR. REHILL:

But they were releasing raw vote totals in the Eastern States when they closed their polls, so why would exit poll results from the Eastern States influence people in the West more than...

MR. DOBBS:

Fair question, but I know -- I say I know. Maybe my whole memory is failing me. I'm certain that I had exit poll information before the last polls had closed.

MR. REHILL:

Oh, you have the early exit poll results for the Western States.

MR. DOBBS:

Demographic information.

MR. REHILL:

Right, but those are not to be released until the polls close. So, yes, if they were released before polls closed for that state, that's very bad, yeah. And that could influence voters for sure. And that's part of the agreement for the people that buy the exit poll is that they cannot do that. And there's a whole series of security measures. There's even literally a quarantine room where the people who have access to the exit poll results they have to give up their laptops and their cell phones and everything else. They're locked in a room until the period ends for each state, the states that they're interested in.

So there's a lot of provisions to prevent people from getting like the first wave exit poll results in California, sometime in the late afternoon. More provisions than there used to be, that's for sure. There used to be always, somehow, always somebody in a magazine or a news -- a television anchor got hold of the exit poll results during the middle of the day.

MR. DOBBS:

Yeah.

MR. REHILL:

And it doesn't really happen. There was a lot of leaks, and they've really shored up the leaks I think pretty much, maybe not a hundred percent. I'm not sure, but it's better.

MR. DOBBS:

How much veracity, how accurate do you think they are, exit polls, at no matter what stage that they are released?

MS. FESSLER:

Well, I actually think that they are fairly accurate and -- the ones that are at the end of the process. As Don said, there are polls that are done during the course of the day and there's some preliminary results, and they actually are not really very accurate. And I believe that they're not going to be doing the early wave ones this year, that they used to do, which journalists would get. We couldn't report them, but it was an early indication of which way things were going.

But I do think, for the most part, if you don't take them as, you know, a hundred percent accurate that they do give you an indication of where things are going and who supported what candidate for what reason. And I think there is a great value in looking at that. Maybe some of the demographics might be a little too inside baseball for the average voter, maybe more for the campaigns. But I do think when you answer that question who you voted for and why and what was the most important issue that that not only informs the rest of the public, it also informs the people who won, why they won, what's important to the public, what were

the things that were really on their mind. And I think it helps them actually govern as they go forward.

MR. DOBBS:

I'm going to issue a personal apology for not remembering with precision how the exit polls that I was conveying came out. The only thing that I do remember is that certainly before the last voter had voted I was, for those who were watching us, saying here's how people in a particular venue, whether it's in your time zone or another, here's how people in a particular venue made their decisions and on the basis of what and what that decision was. And I still didn't like it. I understand it because I have a hunger for it. Politics runs in my blood. But I'm afraid if it has influence over the vote of a single voter there's something discomfoting about it.

SECRETARY NELSON:

If I might say a couple of things. I think, first of all, it's crucial that those polls aren't released before the particular state is closed. And I think the media has done a lot better job than it used to in that particular regard.

MR. DOBBS:

They are released but they're not announced.

SECRETARY NELSON:

Exactly, to the public. And so...

MR. DOBBS:

Right.

SECRETARY NELSON:

...from a practical perspective, that's okay. The political junkie in me loves the cross tabs, you know, figuring out who did what and why. And I think that is valuable information.

The biggest danger that I see in them is this. If you've got an exit poll that shows candidate "A" winning the race with 52 percent and at the end of the day the official results show them losing by 48 percent, there's a percentage of the population that says, "Aha, the election officials stole the election because it didn't match up with the exit polls." And that's something that bothers me.

MS. FESSLER:

And actually, we saw that a lot in 2004 when these people were contesting the election that they said that Kerry actually won. And they used, especially in Florida and I believe in Ohio as well, the discrepancy between the exit polls and the actual numbers that came out. They said, "Well, you know, they've got to be the same. They're not."

SECRETARY BRUNNER:

And in Florida they were doing exit polling during the 15 days of early voting and then they were getting the same exit polling results on Election Day. And then the next conclusion that was drawn was

that, “Well, voters vote in the same manner and with the same trends in early voting as they do on Election Day, so there must be something wrong with what happened on Election Day.” And it causes an awful lot of conjecture.

I don’t know that exit polls are as scientific as they would be if you did actual polling where you randomized your households and you were calling on the telephone. And so, I think sometimes I can see why you’re uncomfortable, Greg.

MR. REHILL:

I think the...

MR. DOBBS:

Don...

MR. REHILL:

The -- I’m sorry.

MR. DOBBS:

No, please go ahead.

MR. REHILL:

Well, two things. One, if you just called a randomized list of households I think, and I’m not actually in the exit poll business but I guess I’ve accumulated a little bit by osmosis. I mean, in an exit poll you are polling people that you know have just voted. When you do a randomized phone poll of people, a lot of them are going to say, “Yeah, I’m going to vote” or “Yeah, I did vote,” and there’s

going to be some significant percentage of them who are going to lie or be mistaken. When you do an exit poll, they all just came out of the polling place, so you know you're getting them.

But that gets back to one of the flaws, which Donetta and I were just speaking about before the break, in exit polls, one of the weaknesses which all the people that do them are well aware of, which is that, it only polls people who are voting at the polling place on Election Day. And we were just talking earlier about how many people vote advanced -- non-traditional, absentee, early.

MR. DOBBS:

Yes.

MR. REHILL:

You're not getting a snapshot of them, obviously, with the exit poll. But what they do now is that they do phone surveys of -- before the election or during the early voting period they do surveys of the people that are voting absentee and early and they supplement the exit poll with that information and they look at the research information about how absentee voters vote in that state and what the phone poll says plus the exit poll. So it's really the exit poll plus in big absentee states.

MR. DOBBS:

And I know, I'm just being a cynic here, being in the television news business from time to time over my 40-some year career, I used to

be asked to go out and do a “man-on-the-street interview”, asking some particular question about some great issue of the day. And, you know, as long as we got six answers where people were able to string 14 words together into a sentence we said to ourselves, “Okay, we’ve got it.” It wasn’t because we had a scientific sample. We had a -- we had a sample of opinion but certainly not a poll of opinion, if that makes any sense to you.

Pam last question on the subject. You’re the one who said you think they’re pretty good, pretty accurate. Why do you think so, when they can be skewed by the time of day the question is asked, the location where it’s asked, the race, the religion, the occupation, the economic status of the respondent?

MS. FESSLER:

Well, I may be going out on a limb here because I don’t actually really know what the numbers are, but I believe that the after-analysis of the vote, when people do look at the vote later on, that it’s -- that they -- that the exit polls themselves, do sort of prove to be relatively accurate.

I personally don’t put a lot of stake in any polls or any kind of numbers. I feel like numbers -- these are just trends, these are just hints at things. You can never, in and of itself, say, “Oh, well this is the way something was.” And you’re right, talking to a couple of

report -- a couple of voters on the street doesn't really tell you anything. You just happened to pick those voters.

MR. DOBBS:

Yes. Don't close it out by repeating yourself explicitly, what are the rules, vis-a-vis, the release of exit poll information?

MR. REHILL:

Well, I think that they do three waves, still, of exit polling. In other words, the interviewer starts at the poll opening time and they do -- they interview every eligible voter, depending on the size of the precinct and they accumulate all those questionnaires. And they also keep track of who refuses to fill it out, incidentally, by age, sex and race and who they missed, perhaps. And then, at a certain point, like 11 o'clock, 12 o'clock, they call in all those results to an operator who puts them all into the system. Then they do a second wave in the early afternoon and a third wave in the late afternoon, ending right before the polls close. And none of those results are supposed to go out before the polls close.

And it used to be that somehow, as Pam said, the first results, which are the least reliable, used to somehow get leaked and they would be all over the Internet and all over the news and they were the least reliable. And somehow they got out. And now that's pretty -- those leaks are I think pretty much plugged. But I think that is the rule, that until the states' polls close there's not

supposed to be any exit poll information released, period, for that state.

MR. DOBBS:

Okay. Let me ask for a factual explanation of another question, and you've touched on it in the first half of this whole panel session, and that is, how news organizations, including The Associated Press which is sort of the top of the pyramid, calls a state, calls a race; the process, the analysis. Talk us through it.

MR. REHILL:

Well, a lot of homework, beforehand. As I said, the bureau chief and, usually with an important top-of-the-ticket race, an analyst in the Washington, D.C. bureau, which they specialize in the national federal races, pretty much, working together, looking at a special tool that we have, not just -- we have our vote tabulation system and software where you can look at the votes in the precincts and some of our alerts, but we also have supplemental databases, including one they use to help call races. It analyzes the results and it breaks up the state by different strata; geographical strata, political strata, sees how much of the vote is in in each one of those strata. Maybe you have 80 percent of the vote in, but you have the whole -- the most Democratic strata in the state has hardly any vote in. So you know you have to be very careful in that case. So they look at tools that tell them that kind of thing. They look at the exit

poll, if there was an exit poll in that state. They look at the homework that they did, the pre-election research that tells how the state votes and what kind of turnout you might expect reasonably. And they get -- and they're communicating constantly. We're literally in chat rooms with the -- the bureau chief is in there in a chat room with the person in charge of the tabulation for that state and the quality control person and writers and everybody. And they're sort of sometimes kicking it around saying, you know, "We need more precincts before we can make this call." And basically, the analysis tools get to a point of critical mass, where it's statistically very safe and you know that there's approximately this many votes outstanding. And even if the person in second place gets like a hundred percent of those votes, you know, they can't win. You don't go that extreme, but you get the picture. You look at the outstanding votes and what the margin would have to be in the outstanding votes for just a switch. And they get a level of comfort and they make the call.

MR. DOBBS:

You didn't occupy your position in 2000, but you already were working with the system at The Associated Press.

Just for clarification, take the 2000 election in Florida, where it was called -- I forget who it was called for first, I think Bush and then Gore and then Bush. And then just 33 days later we found out

who was right. What went wrong there that has now been corrected systematically?

MR. REHILL:

Well, I'm not sure. I was not with The Associated Press in 2000 actually.

MR. DOBBS:

I apologize.

MR. REHILL:

Yeah, but I think basically what went wrong is, there was a sampling error -- a problem with the sampling in the exit poll. It was sort of one of those perfect storms, where you had a sampling error with the exit poll in Florida that was exacerbated by a sampling error with the sample precincts, which is something we haven't talked about, but that's sort of a supplemental thing that they do with actual votes from individual precincts. Sort of...

MR. DOBBS:

Microcosmic...

MR. REHILL:

Right, sort of a super set of the exit poll precincts. And also, an error in a couple of the counties in the tabulation from Voter News Service that sort of all headed in the same direction. Sort of all reinforced the same bias that, I forget exactly what it was, but

indicated that it looked like, I guess, Gore was going to win first, I think, yeah.

MS. FESSLER:

Yeah, but I mean the other thing with 2000, there's some people who would argue that the exit polls, in fact, were correct and that there were people who thought that they had voted for Gore but, in fact, the vote was tabulated for Bush in Palm Beach County, might be -- I think it was Palm Beach County, yeah.

MR. DOBBS:

Or Buchanan.

MS. FESSLER:

Buchanan. And so, Florida is a little bit of a different circumstance. I'm not sure it's been actually shown that the exit polls there were inaccurate. But it was so close that even just a little change one way or the other, you know, made the difference.

MR. DOBBS:

Question for Chris and Jennifer, and this is not so much a question to elicit information but to elicit emotion. It's a reporter's question.

It's Election Night and your job is not in conflict with their job, I should say our job, but you're on different tracks. You're not just trying to be first, you're trying to be complete and accurate as they are -- as who we are. But, obviously, your goal is not to get predictions out there. There's the difference. So when you see the

predictions -- you know, calling a race is a prediction. We predict on the basis of the statistical probabilities that candidate "A" is going to win in your state. What's your gut feeling?

SECRETARY NELSON:

My gut feeling is I've got the numbers. I've got the numbers that represent the people that have voted in the state. I've got what I call "the real numbers," and that's what I'm going to look at. And I, you know, don't give a lot of credence to that. I want the real numbers.

MR. DOBBS:

Did you guys hear that? He called his, "the real numbers."

MS. FESSLER:

Well, they are.

MR. DOBBS:

Fair enough. Anything to add?

SECRETARY BRUNNER:

Well, now you remember this answer is coming from Ohio. So, in the primary, when CNN called it for Hillary Clinton for the Democratic primary, when we had such a small number of votes in from Cuyahoga County, I said, "Well, that's very interesting." But in a way, I went, "Whew. Okay, they're going to go look at Texas now."

MS. FESSLER:

I think that that raises another interesting question. I believe in the primary you had a number of polling places that had extended hours, and that raises a question for a lot of media outlets. Do they call the race when the official poll closing time has come or when all of the extended hours are finished? So...

SECRETARY BRUNNER:

No polling results from any precinct in the state can be released until all of the precincts have closed. So if we do have a county or some precincts in a county where they're going to extend until 9 o'clock, which by the way can only occur by a court order, we issue a directive to all the other counties and say, "You can go ahead and tabulate, but do not release any results until 9 o'clock when all the polls are closed."

MR. DOBBS:

Is that Ohio law? Is that federal law? Is that Ohio law that is duplicated by most other states? Do you know?

SECRETARY BRUNNER:

I am not sure.

SECRETARY NELSON:

I don't believe it's federal law, but South Dakota works the same way.

CHAIR RODRIGUEZ:

It's not federal.

MR. DOBBS:

It's not federal.

MS. FESSLER:

Right, but some media outlets do, in fact, call races, not us, but some do call races when there are, in fact, still polling places open within a state, if they have been extended for some extraordinary reason if it's just, you know, one particular county or a few precincts.

MR. DOBBS:

Each of you is probably conversant for a 24-hour stretch on the subject of Election Night reporting, but for the sake of this panel and the context of time, is there anything else that needs to be said about Election Night reporting before we go on to post-election issues? No? Okay, then let's do post-election issues.

Recounts. What triggers a recount? And is that decided on a state-by-state basis with federal guidelines or otherwise?

MR. REHILL:

State law.

MR. DOBBS:

State law. But are there federal guidelines?

MR. REHILL:

I don't know if there's federal guidelines.

SECRETARY NELSON:

No.

MR. REHILL:

There's some states that have mandatory recounts, only 21, mandatory recounts, if it's a certain margin ranging from a tie, literally, to, I don't know, three points maybe, margin, which is kind of a wide margin, I think, triggers an automatic recount.

Other states don't have automatic recounts or required recounts, but a recount can be requested up until a certain number of days afterwards. And actually, all the states that have mandatory recount laws also allow, I believe, recounts by request as well, or most of them.

So it's kind of a two-track thing. Some states, if you have a margin of half of one percent for President, there's going to be a recount by law. In other states, let's say it's two-and-a-half points and that falls within the guidelines for a non-mandatory recount, the attorneys for the losing candidate can request it within a certain number of days and then that's pursued.

MR. DOBBS:

Such a request is considered and arbitrated by whom, the Secretary of State?

SECRETARY BRUNNER:

It depends upon the jurisdiction for the recount. So if it's a recount within a county, it's by that county Board of Elections.

If you would have a statewide recount, for instance, in a Presidential race, the Secretary of State would supervise that but it would actually -- you have middle managers, if you would, with your directors and deputy directors of your Boards of Elections. In Ohio, it's a mandatory recount if a statewide contest is within a quarter of a percent or less than statewide, within a half of a percent. That doesn't cost the candidates anything. A recount that's requested, because it's at a higher margin, the counties -- whoever requests it actually pays for it. And they can select a group of precincts or all the precincts for a discretionary recount.

MR. DOBBS:

Florida 2000, there were recounts, as everybody recalls. If any of us can ever get to our deathbeds and forget the face of the guy looking up at the hanging chads, we can consider ourselves lucky.

What, if any, protections are in place today, and if not protections, then at least, not arbitrary decisions, to be made at the time under the pressure of the nation's spotlight, to prevent the, kind of what some people characterized as farcical, procedures that followed that confusing election?

SECRETARY NELSON:

I think there are two things that have happened. One is, certainly all of us that are in the elections business learned from Florida that we need to make sure we have recount laws that -- that make

sense and are workable and get us to a final conclusion. That's the first thing.

The second thing, the Help America Vote Act requires states to define what is and is not a vote. And so, you don't have this whole issue of two-corner chad, three-corner chad, et cetera, but you have that defined ahead of time. And I know our state, and I think all other states, have done that to remove some of that ambiguity.

SECRETARY BRUNNER:

But there's also -- when you look back at the Florida race, the finer issues on, "Does this vote count? What's the voter intent on this particular ballot?", were not defined with any uniformity or consistency across the state. And they were left up to individual canvassing boards, some of which were very influenced by political or partisan considerations. So, if a state can be prepared and, for instance, have clear instructions on how to determine voter intent. So, let's take an optical scan ballot where the voter may fill in an oval next to the candidate's name but at the write-in portion they fill in that oval and they write the same candidate's name in there, too, that's not an overvote, it shouldn't be an overvote. But election officials needs to be instructed on the finer points like that because that issue alone could have made a difference in the overall total on the Florida votes, but there were no statewide instructions to

explain that, so it was very disparate implementation or treatment around the state.

MR. DOBBS:

By the way, I'm always looking for definitions, the word "overvote", we assume everybody understands it and probably some people don't.

SECRETARY BRUNNER:

Okay, an overvote means that you're told when you vote in a race how many you're allowed to vote for. So, if it's vote for one, that would mean that you voted for two. And as election officials, we would not be able to determine which one you really meant to vote for, so we can't count that vote.

MR. DOBBS:

Okay. And, Chris, you referred to the certainty of a definition of what is a vote, something that they could have used back in the days of hanging chads eight years ago. Define that, in your state, at least.

SECRETARY NELSON:

Exactly. In our state because we have just one ballot style, the optical scan ballot that uses ovals, we've defined it very clearly that a vote is any mark that is in or on the oval and if it is not in or on the oval, it does not count. Black and white.

MR. DOBBS:

Jennifer?

SECRETARY BRUNNER:

Again, it has to deal with voter intent. If you have an optical scan ballot and the voter puts an "X" in the oval or they circle the oval, we can be very clear about what the intent of that voter was; that that's the candidate that they intended to vote for.

In our state, what we require our local elections officials to do, is our four members of the board have to actually vote on, in session, in open session what the voter intent is on each of those ballots. They grumble about it, but it opens up the process to the public to see how that's determined, and it keeps it fair.

SECRETARY NELSON:

But that's -- in many ways that's what was going on in Florida.

MR. DOBBS:

Yeah, that's...

SECRETARY NELSON:

They were arguing about voter intent. What did the voter mean to do with this chad? Did they mean to push it or did they push it halfway in and change their mind? They were arguing about voter intent. So...

COMMISSIONER HILLMAN:

Greg, I think it's also worth noting that voters get very creative on the ballots. And I don't know if they mean to do that because they

don't care if the ballot is or isn't counted, but I have seen ballots where people have written messages to the candidate on the ballot; sometimes a nice message and sometimes a not nice message. And so, those kinds of things really spoil a ballot. And I think voters need to be aware of, you know, and this is all voter education, you know, what happens that causes a ballot to not be counted.

MS. FESSLER:

Because I have to say, Chris in your case if a voter circled the entire name and didn't put anything in the oval, they would not be counted even though their intent is actually pretty clear.

SECRETARY NELSON:

We could maybe presume their intent, but we don't know for sure. And it certainly would not be counted.

MR. DOBBS:

Well, that's interesting.

SECRETARY NELSON:

You know, the instructions on the ballot are very clear. If you want to vote for a candidate or a position, you fill in the oval. And as long as they've made some kind of mark, even if they make an "X" or a check or a dash, as long as it's in that oval that's the spot that we're looking at and that's what gets counted.

MR. DOBBS:

And yet...

SECRETARY NELSON:

And that -- that removes this whole idea of an Election Board taking a vote as to whether or not somebody's mark is or is not vote.

MR. DOBBS:

So you're ultimately saying something, that a lot of people would repeat, that it still comes down to the individual responsibility of the voter...

SECRETARY NELSON:

Absolutely.

MR. DOBBS:

...to get it right.

SECRETARY NELSON:

Yes.

SECRETARY BRUNNER:

Honestly, when you're dealing with the public on such a mass basis, you could not make up the stories if you tried.

MR. DOBBS:

For example.

SECRETARY BRUNNER:

Such as the things that they write on their ballots, the way that they read a form and think that it means this when it really means something else. With our Boards of Elections that determine voter intent, there's a specific set of rules that they follow to determine

voter intent. But in Ohio it's structured in the law that you have the two major political parties, which in Ohio are the Democratic and the Republican Parties, and you have two Republicans and two Democrats. So hopefully they don't reach a tie vote on that. When they reach tie votes on other things, the Secretary of State breaks the tie vote.

MS. FESSLER:

One issue we really haven't talked about, as far as recounts, is having paper ballots versus just electronic voting. And, of course, this has been a huge debate on how do you do a recount on a touchscreen voting machine, if you don't have individual ballots that you in fact -- that had been verified by voters that you in fact can count. And no matter where you come out on the side, it's certainly been a big debate. And it's one reason I think you've seen a lot of jurisdictions moving in the direction of the system that South Dakota has, or having some type of a paper ballot, because there has been so much pressure from -- among the interest groups or especially the high-tech community; that you need to have a paper ballot that somebody can go back and actually recount to find out what the voter was intending.

MR. REHILL:

And that's one of the things that, yeah, a lot of the controversy recently about the DRE machines and their -- your ability to recount

with those. There's a whole cottage industry since 2006 about whether they're -- and a lot of counties have de-emphasized since 2006 the DREs and gone back to optical scan as their main type of equipment. But the argument is that if you can't do a recount completely independent of the system's software, you're not doing a real recount. If you can't look at a piece of paper somehow and then compare it to what the computer did, you know, you're not proving anything, which is an interesting point.

SECRETARY BRUNNER:

And because even if you have a voter-verified paper audit trail with a direct recording electronic touchscreen machine, it's thermal paper. You've got to hope that the poll worker put it in, not backwards, because if they put it in backwards nothing prints on the back of the thermal paper. The thermal paper has the tendency sometimes to crunch up like an adding machine tape, so that you get printing over printing and you can't actually see that ballot. And if you're in a state, like my state, where the Legislature defines the ballot as that verified-voter paper audit trail, if that's destroyed or if that's not intact, the only thing you have to fall back on is memory card or the flash memory chip in the machine, and that really isn't the ballot.

MR. DOBBS:

I started my career in Chicago and there have always been a lot of jokes about voting in Chicago and I think the most common was, "Vote early, vote often." Those were the old days. Those days are gone. I don't want to cast dispersions on the wonderful City of Chicago or the State of Illinois, but it leads to a question about fraud, about corruption. I don't really have a question so much as a request to just talk about it; how you protect against it, whether we're safer from that today than we used to be, whether it's inevitable if people want to be corrupt within the election process.

SECRETARY BRUNNER:

You need to -- you need to break this into about three parts. There's voter registration fraud, there's illegal voting and then there's voter intimidation or coercion, which some people also call voter suppression. And so many times, especially if you're listening lately, they just want to say voter fraud and this idea that a person is -- if you think about the movie "Gangs of New York" and they picked up a vagrant on the street and they essentially voted in four different places. And each time they cleaned him a little bit, shaved his beard once, shaved his mustache, by the end he was wearing a nice three-piece suit with a pocket watch, he looked great. That's voter fraud, where you have someone who's illegally voting or voting more times than they're allowed to or ineligible to vote. And so many people look at this issue about the false registrations and

think that that automatically transfers into illegal voting, when it very seldom does.

We know in Ohio that there was a study performed by the League of Women Voters and the Coalition on Homelessness from 2002 to the end of 2005. Out of nearly eight million registered voters, they found four individual cases of illegal voting. So, when you hear this voter fraud it sort of creates a frenzy. But I like to say that the issue of illegal registration, such as you're hearing a lot about right now, those generally get caught and get stopped because there are a lot of safeguards, a lot of checks and balances. And so, I like to say, if you have a baseball analogy, a person doesn't get to first base, which is where you're allowed to ask for a ballot. That's the only base that you can't steal. You can steal second, third and home, but, you know, that's because of all the safeguards that are in place to keep someone from actually being able to vote and ferreting out those illegal registrations.

MR. DOBBS:

I just want to say anybody from Ohio who has the guts to make a baseball analogy, that's pretty good.

Any other comments about corruption?

SECRETARY BRUNNER:

You don't like the Indians?

MR. DOBBS:

They didn't get in this year.

SECRETARY NELSON:

Jennifer is right. We need to split this into a couple different areas. The two questions that I used to get in South Dakota is, "How do we know everybody on the registration list is legit?" And, "How do we know those that are showing up are who they say they are?" And we've made some strides in the last four years to deal with that.

On the registration side, with the Help America Vote Act requirement of the statewide file and the verification process, you know, we're verifying against the driver's list, Social Security list, people under current felony convictions and against deceased people's list, to make sure that every single person that goes on there is in fact a qualified person to vote.

And then on the flip side of that, so far as showing up at the polling place, we've instituted the photo ID requirement. And while that takes a little getting used to for the voters, once they get used to it, that has also worked well and essentially eliminated those two questions.

MR. DOBBS:

Jennifer, is it any different in your state? You know, we have a good pair of examples here. We have one of the least populated

States of South Dakota, and I don't know where yours stands, but I guess you're fifth or sixth...

SECRETARY BRUNNER:

I think we're sixth or seventh.

MR. DOBBS:

...most populous State in the Union. Is it any different just because you have so many more people?

SECRETARY BRUNNER:

You run into more difficulties in the larger urban areas. In the smaller counties or the more rural counties, people know each other and they oftentimes have been voting in the same place for years. But when you get the more mobile populations in the larger urban areas, what we run into from the standpoint of the statewide voter database is getting those counties to remove duplicates. When one county is notified that their resident has moved to another county, they need to go in and remove that duplicate. And that's what we're constantly on the counties for, is to get those duplicates down.

So, when people are worried a lot about excessive purges, the National Voter Registration Act keeps these wholesales purges from taking place until -- and they can't take place any -- any later than 90 days before the election. But once a notice is sent to a person, under the National Voter Registration Act, two federal

elections have to pass before that voter takes any kind of election activity for that voter's name to actually be purged. So you might hear Boards of Elections talk about inactive voters and active voters, and the difference is that the inactive voters have been sent this notice and we're waiting to see what happens for two federal elections before we can actually take them off the rolls.

MR. DOBBS:

Okay.

COMMISSIONER HILLMAN:

Greg here's an observation, that when it comes to the issue of fraud. There's what I call political shenanigans and then there's the administration of elections, you know. And the name of the game is win. And so, people will push the envelope so that their candidate wins. And so the political shenanigans then have to be cleaned up by the election officials, and sometimes that line gets blurred. And so, the voter and the citizen doesn't know where the political activities end and the election administration begins.

And it gets back to a point that Chris made earlier about people believing that the election official did something to skew the numbers or the outcome of the election because they were led to believe this based on polling data or any other kind of information and this was the outcome.

And, in fact, one of the local election officials said in recent years, she came to appreciate that nobody loses a race. There's always a problem with the election process. Couldn't be that voters didn't actually vote to put this person in office, there must have been a problem with the process.

MR. DOBBS:

In my journalist career, I've covered eight wars and have come to the conclusion that, hardly novel, hardly unique, hardly insightful, that there will always be war. I've looked at the roots of the wars I've covered, most of which had no American element, mainly wars in the Middle East, Rhodesia, and so forth. And, you know, everyone has a different kind of root which convinces me that there will always be human beings who will be either greedy or fanatical about their religion or for one reason or another there will always be war.

There will also always be people compelled or motivated to pull off, as you described it, election shenanigans, which is a nice, colloquial way of saying fraud, if they can. But it's a gray area, I would agree, as an observer. I'm not an expert as you are.

Last thing on that subject before I open it up to each of you, having the opportunity to stop me from monopolizing the questions. In your bio, it says, Pam, that you've covered election reform issues. So do you have any comment about election reform as it

pertains to corruption and fraud, which in elections past, sometimes has played a major role in the outcome. And some people believe it did, by the way, for the younger people in the room, back in 1960 the Kennedy/Nixon election, Mayor Daley -- the first Mayor Daley in Chicago. Whether it did or not, I cannot pass judgment. But, you know, it's not as if it just goes back a few hundred years. Any comment on it?

MS. FESSLER:

Well, I'd say the one thing that's different now, and certainly since 2000, is that there's so many more people watching the process. There are all these interest groups. You have a lot of voter advocacy groups. There's a coalition called "Election Protection." They have people outside polling places. You have the media. You have bloggers. A lot of people, who are watching every aspect of the process. Now sometimes that's good and sometimes it's bad. Sometimes it leads to a lot of misinformation. But I do think that there are many more people watching out for potential fraud, intimidation, deception. I noticed -- already we're hearing, you know, there's one brochure or poster put up telling people that they shouldn't be voting on Tuesday, that they should vote on Wednesday, and this happens all the time. Well, I mean, I see it immediately. If it's in one precinct in one state, you know, it gets online and everybody knows about it. And that's entirely different.

So, I think that actually keeps a little bit of pressure on the system not to let anybody kind of get away with this.

MR. DOBBS:

Okay. Does any of you have questions for any of you? Any, Commissioner?

MR. REHILL:

I do, actually, for Chris. You have an unusual circumstance, in that a couple of your counties, Shannon, and a couple of the other ones are largely or I'm not sure, wholly, Native American reservations. Does that have any special like election administration challenges for you, as far as jurisdiction or how things work? Is it different than the other counties?

SECRETARY NELSON:

There are a number of challenges there. We've got several counties that are predominantly Native American, and the challenges would be threefold. First of all, those counties are covered under the federal pre-clearance requirements of the Voting Rights Act, and so, any change to election process or procedure has to be pre-cleared by the Department of Justice. And so, that's something to take into account.

The second thing is, those counties do not have election offices located in the counties, and they rely on neighboring counties for services. And so, there's -- there's that issue.

And then they're rural counties, and so there's always the travel time that's involved to get to the polling place and to get ballots from polling place to the county election headquarters.

And then, obviously, as you mentioned, the jurisdictional issues. The state doesn't have jurisdiction -- law enforcement jurisdiction over Native Americans in those counties. We have to rely upon the U.S. Attorneys and FBI for that, and so, you have to have coordination with those offices for any type of law enforcement activity.

MR. REHILL:

Are there ever any differences in viewpoint about keeping polls open later or anything like that? And how would you handle something like that?

SECRETARY NELSON:

You know, not really. We've got very good local election officials that work with those counties and run the elections in those counties and so, you know, we don't have those issues. Probably the biggest -- frankly, the biggest challenge we have there in administering the elections, is simply getting enough poll workers and getting them trained and actually getting them to show up at the polling place on Election Day and stay for the day and complete the task.

MR. DOBBS:

Don's question raises a question in my mind. To what degree, with all the federal law and State law that each of you as the Secretary of State has hanging over you like an umbrella on Election Day and the period leading up to the election, to what degree still are you going to be obliged to make it up as you go along?

SECRETARY NELSON:

You know, I -- I don't think we do, unless you get that situation that throws you for a loop and then you've got to figure out, okay, what's the best way to resolve this. But...

MR. DOBBS:

Might that be extending the hours at a polling place, for example?

SECRETARY NELSON:

You know, that's just not something that's done in South Dakota. That's not a -- it just isn't done. There's really not any need for it or been any need for it. So...

SECRETARY BRUNNER:

You said, where we want to see new laws?

MR. DOBBS:

Well, yeah, sure, answer that too. But I'm asking, are there still some areas where you know you may be obliged, if a certain situation comes up, to make it up as you go along? Obviously, not arbitrarily and not with partisan favor, but to make it up because there's no law that guides you.

SECRETARY BRUNNER:

One example, in Ohio, is in 2004, there was what has been referred to colloquially as vote caging, where a political party mailed out notices that were not forwarded and then the notices came back and they did wholesale challenges. The Legislature then moved, two years later -- there were about 35,000 challenges filed in 2004 - - two years later the Legislature passed a bill where -- which, by the way, sunsets at the end of this year -- where they required the county Boards of Elections to mail out notices to every registered voter, 60 days before the election and specified in the statute that they could not be forwarded. And then, when they came back, the poll list was to be marked because these non-forwardable notices came back. And if challenges were filed, which could be filed on the basis of these notices because they are public record, the Board of Elections could decide the challenge without a hearing based only on its records. Or it could wait to decide a challenge with the hearing after the election, forcing the person into a provisional ballot.

We looked at the National Voter Registration Act. We've looked at Constitutional law, case law and we literally said to the Boards of Elections through the directive power that we have, "Okay, you have this law but we are telling you, very strongly, that you need to hold a hearing on every challenge and you need to

hold that hearing before the election because, otherwise, you will likely be facing litigation. And we want this done uniformly and consistently across the state, so that we're not subjecting our state to depriving people of due process of their right to vote." So, did we make it up? We, sort of, filled in where there were gaps and we -- we applied Constitutional principles.

Another situation was, observers for early voting. We would like to make up the laws, so that they could have observers for early voting, but the Legislature didn't put it there. So, when we decided that we probably had not better make up the rules because there was absolutely nothing to fill in there, people got kind of mad at us.

MR. DOBBS:

I'd like to make up a few laws myself.

SECRETARY BRUNNER:

Well, I'm in the executive branch, not the legislative.

MR. DOBBS:

No, I understand.

COMMISSIONER HILLMAN:

Greg, one other thing. I mean states and local officials are encouraged to have contingency plans for everything they can think of.

MR. DOBBS:

Encouraged by, the Election Assistance Commission?

COMMISSIONER HILLMAN:

By the Election Assistance Commission. State -- Secretaries of State encourage the locals to do the same.

MR. DOBBS:

And Rosemary just said Congress.

COMMISSIONER HILLMAN:

Right.

CHAIR RODRIGUEZ:

Uh-huh.

COMMISSIONER HILLMAN:

And so, there may be events, though, that no matter what kind of careful planning is done. And, you know, what if a county has some horrific flood and it ruins every voting machine that's stored in the warehouse the day before election? Well, I don't -- you know what I mean? Somebody has to quickly figure out, what do you do if a county doesn't have voting equipment that was lost within the 48 hours before the election?

So, if that's what you mean by making it up as you go along, yeah, I'm sure that officials are confronted with challenges, maybe not as horrific as that, but there have been floods, you know, on Election Day that have prevented operations from going and they have to figure out, "What do we do to accommodate the voters"?

SECRETARY BRUNNER:

Another great example. The primary election this year, we had flooding in ten counties which prevented voters in those counties, in some places, from getting to their polling location. A voter can't vote at the Board of Elections except under specific circumstances. So, we had to literally -- what we did was, we called the counties, we said, "We'd like to file a friendly lawsuit against you, and we would like to get an order from a judge in Columbus, saying that voters who can't reach their polling places can vote at the Board of Elections." And as the flooding got worse throughout the morning, we kept adding more counties into this lawsuit. So thanks to the courts, we were able to deal with those situations where it was just one of those things where there was nothing else you could do.

MR. REHILL:

There was an extreme example in September. The Louisiana primary was cancelled because of the hurricane. I mean it's kind of a no-brainer, they could -- in no way could they have had that election, but they ended up coupling it with the planned October 4th election. They had the primary race with that election. But it happens on a much smaller scale, much more frequently, where they have to decide on a county-by-county basis.

MS. FESSLER:

The primary in New York on 9/11. It was the same thing, they had to...

MR. REHILL:

That's right.

MS. FESSLER:

Actually, I do have one question. And that is, one of the largest sources for confusion for voters on Election Day is the fact that all of the rules are different in different states, in -- even within states, from county to county and sometimes even from precinct to precinct. I think the directive on whether or not you can or can't wear campaign paraphernalia in the voting place is a good example.

So, my question to you is, do you -- would you feel it's a good thing or a bad thing if there were more federal laws overseeing some of the administration of elections?

SECRETARY NELSON:

I'll jump into that. I think, bad thing. I'm a big states' rights advocate. I think -- we have this overview of federal law right now and I think states ought to be allowed to choose the best avenues within that framework to answer the questions and put the processes and procedures into place that are going to work for those states.

And that kind of goes back to the earlier question. It's incumbent upon state election officials to be very aggressive, very proactive about going to our Legislatures and saying, "These are the changes we need to the process this year to answer those questions, fill in those gaps and make sure the process is free and fair for everybody." And that's our responsibility to be proactive in that.

MR. DOBBS:

How about being proactive with respect to educating the public about questions such as, "Can I wear campaign paraphernalia? Can I campaign within such and such a distance of the polling place?"

SECRETARY NELSON:

That's certainly -- certainly part of our job.

MR. DOBBS:

Do you do it?

SECRETARY NELSON:

To an extent. You know, all of the information is available. It's on our Web sites. In South Dakota do we spend a lot of money doing advertising in that area? The answer is no. We rely on contacts with the media and our Web site for that.

SECRETARY BRUNNER:

Those kinds of questions about campaigning and the distance from a polling location that a person can be handing out literature or whether they can walk into a polling location wearing a badge or a shirt promoting a candidate or an issue, usually, those are people associated with political parties. And the political parties generally do a pretty good job educating their workers about what they can and can't do, as long as we've made it very clear with public disclosure what a directive is or what the rules are.

MR. REHILL:

There are a lot of states who have laws on electioneering, as they call it, anywhere near a polling place. You have to -- you can't have a button or a sign within 50 feet or a hundred feet of the polling place.

COMMISSIONER HILLMAN:

But I think this year is different because you've got a lot of young people who are so excited. They may not be officially attached to a campaign or a political office, but they want to proudly wear the paraphernalia of whatever -- whichever candidate they are supporting. And so, they don't know this information. They're new to the system and so they will miss it. And they're feeling like it's an arbitrary and capricious decision on somebody's part not to let me come into this polling place with this T-shirt, because they don't know it's state law and they don't understand the reason for it. And

so, I would just say that, you know, there does need to be some information sharing, when you look at the new element of voters who are into the process this year.

MR. DOBBS:

I walked from my restaurant this morning -- from my hotel to a restaurant to have breakfast on "M" Street, right at the corner of Georgetown and they had -- it's a bakery and restaurant and they had a cookie container and they had sugar cookies. One pile had in frosted script, "McCain" and the other pile had "Obama." And I was going to call the police and I decided, nope, just let it rest. Just let it rest.

Go ahead.

MS. FESSLER:

No, I was just going to say, but voters are very confused. I mean we get these calls all the time from listeners and it's amazing some of the questions that people have that you would think almost anybody would know. So that's why I was wondering if you thought that maybe there were some areas where there could be more standardization, just to get rid of something because they hear that, you know, something is allowed in one state, but it's not allowed in another.

SECRETARY BRUNNER:

What I find -- certainly Congress is entitled to regulate federal elections because they're federal elections. What's difficult is that to get Congress to act in the time that the states and the localities need it is very difficult. And so -- and that's one of the reasons why in my state the Secretary of State has the authority to issue directives because you can be more nimble and quick to adjust to changing situations.

One of the difficulties -- it would be wonderful if there were some more federal uniformity, but the reality is, I'm afraid it would really be lagging behind when the states and the localities actually needed it.

MR. DOBBS:

Chris has very clearly stated his position, Jennifer, that he is against any more federal law that would guide his conduct running an election. Do you feel the same way? Or is there more federal law that you'd like to see to make your job easier or to make it more uniform, whatever?

SECRETARY BRUNNER:

I'm sure that my local election officials would disagree with me generally, but I don't have the same problem with it because I think, probably coming from the judicial and the legal background, I just look at the fact that Congress is entitled to regulate federal elections. And at some point -- I mean, I know looking at it from the

standpoint of our state we have worked very hard to create consistency and uniformity. So that, when we're talking about a person's right to vote, it's really more of a process and it plays more into the due process, so that there's due process in the protection of a fundamental right. So I don't have a problem with it in theory, but in practice it takes a long time for Congress to make needed changes that a lot of us would like to see. And we end up sometimes being hamstrung.

MR. DOBBS:

Go ahead.

SECRETARY NELSON:

If I might, the other point I'd like to make, I mean, I've seen how a lot of the federal law that is written impacts on very rural places in South Dakota and it's law that's not written with those places in mind. A key example of that, in 2006, we had to spend \$28,000 to comply with a federal requirement that was used by 15 voters. And those are the kinds of things that, you know, just don't make any sense whatsoever from an economic standpoint, but when the law is written for the entire country, those are the things you sometimes get shoehorned in to.

MR. DOBBS:

Just a few minutes left. Opportunity for the two of you Secretaries of State to ask any questions of people who are in charge of the

dissemination of information that all Americans will get for the most important election event that comes in every four years.

SECRETARY BRUNNER:

I think we're so used to them asking us questions.

MR. DOBBS:

That's why I thought this would be a great opportunity. Anything?

SECRETARY NELSON:

I don't have anything.

MR. DOBBS:

Rosemary?

CHAIR RODRIGUEZ:

No, just when you're finished I'll need a minute.

MR. DOBBS:

Oh, okay. Okay. Any last questions to put out there? Okay, I have one more. Tip O'Neill was -- he was the Speaker of the House back, what, in the '70s? Is that about right? Old Democratic...

MS. FESSLER:

'80s.

MR. DOBBS:

'80s maybe, from Massachusetts. And John McCain, in the second -- I think it was the second debate, maybe the first one, brought up his name in referring to the good old days, when politicians would fight by day and, you know, play poker together by night. Yeah,

that's right, it was in the Reagan years. But Tip O'Neill is probably best known for a quote that many people with politics in their blood could recite and that is, "That all politics are local." So does that come down to elections? After all is said and done, you're each elected officials in your states, but does it come down to that, "All politics are local"? And from the standpoint of what you do, would you say it comes down to the same thing? We don't have but about a half a minute for each of you to respond.

SECRETARY NELSON:

As Secretaries of State, we have a wonderful privilege to work with county level election officials and help to oversee this process, but the reality is 99 percent of the work is done by county election officials and that vast cadre of volunteers that show up on Election Day to run our polling places. And we play but a very small part of that roll.

SECRETARY BRUNNER:

I can give by example. I said there have been eight separate actions or lawsuits filed in less than four weeks, and while it may be a little painful for me to have to deal with them, I would prefer that I be the lightning rod for those, so that I can leave my election officials free to do the preparation and the work that they do best because they will be directly serving the voters. And it's the voters who we're concerned about, that have every opportunity and

experience to register their vote, which is, essentially, to speak their mind about their government. So, yes, that's where it gets done and whatever we can do at the state level to support that and allow that to continue unhindered that's what we try to do.

MR. DOBBS:

Pam?

MS. FESSLER:

I would just say, I don't think it's true anymore that all politics are local. I think with the way -- with the media, with communications today, the way the campaigns and the political parties are organized, that everything is, for the most part, it's a national, you know. The national campaigns care about what's happening in every single little county and they are overseeing and coordinating what happens, at least, for the Presidential race.

MR. DOBBS:

Don

MR. REHILL:

Well, I agree with Pam that politics is national now, even at a county level, for sure. But election administration and the AP's, from our perspective, our tabulation effort on Election Night is very decentralized and local. As Chris and Jennifer were saying, we rely a lot on the county election officials. We rely on our stringers. And

it gets bubbled up. And so, it is a grassroots kind of thing where the local folks are a very important part and we rely on them a lot.

MR. DOBBS:

Okay, well, thank you to all of you. I've learned a lot and I'd already done a little homework before getting here today. Probably the only -- well, there may be many questions left that I wasn't smart enough to cover, but the only one I can think of is what I posed at the beginning. What don't we know and how are we going to learn it? Many of the new laws and the procedures are consequences, that we've talked about here, are consequences of lessons learned in elections past, particularly the last two Presidential elections. And I guess, my fondest hope is that we have learned more lessons than we have yet to learn.

Thanks to the U.S. Election Commission and the Commissioners, who are here with us today for putting this program together. And on behalf of the Commission, many thanks to the Secretaries of State and to the journalists with national news organizations that are going to be critical on Election Night. Thanks for your expertise and your candor and your time. And thank you to all of you and everybody watching on C-SPAN for your attention.

Remember tomorrow you can see and study and scrutinize what you heard here today, by going to eac.gov and you can watch a Web cast of this. And it will probably re-air, no promises. I have

nothing to do with C-SPAN, but my guess, if history is any guide, is that it will.

It's the Commission's hope, it's certainly in the nation's best interest, that some of the key points made here are passed on to the voting public because that's who it's about, either to instill confidence or restore it, in the case of some people, confidence in a process in which we as Americans are so lucky to participate.

So thank you very much. And now back to the Commissioner Rosemary Rodriguez.

CHAIR RODRIGUEZ:

Thank you, Greg. And I want to express our appreciation to you for managing this conversation today. This concludes our workshops in preparation for the 2008 Election. We have talked about statewide voter registration databases, voter empowerment, ballot design, testing and certification, contingency planning, in an effort to reach election officials and the public. And these are all available on the eac.gov Web site for viewing.

If you haven't had enough and want to be a poll worker, I'm sure that your state can use you. And so, to our viewers out there, there is an opportunity for you to serve your community and your country on November 4th, and maybe in advance of that.

I would like to offer Commissioner Hillman or Commissioner Davidson an opportunity to make a closing comment. I know

Commissioner Davidson, I wish you could talk too, but is there anything you -- okay, thank you so much.

Commissioner Hillman?

COMMISSIONER HILLMAN:

Well, I'm sure I can do this, to speak on behalf of Donetta Davidson that we thank the panelists, we thank the Secretaries of State and the journalists for joining us, in this endeavor to bring information to the public.

CHAIR RODRIGUEZ:

All right. And we usually end with a vote on whether or not -- oh, I did want to acknowledge a couple of our friends in the audience again.

Secretary of State Mark Ritchie, thank you for joining us. Our friend Kimball Brace who is the data/number cruncher extraordinaire is here. And then, Leslie Reynolds, who manages the National Association of Secretaries of State, who really are the folks on the frontline on Election Day. Thank you all for being here.

And with that I'll ask for a nod. May we adjourn? Thank you very much, we're adjourned.

[The panel/workshop adjourned at 4:00 p.m. EDT.]