

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

SECRETARY OF STATE
1500 11TH STREET
1ST FLOOR AUDITORIUM
SACRAMENTO, CALIFORNIA

WEDNESDAY, APRIL 21, 2004

10:00 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson
Mr. Marc Carrel, Vice Chairperson
Ms. Caren Daniels-Meade
Mr. David Jefferson
Ms. Debra Jones
Mr. Tony Miller
Mr. John Mott-Smith
Ms. Judy Riley

STAFF

Ms. Dawn Melhaff, Deputy Chief, Elections Division
Michael Wagaman, Elections Analyst

ALSO PRESENT

Mr. Jim Adler, Vote Here
Ms. Kim Alexander, California Voter Foundation
Ms. Alexandra Allman-VanZee, R.N., Ground Zero Volunteer
Mr. Bill Barnes, San Joaquin County
Ms. Ann Barnett, Kern County Elections
Ms. Ardis Bazyn, California Council of the Blind
Mr. Moise Berger

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APPEARANCES CONTINUED

ALSO PRESENT

Ms. Judy Bertlesen

Ms. Cindy Cohn, Electronic Frontier Foundation

Mr. James Dunn, Former Diebold Contractor

Mr. Austin Erdman, San Joaquin County

Mr. Lowell Finely, Law Offices of Lowell Finley

Ms. Kathay Fong, Asian Pacific American Legal Foundation

Mr. Jack Gerbel, Unilect Corp

Ms. Tracey Graham, Sequoia

Mr. Jim Hamilton, Save Democracy

Ms. Bev Harris, BlackBoxVoting.Org

Ms. Deborah Hench, San Joaquin Registrar of Voters

Mr. Joseph Holder

Ms. Veronica Jacobi

Mr. David Janssen, County of Los Angeles

Mr. Robert Kibrick, VerifiedVoting.Org

Ms. Cindy Lennon, Able-Disable Advocacy

Mr. Jim March

Ms. Conny McCormack, Los Angeles County Registrar of
Voters

Mr. Chris Norby, Orange County Supervisor

Ms. Freddie Oakley, Yolo County

Ms. Eve Roberson, California City Clerks Association

Ms. Maureen Smith, Peace and Freedom Party

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Michael Smith, Marin County Registrar of Voters

Ms. Pamela Smith, Save-Democracy

Ms. Brina-Rae Schuchman, Save-Democracy of San Diego

Mr. John Tavaglione, Riverside County Supervisor

Mr. John Tuteur, Napa County Registrar of Voters

Ms. Jocelyn Whitney, Consultant, R&G Associates

Ms. Kathleen Williams, Plumas County Registrar of Voters

Ms. Patricia Yeager, California Foundation of Independent

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1 PROCEEDINGS

2 CHAIRPERSON KYLE: Good morning. We'll start the
3 proceeding today.

4 This is a hearing of the Voting Systems and
5 Procedures Panel. My name is Mark Kyle. I'm the
6 Undersecretary of State, the Chair of this panel, and I
7 want to welcome everyone here this morning, elected
8 officials, representatives of elected officials, county
9 registrars of voters and county clerks, other interested
10 public members, staff. Thank you for being here. I
11 understand there was a couple of press conferences this
12 morning. I came down to see the crowd. Unfortunately I
13 could not stick around. However, it's exhilarating. It's
14 energizing to see democracy in action is taking place,
15 because I believe that's what's going on. And why we had
16 two press conferences and we had a large turnout here
17 today.

18 And we are interested in hearing from everyone
19 who wants to articulate their point of view, both today
20 and tomorrow. We do have a large crowd, so that's going
21 to lead me into a recitation of some of the ground rules
22 for the next two days.

23 First, just let me talk about how the proceeding
24 works. We will have a staff report on the germane agenda
25 item. The panel will ask questions, and then we'll ask

1 for comment. Comment will go in order. Generally, we ask
2 a vendor to make a comment. We ask counties to make
3 comments. We ask the public to make comments. And we
4 have invited a few folks to speak today, so we'll ask
5 them, and then we'll open it. There will be a time limit.

6 Normally, for those of you who have been here
7 before, you'll know that I'm fairly indulgent on the time
8 limits. Normally, we set them for two minutes or three
9 minutes and folks are allowed to go over that by a few
10 seconds up to a minute or two.

11 Given the size of the crowd today and depending
12 on the size of the crowd tomorrow, I'm not going to be as
13 indulgent. So I'm going to strictly enforce the time
14 limit.

15 If you have something written, we will take that
16 into submission and make that part of the record. So
17 please do not come up and expect to read a five-page
18 letter. If you get to about the third paragraph, I will
19 cut you off if the time expires. And if you want to do
20 that, that's fine, but I will cut you off and -- but we
21 take the letter into submission. So it would be better if
22 you came up, handed us the letter to the staff and just
23 gave us a few highlights of the points that you want to
24 make.

25 Again, we do have a lot of people here today. We

1 are scheduled to go late today, and tomorrow. We want to
2 hear from everyone.

3 I'd also like to just point out some obvious
4 statements. And I know I do not have to say that to this
5 crowd, from looking at you, but we're going to participate
6 in democracy with a small d and hear from everyone. We're
7 going to respect everyone's point of view. I will not
8 tolerate heckling. I will not tolerate booing. I will
9 not tolerate cheering, clapping. Besides being
10 disrespectful, it disrupts the proceeding and prolongs it.
11 And I do not want to be here until midnight because of
12 spending our time applauding, et cetera, et cetera.
13 Occasionally, spontaneous outburst of a chuckle or a
14 laugh, that's acceptable.

15 But everything else I want to move through and I
16 want to be able to take testimony from everyone and that
17 means treating everyone with civility and respect. I will
18 not entertain questions from the audience. We get to ask
19 the questions and we will ask the questions. And we're
20 not going to have a cross dialogue between audience
21 members and those folks testifying.

22 Let me go over the agenda now. Has everyone
23 received one? If not, I'll run through it. On the agenda
24 today is the continuation of an earlier agenda item called
25 the Diebold Investigation. We're anticipating that will

1 take probably the rest of the morning and into the
2 afternoon.

3 Those folks wishing to listen in on that report
4 and testimony, please feel free to stay around. We then
5 will probably take a break some time after that, depending
6 on the length of it. We'll come back and get a report on
7 the March 2nd Primary Election from staff. We're
8 basically moving that report into the record, and don't
9 anticipate a lot of comment, but comments are welcome.
10 And then we'll move into the voting systems for use in
11 November.

12 And there are a number of people here that I've
13 been told, but I'm not sure who those are, we'll try to
14 figure that out during the course of the day, who can only
15 testify today. So we'll have them go and we may shuffle
16 things around so those folks who cannot be here tomorrow
17 can testify today if it's germane to what we believe will
18 take up the bulk of the testimony tomorrow, which is the
19 voting systems for use in November. So we're anticipating
20 that being the bulk of tomorrow. But those folks who want
21 to testify on that, we'll try to squeeze you in at the end
22 of the day today. Another reason to keep things moving,
23 which I'll try to do now.

24 So those of you who are waiting to testify on
25 voting systems for use in November, you're welcome to

1 stick around. But I know that, for example I was
2 contacted by some staff of a couple of elected officials
3 who wanted to perhaps enter a letter into the record or
4 read, it might be more appropriate to come back say mid to
5 late afternoon, check in and come back at that time. Not
6 that you won't find the first part of today fascinating
7 and riveting, which I'm sure you will. But I just want to
8 set the expectations realistically so folks don't feel
9 like they're cooling their heels waiting to testify when
10 tomorrow might be more appropriate.

11 Having said all that, I'm going to take a second
12 and then we'll get started.

13 Before we get started, I'm just going to
14 introduce a couple of the new panel members. It's been
15 pointed out to me twice how rude I am. On my far right is
16 Debra Jones, our Interim Director for Management Services.
17 Thank you for being here today, Debra. Two people to my
18 left is Mr. David Jefferson, consultant for the Secretary
19 of State's office -- no clapping, thank you -- and head of
20 our new technical oversight committee that we're
21 establishing and currently putting into place as part of
22 the directives coming from the Secretary of State at the
23 end of last year. And to my far left is Judy Riley our
24 Interim IT Department Director.

25 Thank you for being here. They fill the

1 positions left vacant by the departure of Chon Gutierrez,
2 Terri Carbaugh and Bernard Soriano who left for positions
3 with the new administration across the street and good
4 luck to them.

5 So having said that, I'd like to ask our staff,
6 Mr. Wagaman, would you please give us your report.

7 Agenda Item number 1.

8 ELECTIONS ANALYST WAGAMAN: Thank you, sir. Just
9 to provide a short recap on the events that led to the
10 conditional certification, and the subsequent
11 investigation, the Diebold Election Systems Inc,
12 AccuVote-TSx, the DRE or touch screen voting system. It's
13 a successor to their previously certified DRE system, the
14 TS system.

15 After developing the system, the vendor marketed,
16 sold and installed the system in four California counties
17 Kern, San Diego, San Joaquin and Solano. And it did so
18 prior to completion of testing, prior to federal
19 qualification and prior to State certification.

20 Their result was to bring an attainable situation
21 for both counties and State election officials. Some
22 county officials felt compelled to defend an untested,
23 unqualified, uncertified system after having made large
24 capital outlays. And county officials were forced to make
25 repeated warnings to this office that the election could

1 not be conducted without the system as it was too late for
2 backup plans to be implemented.

3 The situation was further complicated when,
4 during the actual testing of the system, it was discovered
5 that the company had installed uncertified software in at
6 least one of its client counties, and that that software
7 was used in a binding election in this state.

8 Following the discovery at the November 10th
9 hearing of this panel, and after repeated assurances from
10 the vendor that completion of federal testing was
11 imminent, and the counties again repeated that the system
12 had to be certified as no replacements were -- could be
13 put in place in time, this panel conditionally certified
14 the TSx system with three conditions.

15 One of which was that the system -- that the
16 vendor cooperate with the investigation into whether, how
17 and why uncertified software was installed.

18 And that the panel also initiated an audit of the
19 vendor's client counties in order to determine the extent
20 of the problem.

21 The result of that audit, as reported by R&G
22 Consultants who are available today if you have questions,
23 as reported on December 15th, was that the company had in
24 fact installed software that was uncertified and
25 unqualified or both in all of its client counties.

1 Following those discoveries -- pardon me. One
2 moment, sir.

3 CHAIRPERSON KYLE: Certainly.

4 ELECTIONS ANALYST WAGAMAN: Following the
5 discovery that the vendor had in fact installed
6 uncertified and unqualified software in its California
7 counties in violation of California law, one would have
8 expected the vendor to show additional caution and
9 scrutiny in future applications for certification of its
10 voting system components.

11 Indeed, the company promised on December 19th of
12 last year in a letter that quote, "A new day had begun..."
13 in relation to the company's certification of client's
14 procedures. Unfortunately, the facts do not support that
15 assertion.

16 In the two months before the election, the
17 company submitted fully ten different requests for last
18 minute changes to its various voting system components,
19 more than three times any other vendor.

20 Many of these related directly or indirectly to
21 the TSx system. In fact, in the documentation relating to
22 the applications for approval of the TSx, fully five
23 different versions of the firmware are mentioned 4.4.3,
24 4.4.3.27, 4.4.3.27-Cal, 4.4.4.10, and 4.4.5.

25 These applications present a disturbing pattern.

1 Virtually every application was submitted prior to
2 completion of federal testing. In some of the
3 applications even the vendor referred to the firmware as
4 being quote "pre-release".

5 Some of the applications were for components that
6 were dependent on other voting system components that were
7 even further behind in the testing process. The vendor
8 also showed a disturbing pattern of abandoning attempts to
9 seek federal approval of previous versions of the firmware
10 in favor of newer versions, and in favor of versions other
11 than the version originally certified, conditionally
12 certified by this panel, and in many cases versions that
13 were either unqualified or uncertified software in order
14 to operate. And they did so in detriment to any version
15 of the firmware, never actually completing testing.

16 The results of these applications are that the
17 vendor jeopardized the conduct of the March Primary. In
18 fact, the vendor was only able to obtain federal approval
19 of any of the versions of its TSx firmware after the
20 federal ITA's, Independent Testing Authority, NASED and
21 the State testing expert recommended a one-time
22 conditional certification, only in light of the pressing
23 and urgent March Primary deadline.

24 Taking a step back now to the audit. After the
25 results of the initial audit were reported to this panel,

1 on January 15th this panel requested Diebold produce ten
2 categories of documents to further its investigation.

3 In response to these, the vendor often raised
4 frivolous legal objections to producing said documents and
5 often produced others in an untimely manner. They were
6 doing so at the same time they were asking this office to
7 expedite its applications for certification of various
8 voting system components.

9 In summary, the vendor marketed and sold its TSx
10 system before it was fully tested, qualified and
11 certified. It misrepresented the status of federal
12 testing in order to obtain State certification. It failed
13 to obtain federal qualification despite assurances it
14 would do so. It failed to even pursue testing of the
15 firmware installed in California counties until only weeks
16 before the election in favor of newer uncertified
17 versions.

18 And those versions often depended on installation
19 of other uncertified, unqualified software. It installed
20 uncertified software in all of its client counties. It
21 often requested last minute changes right before the
22 election, did so jeopardizing the conduct of the March
23 election, resulting in the fact that more than a year
24 after initially submitting its firmware to the ITAs, more
25 than six months after submitting its application for

1 certification in this state, more than five months after
2 assuring this panel that such -- that the completion of
3 federal testing was imminent and more than four months
4 after declaring a new day at Diebold, not a single version
5 of the TSx firmware is federally qualified for use in the
6 upcoming November election.

7 In response to this agenda item, staff received
8 13 timely correspondences that focus directly on this
9 item. In addition, it received 52 timely correspondences
10 that related to this item, while primarily focusing on the
11 third item. And there were also 50 non-timely
12 submissions, most of which did relate to this item.

13 CHAIRPERSON KYLE: And those are contained in the
14 documents labeled Public Comment?

15 ELECTIONS ANALYST WAGAMAN: Correct.

16 CHAIRPERSON KYLE: Contained in this binder?

17 ELECTIONS ANALYST WAGAMAN: Correct.

18 CHAIRPERSON KYLE: Are they differentiated by
19 agenda item in here?

20 ELECTIONS ANALYST WAGAMAN: That binder is not.
21 I can create one for you.

22 CHAIRPERSON KYLE: Okay, but they're contained in
23 here?

24 ELECTIONS ANALYST WAGAMAN: Correct.

25 CHAIRPERSON KYLE: So this is for everything

1 today and tomorrow?

2 ELECTIONS ANALYST WAGAMAN: Correct.

3 CHAIRPERSON KYLE: All right. So we're going to
4 move this into the record. We'll make sure you get a copy
5 and it's attached and it becomes a part of the record.

6 Is there anything else, Mr. Wagaman?

7 ELECTIONS ANALYST WAGAMAN: No.

8 CHAIRPERSON KYLE: Panel members, do you have
9 questions of Mr. Wagaman?

10 Okay. Thank you, Mike.

11 I'd like to call Bob Urosevich from Diebold to
12 come to the microphone, please.

13 So we have a clear record in our transcripts,
14 would everyone who comes to the stand, including you Mr.
15 Urosevich, just say and spell your name?

16 MR. UROSEVICH: Yes. Robert J. Urosevich,
17 U-r-o-s-e-v-i-c-h, president of Diebold Election Systems.

18 CHAIRPERSON KYLE: Thank you. I understand you
19 have a statement you'd like to read.

20 MR. UROSEVICH: Yes, if permitted.

21 CHAIRPERSON KYLE: Yes.

22 MR. UROSEVICH: Mr. Chairman and members of the
23 Voting Systems and Procedures Panel, thank you for the
24 opportunity to address you today.

25 Before we discuss the issues of the hearing, I

1 would like to make the following comments, not only
2 intended for this panel, but for the Secretary of State,
3 Elections Division and our customer counties.

4 At the outset, DESI reiterates its commitment to
5 work closely with the Secretary of State and the voting
6 panel. DESI has heard loud and clear Secretary Shelley's
7 message that voting systems software and certification is
8 a key priority to this office. And DESI is doing
9 everything to take this message to heart.

10 DESI understands that the SOS, the Secretary of
11 State, and the voting panel are disappointed in the fact
12 that the R&G Associates inventory report identified
13 unqualified and uncertified software, and are looking at
14 DESI to acknowledge that this should not have happened.

15 Diebold Election does acknowledge this and
16 apologizes to the voting panel and the Secretary of State
17 for the situation of any embarrassment it may have caused.

18 At the same time, there are number of different
19 factors that lead to this situation that are not unique to
20 us. To be clear, there was no improper intent or motive
21 on DESI's part to give rise to this situation. Diebold
22 Election's intent has always been to service and assist
23 its counties to run accurate and secure elections.

24 Diebold Elections has been open and responsive to
25 the panel, its investigation and has funded and fully

1 cooperated on the inventory.

2 Again, DESI recognizes the strict and scrupulous
3 compliance must be of the order of the day. Diebold
4 Elections has taken vigorous actions to see that this is
5 achieved. With the message and mandate to DESI from the
6 current Secretary of State, it's crucial that the voting
7 panel understand there are important circumstances and
8 context that must be considered along the way in our
9 evaluations of past practices, which confirm that there is
10 no improper intent or motive on our part.

11 Now, turning to the current situation. Since we
12 only received the report last night, and are looking at it
13 this morning, and have not had a full opportunity to
14 review the findings, I am dismayed at the overall theme to
15 the findings. Specifically, the accusations that we
16 misled this panel, the Secretary of State and
17 misrepresented our status in federal testings, and in
18 essence deceived the panel into certifying the TSx system
19 for March.

20 At the outset, I want to be crystal clear that
21 these allegations in this report about Diebold's deceiving
22 are not true and are factually not supported. I have
23 concern that the reports have obviously been in the making
24 for weeks, if not months, and that we are now only given
25 the opportunity to address these specific charges posted

1 on the Internet last night.

2 From even a quick reading of this document, its
3 false assumptions and findings, and in fairness to
4 Diebold, we should have been given the opportunity to
5 address these findings in a reasonable amount of time and
6 to provide a reasonable response.

7 Nonetheless, we want to be as helpful as possible
8 to this panel, and subject to its constraints, and would
9 like to address the best we can the specific findings that
10 you've listed in your summary.

11 I'll also want to note that the overall tenor of
12 the report is that Diebold has been non-cooperative. Let
13 me address that specifically.

14 On November 10th of last year the panel certified
15 the AccuVote-TSx system with certain conditions. We met
16 all of those conditions. At the January 14th hearing the
17 panel requested additional documentation. We have met
18 most all of those, if not all of them and submitted 2,729
19 pages for your review. We participated in the November
20 meeting at the Secretary of State and the R&G auditors to
21 train them on DESI equipment prior to the inventory of the
22 DESI customer counties.

23 This included expenses of traveling to assist in
24 that. We participated in the mandatory conditional
25 certification. We participated in the R&G audit. We paid

1 \$75,000 for the audit. I myself at the request of the
2 panel had to appear in November at the hearing. To assist
3 the technical consultant, we sent DESI staff to Steve
4 Freeman's home and offered to personally answer questions.
5 We compiled for the Voting Systems Panel directive an
6 upgrade to all DESI customer counties the same level of
7 our GEMS software 1.18.18 at our expense.

8 We offered information not essential to elections
9 in an effort to be more communicative with the staff about
10 Diebold Elections. We provided research to the California
11 Secretary from the state of Maryland and Georgia relating
12 to the processes of L&A testing and acceptance.

13 We responded and requested the policy be adjusted
14 by the California Secretary of State on the voter verified
15 receipt printer guidelines, and we did that in less than
16 three days upon notice.

17 At the Undersecretary and Chief of Elections
18 request, we notified customers of the issues surrounding
19 problems, who requested the upgrade on the AccuVote OS
20 system from 194 to 196 prior to the election. We did that
21 at our cost.

22 At the Undersecretary's request, we updated two
23 of our counties to the proper version of our optical scan
24 system.

25 We voluntarily agreed to pay for all printing of

1 all images off of our systems in our TSx county.
2 Responded to the request from the Secretary of State for
3 March 2nd election plan by DESI and met their time
4 schedule.

5 Responded to a request from the Secretary of
6 State for a March 2nd security plan by Diebold and met
7 their timeline.

8 Agreed to train Secretary of State R&G staff for
9 parallel monitoring activities. This included expenses to
10 send people here to Sacramento. Provided and requested
11 software and firmware for the State to conduct its
12 independent security analysis.

13 We have completed -- we have complied with all of
14 election division staff and R&G auditor's request for
15 documents and returned phone calls in an expedited
16 timeframe.

17 It seems to me that prior to October 2003 we're
18 accused of not communicating with the Secretary of State
19 and this panel. Since then, it's a Catch 22, we give you
20 all the information, and quite frankly we're accused of
21 giving you too much.

22 Now, I'd like to have and address the specific
23 items in your summary report from staff. To clarify for
24 the record, there are several persons that I brought here
25 today with me, if they're allowed to speak. Kevin Dorse

1 who is Jones Day -- is from Jones Day Law Firm in Los
2 Angeles. Marvin Singleton who is our consultant person
3 for Diebold with the California Secretary of State. I
4 would like to have Kevin Dorse address you with some
5 issues.

6 CHAIRPERSON KYLE: I'm not going to have them
7 speak now, Mr. Urosevich. Mr. Dorse and Mr. Singleton you
8 can sit down. You'll have a moment. I'd like to open the
9 panel to some questions for you.

10 MR. UROSEVICH: Yes, sir.

11 CHAIRPERSON KYLE: Mr. Carrel I know you have a
12 few questions.

13 VICE CHAIRPERSON CARREL: As always. Mr.
14 Urosevich thank you for coming today.

15 I have some questions regarding the completion of
16 the 10 items that the January 15th letter related to the
17 request at the VSP meeting. At that point I know we sent
18 a request to you of 10 items. We received numerous
19 letters and submissions from your attorneys. But I'm not
20 clear that we still received everything we've requested.
21 And I guess the reason I am still wondering whether we've
22 received everything we requested is because we sent a
23 letter on April 19th from our counsel asking if that was
24 true.

25 And that same day crossing with her letter was

1 additional documents, additional documents from three or
2 four pages regarding Emails related to Lassen County. And
3 then -- so she followed that up with a letter on April
4 20th -- that's not in the report. I just found it this
5 morning -- saying, "I also thank you for faxing copies of
6 three Emails, the most recent disclosure more than two
7 months after the deadline for responding to VSPP's request
8 for documents as a further indication that there are more
9 documents responsive, the VSPP requests your client has
10 failed to produce."

11 That was sent yesterday. Clearly not enough time
12 to respond before this hearing today. But I guess what
13 that suggested is when we received a fax from your
14 attorneys just the day before yesterday with further
15 documents, it suggested to us that there are still
16 documents, particularly related to the item in that letter
17 requesting correspondence and Emails regarding the
18 installation of the critical software.

19 You've just stated that most if not all of the
20 requests have been complied with. And I'm wondering if
21 you have a clarification to that. Have they been complied
22 with or have they not been complied with or not, because
23 I'm not clear?

24 MR. UROSEVICH: Thank you, Mr. Carrel.

25 CHAIRPERSON KYLE: Mr. Urosevich, if during this

1 questioning it's more appropriate for one of your staff to
2 answer, then they can step up at that time.

3 MR. UROSEVICH: Thank you, Chairman. That's
4 exactly what I was going to do. Obviously, Marc, I don't
5 have all of the information as to the correspondence back
6 and forth. My statement said that I believe in my
7 understanding that we have complied with all of the
8 requests that have come in. If there are particular
9 documents that you're interested in from a letter that was
10 sent yesterday, and as such that correspondence does go
11 through our Los Angeles lawyer and Kevin may answer those
12 specific questions.

13 MR. DORSE: Mr. Carrel, as you know from our
14 correspondence, we have raised continuously in
15 correspondence --

16 CHAIRPERSON KYLE: Some of us know who you are,
17 but in case you're mistaken as Marvin Singleton, please
18 say your name for the record.

19 MR. DORSE: I apologize, I wouldn't want that to
20 happen. I thought from Mr. Urosevich's introduction that
21 might have been indicated. I'm Kevin Dorse with the Jones
22 Day firm.

23 CHAIRPERSON KYLE: Thank you.

24 MR. DORSE: I apologize, Chairman Kyle.

25 I would say we have responded and completed our

1 production in response to the information request. We've
2 indicated on numerous occasions in correspondence with
3 your office or staff that we would like to meet and confer
4 to get clarification as is typically done. We haven't
5 been afforded that opportunity. So subject to not getting
6 that guidance, yes we are done.

7 VICE CHAIRPERSON CARREL: Despite your statement
8 that you haven't been provided that, you sent -- your
9 office co-counsel of yours, Mr. McMillan, who wrote most
10 of the correspondence to this office, in his first letter
11 to us said that DESI -- and this is dated February 13th,
12 so it was two days before our requested deadline of
13 February 15th, when most of the documents were submitted
14 to us.

15 "DESI has made significant progress towards
16 collecting the information requested. Many of the
17 requested information are being delivered." But then it
18 goes on to say that Item 5, "...that you're continuing to
19 review and collect documents that may be responsive to
20 this request. You're working on this request and
21 attempting to develop a reasonable approach to collecting
22 potentially responsive documents and will further discuss
23 with you this category next week."

24 Now, I found it -- and that letter was addressed
25 to me. I found it somewhat surprising, that information

1 regarding the January 15th letter to Diebold. I had a
2 discussion with Mr. Urosevich and others prior to that
3 hearing in January going over the list with them, making
4 them aware of what we were going to request. And we made
5 some slight modifications to language to meet their
6 comfort level.

7 And despite that, your office at Jones Day on
8 behalf of Diebold was basically saying that that wasn't
9 feasible, wasn't possible. And yet we didn't hear that
10 until two days before the deadline. And we heard it in
11 writing and said that you would discuss this with us next
12 week. I never then heard from Mr. McMillan regarding
13 that. And when I did have calls from Mr. McMillan there
14 was no discussion of that item at all. It was all about
15 more delivery of documents.

16 So I have some discomfort regarding that
17 statement, that there was full compliance -- or that you
18 had asked for a meeting and we didn't provide it, because
19 at that point, you had not asked for a meeting. You had
20 said, you will discuss this with us, and you never did
21 discuss that with us at that point or in the next weeks
22 following until a follow-up letter was written, and then
23 most of the transactions were occurring via the mail.

24 Let me move on, though.

25 MR. DORSE: Would you like a response, sir?

1 VICE CHAIRPERSON CARREL: I'm happy to have a
2 response.

3 MR. DORSE: Well, in fact, your chronology
4 overlooks the point that before our February 13th
5 response, Mr. McMillan was in several communications with
6 Mr. Riddle of your office, and expressed precisely the
7 same point as to the scope of the production of electronic
8 records and Emails and the like, as we related to category
9 5.

10 So with all due respect, and I believe there's,
11 you know, evidence of this, that the issue was raised with
12 your counsel's office before the February 13th letter. So
13 I disagree that the February 13th letter came out of the
14 blue.

15 VICE CHAIRPERSON CARREL: I'm not suggesting it
16 came out of the blue. It was my initial response. But
17 what I'm suggesting is that while I made Mr. Urosevich and
18 others aware before that hearing, before the request was
19 even made publicly of what happened, they requested some
20 changes and said that they'd comply with anything based on
21 the language that they had agreed at that point.

22 And I softened some of the language and limited
23 some of the scope, as a result to try to make sure that it
24 was -- that there was the ability to amply comply within a
25 specified time period. And I recognize that at that point

1 I told them I didn't know what time period we would
2 request, whether it be 30, 45 or 60 days. And at the
3 hearing they requested 30 days, but --

4 MR. DORSE: Thirty?

5 VICE CHAIRPERSON CARREL: Yeah, 30 days. But not
6 everything was provided in 30 days. And, in fact, not
7 everything was provided in 60 days. So that's why I was
8 concerned. Let's move on. If you want to respond, you're
9 welcome to, but we can move on.

10 MR. DORSE: We can move on then.

11 VICE CHAIRPERSON CARREL: Let me go back to Mr.
12 Urosevich if you can. I have some questions regarding the
13 TSx itself. And the statements made to us prior to and
14 upon -- at the hearing when the TSx device was
15 conditionally certified on November 10th. The statements
16 made to us at that point or even later was that the TSx
17 device had gone through 2002 certification for all of its
18 systems.

19 But later on -- and that it was fully complied
20 and everything then was ready. And later on from the --
21 during the eight weeks prior to the election, we
22 received -- and not all related to the TSx clearly, but
23 certainly a number of them did, we received eight requests
24 for certification of different items: applications
25 regarding key card utility, applications regarding the

1 PCM's TSx firmware 4.4.5 in January, which we denied,
2 because it wasn't even federally qualified.

3 I guess to summarize, when you submitted ten
4 applications for modifications to a system that we
5 conditionally certified in November and eight from January
6 and February prior to a March 2nd election, I'm wondering
7 whether -- I guess what I'm suggesting is in addition to
8 the statements made by Mr. Wagaman in the staff report
9 that the marketing that had occurred was before
10 certification, I guess I'm saying it clearly wasn't ready
11 for prime time, and we had been led to believe that it
12 was, and then all of these came in.

13 And I'll just compare the other systems of other
14 vendors. We received three from ES&S regarding their
15 system, and we received one each from Hart, from LA County
16 and from Sequoia all related to minor changes, and those
17 all came the first week of January.

18 So ten applications in the last eight weeks,
19 including some applications related to GEMS, clearly
20 February 16th and February 24th. I'm just -- I'm just
21 dumb-founded that you would have sold the system, produced
22 a system and sought certification of the system when all
23 of these changes still were necessary. Do you have a
24 response?

25 MR. UROSEVICH: On some of the details I'll let

1 Kevin get back up. But on the general comment that you
2 made, the eight items or the items, and I'm not exactly
3 sure which ones they are, Marc, that you're referring to.
4 I don't have that from -- they're peripheral equipment in
5 most of these cases, that are not a necessity to conduct
6 the elections, did not at the time of our certification
7 process at the ITA were not required federally. They may
8 have been required here at the State. We were unsure
9 about that at the time, but they're not required
10 federally.

11 In finding that the new standards do require all
12 peripheral equipment, whether they count votes, whether
13 they don't record votes, whether they are used, they are
14 going to give systems numbers now that do apply to that.

15 We have quite a bit of peripheral equipment with
16 our system, contrary to our competitors. Therefore, upon
17 knowing that fact, which was in December, we came to you
18 very open, and said it has become our intention that the
19 federal ITAs are going to require encoders, printers,
20 labelers, EMPs, all of the products that you receive to go
21 through testing. We applied for those with you and have
22 obviously put it into the ITA process as we go through.

23 And as you eloquently said in San Diego at a
24 hearing I attended, we are under the same guidelines and
25 control of the ITA that you are. And you don't do it

1 overnight and it does take months to get through it. And
2 we did what we thought was correct and in good conscience
3 with you to let you know that we were made aware of this
4 from the ITA and we put it in as soon as we could. I see
5 no issue there.

6 CHAIRPERSON KYLE: I'll take issue with that.
7 Repeatedly, you came -- we contacted you regarding the PCM
8 for example on submitting it for federal testing,
9 repeatedly in oral communications. And it wasn't until we
10 rejected it formally weeks later starting from the first
11 of the year weeks later, and the election was only several
12 weeks away that you finally moved on it.

13 And it went to Ciber for testing, one of the
14 federal ITAs. At that point in time, we were very jammed
15 for time, wondering whether we would even get it back in
16 time for the March 2nd election. Needless to say, the
17 affected counties were very disturbed by the lack of
18 response from us, yet we were waiting on that.

19 So claims to the contrary, that's not how history
20 has it recorded.

21 VICE CHAIRPERSON CARREL: Well, I have a PCM
22 device right here. And this is the smart card encoder
23 that you insert. Now, this is the device that we went
24 around and around and around with you on.

25 We had communications with you on February 13th

1 saying that we were, as a result of the lack of federal
2 testing, the PCM devices couldn't be used, and we still
3 got pressure from you to continue this. And that was just
4 two weeks before an election.

5 And yet we received no backup plan from you upon
6 request that there was a backup, that you provide a backup
7 plan for your counties, that would adequately serve the
8 needs of counties in lieu of the PCM devices.

9 I mean, I've made statements regarding the PCM
10 devices in San Diego. You were there. You heard what I
11 said. I went through the timeline. It's on the record.
12 And I don't have -- I mean I can go through it now and ask
13 you specifically why certain things were done and why
14 there were delays, why there was reliance or expectation
15 that we would certify something without federal
16 qualification testing. And that happened not only with
17 the PCMs but with your firmware also.

18 In January you submitted firmware version 4.4.5,
19 and we denied initially for being not federally qualified.
20 I guess this goes to, not specifically cooperation, but it
21 goes to the standards that you said that you were living
22 up to and the quote, unquote "New Day" that Diebold was
23 meeting as you stated in one of your letters.

24 When we kept getting applications for things that
25 did not receive federal qualifications, and we had to deny

1 them, despite -- I mean, we did not want to be in a
2 position and it was uncomfortable for us to be in a
3 position of saying you can't use something to the
4 counties, when you were telling the counties we have a new
5 system coming out or a new version coming out, and then
6 submitting it to us without federal review.

7 And so there's obviously some discomfort there.

8 And I guess my question is, how is it that -- well, you
9 know, the whole thing that's mentioned in the staff report
10 regarding the firmware that was submitted and then you
11 completely stopped moving on it, I believe it was version
12 27, and move to a later version proceeded without
13 informing us that you were moving to a later version. You
14 want to respond to that?

15 MR. UROSEVICH: Yes. I'd like to have Kevin do
16 that then. I think it's in the summary page, because you
17 do make the statement that somehow DESI stopped doing the
18 ITA certification process.

19 First of all, ITAs you don't stop or start. They
20 do what they'd like to.

21 So Kevin, would you specifically address the
22 Version 4 -- are you referring to the Version 27 then Cal?

23 VICE CHAIRPERSON CARREL: Version 27C, actually.

24 MR. DORSE: Right. If I could address the
25 changes in versions and the allegation of undermining

1 somehow the ITA process, which is in the staff report.

2 I think the framework here, the timeline, the big
3 timeline, big picture is the October submission for TSx
4 certification, which was approved in November, was the
5 4.4.3.27-Cal which is GEMS 1.18.

6 What we ran and the company ran in the March
7 election was the GEMS 1.18 just as submitted and
8 certified, which does have the federal qualification --

9 CHAIRPERSON KYLE: Can you be more specific?
10 There's several iterations of 1.18, 1.18.18, 1.18.19?

11 MR. DORSE: 1.18.18 is what was used and
12 installed for March 2, as I understand it. Obviously, we
13 can have Diebold people verify that. 1.18.18 was what was
14 used and installed throughout California, I believe in
15 close communications with Mr. Singleton and the Secretary
16 of State's Office in agreement to install that throughout
17 California.

18 Your staff report addresses certain reporting
19 changes that certain counties needed, but I'm not getting
20 into that level of detail. But anyway, my overall
21 chronology, Mr. Carrel, is simply that the submission in
22 October, approved in November is the GEMS 18.18, and the
23 4.3.27.

24 What we ran in March was the GEMS 1.18.18, which
25 is after all the ballot tallying function. It's the

1 backbone. I mean, if I could it's the most important
2 part, the ballot tallying function. And we ran
3 4.3.27-Cal. So this timeline, in effect, is in the
4 consternation that I understand you're expressing.

5 If you really boil it down on all these
6 so-called -- all these different versions, what it really
7 boils down to is simply the change in the October
8 submission, the November approval by your panel of 4.3.27
9 to the 4.3.27-Cal version.

10 As you know, there's basically three changes
11 between 27 and Cal. None of them are a big deal. Mr.
12 Freeman's looked at them. The ITA gave us a letter, which
13 you based your February approval on. Not a big deal. So
14 from our perspective, while different version numbers were
15 mentioned and so forth and so on, in terms of what
16 actually happened, there's one change, you go from
17 4.4.3.27 to 27-Cal.

18 VICE CHAIRPERSON CARREL: Yeah, but we were
19 relying on from being approved at a certain date. And to
20 our knowledge, you modified the version that the ITA had
21 to make additions to it. And as a result, it extended the
22 time period by which they would certify it, thus putting
23 us in a more precarious position.

24 MR. DORSE: And to be clear, your report
25 communicates that. And I'd like to offer some points that

1 I hope you'll have an open mind to hearing, because I'm
2 sure you're sincere in your efforts and I'm going to try
3 to be sincere in mine, because I know you have concerns.
4 And the concern that you're focusing on here is what
5 happened to 27 to 27-Cal.

6 And did Diebold do something as you say in the
7 report, to undermine the certification process? And did
8 Diebold misrepresent the certification process in
9 November?

10 I think if I could only address those two points,
11 and be --

12 VICE CHAIRPERSON CARREL: Be my guest.

13 MR. DORSE: -- struck dead, that's what I assume
14 you want to talk about and get some straight talk on, and
15 some straight answers. I think we have some straight
16 answers that are important context. What happened and
17 what was the change and when did it happen?

18 I'll give you a high level and you cut into the
19 detail as you want.

20 At the high level in October last year, we had
21 worked the TSx system through the federal labs, the ITAs.
22 We got the October 17 letter from Wyle, the federal lab,
23 which has a long list a completeds and testings. We
24 didn't write this letter. We got it from the federal ITA.

25 And in short we went into our certification with

1 California, we went into the November panel session,
2 November 10th panel session, with this letter on our
3 shoulder. So just to step back, the notion that we could
4 have misrepresented the process of federal qualification
5 would somehow imply that the lab itself was
6 misrepresenting the process, because all we did, and all
7 we could do, and you had this, was rely on this.

8 And I want to emphasize a point about this
9 document. This is the federal lab test. It notes -- and
10 this is on the TSx. It notes everything has been
11 completed. A report will be generated. Due to the
12 expense of the amount of documentation, we're estimating
13 it's going to be four weeks. I'm paraphrasing, okay.

14 Please be advised upon completion it will be
15 forwarded to the technical committee of NASED for final
16 review. This is important. "We ask for your patience in
17 this process. Ongoing developments with the qualification
18 process, as well as ongoing clarifications of certain
19 requirements of the 2002 voting system standards are still
20 under way."

21 There's a transitional period at the labs. They
22 tell us that. We don't have anything to do with that. We
23 do the best we can with the process. But the point is
24 when we come to you, we come in good faith in November and
25 we're through the process. Now, there's two important

1 points I want to also communicate.

2 We're in, if not daily, near daily communication,
3 our technical folks with the ITA. Here are some Emails,
4 I've asked, you know, what's the timeline here? You know,
5 I read the Secretary of State's report, a staff report, I
6 apologize, that says, you know, quite explicitly that we
7 disingenuously assured the VSPP on November 10th that the
8 completion of federal testing was imminent.

9 And on page four of your report, it says we
10 misrepresented the status of the TSx in federal testing in
11 order to obtain State certification. If that's true, I
12 agree, that's a very bad thing, very serious. I would
13 expect you to take it seriously. It's not true.

14 First of all, we have the letter. We didn't
15 write this. We got this from the lab. But secondly what
16 were the communications with the federal ITA in and about
17 the time of we're here in California saying, we didn't say
18 we had a NASED number. We said we're through the testing.
19 They say it's completed. They're writing a report on it.

20 Well, these are some communications that our
21 technical folks are having at that time, you know,
22 unbeknownst to you, but to just give you a sense of the
23 timeline.

24 There was after the October letter, we're in
25 touch with them on November 3rd, their report is still in

1 progress. I'm hoping I might beat the date of November 14
2 for issuance of the report to the technical committee to
3 start their review, and some other information.

4 So the week before we come to your panel, we're
5 being told, still moving along. Then there's another
6 communication on November 11th, which happens to be the
7 day after the meeting, but to give you a sense of the
8 timeframe. Again, this is with the ITA at Wyle labs.

9 It says, you know, "We confirm..." -- I'll just
10 cut to the chase. It says, "Tab..." -- Tab Iredale one of
11 our technical programmers, "...was most helpful." He
12 makes that comment. He says, "Regarding the TSx hardware
13 report, I'm still targeting to submit the draft to..."
14 someone, "...for subsequent review and comment. I don't
15 know how long it will take. Your reviewers are still
16 included." I'll stop there for a moment.

17 The point is as of the time we're here in
18 November asking for certification, we have every reason to
19 believe that we are working in good faith with the ITAs to
20 obtain the ultimate end-product of the NASED number. But
21 we certainly have positive proof to do what we told you,
22 which is to say we're through the federal testing process.
23 Now, as you know, in your sophisticated parties, they have
24 a report, they go back and forth and, you know, we don't
25 control that, and it takes time. And they're backed up,

1 and they're changing standards and that's all here. So
2 the point is --

3 VICE CHAIRPERSON CARREL: Do you have a NASED
4 number today?

5 MR. DORSE: I do not have a NASED number, but I
6 do have a letter today from the ITA saying that they have
7 now completed testing on the full package of the system
8 that we are proposing for the November election.

9 MR. SINGLETON: And we'll submit that for the
10 record.

11 MR. DORSE: We'll submit that for the record.

12 VICE CHAIRPERSON CARREL: So they haven't
13 completed the federal testing?

14 MR. DORSE: They have completed the federal
15 testing --

16 VICE CHAIRPERSON CARREL: But they hadn't
17 completed it when we met on November 10th.

18 MR. DORSE: No, they had completed -- okay, now
19 I'm just -- they completed the testing as of this time.
20 Now you wanted --

21 CHAIRPERSON KYLE: And as of this time meaning
22 today? What's the date of the letter that Marvin
23 Singleton just handed you, Mr. Dorse?

24 MR. DORSE: That's April 20th.

25 VICE CHAIRPERSON CARREL: And the date on the

1 Wyle letter?

2 MR. DORSE: This is the Wyle letter.

3 VICE CHAIRPERSON CARREL: Okay, but is that the
4 first?

5 MR. DORSE: The original is October 17th. Now,
6 your question, Mr. Carrel, was well what about 27-Cal?

7 As I pointed out, that's the one change -- for
8 all of the consternation, that's the one change that was
9 made -- the critical change between the certified version
10 with the state, the submitted version and the one that was
11 run in the election.

12 So what happened? Why did it take so long?

13 And, Mr. Kyle, I understand your question, why
14 did it take so long?

15 CHAIRPERSON KYLE: Well, not only that, Mr.
16 Dorse, but there was iteration 4.4.5 that actually had
17 been released by you to one of your client counties. And
18 it was our understanding that that was being promoted by
19 you with the ITA as well. So your efforts to explain how
20 prolonged it was with the Cal differentiation are setting
21 aside the fact that there were other iterations floating
22 around out there.

23 MR. DORSE: I haven't set it aside. With all due
24 respect, I'm hoping to turn that right now. And I
25 understand that's an important question, why did we not

1 ultimately get a NASED --

2 CHAIRPERSON KYLE: We had to basically deny a
3 county from using that, because it was uncertified and
4 untested. Yet we're being -- we were told that, which you
5 promoted to the ITA and the others were on the back
6 burner. Again, putting not only us in a precarious
7 situation, but the county in an incredibly precarious
8 situation.

9 MR. DORSE: And on this point what I want to
10 address, sir, is to respond to that. And this is the
11 finding in the staff report, which basically says that
12 DESI abandoned or undermined attempts to seek federal
13 qualification. If I hear you right, that's the point
14 you're touching on, and I'd like to address that directly.

15 Not true. I'll give you the details. We did not
16 abandon. We did not undermine the federal certification.
17 And I'll give you a general sense. There are people who
18 can give you the details and facts. But the general
19 timeline, sir, I've mentioned that as of October 11, we
20 got this status report from Wyle that they're still moving
21 forward with the report.

22 Well, what happened and what went wrong? What
23 happened is that in the report writing phase, yes you're
24 right Diebold also had other -- we have other customers.
25 We have other products. There were other products in the

1 lab. True.

2 What happened, as I understand it is, that while
3 they're writing the report for the California version, in
4 looking at -- because a small company, they're looking at
5 all the different products we have. They looked at it,
6 and they identified an issue that came to light that was,
7 if you will, came to light easily by -- more easily by
8 comparing maybe the new version, the 4.5 or whatever the
9 number was at the time, with the California version and
10 said, gee, there's a couple new things here in the newest
11 version that we think you should have in the version that
12 we've completed the testing on.

13 You've got us. We've completed the testing. We
14 gave you the thumbs up. But now that we can put these
15 side by side, from a technical perspective, there are a
16 few technical issues that we think you need to address.

17 And, you know, with all due respect, we think you
18 need to address those before we can -- before we can issue
19 a report or issue a NASED number.

20 So what happened, in a general sense, Mr.
21 Chairman, was that after submission the lab itself
22 identified certain technical issues that were of concern
23 to the lab. And the lab raised the point that given the
24 fact that you've got, yes, a newer version, that seems to
25 address some concerns that we now have, we can't proceed

1 on the original timeline. And that's, if you will, what
2 spawns the 27-Cal. What 27-Cal does --

3 VICE CHAIRPERSON CARREL: When was that if I may
4 interrupt? When did this all occur that you were notified
5 that technical changes were requested or I don't know if
6 they were technical, but changes were requested? When did
7 you know that?

8 MR. DORSE: I don't know. I can't give you a
9 precise timeline on working on that. Mr. Urosevich can
10 address that.

11 MR. UROSEVICH: Marc, that was notified to us,
12 the fundamental changes that the labs, as you know, the
13 ITAs have changed their procedures in December.

14 We had 18.18 federally certified. There's a
15 NASED number with it, right. TSx-Cal is in the process.
16 We pass that. They come back to us in December and say
17 that -- but as under our instructions now from the new ITA
18 group, the FEC regulations, that no NASED number can be
19 available. There has to be a system number.

20 So therefore we cannot assign to your TSx unit
21 independently a number. Therefore, we believe, and this
22 was their recommendation not ours, that you move with 4.4
23 and take into account all of their systems as you go.
24 That's what we did.

25 VICE CHAIRPERSON CARREL: When?

1 MR. UROSEVICH: We were notified of that in
2 late -- about mid-December. In fact, I have documentation
3 that on February 16th they're still sending us from the
4 lab here are some new guidelines for you.

5 VICE CHAIRPERSON CARREL: Okay. And were we
6 notified when you were notified?

7 MR. UROSEVICH: We believe that we notified, and
8 I'll to have check my record of this. But as soon as we
9 found out that it has to be a system, and a central
10 number, we did talk to Mr. Freeman, I believe. I'll have
11 to verify that for sure.

12 MR. DORSE: On the timeline, sir, and Mr.
13 Freeman, of course, plays an important role, because he's
14 the State's technical consultant. He's someone who we're
15 communicating with and he's on the NASED board.

16 So, if you will, Mr. Feeman is an intermediary of
17 sorts. And Mr. Freeman knows this stuff. Mr. Freeman
18 sent an Email on February 5 to the Secretary of State's
19 staff, which highlighted, I think, a question you probably
20 had -- not you personally -- but collectively had to Mr.
21 Freeman. What happened here? Why don't we have a NASED
22 number?

23 And I think Mr. Freeman explained that what
24 happened was in the post-testing phase issues came up an
25 anomaly that dovetailed into what we need to have

1 systemwide compliance. And that's a dramatic change, had
2 not been a practice of the ITAs before the end of last
3 year. And what that means is if you change one thing, you
4 have to look at everything again. Maybe that's a great
5 idea, but it was a significant change in practices.

6 From our perspective sir, we are -- we being the
7 company -- we're caught in a very difficult situation,
8 just to be clear. November 10th when we come to you, I
9 think it's undisputable that we came with definitive
10 evidence and good faith belief and position that we had
11 completed the federal testing and were awaiting the usual
12 lengthy process of the report.

13 What then happened was the Perfect Storm of
14 problems, perhaps. You have the ITAs focusing on this
15 need for system integration from A to Z. And so you
16 change one thing, they're going to look at everything
17 again. And that's not fast. That happened. That's a
18 fact.

19 Secondly, you have, just as luck would have it,
20 an issue that I think principally focused on being able to
21 compare our newest versions with the California version
22 and the specific issues, that, gee, shouldn't you fix
23 these three things?

24 One of them is, I believe you would be familiar
25 with, was the so-called double click. I think that is one

1 of the last -- when you cast your vote -- sort of, if you
2 vote for the last person Mr. Smith what we did was move
3 the button to say, "I confirm my vote" to not being that
4 same one, so you couldn't accidentally double click it,
5 but to move it to a different location.

6 I think everyone in this room would agree that
7 was a great idea. Wish we would have thought of it
8 earlier. But the point is, it really came to light, I
9 believe -- and I'm just representing I don't have personal
10 knowledge of anything -- in the post-completion process of
11 the testing. And yes it's hard to argue with that. Yes,
12 we should make that change. And so it was made. It took
13 a period of time.

14 But the conclusion that's in the staff report,
15 the two conclusions, one that we -- the company somehow
16 lied to obtain the November 10th certification, are
17 demonstrably false, not true.

18 And the other conclusion that we're suicidal and
19 that we deliberately undermined and perverted the ITA
20 process so that we could get California angry with us is
21 just not true. I mean it's not --

22 CHAIRPERSON KYLE: We wouldn't characterize it as
23 suicidal. We might characterize it as shrewd marketing.

24 (Laughter.)

25 MR. DORSE: Well, it's neither, sir.

1 It's neither, sir.

2 CHAIRPERSON KYLE: So I think we have a few
3 technical questions, if I can turn it over to David
4 Jefferson.

5 PANEL MEMBER JEFFERSON: Mr. Urosevich. I'm
6 going to change the subject here, not so much about the
7 process of qualification and certification of the sequence
8 of events, but all on actually the quality of the product,
9 the Diebold TS and TSx systems.

10 Now, as you know about a year ago, the source
11 code -- one version of the source code of the Diebold TSx
12 system escaped your control and some months later was
13 investigated by a group headed by Avi Rubin, Professor Avi
14 Rubin, Johns Hopkins University, and they wrote a report,
15 which found numerous severe vulnerabilities in the code
16 that they saw.

17 There were three subsequent reports. One written
18 by SAIC, commissioned by the state of Maryland in reaction
19 to the Johns Hopkins report.

20 A third by the state of Ohio by Compuware. And
21 the fourth, again by the state of Maryland by a company
22 called RABA, which is kind of an off-shoot of the National
23 Security Agency.

24 And all four of these reports found serious
25 security vulnerabilities in the systems that they tested

1 and the code that they tested. And I would like your
2 general reaction to those reports before we go a little
3 more deeply.

4 MR. UROSEVICH: Yes, sir, Mr. Jefferson. You're
5 right on being probed, prodded and studied. The
6 conclusions on all of those reports are really down to
7 three items. I'm not sure there was to categorize it as
8 gross problems with security.

9 I'd like to, and I'm not technical and I have
10 developers sitting here behind me that can answer those
11 questions, but it's basically the code was stolen. In
12 there is passwords and there's our encryption technology.

13 Okay. Now you know we're not -- I'm not a rocket
14 scientist. But let me tell you if somebody steals the key
15 to my house, the first thing I'm going to do is probably
16 change the lock. So that's what we went ahead and did.
17 That's exactly --

18 PANEL MEMBER JEFFERSON: As you know, the code
19 wasn't stolen. It was left on a public FTP site by your
20 own company.

21 MR. UROSEVICH: The code was lifted off of our
22 site, sir and we still believe it was.

23 PANEL MEMBER JEFFERSON: Downloaded, you know
24 that.

25 MR. UROSEVICH: Okay, if you'd like to talk on a

1 legal issue on that, I'll let our attorney do that.

2 PANEL MEMBER JEFFERSON: Just the word stolen.

3 MR. UROSEVICH: Okay. Yeah, well we thought they
4 were stolen off of the site.

5 Number 2 is that the studies came, and if we look
6 at the SAIC on Maryland which is the first one.

7 PANEL MEMBER JEFFERSON: Hopkins was the first
8 one.

9 MR. UROSEVICH: Well, Hopkins was not a study, it
10 was a homework assignment that looked at the code. The
11 first one that was sanctioned by a State was the SAIC
12 Report.

13 That report which is many, many, many pages long
14 versus the two or three Avi Rubin homework assignment, and
15 we go through that process --

16 PANEL MEMBER JEFFERSON: Mr. Urosevich, you are
17 characterizing Professor Avi Rubin and Professor Dan
18 Wallach and their colleagues' report as a homework
19 assignment?

20 MR. UROSEVICH: That's exactly what he said it
21 was to his local group.

22 PANEL MEMBER JEFFERSON: I know Avi Rubin very
23 well. He does not say that.

24 MR. UROSEVICH: I know Mr. Rubin very well too.
25 He worked a precinct with me in Maryland here just

1 recently.

2 Number 2, is that the SAIC report, which was a
3 exhaustive study of our code, concluded the same thing
4 that Mr. Rubin did. You have static code in your process,
5 which means you can't change the encryption coding
6 election to election.

7 Security 101, which is correct, says that you
8 better be able to have the local authorities change
9 passwords, change encryption coding as the process moves
10 through. We know that. We recognized that fact. And
11 that's -- we changed --

12 PANEL MEMBER JEFFERSON: You recognize this now
13 or you recognized it before those reports were written?

14 MR. UROSEVICH: Well, before the report -- no.
15 Personally, I did not -- not knowing that our codes would
16 be made public, however you want to depict that it was,
17 that there was a need because -- to change those codes,
18 because as you know, election process is many, many
19 securities. You have L&A, you have poll workers, you have
20 keys, you have everything that goes on. Our part of it,
21 we so as one part of it.

22 So prior to somebody knowing all of the
23 passwords, all the encryption in our technology, static
24 code was written into it.

25 After that, we have made those changes, and

1 applied through the federal ITA on that, have taken to
2 heart Compuware, have taken to heart RABA, and have taken
3 to heart SAIC's and have made those changes within the
4 code, and are in the process and have received the notice
5 today that those security enhancements, through many
6 products in layers, have been incorporated into our code,
7 and are going through and applied for a NASED number.

8 PANEL MEMBER JEFFERSON: So you have some
9 document describing your progress on correcting these
10 vulnerabilities that you just said?

11 MR. UROSEVICH: Not presently, but yes we have.

12 PANEL MEMBER JEFFERSON: And you'll submit that
13 to us?

14 MR. UROSEVICH: We certainly will.

15 PANEL MEMBER JEFFERSON: So I would like to go
16 further and ask some questions about the specific
17 conclusions of these reports, because I find them very
18 disturbing. And I don't think that I would characterize
19 them the way you have.

20 In the first place I have to take issue with your
21 characterization of the Hopkins Report as a homework
22 assignment. Professor Rubin and Professor Wallach and
23 their colleagues are internationally renowned security
24 experts, and they don't just do homework assignments.

25 Now, I would like to quote from that report, if I

1 may, and get your reaction to this.

2 One of their summary paragraphs
3 says, "Our analysis shows that this
4 voting system is far below even the most
5 minimal security standards applicable in
6 other contexts. We identify several
7 problems, including unauthorized
8 privilege escalation, incorrect use of
9 cryptography, vulnerabilities to network
10 threats and poor software development
11 processes."

12 Your response?

13 MR. UROSEVICH: I'm not technical. I can just
14 talk to you generally. If you'd like, our developer who
15 has developed our code is here to answer any direct
16 questions.

17 PANEL MEMBER JEFFERSON: Well, first your answer,
18 since, as the CEO, you are -- you take responsibility.

19 MR. UROSEVICH: I believe the Diebold election
20 system is secure and was secure at the time of that.

21 DREs have been in this country for 20 years.

22 PANEL MEMBER JEFFERSON: This is not DREs. This
23 is your particular system.

24 MR. UROSEVICH: Our system has been operational
25 for three to four years in major elections. Not once has

1 it ever been recorded that there's been a breach. Not
2 once has there been recorded that there's an accurate
3 security problem. Not once has it been reported that
4 somebody has tapped into communications. Not once in an
5 election process has that been proven. In theory, you are
6 absolutely right. Also --

7 PANEL MEMBER JEFFERSON: And in theory Professor
8 Rubin and Wallach are right. Is that what you're saying?

9 MR. UROSEVICH: I'm saying on some of the
10 summations that is correct. But the idea that these
11 were -- he did not realize at the time nor had access to
12 the equipment that the equipment is not hooked up to the
13 Internet, that the equipment is stand-alone. And has
14 since in I believe in his writings and findings that he
15 puts out in the press, has made those comments.

16 Not all of their assumptions were based on the
17 actual fact. After he took the time to sit down and run
18 an election or work an election in Maryland, he came back
19 with conclusions that said, I may have been a little wrong
20 on this one, but there are issues.

21 Am I going to tell you in theory you can't do
22 something. Of course I'm not going to stand up and say
23 that.

24 But in reality there has never been, on our
25 system a security breach.

1 PANEL MEMBER JEFFERSON: How would you know that
2 there has never been an undetected security violation?

3 MR. UROSEVICH: We can go through the process,
4 the election day process. I think one of the
5 misconceptions is, you know, Diebold and vendors don't run
6 elections, county officials do.

7 Obviously, us as Americans and us as voters have
8 to rely on their procedures as well. We run through L&A
9 testing, the counties do, where they test each and every
10 piece of equipment, lock up each and every piece of
11 equipment, deliver it to the polls and check it.

12 Now, we can only go -- we walk through those
13 processes with them. They also have images of the system
14 that come off. They also are stored in different
15 locations. Not once has it been recorded that there has
16 been an issue with accuracy and security from the customer
17 base that we deal with.

18 PANEL MEMBER JEFFERSON: But you didn't answer my
19 question. Just because it hasn't been recorded, how do
20 you know that there haven't been undetected problems?

21 The point about security vulnerabilities is you
22 may not always detect them. And breeches of them are not
23 always detectable.

24 Let me read another quote from that before we
25 move on to the other reports, because this is going to be

1 the only technical question I'm going to ask of the day,
2 but it has to do with the key management. And this comes
3 from Professor Rubin's report and has not been taken back
4 or modified in anyway by subsequent statements by him.

5 He says, "Unlike the data stored in
6 the voting terminal, both the vote
7 records and the audit logs are encrypted
8 and checksummed before being written to
9 the storage device. Unfortunately,
10 neither the encrypting for the
11 checksumming is done with established
12 secure techniques. This section
13 summarizes the issues with Diebold's use
14 of cryptography and protecting the vote
15 records and audit logs, and then returns
16 to the consequences of Diebold's poor
17 choices in a subsequent section."

18 He goes on to talk about key
19 management. He said, "All of the data
20 on a storage device is encrypted using a
21 single hard coded DES key..." which they
22 then give in the paper here, because the
23 code was in fact in the source code.

24 And he said, "Note that this value
25 is not a hex representation of the key,

1 nor does it appear to be randomly
2 generated, and of course it should have
3 been. Instead the bites used in the
4 string are fed directly to the DES
5 scheduler. It is well known that hard
6 coding keys into a program source code
7 is a bad idea. If the same compiled
8 program is imaged, the compiled program
9 is imaged..." -- Let alone the source --
10 "...is used on every voting terminal.
11 An attacker with access to the source
12 code or even a single program image
13 could learn the key and thus read and
14 modify votes and auditing records."
15 Now of course the source code in fact got out.
16 The key is now published.

17 What, in effect you did or your team did, is
18 create a big complex building, put locks on every door,
19 use the same key for every lock, and then published a
20 picture of the key on the wall. Does this seem to be a
21 suitable security architecture to you? I mean --

22 MR. UROSEVICH: No, I agree with Dr. Rubin's
23 findings on once the code was known and once the embedded
24 code in our source was there, it had to be changed. Yes,
25 sir, we agree with him 100 percent.

1 PANEL MEMBER JEFFERSON: But should it have ever
2 been that way in the first place. His point is this was
3 far below the minimal standards of security, far below
4 security 101, as you point out.

5 MR. UROSEVICH: Well, what the guidelines set
6 forth as we were producing this code since 1992 has been
7 to run through federal certification and federal
8 compliance of those. And we did that.

9 If there is a new set of rules in town, which we
10 believe there are, and we understand that very fully from
11 all of the studies, we have incorporated those into our
12 new design.

13 PANEL MEMBER JEFFERSON: So your point is that
14 because it is somehow not addressed in the federal
15 qualifications standards or the ITAs did not detect it
16 somehow, that's sufficient.

17 MR. UROSEVICH: No, I'm not sure I said that.
18 What I said was is that we put this -- the system has gone
19 through all federal and state qualifications as it's moved
20 through.

21 Yes, we agree with the findings that the
22 encryption code should be changed and has been and is
23 incorporated.

24 PANEL MEMBER JEFFERSON: Okay. I would like to
25 move along to some material from the RABA report, the

1 fourth report, the last of them and in some sense the
2 deepest because the RABA technicians -- technical experts,
3 I should say, actually did "red team" studies to try to
4 break into the system. And this was many months later
5 than the -- as you know, than the Hopkins report I was
6 just quoting.

7 And I would say -- so let me read
8 this from there. "The key findings..."
9 -- this is a summary paragraph -- "...of
10 this effort are two-fold. The State of
11 Maryland election system contains
12 considerable security risks that can
13 cause moderate to severe disruption in
14 an election." They say, "However, each
15 of these vulnerabilities has a
16 mitigating recommendation that can be
17 implemented in time for the March 2004
18 Primary.

19 "With all of these near-term
20 recommendations in place, we feel, for
21 this primary that the system will
22 accurately render the election and is
23 worthy of voter trust. However, between
24 March and November elections ..." -- a
25 few weeks ago in this coming November --

1 "...we strongly feel that additional
2 actions must be taken to mitigate
3 increasing risks incumbent on a system
4 that will receive broad scrutiny.
5 Ultimately, we feel that there will be a
6 need for paper receipts at least in a
7 limited fashion."

8 Your comments about that.

9 MR. UROSEVICH: Those are true statements by
10 RABA. The code that they looked at obviously was the
11 Maryland code prior to security enhancements being placed
12 in it. Later on in the report they do make reference that
13 that -- that studied as well as it does. They did approve
14 and say that it was safe to run in March, which it did
15 with its new security enhancements on it, which has been
16 approved through Maryland for use.

17 And we agree with RABA.

18 PANEL MEMBER JEFFERSON: You agree with RABA.

19 So when they go on to say, "It is
20 our opinion that the current Diebold
21 software reflects a layered approach to
22 security: as objections are raised,
23 additional layers are added."

24 MR. UROSEVICH: That was based on -- no, no
25 that's not what you asked. You asked --

1 PANEL MEMBER JEFFERSON: No, no. This is also a
2 quote from the RABA report.

3 MR. UROSEVICH: Let's read that quote and then
4 I'll respond to that quote.

5 PANEL MEMBER JEFFERSON: Okay. I'm almost done.
6 I don't mean to keep you up here too long.

7 Go ahead.

8 MR. UROSEVICH: Okay. Well, that quote goes on
9 and that was prior to them looking at key code tool and
10 the security enhancements were on. Their recommendations
11 to the State of Maryland and to us is that those security
12 enhancements must be in place before the November
13 election, in fact were used in the March election.

14 PANEL MEMBER JEFFERSON: So the only last
15 question I have is how would you characterize the
16 relationship between the code base used for the TS;
17 machine and the code base used for TSx, the TSx machines?
18 How similar are they or do they come from the same code
19 development tree or are they completely different? How
20 would you describe that relationship?

21 MR. UROSEVICH: Well, obviously they're the same.

22 PANEL MEMBER JEFFERSON: Okay, thank you.

23 CHAIRPERSON KYLE: Thank you.

24 Tony, I understand you have a couple questions.

25 PANEL MEMBER MILLER: Thank you, Mr. Chairman.

1 Just a couple of questions. And actually they relate to
2 something that I can almost understand. This has been
3 very technical. I enjoyed the exchange.

4 But I want to talk about San Diego and the use of
5 the TSx machine in San Diego for the March Primary
6 election.

7 It's my understanding that something like half
8 the polling places were unable to open or voters were
9 unable to vote using the TSx system because of the failure
10 of the PCM 500 device. Is that correct?

11 MR. UROSEVICH: Here's my understanding, and
12 we've done -- obviously, the county has requested and did
13 do a final report. And I think we did notify the panel
14 and give them our findings.

15 The TSx, the touch screen itself, is not the --
16 affected. Those ran extremely well and recorded the
17 votes. People cast their votes on it. The images printed
18 it out. The counts were correct. And they performed
19 admirably, and the county did as well.

20 The PCM problem, which is -- and Mr. Carrel has
21 it in front of him here -- had a battery issue. And you
22 are absolutely right, it caused a delay in poll opening,
23 because when the poll workers showed up in the morning,
24 fired up their systems, all TSx units came up. The poll
25 book -- the PCM did not. It came up in an unfamiliar

1 screen that were not familiar to the poll workers.

2 We were caught. We apologize for that. We did
3 not realize that when we have an off button on this
4 machine, that it does not turn the system off. It put it
5 in suspended mode.

6 We're sorry for that. We're sorry for the
7 inconvenience it caused voters. It was remedied and the
8 precincts were opened up anywhere from 15 minutes to a
9 two-hour period of time to get it going. There was backup
10 in there. TSx unit itself can become an encoder.
11 Unfortunately, we had not instructed the poll worker of
12 that, and therefore we had to resolve the issue on the
13 fly.

14 PANEL MEMBER MILLER: Was the PCM part of the
15 voting system itself? I realize it's a peripheral.

16 MR. UROSEVICH: It's a peripheral. Well, yes you
17 encode the card off that, as you do off of a TSx, which is
18 part of the system, as you do off the hand-held encoder,
19 as well.

20 PANEL MEMBER MILLER: But it is integral to the
21 operation of the system as you were configuring it?

22 MR. UROSEVICH: It's one of the pieces that
23 should be functional within the precinct, yes, sir.

24 PANEL MEMBER MILLER: Now, you indicated that
25 some voters were inconvenienced. Weren't they actually

1 disenfranchised?

2 MR. UROSEVICH: I do not know that. That would
3 come from the county themselves.

4 PANEL MEMBER MILLER: Common sense would suggest
5 that at least some voters not being able to vote would
6 leave and may not be able to return, and would be
7 therefore more than inconvenienced, but actually
8 disenfranchised.

9 MR. UROSEVICH: Yes, sir.

10 PANEL MEMBER MILLER: When did you know that a
11 low-battery charge may result in the PCM starting in an
12 unfamiliar mode? When did you find out about the battery
13 problem?

14 MR. UROSEVICH: Personally?

15 PANEL MEMBER MILLER: The company?

16 MR. UROSEVICH: I believe after the fact.

17 PANEL MEMBER MILLER: Believe after the fact?
18 Nobody brought it to your attention before --

19 MR. UROSEVICH: That the batteries drained?

20 PANEL MEMBER MILLER: That the drained battery
21 might create a problem with respect to moving up in the
22 appropriate --

23 MR. UROSEVICH: I had no personal knowledge. I
24 understand that obviously the batteries are charged before
25 they are delivered, and that during testing they probably

1 ran down things like that, but I'm not sure that anybody
2 understood, or at least I did not. I'm not -- I can't
3 speak for everybody in the company, that they understood
4 that this would put it in an unfamiliar screen.

5 PANEL MEMBER MILLER: And you didn't -- you
6 meaning the company -- appropriate persons in the company
7 didn't have a clue that even in the off position it would
8 lose power and drain the battery?

9 I mean, that seems like a fundamental design flaw
10 that somebody, one would have thought, would have caught
11 it.

12 MR. UROSEVICH: I believe it's a fundamental
13 design flaw. I agree with you.

14 PANEL MEMBER MILLER: Yeah, I think that's true.

15 (Laughter.)

16 PANEL MEMBER MILLER: Interesting.

17 (Laughter.)

18 CHAIRPERSON KYLE: To my understanding, just to
19 jump in on this, Tony, that one of your other client
20 counties became aware of the problem prior to the
21 election, Solano county, in fact is my understanding that
22 they through some of their testing had discovered that.
23 They didn't communicate with you about that?

24 MR. UROSEVICH: I am not sure what Solano county
25 used, Mr. Kyle. I don't know if they used the PCM 500 or

1 100 encoder. I'm not familiar with each configuration.

2 PANEL MEMBER MILLER: If I could change the
3 subject slightly. And I don't expect you to know the
4 answer to this, but is Mr. Rasmussen with you today? I'm
5 referring to a Kern County contract with Diebold with
6 respect to the TSx system.

7 And I apologize, because I just received this
8 particular document yesterday, and I've not had a chance
9 to talk with your people nor with the county of Kern. But
10 it would appear from a layman's perspective reading the
11 contract that it requires or permits Diebold to establish
12 a direct phone line, modem line with the server. I'm not
13 sure what the server is, that it doesn't go through the
14 switchboard, and can be used at any time for any reason by
15 Diebold. And that from a lay person's perspective, it
16 sounds pretty scary. I wonder do you have anybody with
17 you that could respond to that.

18 MR. UROSEVICH: Mr. Rasmussen isn't here and is
19 no longer with the company for quite some time. I'm
20 not -- I don't know, Tony but --

21 PANEL MEMBER MILLER: Would that be a customary
22 provision in your contracts?

23 MR. UROSEVICH: I'm not -- I don't understand the
24 question, I guess. If you're referring to phone modeming
25 of results from precincts?

1 PANEL MEMBER MILLER: No, I'm talking about --
2 and I can give you a copy of this.

3 MR. UROSEVICH: I apologize, I guess, for the
4 delay. I guess I can't answer the question, because I
5 have no knowledge of it.

6 PANEL MEMBER MILLER: Is there anybody with you
7 that might be able to respond to that?

8 If not, I understand and I apologize for the
9 lateness there.

10 MR. UROSEVICH: I don't believe so.

11 PANEL MEMBER MILLER: And maybe later on Kern
12 County can respond to that. I think Kern County is
13 represented today here.

14 Thank you.

15 MR. UROSEVICH: Thank you.

16 CHAIRPERSON KYLE: I think we have some more
17 questions.

18 Mr. Mott-Smith.

19 PANEL MEMBER MOTT-SMITH: Mr. Urosevich, I want
20 to veer slightly off of the TSx issue to your -- to an
21 example of something that happened in the last several
22 months involving the optical scan firmware, which creates,
23 in my mind, a problem. And the problem has to do with the
24 relationship between our office and the counties and the
25 vendors. That's not necessarily a relationship that

1 involves complete communication all of the time.

2 What happens between our office and your company
3 is not transparent to the counties. What happens between
4 you and one county is not necessarily transparent to the
5 other counties. And we occasionally get into situations
6 where the finger is pointed in all directions, and I want
7 to go through one of those situations and ask you to
8 please give me your perspective on that.

9 MR. UROSEVICH: Sure.

10 PANEL MEMBER MOTT-SMITH: I want to first
11 acknowledge Mr. Singleton, as has been mentioned before,
12 every time we have asked him for information he has
13 responded to me personally, whether that satisfies all of
14 the company's requests, I don't know.

15 We became aware of an issue for the firmware, it
16 was represented to us by a county that Diebold had
17 informed them that their firmware version 1.9.W would not
18 handle cross-over votes in the primary election.

19 We took that under consideration. And about the
20 next day we got a call from another county, and about the
21 next day we got call from another county, and about the
22 next day we got a call from a CAO. The following day we
23 got calls from two boards of supervisors. The following
24 day we got calls from the State Assembly and the State
25 Senate.

1 And all of them were focused on why is the
2 Secretary of State dragging its feet on approving this
3 necessary, critical
4 election-can't-happen-unless-we-do-this modification to
5 the system.

6 We do try and be responsive to the counties as
7 much as we can. Now, we flew our tester and our staff to
8 Texas to look into this problem. They got there. They
9 loaded up all of the equipment, and they couldn't
10 duplicate the problem. They could not duplicate the
11 problem.

12 So, put it back to you guys. You guys sent it
13 back to whoever in Canada does your programming on this
14 issue and they couldn't duplicate the problem. And in the
15 end we were left with a situation where we had a huge
16 barrage of pressure from counties who were under the
17 impression that the Secretary of State was dragging its
18 feet on an issue. When, in fact, there wasn't an issue.

19 And it did take two letters to the counties to
20 inform them that it was Diebold's mistake not ours. But
21 I'm not certain that that communication got fully vetted
22 by the counties anyway.

23 So what I'm most concerned about is that a lot of
24 what has happened between your office and our office, the
25 representations to your clients seem to generate a barrage

1 of urgent requests for things that turnout to not be
2 necessary. And it appears to me that these are based on
3 assertions by the vendor that if we don't get this change,
4 if the Secretary doesn't move, we're going to have a big
5 problem. We won't be able to run the election.

6 And personally I feel that the environment and
7 relationship has been a little bit poisoned by that. And
8 I would like you to give your perspective on that
9 particular example, how it happened and what happened.

10 MR. UROSEVICH: And I agree with your statements
11 on that, John. The communication between us, the counties
12 and you have not, and I think we've admitted that over and
13 over again, been terrific.

14 To this specific agreement and issue, we
15 believe -- first of all, 1.9.6, which was being asked to
16 be used, is federally certified with and qualified with a
17 NASED number.

18 Our development people came to us or came to our
19 project managers here in the state and said we believe
20 because we have a ten-party restriction on the OS 194
21 system, that there would be a potential problem, that when
22 the State had registered 11 parties for this primary, that
23 our system itself would have difficulty in accommodating
24 that 11th party. Therefore, the recommendation was made
25 to use 1.9.6, which does have a higher party limit on

1 that.

2 We were wrong. I like your testers better than
3 mine. They came down, ran the 11 parties. It has to do
4 with reporting function, we found out, versus a firmware
5 function. And you are absolutely correct, 194.W did
6 perform, could handle 11 parties and handled it with ease.

7 We, in no way, would have communicated to the
8 counties. We're not idiots, although we may act from time
9 to time as not the smartest, that we in no way would want
10 to put firmware at our cost on our optical scan systems in
11 the state unnecessarily, unless we really thought there
12 was a problem.

13 If the communication came back from counties that
14 the State was, for whatever reason, dragging their feet, I
15 personally do not know of any commitment or statement that
16 was made like that. We apologize if that was. We were
17 doing this, what we thought was the correct thing. Your
18 group came down, kindly came down to review 194.W to make
19 sure that it does pass what it was, and the conclusion was
20 made. And I believe from that point went to the two
21 counties that have 1.9.6 on it, downgraded them back to
22 the 194 at our cost and it performed very well.

23 I apologize if it put you and your staff in any
24 position that the counties felt that you're dragging your
25 feet. It was clearly an overreactment from ours to say

1 there could be a potential problem with the 11th party,
2 feeling that our system was geared to 10.

3 PANEL MEMBER MOTT-SMITH: I appreciate your
4 candor and apology. And I don't want to just let it rest,
5 because it isn't a single isolated instance. A second
6 example would be San Diego county, where we were informed
7 that it was impossible, there was no work-around, there
8 was no way to count provisional ballots given the problem
9 that they were having with provisional ballots, unless
10 there was a change made to the software.

11 It was unequivocally represented to us that that
12 was the case, about a day and half before it was found
13 that there was a way to do it. And the result in all of
14 those cases is that the client, your client county, our
15 friend the county comes back to us and says you've got to
16 approve this, there's no other way to do it. Now, why are
17 you making my life more difficult?

18 And I don't expect you to respond to the second
19 one unless you want to. But I'm telling you that at least
20 in my experience a part of the problem that I have with
21 Diebold's operations is that there does appear to me to be
22 a finger pointed at our office when it's not deserved.

23 MR. UROSEVICH: Duly noted.

24 CHAIRPERSON KYLE: It's not only problematic for
25 our office, which is admittedly a pain in the neck

1 sometimes on a grand scale, but it's problematic for the
2 counties, as John stated. And both instances that you
3 cited, there were numerous calls from the counties,
4 including the resolution -- numerous calls from the county
5 obviously perturbed, sometimes very extremely so.

6 But even the resolution to the first one, the
7 194.W where 1.9.6 had been installed, and then had to be
8 downgraded as the solution, was problematic for the
9 counties. Even though, you picked up the cost, I know
10 that logistically in at least one county that I'm familiar
11 with, where I live actually, it was hugely problematic.

12 Now, they pulled it off, and your company pulled
13 it off. But it was a huge strain logistically just days
14 before the election. So it isn't just that it's a pain in
15 the neck for the Secretary of State's Office. It's a pain
16 in the neck for everybody all the way around and on a very
17 large scale a huge impact.

18 Do we have other questions?

19 I'd like to ask that you and your staff may want
20 to remain there. I think that we may want to call you
21 back and ask a few more questions and have a back and
22 forth on that.

23 And Marvin I see you signaling me. Do you have a
24 letter?

25 MR. SINGLETON: I'll submit for the record the

1 Wyle letter that we received this morning.

2 CHAIRPERSON KYLE: Thank you. April 20th?

3 MR. SINGLETON: Twenty-first.

4 CHAIRPERSON KYLE: Ms. Melhaff, would you have
5 somebody make a few copies of that so we can see it. If
6 Tim might come down, please.

7 ELECTIONS DEPUTY CHIEF MELHAFF: It's dated April
8 20th.

9 CHAIRPERSON KYLE: Come down here, Tim, please
10 and make a few copies for the panel. I'd like to see
11 that.

12 Thank you.

13 We'll take -- why don't we take a five-minute
14 break, bio-break and we'll be back. And then if you want
15 to just sit and then we'll call you backup appropriately.

16 Thank you.

17 (Thereupon a recess was taken.)

18 CHAIRPERSON KYLE: Okay. If the folks could
19 please be quiet in the auditorium, if somebody could close
20 the doors and ask that folks speaking in the back, please
21 pipe down or take your discussions out into the foyer.
22 I'd appreciate it.

23 I'd like to call our next person for some
24 comments. Is Mr. Dunn in the room?

25 Would you please pull him in. Please state your

1 name for the record and spell it for our transcriber. And
2 then I believe Mr. Carrel has some questions or go -- do
3 you have a statement?

4 MR. DUNN: No, sir. My name is James Dunn.
5 Spelling of the last name is D-u-n-n.

6 CHAIRPERSON KYLE: Thank you for being here
7 today.

8 MR. DUNN: My pleasure.

9 VICE CHAIRPERSON CARREL: I have some questions
10 regarding your employment from February 2nd through March
11 2nd.

12 Can you tell me what you were doing and a little
13 bit about what you saw with regard to, as I understand it,
14 the PCM devices?

15 MR. DUNN: I was hired as a PC technician. And
16 we were brought into assemble the PCM 500s and the 100s,
17 and put their software, load it in, pack them up and then
18 ship them off to the customers.

19 VICE CHAIRPERSON CARREL: Okay. Where were you
20 employed and by whom in this process?

21 MR. DUNN: I was hired through PBS Technical
22 Services based out of the Dallas, Texas area. I answered
23 an ad in Monster.com. I was hired over the phone for the
24 position. And we were sent to the West Sacramento Diebold
25 office to work.

1 VICE CHAIRPERSON CARREL: And when you started
2 there, what did you -- what actually did you do with the
3 PCM devices?

4 MR. DUNN: We unpacked all the components, and
5 assembled them together. Then --

6 VICE CHAIRPERSON CARREL: This from February 2nd
7 on?

8 MR. DUNN: Yes, sir.

9 VICE CHAIRPERSON CARREL: Okay.

10 MR. DUNN: Then did the software loads into them,
11 repack them into a hard case, palletized those cases and
12 then sent them on to the customer.

13 VICE CHAIRPERSON CARREL: Okay. Can you talk
14 about where these PCMs were headed and any tracking system
15 that might have existed?

16 MR. DUNN: The PCMs were headed -- we had three
17 primary places: one was San Diego county, the other was
18 Alameda county and the other, I believe, was Johnson
19 County, Kansas.

20 VICE CHAIRPERSON CARREL: Did you have any
21 contact with regard to the batteries in the devices? Were
22 you familiar with their abilities?

23 MR. DUNN: Yes. We had a significant amount of
24 problems with the batteries. In fact, one of the things
25 we were told -- one of the last things we were to check

1 was before they were packed up, was that they were
2 supposed to have a 60 to 70 percent battery load in them
3 due to the problem of the batteries discharging once they
4 reached anywhere from about a 20 to 15 percent charge
5 rate, they would then dump the settings, sometimes dump
6 the software load, and then on initial startup, would
7 bring up a standard Windows CE screen and not the Diebold
8 screen.

9 VICE CHAIRPERSON CARREL: How often did that
10 occur on the systems that you were installing or testing?

11 MR. DUNN: Frequently. All the time. We
12 recognized it, told them about it. They told us they knew
13 of the problem and that was specifically why it had to
14 have that charge load going out.

15 We also, during the early part of this,
16 apparently one of the customers, I'm not sure who called
17 in, that they had unpacked, went to test them and had the
18 unfamiliar screens come up. We then unpacked a couple of
19 or 3 pallets full of these that we had already done up and
20 checked them, and found that they had discharged while
21 unpacking in the --

22 VICE CHAIRPERSON CARREL: The batteries
23 discharged?

24 MR. DUNN: The batteries had discharged.

25 VICE CHAIRPERSON CARREL: Meaning what, the

1 batter acid was --

2 MR. DUNN: No, just the charge --

3 VICE CHAIRPERSON CARREL: They had.

4 MR. DUNN: -- of the batter degraded down.

5 VICE CHAIRPERSON CARREL: Oh, okay. So there was
6 actually no charge left in the batteries.

7 MR. DUNN: Right, and therefore the units either
8 wouldn't fire up or -- and then once fired up, we found
9 out that it had lost both CMOS type settings and lost at
10 times software loads.

11 VICE CHAIRPERSON CARREL: Did you have to keep
12 installing the software again, or were --

13 MR. DUNN: Yeah, we would then reinstall it and
14 redo all the settings, charge the battery and then send it
15 back out.

16 VICE CHAIRPERSON CARREL: Were there new versions
17 of software you were installing or was it the same
18 software over and over again.

19 MR. DUNN: Two times that I specifically recall
20 while I was there, they came out. We did the software
21 settings with a smart card insert. And they brought out
22 new versions, took the old ones from us, gave us the new
23 ones, and said start using this software. What versions,
24 I'm not sure of.

25 VICE CHAIRPERSON CARREL: Had any of the pallets

1 that had been packed already been mailed out or did you
2 have to reinstall on every single PCM device?

3 MR. DUNN: No, we just, you know, stopped at this
4 one, start at this one. And, in fact, I made a specific
5 comment to someone there, I said, this is a little unusual
6 that, you know, there's a pallet going out with mixed
7 versions of software on it going to the customer.

8 VICE CHAIRPERSON CARREL: So to your knowledge,
9 there were a PCM -- and were you on only the 500s or also
10 the 100s.

11 MR. DUNN: 100s a little, primarily the 500s.

12 VICE CHAIRPERSON CARREL: Okay. And was it the
13 same software on both?

14 MR. DUNN: I believe there was a slightly
15 different variation for the PCM 100s due to the fact that
16 it's a different machine.

17 VICE CHAIRPERSON CARREL: Okay. But to your
18 knowledge, there were PCMs shipped out to various counties
19 with different software on them, they did not all have the
20 same software?

21 MR. DUNN: Yes, sir, I know that for a fact.

22 I even asked specifically if we needed to write
23 down at what serial number point -- do you need to know
24 from serial numbers forward have the old version and I was
25 told no.

1 VICE CHAIRPERSON CARREL: So the tracking didn't
2 occur?

3 MR. DUNN: No. No tracking. The only tracking
4 that happened was what serial number unit went on what
5 pallet number going out to the customer.

6 VICE CHAIRPERSON CARREL: Can you tell me about
7 the frozen screens. Well, did you test these with TSx
8 machines at all or not?

9 MR. DUNN: No, not with a TSx machines. The only
10 testing -- there was no QC testing involved in the process
11 till maybe the last 10 or 15 percent of the machines. And
12 then the testing was a piece of software we inputted that
13 set up a simulation, where we then put a card in. It, you
14 know, developed a card, you checked it, and then it went
15 out. There was no normal, you know, QC process that I'm
16 used to in an electronics manufacturing environment.

17 VICE CHAIRPERSON CARREL: So Quality Control was
18 lacking significantly?

19 MR. DUNN: Hugely so.

20 VICE CHAIRPERSON CARREL: Or it might not have
21 been.

22 Let me ask you when you heard about what happened
23 with the PCMs in San Diego and Alameda counties, and I
24 assume you did hear about it on election day.

25 MR. DUNN: Heard about it on the radio on

1 election day. I was sitting there. I was working as a
2 rover technician in San Joaquin county. And I was sitting
3 with another technician at the time, who had worked with
4 me also in West Sacramento. And we both looked at each
5 other and laughed and said well, that was predictable.

6 VICE CHAIRPERSON CARREL: Can you tell me did you
7 observe frozen screens or screens that came up to a
8 Windows -- the Windows --

9 MR. DUNN: Yes, a lot of frozen screens.
10 Sometimes frozen to the point where we would have to go in
11 and do a manual reset in the back of the machine, which
12 requires a removable panel and a small reset button that's
13 in there next to the CMOS battery.

14 VICE CHAIRPERSON CARREL: Okay. Any other
15 questions?

16 John.

17 PANEL MEMBER MOTT-SMITH: And I don't think it's
18 for Mr. Dunn, but it's for the Diebold representatives.
19 Mr. Urosevich, I think you just told us that you found out
20 about the PCM problem on the day of the election. This
21 gentleman just said that he advised people prior to the
22 election and was told that Diebold representatives knew
23 about it. Before your response, can you tell me exactly
24 what the nature of that advisement was, to whom it was and
25 what their response was?

1 MR. DUNN: I forget the lady's last name. Her
2 first name was Karen and she was out from the McKinney
3 office. And she explained to me, yes, that they knew
4 about it, and that's why there was the specific
5 requirement to make sure of the 60 to 70 percent battery
6 load in the machines, was that they felt that with the
7 gradual discharge, that that would hold them long enough
8 until such time as they're opened up by the customer and
9 then fully charged and run.

10 It was a known problem. To the extent of it
11 dumping the software, when we pointed that out, when it
12 failed, that's a highly unusual occurrence in any PC type
13 of machine that that happened and we pointed it out. And
14 we were told well just make sure it goes out with the
15 battery charged and we won't have that happen.

16 PANEL MEMBER MOTT-SMITH: So you pointed it out
17 to your supervisor?

18 MR. DUNN: Yes.

19 PANEL MEMBER MOTT-SMITH: And your supervisor's
20 positional responsibility was what?

21 MR. DUNN: I believe was involved in the project
22 management part of the -- there were two supervisors
23 there. One that was just for the techs, who was also a
24 temp. And they reported to a gentleman I believe named
25 Mike Rockenstein based out of the West Sacramento office.

1 So it was fully known by all the techs and
2 everyone there that there was a battery problem.

3 PANEL MEMBER MOTT-SMITH: Okay. I don't know if
4 it's appropriate to have Diebold respond or --

5 CHAIRPERSON KYLE: I think we want to hear a
6 response from them Mr. Mott-Smith. But before I would
7 like to exhaust some questions for Mr. Dunn from the
8 panel. And I believe David and Tony you have questions.

9 PANEL MEMBER JEFFERSON: So you were supposed to
10 charge the batteries before they were delivered to the
11 counties?

12 MR. DUNN: Yes, sir.

13 PANEL MEMBER JEFFERSON: And when were they
14 delivered? In other words, how long before the election
15 were they delivered to the counties?

16 MR. DUNN: We were shipping them out of the West
17 Sacramento office up until probably ten days before the
18 election.

19 PANEL MEMBER JEFFERSON: So at least ten days
20 before and as early as when?

21 MR. DUNN: A month prior.

22 PANEL MEMBER JEFFERSON: So 30 to 10 days.
23 During that 30 to 10 days before the election, the
24 batteries are discharging at some low rate, but you say it
25 was predictable that a large fraction of them would have

1 been discharged by the time of the election?

2 MR. DUNN: Yes, sir.

3 PANEL MEMBER JEFFERSON: Okay, thank you.

4 CHAIRPERSON KYLE: Tony your question went to
5 timing.

6 PANEL MEMBER MILLER: Mr. Mott-Smith asked my
7 question.

8 CHAIRPERSON KYLE: Mr. Carrel.

9 VICE CHAIRPERSON CARREL: Do you know of any
10 information that was provided with the shipments to these
11 counties, or do you know of any other information that's
12 provided to the counties that informed them of the
13 batteries and the status if the status of the batteries
14 were -- or potential problems that you saw.

15 MR. DUNN: No, sir. I have no direct knowledge
16 of that.

17 CHAIRPERSON KYLE: Okay. Thank you, Mr. Dunn.
18 Would you stay close of for a minute, and we're going to
19 ask Mr. Urosevich to come up to the stand.

20 MR. DUNN: Okay.

21 CHAIRPERSON KYLE: Thank you.

22 VICE CHAIRPERSON CARREL: Let me just ask a
23 question related to this, but not directly on Mr. Dunn's
24 testimony. And that is in the letter that was sent to me
25 as Vice Chair of this panel on February 13th from your

1 attorneys at Jones Day, in response to the list of
2 materials that we requested at the January 15th hearing,
3 there was a statement made in there in response to number
4 9.

5 And the request in the January 15th letter number
6 9 was, any documents that -- we request you provide any
7 documentation regarding any modifications to the smart
8 card hardware or software producing the TS or TSx
9 platforms.

10 And my presumption is the smart card encoders are
11 a part of that platform. In the response from your
12 attorneys from Jones Day on February 13th, it states
13 number 9, "As I understand things, DESI does not modify
14 the smart card hardware or software used in DESI's TS and
15 TSx platforms in California, a standard Windows CE serial
16 port driver is used."

17 What was that, a reference simply to the TSx
18 device itself and not the entire system or is it just the
19 system.

20 MR. UROSEVICH: I can't speak for Kevin, but yes
21 I assume that's what it was.

22 VICE CHAIRPERSON CARREL: And so it was not
23 regarding the PCM 500 or 100 devices?

24 MR. UROSEVICH: Probably not.

25 VICE CHAIRPERSON CARREL: So when the statement

1 is by Mr. McMillan, "That I understand that you don't
2 modify the smart card hardware or software," he was
3 referring simply to any modifications in the TSx device
4 and not to any peripheral devices that might have been
5 modified?

6 MR. UROSEVICH: Again, I cannot speak for Mr.
7 McMillan on that, but that would be the assumption if
8 you -- what the question of number 9, how you read it.

9 VICE CHAIRPERSON CARREL: Okay. Well, I read it,
10 the answer, as either avoiding the question or giving us
11 an incorrect answer, if, as Mr. Dunn stated, that software
12 was installed. So if you can explain that.

13 MR. UROSEVICH: Well, you're --

14 MR. DORSE: Mr. Carrel, since I wrote the letter
15 you're talking about, I'll explain it directly.

16 CHAIRPERSON CARREL: Okay.

17 MR. DORSE: Your question, which I believe you
18 read in the record, was were there any modifications to
19 the smart card hardware or software on the TSx or TS
20 platform?

21 VICE CHAIRPERSON CARREL: Correct.

22 MR. DORSE: Okay. Well, the answer -- that
23 question was answered in the way that it was asked, which
24 was the TSx platform. And the answer is in the TSx
25 machine, there is a smart card reader and there is smart

1 card hardware, the driver, and it is not modified, and
2 that's the answer you got.

3 If it was vague or unclear to you, instead of
4 accusing someone of making a lie to you --

5 VICE CHAIRPERSON CARREL: No, I'm not necessarily
6 accusing them of making a lie. I said it was either
7 incorrect or it was intentionally misleading.

8 MR. DORSE: Or misleading. I view misleading as
9 a synonym for a lie, a polite synonym for --

10 VICE CHAIRPERSON CARREL: Or incorrect.

11 MR. DORSE: It's neither. The question that was
12 asked was the TSx platform. The answer is there is no
13 modification to the smart card. In fact, when that
14 question was asked on January 15, you know, the PCM had
15 not been used in an election. You don't refer to the PCM.
16 Clear questions beget clear answers. And your question
17 was clear enough that it was talking about the TSx
18 platform. And that's the answer you got. And it was not
19 in any way, shape or form -- as the person that was
20 involved in trying to answer that question, it was not in
21 any way, shape or form intended to be nor was it
22 misleading.

23 We answered the question about the TSx platform.
24 It would have been absurd to say that there's no
25 modifications to the PCM because there's -- you know,

1 there's work that's done on a PCM, as I understand it.

2 But if you ask about a PCM, you'll get an answer
3 about a PCM. You've got to ask the right question. And
4 I'm not trying to read it narrowly or anything. That
5 never occurred to me --

6 VICE CHAIRPERSON CARREL: Let me ask you a
7 specific question about PCMs then. Did you or did Diebold
8 install software as Mr. Dunn stated, continuing to change
9 the software versions up until close to the election?

10 MR. DORSE: I'm glad you asked that. Let me just
11 say a couple things. The declaration that Mr. Dunn put on
12 the Internet last night or whenever it was, that's when I
13 saw it, has filed a lawsuit and we're the counsel of
14 record. So it's the first I saw of it.

15 He makes a lot of statements, makes a lot of
16 allegations. In the less than 12 hours I've had to look
17 at it and speak to my client, it's our belief that he's
18 either confused or misguided on a number of key points.
19 And we obviously want to be able to address those on a
20 factual basis to you.

21 I don't think it would surprise you that that's
22 hard to do in the context of everything else that's going
23 on without knowing that you were going to put on a direct
24 examination from Mr. Dunn today.

25 The issues raised, we're happy to address them.

1 All I can tell you is that my initial understanding is
2 there are a number of areas where he's confused or
3 misunderstanding, software in particular. I don't believe
4 it's true that software was installed as he's described.
5 The PCM came loaded with an operating system, and the PCM
6 software, as I understand it. I don't believe Mr. Dunn
7 was involved with that. But I could be wrong. I've been
8 wrong before, but that's my initial information.

9 So I don't know what to say. We're not sure what
10 we're talking about, but we're certainly going to look
11 into it, you know, more carefully, and understand this
12 panel wants as direct a response as possible.

13 But Mr. Carrel, by bringing up my firm's answers
14 to the question about the TSx platform and saying that it
15 was evasive or otherwise, I think a fair reading of the
16 question about the TSx platform is going to give you an
17 answer about the smart card on that machine.

18 VICE CHAIRPERSON CARREL: Okay. So what
19 you're -- I'll give you the TS or TSx. But when you talk
20 about a platform, I'm questioning whether a peripheral
21 device is included with the platform. I'm not an expert
22 here. But I've been informed by people who I believe are
23 experts that if a smart card encoder is used as a part of
24 the system that it's included in part of the platform.

25 I won't belabor the point. But I do think that

1 the intent was to find out in that question, and you may
2 have looked only at the words and not the intent. The
3 intent of finding out in that question was whether any
4 Windows CE software was modified with regard to smart
5 cards. And while there may not have been changes in the
6 TSx device, there clearly were modifications to the
7 Windows CE software, the PCM device, with modifications by
8 your company.

9 MR. DORSE: And this is precisely why from our
10 vantage point, we did feel and continue to feel -- I mean,
11 maybe this is the end of everything as far as you're
12 concerned. We feel that an open dialogue on issues and
13 clarifications continues to be useful.

14 Certainly, no one in the months since the January
15 letter has ever come back to me and said now, did you
16 answer that just as to the PCM or did you answer that as
17 to the TSx or both or neither. I mean, I'm a
18 straightforward guy. I tell you exactly what I did. I
19 just did.

20 So you know that dialogue we think is useful and
21 those clarifications can be useful, so that -- you know,
22 so that frankly, if you will, a misunderstanding. I
23 assumed that in writing that question that you weren't
24 writing it in a way to try to trick us into giving you the
25 wrong answer. I give you the benefit of the doubt.

1 VICE CHAIRPERSON CARREL: I did write it in such
2 a way -- I didn't know anything about the information.
3 Mr. Kyle added it, because a question was brought up at
4 that hearing, about that subject. Maybe the question
5 wasn't written as correctly as it should have been. But
6 I'm just confused. I'm confused why we were led to
7 believe that with regard to smart card encoders and maybe
8 it was because we were on the --

9 MR. DORSE: You ought to remove the word encoder.
10 The question doesn't use the word encoder.

11 VICE CHAIRPERSON CARREL: I'm sorry, smart card
12 hardware software.

13 MR. DORSE: I'm smart enough to realize that
14 encoder must be something else.

15 VICE CHAIRPERSON CARREL: Okay. Let me move on
16 to ask a question then about the other statement Mr. Dunn
17 made about all freeze-ups, the battery drains and other
18 such problems that he experienced in production prior to
19 the election, contrasting with Mr. Urosevich's statement
20 that he had no knowledge of this problem until afterwards.

21 And I would also bring up a statement in our
22 March 2nd Election Report related to that Mr. Kyle alluded
23 to earlier regarding Solano county and their testing of
24 the equipment when they got it, and finding problems with
25 it, and then figuring out that it was related to the

1 battery and then addressing it.

2 And seems --

3 MR. DORSE: Those are fair questions. I don't
4 think it's reasonable to expect the company on the fly to
5 give you detailed information sufficient to resolve those
6 questions.

7 All I can tell you is, very quickly, it appeared
8 there were some areas where we believe he appears to have
9 incomplete information. We certainly would like an
10 opportunity to prepare a response, maybe it could be in
11 writing. We can submit that to you, if that would be
12 appropriate.

13 You tell me what you want to do. But certainly
14 the agenda for this meeting, and you know as well as I do
15 that we've had some issues with the sort of notice and
16 clarification of what the agenda is for this meeting.

17 I think it's fair to say that a statement by Mr.
18 Dunn on allegations that appeared on the Internet last
19 night wasn't on our radar screen before midnight.

20 VICE CHAIRPERSON CARREL: It wasn't on our radar
21 screen until yesterday.

22 MR. DORSE: Fair enough. But if you want answers
23 from us, I have no problem with that.

24 CHAIRPERSON KYLE: I believe it was public, in
25 fact, yesterday morning in the Oakland Tribune.

1 VICE CHAIRPERSON CARREL: And that's when we
2 found out about it and found our about him, so we're both
3 in the same boat in terms of timing.

4 MR. DORSE: It was a busy day yesterday. I
5 apologize.

6 VICE CHAIRPERSON CARREL: It was very busy.

7 CHAIRPERSON KYLE: But the fact that you get late
8 notice doesn't mean that you don't have knowledge about
9 it. So going to the question, I'd like Mr. Urosevich,
10 you've already proven how clever you are, Mr. Dorse, and
11 having a narrow interpretation of letters and we
12 understand your interpretation.

13 MR. DORSE: It's Mr. Dorse for the record and the
14 court reporter.

15 CHAIRPERSON KYLE: Sorry, Mr. Dorse, then I stand
16 corrected. And then, Mr. Urosevich, if you could please
17 address it more substantively, we'd appreciate that.

18 MR. UROSEVICH: I'm not sure what the question is
19 Mr. Chairman. Is it on the Solano specific, is it Mr --

20 VICE CHAIRPERSON CARREL: My question was
21 specifically Mr. Dunn made statements that the machines
22 were freezing up in the production process, a month
23 leading up to the election. They were observable
24 problems. They were problems both of battery drain and
25 with the freezing screens and with other things. And that

1 in addition to statements we received from Solano county
2 that they observed the problems prior to the election. I
3 don't know what device they used, the 100 or 500. And I
4 don't know what they observed.

5 But it seems to me that there's -- I guess, the
6 question is, are you making the claim that you had no
7 knowledge of these problems with PCM or your company had
8 no knowledge of the PCM.

9 MR. UROSEVICH: Well, there's a difference. The
10 claim -- what I said was I have no knowledge of the
11 battery drain completely going down prior to an election
12 process. That when the switch was turned off that it was
13 in suspended mode. That's what I answered the question.

14 Specifically on Solano, again I have no intimate
15 knowledge of it. But my understanding is is that they had
16 made a decision not to use the 100 and were going to be
17 using the TSx as the encoder until they got approval from
18 the panel and staff on, I believe, I came up Friday prior
19 to the election.

20 That equipment had been shipped out very early in
21 the process. They were not as -- standard operating
22 procedure my understanding is is that as the equipment was
23 assembled, obviously they were shipped into them.
24 Obviously, there would have been a discharge. They were
25 told to make sure that the charge was up, when it went

1 down. The procedure once it was received at the county
2 was to fully charge the equipment, to get ready to go for
3 the election.

4 That's what my understanding was of the
5 procedures, and I believe that was done. So whether they
6 discharge in the warehouse, as Mr. Dunn may have said, and
7 again I don't know the gentleman, or what. At the county
8 level, they were also instructed to make sure that the
9 batteries were fully charged and that -- before placing
10 them in precinct.

11 Solano, I believe because they sat there so long,
12 once they knew they were going to use it, they were
13 instructed to go fully charge the batteries over the
14 weekend which they did and they were in full operation.

15 A screen freeze -- all equipment has some of
16 those issues -- was reported to us on election day. And I
17 think in our report to the panel and to the staff, there
18 were some rare occurrences of that out in the precincts on
19 the PCM. Reboots were done, and they were moved on.

20 As far as encoding or coding failure or any of
21 those issues, we found none of those as they went through
22 the process.

23 I can't specifically talk about what Mr. Dunn may
24 or may not and who Karen is or who the supervisor was and
25 et cetera, et cetera.

1 CHAIRPERSON KYLE: Any other?

2 PANEL MEMBER MILLER: Just briefly. And this may
3 be redundant but I'll ask it anyway, because I want to be
4 sure. And I'm directing this to anybody from Diebold who
5 knows, the most knowledgeable person. I don't expect you
6 to know the details.

7 But indeed in terms of the company, what did you
8 know and when did you know it with respect to this battery
9 charge problem, which disenfranchised voters in San Diego
10 county?

11 You've indicated that you had no knowledge of it
12 until it occurred. Did anybody? I mean we've heard Mr.
13 Dunn say that he told his supervisor is there -- and
14 you've had, I know, not much time, but you've had 24 hours
15 to at least pursue it, because when this story became
16 public in the Oakland Tribune yesterday.

17 Do you have any knowledge whatsoever that you've
18 been able to ascertain with respect to what the company
19 knew, why did the company advise the counties, as I
20 understand it from your testimony, to make sure they were
21 charged? Why? I mean, if you knew that the failure to
22 charge would cause a critical problem?

23 MR. UROSEVICH: Tony, and again I can only go --
24 I'm not sure anybody that I have with me today was
25 involved in the assembly process at Mister -- at our West

1 Sacramento facility that Mr. Dunn was at.

2 The battery discharge, the way I understand it,
3 is obviously over time batteries discharge.

4 PANEL MEMBER MILLER: Well, especially if the
5 unit has an on/off position, and the battery discharge is
6 in the off position, yes, that would be a problem.

7 I mean it's not just through longevity or sitting
8 on a shelf. I mean, the equipment itself is a problem.

9 MR. UROSEVICH: The instructions to the county
10 were to charge the batteries fully, that when they were to
11 set up in the polling place to plug in the system, because
12 we have to remember these not only run on battery which
13 are used for backup they run on AC power.

14 What happened was when they plugged them in, the
15 batteries, my understanding, had already either had some
16 relationship, and in San Diego the relationship was in 30
17 percent of the counties or so according to their report,
18 had already discharged to the point where an unfamiliar
19 screen came up. The balance of them did not, depending on
20 timing. That's what I know.

21 PANEL MEMBER MILLER: But you're assuming the
22 counties were specifically advised to make sure that the
23 units were fully charged?

24 MR. UROSEVICH: That is correct. That was part
25 of our standard operating procedure before they went out

1 the door.

2 PANEL MEMBER MILLER: And you told them that
3 because you were aware of the problem or you just wanted
4 to provide full batteries?

5 MR. UROSEVICH: We wanted to provide full
6 batteries as we do with the TSx units that go out as well
7 for battery backup, because if the power supply would have
8 went out, or an electrical power would have knocked out an
9 entire precinct, then the PCM would have to run on
10 battery. Of course, we want them fully charged.

11 PANEL MEMBER MILLER: And I'll assume you are
12 vigorously and aggressively pursuing finding out exactly
13 what Diebold knew and when it knew it with respect to
14 this?

15 MR. UROSEVICH: Yes, sir, we are.

16 PANEL MEMBER MILLER: Thank you, appreciate it.

17 CHAIRPERSON KYLE: Mr. Carrel, do you have a
18 question?

19 VICE CHAIRPERSON CARREL: Yes, I have a question,
20 and that's regarding the timelines with the PCMs again to
21 certification. And you came to us on December 22nd after
22 the previous VSP hearing when we had made you aware that
23 we wanted to see everything. You came, you showed us the
24 PCM device. You asked us if we needed to see something.
25 We said we'll see it after you get all the documentation

1 for the formal application, have the federal approval.

2 You then said, well we don't think the Feds need
3 to see it, but we'll submit an application. We then said
4 you need to get either approval from the Feds or you need
5 a letter from Wyle, who will do the testing on it. It
6 took some time.

7 We then denied it initially, and then you came
8 back with that throughout all this time. I guess my
9 question is, before the 22nd, when you came to us and
10 showed us the device, had you been anticipating using
11 these devices in all the counties that eventually used it?

12 MR. UROSEVICH: It was part of our plan to use
13 them as an alternative to the TSx at the time.

14 VICE CHAIRPERSON CARREL: And all the counties
15 that did eventually use it were initially planning on
16 using it?

17 MR. UROSEVICH: Boy, I don't know exactly if all
18 the counties were, no.

19 VICE CHAIRPERSON CARREL: But you had delivered
20 the 100s to some of the counties like you had said Solano
21 or Mr. Dorse said Solano, I'm not sure which of you said
22 that, that Solano had these and decided not to use them
23 because approval hadn't been given and then decided to use
24 them again when approval was given.

25 But others liked the 500s and other 100s were

1 delivered later on in the process, either -- I would
2 assume right after we received the letter and gave you
3 approval on the 23rd?

4 MR. UROSEVICH: I don't know the exact delivery
5 when we shipped or didn't ship.

6 VICE CHAIRPERSON CARREL: I'm just wondering if
7 you were shipping then previous to the certification and
8 approval by this -- this limited certification by this
9 office?

10 MR. UROSEVICH: I do not know.

11 VICE CHAIRPERSON CARREL: Okay.

12 CHAIRPERSON KYLE: Mr. Jefferson.

13 PANEL MEMBER JEFFERSON: So again I just want to
14 ask a couple of questions about the quality of the design
15 of the system. Of course, if the equipment in a precinct
16 fails, people are disenfranchised. It's a case where high
17 reliability has to be built into the architecture of the
18 system. And one of the principles of reliability is to
19 not have any single point of failure, not any single piece
20 of software or equipment or single person, the failure of
21 which causes the system at the precinct to go down.

22 But we in fact have only one PCM machine per
23 precinct, right, in this design, not that it couldn't be
24 modified, but --

25 MR. UROSEVICH: In the California configuration,

1 there was one PCM, yes, sir.

2 PANEL MEMBER JEFFERSON: Right. And so one of
3 the ways to possibly address this is to get rid of that
4 single point of failure by having multiple PCM machines in
5 future designs or something like that. Because that's not
6 the only -- this is not the only failure mode, the
7 battery, but this is one that happened to have hit us.
8 But conceivably something else could have happened as
9 well?

10 MR. UROSEVICH: Mr. Jefferson, I agree
11 wholeheartedly no single point of failure should exist nor
12 does it.

13 PANEL MEMBER JEFFERSON: Nor does it. You don't
14 think that was?

15 MR. UROSEVICH: No. The TSx. You know, let me
16 clarify this. The TSx itself is an encoder as well.
17 There are six to seven of those devices in a polling
18 place. They can be used as backup to burn and encode the
19 cards.

20 PANEL MEMBER JEFFERSON: I wasn't aware of that.
21 This is part of the -- have we trained poll -- I was
22 unaware of it, okay.

23 Thank you.

24 MR. UROSEVICH: Yes, sir.

25 CHAIRPERSON KYLE: Any other questions of either

1 Mr. Urosevich, Mr. Dorse or Mr. Dunn?

2 Okay. Thank you very much.

3 MR. UROSEVICH: Thank you, Mr. Chairman.

4 CHAIRPERSON KYLE: And we're going to take Mr.
5 Dorse's suggestion of a possible written response under
6 consideration.

7 Any so, Mr. Dunn, you can sit down and relax as
8 well. And again folks from Diebold may want to stay put
9 and we'll see how it goes.

10 MR. UROSEVICH: Okay.

11 CHAIRPERSON KYLE: I'm going to call the next
12 person to the podium. Is Ann Barnett in the room, Kern
13 County? Oh, there you are. Great. Hard to see up here
14 with the lights.

15 MS. BARNETT: My name is Ann Barnett. I'm the
16 auditor/controller/county clerk for Kern County. You
17 spell my last name, B-a-r-n-e-t-t.

18 The problems with voting systems, voting and
19 tabulation systems aren't new to California. Registrars
20 have been working with vendors to improve the system,
21 respond to problems and/or changes in the law. Because
22 voters and vendors have had success in responding to
23 problems, this process has mostly gone unnoticed. But
24 then came Florida and now California.

25 New product development involves improvements and

1 sometimes fixes. Anytime, particularly in elections, even
2 though we go through a certification process and approval
3 process, as users we identify things that need to be
4 fixed.

5 And laws change on an annual basis, like
6 provisional ballots, where new requirements, new systems
7 have to figure out ways to deal with that. So we didn't
8 have optimal, but we worked around it.

9 Touch screen voting machines are accurate, of
10 that there's no doubt. Did some counties have problems
11 with peripheral devices? Yes.

12 Did some counties deal with software glitches?

13 Yes. My county didn't. But can they be
14 improved?

15 Yes, you bet.

16 Does that make touch screen voting systems
17 inherently bad or untrustworthy? No. It means you
18 improve the software, you fix a glitch, and you go on.
19 The issue, in my mind in Kern County, where we don't have
20 a problem with our TS machines, is are we going to make
21 political fodder of this or are we going to fix things and
22 move on?

23 Thank you.

24 CHAIRPERSON KYLE: Thank you. And, Ms. Barnett,
25 if you have anything written and you want to submit it,

1 otherwise that's duly noted.

2 I know there was some earlier questions about
3 Kern County, Mr. Miller. Would you mind stepping back up
4 to the podium?

5 PANEL MEMBER MILLER: Yes, I apologize, because I
6 haven't had a chance to talk with you about this. And I
7 just received this document. And maybe it's not even
8 relevant, but it is a portion of the Kern County contract,
9 and I don't expect you to be personally familiar with it.
10 But it appears to -- well, let me read it to you and then
11 you can tell me what it means. And if it's as scary as it
12 sounds to the lay person.

13 It's in Writer 0, and it says that,
14 "The vendor, Diebold, must provide one
15 dedicated voice-grade line in the server
16 room for exclusive use by DESI as a
17 modem support line directly connected to
18 server. Line must be a number that does
19 not go through a switchboard so that
20 after-hours work can be conducted
21 whenever necessary."

22 It sounds pretty scary from a lay person's point
23 of view. It would, on its face, seem to permit DESI to
24 access your server whenever it wanted to for any reason at
25 all.

1 What I'm not sure about is what the server is.
2 Maybe it's some in-joint control thing, which is not maybe
3 significant. But if it's your vote tabulating device, if
4 it's something like that, it sounds pretty scary. And
5 it's unfair to even ask you in this setting, but I'll ask
6 it anyway because I'm an unfair person sometimes.

7 (Laughter.)

8 MS. BARNETT: We write our contracts to hopefully
9 deal with any eventuality. We do know that that is in the
10 contract. We do not have anything hooked up to our
11 server. That is there in the event that it is necessary.

12 PANEL MEMBER MILLER: It sounds like you're
13 giving the keys to the kingdom to a vendor, which even
14 though you're not doing it you say right now --

15 MS. BARNETT: That would only be true if we were
16 to hook it up, and we have not.

17 PANEL MEMBER MILLER: Thank you. I can sleep
18 better.

19 (Laughter.)

20 PANEL MEMBER MOTT-SMITH: Ann, before you go I
21 want to ask you a question. I'm curious whether you
22 received instructions for charging batteries for PCM
23 devices prior to the election?

24 MS. BARNETT: Yes, we did. We used the PCM 100s.
25 And we were told that the battery life is short, and so

1 you need to be -- you need to charge them, and so we did.

2 CHAIRPERSON KYLE: Who told that to you, Ms.

3 Barnett?

4 MS. BARNETT: Our Diebold rep.

5 CHAIRPERSON KYLE: When?

6 MS. BARNETT: We actually -- you want a name?

7 CHAIRPERSON KYLE: No, I asked when. When were

8 you told, a day before the election, two days before the

9 election, ten days before the election?

10 MS. BARNETT: Oh, no. We actually --

11 CHAIRPERSON KYLE: About?

12 MS. BARNETT: We started training in mid-January.

13 And so -- let's see, when we did -- actually, we handed

14 them out in inspector training, a couple weeks before the

15 election. And we had actually charged them at that point.

16 So the timeframe on that, I can't be specific.

17 VICE CHAIRPERSON CARREL: Can I ask a similar

18 question that I asked the Diebold reps, which is when did

19 you take delivery of the PCM 100 devices? And were you

20 planning on using them initially until you found out that

21 they weren't certified, and then decided to use them when

22 they were certified or did you only decide later on?

23 MS. BARNETT: Okay. Initially, we were planning

24 on using the PCM 100s because we did not know that they

25 were necessary to be certified. In our training, we did

1 cover encoding the card on the TSx machines. And in some
2 cases we actually did do that.

3 VICE CHAIRPERSON CARREL: So you had delivery of
4 them prior to -- during the training period. And when was
5 your training period January, February?

6 MS. BARNETT: We only had -- we had prototypes.
7 We didn't actually have the approved model yet.

8 VICE CHAIRPERSON CARREL: Okay.

9 MS. BARNETT: The final model that we used. But
10 when we did the inspector training, we did two levels of
11 training. We had them at that time.

12 VICE CHAIRPERSON CARREL: Okay, thank you.

13 CHAIRPERSON KYLE: Any other questions?

14 MS. BARNETT: Sorry.

15 CHAIRPERSON KYLE: No others?

16 Thank you.

17 Is Cindy Cohn in the room?

18 And is Deborah Hench here?

19 MS. HENCH: I'm Deborah Hench, San Joaquin County
20 Registrar of Voters, and we are a TSx county. We used the
21 TSx as the encoder in our county, simply because I wanted
22 to start training inspectors and clerks in mid-January.

23 And at that time, all we had of the PCM 100s were
24 demos of about six units. We tried training both ways,
25 PCM 100 and the TSx in the first week of classes. And for

1 me it was too complex. So I, at that time, made a
2 decision to just use TSx and tell the company that, you
3 know, withhold any delivery of any other units.

4 But I should tell you that there is a
5 misconception that we, you know, held equipment without it
6 being certified. We had GEMS system installed when we
7 came to the State for the VSP, when we were trying to
8 certify the TSx.

9 At that time, we had taken just the GEMS server
10 and we had a few of the TSx's, but we withheld delivery
11 because we wanted to make sure it was certified. At that
12 time we didn't finish delivery of all the equipment. And
13 until you guys said we could use it, our contract says we
14 can't.

15 But the delay in the timing of when the VSP panel
16 said we could use it was causing us a challenge on what
17 kind of system we could use for the primary, because we
18 have to order ballots, paper ballots, at least three
19 months in advance. And so that was the cause of concern
20 for us. It's also additional cost for paper ballots than
21 the TSx.

22 Our TSx units worked without problem. We had
23 staffing problems, but not unit problems. They counted
24 accurately. And I would say to decertify any TSx would be
25 a disservice to the voters in our county and to the state,

1 because it is a very good system.

2 And security issues. Well, everyone tells me
3 that it's supposed to be on line and it's networked, and
4 ours is not. It is locked in a locked room. And Jim
5 Marsh himself came and he couldn't find a fault with that.
6 I would say don't decertify Diebold. Our system does
7 work. And if there's communication problems with the
8 State from the counties and Diebold, those are issues we
9 should take under consideration.

10 Thank you.

11 CHAIRPERSON KYLE: Thank you. If you could
12 please stay Ms. Hench. I have an initial question. You
13 said that you had some staffing problems but no problems
14 with the TSx.

15 MS. HENCH: Correct.

16 CHAIRPERSON KYLE: Wasn't there a problem with
17 the provisional ballot counting in San Joaquin county with
18 the TSx?

19 MS. HENCH: No, we're the ones that figured out
20 how to work around it.

21 CHAIRPERSON KYLE: Well, wasn't it a work-around?

22 MS. HENCH: It was a work-around.

23 CHAIRPERSON KYLE: So the TSx did not count
24 the --

25 MS. HENCH: It counted the ballots. It said that

1 they're there, but the cross-over parts had to be
2 duplicated into the system in order for those to go into
3 the actual declined-state version. In the summary totals
4 it shows the totals are there, but we had to duplicate
5 those ballots into the DTS part.

6 CHAIRPERSON KYLE: And wasn't that work-around as
7 a result of the inability of TSx to actually do what
8 you're talking -- to tabulate the cross-over vote?

9 MS. HENCH: In the provisional process, it was --
10 this is that -- well, actually it's not the DTS, it's the
11 AP 908 or something. It was the reason of provisionals
12 being able to vote on a partial ballot, instead of the
13 entire ballot. It was not the DTS itself, meaning a voter
14 could go into any polling place and vote the wrong ballot
15 type. What we were told now by law, that we have to
16 duplicate that part of the ballot the voter could have
17 voted on. That was a manual problem, because now we have
18 to print a provisional ballot, put them with the envelope,
19 and then go in and duplicate those ballots.

20 And so that was our work-around. There was a
21 different way to do it electronically, that we weren't
22 able to do because that was the version of the software
23 that was not approved.

24 CHAIRPERSON KYLE: Electronically, it wouldn't do
25 it unless you had that other patch, which was an

1 uncertified patch?

2 MS. HENCH: Right.

3 CHAIRPERSON KYLE: So electronically you couldn't
4 do it, so you created a -- I heard about it, that it was a
5 work-around and that you successfully implemented that
6 manual work-around.

7 MS. HENCH: That's correct.

8 CHAIRPERSON KYLE: Because of the inability of
9 the TSx to perform that?

10 MS. HENCH: Well, it's no voting system. Paper
11 ballots, it doesn't matter. You have to open that paper
12 ballot and then duplicate on to a different ballot in
13 order for a partial vote to count.

14 CHAIRPERSON KYLE: Wasn't it only a couple
15 hundred in your county?

16 MS. HENCH: Luckily this time it was only about
17 200. But that doesn't mean that my county is going to
18 have that fewer in the general, because in the general you
19 have more people voting, and you're going to have more
20 people, you know, going to the wrong polling place and
21 we're going to have the same issue.

22 It's something that's going to be ongoing and is
23 on every voting system in this state.

24 ELECTIONS ANALYST WAGAMAN: And justify a
25 clarification, Mr. Chair, the problem was related to GEMS

1 software not the TSx firmware.

2 CHAIRPERSON KYLE: Thank you for that
3 clarification.

4 VICE CHAIRPERSON CARREL: I have one question,
5 Ms. Hench, and that's related to, as you said you didn't
6 take delivery of any hardware until after we certified it.
7 I'm wondering, though, about the contract that you had
8 with Diebold, was it for TSx equipment or was it for TS
9 equipment?

10 MS. HENCH: It was TS. And then I submitted a
11 change order to the VMB board for a change in the TSx.
12 And the reason was there's a cost savings. We would save
13 over \$27,000 in our contract immediately. And then over
14 time we would save, because we no longer would have to
15 hire a company to deliver systems to each polling place.
16 Instead we could do as we had in the past, and that was
17 having the inspector pick up the units themselves and
18 deliver them back.

19 VICE CHAIRPERSON CARREL: And here the PCM 100s
20 included in the contract or included in the change order
21 including in your plan. And so --

22 MS. HENCH: Yeah, they were included.

23 VICE CHAIRPERSON CARREL: -- when that
24 happened --

25 MS. HENCH: You know, even today we now have

1 received a shipment of them, but we haven't completely
2 signed off on them. We haven't tested them.

3 VICE CHAIRPERSON CARREL: Okay. But was your
4 contract with Diebold ever modified?

5 MS. HENCH: Yes.

6 VICE CHAIRPERSON CARREL: It was, okay.

7 Thank you.

8 CHAIRPERSON KYLE: Any other questions from the
9 panel for Ms. Hench?

10 Thank you very much.

11 Is Freddie Oakley here?

12 Ms. Oakley.

13 MS. OAKLEY: My name is Freddie Oakley. It's
14 O-a-k-l-e-y.

15 Good morning and thank you for this opportunity
16 to address the panel. I'm the elected clerk/recorder for
17 Yolo County, California, which is right across the river
18 from here and the home of UC Davis.

19 UC Davis is the institution that I've employed to
20 help me prepare for the new era in voting, and in fact
21 Matt Bishop, who is an expert on intrusion studies in
22 computers has been my consultant as I've gone forward with
23 this process.

24 My purpose in speaking here today is to
25 communicate that there exists a difference of opinion

1 among county election officials concerning electronic
2 voting, in particular paperless voting.

3 I support the Secretary of State's effort to
4 bring oversight to the use of these systems, and I share
5 his concerns regarding these systems.

6 I've expressed my concerns regarding paperless
7 electronic voting to my colleagues many times over the
8 resent years. I've published newspaper and magazine
9 articles expressing my views. I'm certainly not a Levite.

10 For one of my graduate degrees in science from
11 Yale, I satisfied the foreign language requirement by
12 demonstrating proficiency in a computer language.

13 Before today, I have scrupulously refrained from
14 arguments that attack the intelligence or probity of my
15 colleagues who hold a different opinion than I. The
16 Secretary of State has been equally restrained. I am so
17 concerned now by the intransigence of election officials
18 and their attacks on the Secretary of State's authority
19 and discretion, that I feel compelled to question the
20 wisdom of that decision.

21 And it grieves me to say that. These are my
22 colleagues whom I've worked with amicably for many years.
23 I am unable to discern any public benefit in the behavior
24 of my colleagues, except that they hope to protect the sum
25 costs of their technology purchases, thereby protecting

1 the public treasury from the cost of making things right.

2 However, whatever fiscal cost of restoring --
3 whatever the fiscal cost of restoring reliability to
4 California's elections, it is de minimus when weighed
5 against the cost of abandoning the principle that every
6 vote counts.

7 I urge this panel to carefully consider the
8 shortcomings of certain of these systems, especially the
9 Diebold system as made evident by the abysmal performance
10 in the March Primary. And I urge you to consider your
11 sacred trust to act on behalf of those California voters
12 whose interests are perhaps not adequately protected at
13 the local level.

14 Thank you.

15 (Applause.)

16 CHAIRPERSON KYLE: Please -- Thank you. Any
17 questions from the panel?

18 I know you had to leave because of a recent
19 operation, so thank you for being here.

20 CHAIRPERSON KYLE: Michael Smith, Registrar of
21 Voters from Marin county.

22 MR. SMITH: Hi. I was going to say good morning
23 but, I think we're already into the afternoon. My name is
24 Michael Smith. I'm the -- I have a number of titles. I'm
25 the county treasurer, tax collector, public administrator,

1 county clerk and, yes, I'm also the county's registrar of
2 voters for Marin county.

3 I want to first off say that voting, there can be
4 nothing more important than the integrity of the election
5 systems than the outcome of those results. And what
6 registrars struggle with and I struggled with when I added
7 this extra area of responsibility in '99. I've been with
8 the county for well over 20 years.

9 But I looked at the complexity of California's
10 election laws, and I'm not so sure that the speaker that
11 was just here before me would disagree, but they are at
12 the point where registrars, even much more knowledgeable
13 than myself, had said that California's elections are at
14 risk of failure due to the complexity of California's
15 election laws. And bear in mind, this statement was made
16 before we even had the debate about voting systems.

17 I want to also say that I think that this process
18 is coddled by politics, and I don't like it. I'm a
19 declined-to-state. I'm an elected official and I don't
20 take a dime from anybody. And so I'd like to see the
21 corporate counter-parts and those involved with the
22 purchasing of election systems, including our Secretary of
23 State, irrespective of some campaign political reform and
24 finance reform, take their independent action not to take
25 campaign contributions period, because the process should

1 be free of any undue influence.

2 That's point one.

3 Point two, Diebold is a company that I looked at
4 because that was a relationship that we entered into not
5 voluntarily. Initially in '99 when I took on the job of
6 registrar, I looked at -- a majority of the voters in the
7 State were using punch-card ballots. And the evolution of
8 technology is a recent phenomenon. I don't think that the
9 leadership, the vision or the competency is there when we
10 don't even have good communication.

11 And I'm seeing the failure of communication
12 between the Secretary's office and Diebold, and it may be
13 clouded by politics. I'm very guarded by that.

14 In Diebold's defense when I looked at this new
15 partner that I have now a relationship with, I looked at a
16 more contemp -- an equally contemporary topic that's being
17 debated today, and that is one of the notion of corporate
18 governance. What's going on in the corporate board rooms
19 and how does that transcend down to the workplace and
20 workers that are affected. I've even provided your office
21 with a copy. And then as the treasurer I look at
22 corporate governance now in evaluating companies that I'm
23 doing business with.

24 And let me just share with you something here
25 with respect to Diebold in defense of them with respect to

1 what's going on within their corporate board room.

2 They among -- their industry rating is 91.7
3 percent. They outperformed, and that's 91 percent of
4 their corporate governance rating, which is, you know, 100
5 percent, it doesn't get better than that, right. But they
6 are at 91.7 percent of companies in the technology and the
7 hardware equipment group.

8 Now that said, no one company is always going to
9 get it and be perfect, because we're in an era where
10 technology is evolving. It was only yesterday we were
11 using punch cards. Here we're approaching another
12 presidential and we have the issue before us of touch
13 screen to paper ballots. We use paper ballots in Marin
14 county. But we need to look at each of the vendors, and
15 there needs to be a good working relationship with them
16 for those that are currently doing business in the state,
17 such that, at the end of the day, we improve upon the
18 systems we have.

19 And yes, the paper trail component within touch
20 screen voting, anything that gives a greater assurance to
21 the voting public and addresses that concern is needed.

22 I'm struggling right now, I've been sitting back
23 for years now. I have an application pending for Prop 41
24 funds. As I look ahead to January of '06 and I'm
25 certainly not interested in entertaining a lawsuit in our

1 county, but I'm unaware of any voting system being
2 certified in the state that would allow us to even meet
3 the HAVA requirements.

4 I'm hoping that the work of the Secretary's
5 Office with vendors, and no one vendor could -- no one
6 vendor system would not come under this similar criticism
7 that even Diebold here has today, when you examine them
8 closely.

9 And I think that, you know, as we go forward, the
10 politics need to come out of the equation. We need good
11 decisions going forward, and we need some action that
12 helps registrars, because we're caught in the middle. And
13 in the middle is the complexity of the new voting
14 technology and how do you wade through that then. And
15 then you add on top of that the complexity of California's
16 election laws, and at the end of the day the finger gets
17 pointed, not at the Secretary of State, at the local
18 registrar.

19 And I found it to be really an almost impossible
20 job. And still that Marin county head is well above water
21 and our election systems and the results of those
22 elections are beyond question.

23 I was very bothered given recent interactions as
24 we approached the March Primary when three weeks before
25 the election we were confronted with some certification

1 issue on the chip, and this was alluded to earlier by the
2 panel here, 196.4 versus going back to 194.W.

3 And on the weekend hours I worked with
4 Chairperson Kyle, Mark Kyle, here trying to get some
5 conditional certification. This was not a position that I
6 liked being in, in the 11th hour changing chips in
7 hardware knowing that the existing chip we had where we
8 had a recount on an election down to one vote where the
9 results were verified.

10 And yet I was three weeks before with staff down
11 there changing chips, running test ballots, doing logic
12 and accuracy and crossing my fingers and hoping like hell
13 that something doesn't blow up on March, because no one
14 registrar wants to be in the headlines. So I need the
15 Secretary of State's office. I need the vendors to get
16 past the lack of communication and truly deliver the
17 leadership, vision and competency to assist local
18 registrars as we set out at the end of the day in
19 reporting election results for our community.

20 Thank you.

21 CHAIRPERSON KYLE: Thank you. Any questions for
22 Mr. Smith?

23 As I said earlier, Mr. Smith, we shared your
24 frustration on that last incident as mentioned.

25 MR. SMITH: Thank you.

1 CHAIRPERSON KYLE: Is Robert Kibrick in the room?

2 MR. KIBRICK: Yes. My name is Robert Kibrick.

3 That's K-i-b-r-i-c-k. I'm a registered voter in Santa
4 Cruz, California. And I'm here today representing
5 Verifiedvote.org, which is a nonprofit non-partisan group
6 that supports the concept of verifiable paper trails. I
7 submitted written comments to this panel on April 6th, so
8 I won't go through those in detail.

9 I simply wanted to encourage you to take to heart
10 the stories we've heard today about the problems that
11 occurred on March 2nd, and to look carefully at the
12 pattern of behavior of this one vendor, in particular
13 Diebold, over the many months going back to the audit
14 results that were reported in the December VSP meeting
15 through what we've heard here today. And certainly to
16 encourage you to take strong and effective action to send
17 a signal to other vendors that the sorts of behaviors that
18 we have seen over the months with installation of
19 uncertified software and been putting counties in
20 positions, such as what we've just heard, where people are
21 given these difficult 11th-hour decisions, this kind of
22 performance, this kind of behavior, should not be
23 tolerated.

24 I'd also like to renew a request I made having to
25 do with the Diebold investigation at both the December and

1 January meetings. I've sent communications to this panel
2 and to Mr. Wagaman having to do with the certification of
3 the TSx, whether the configuration that was tested at the
4 Independent Testing Authority did or did not include a
5 wireless LAN card. I have been asking that question
6 repeatedly since January. I have yet to receive an answer
7 from either the Elections Division, from this panel or
8 from the Federal Elections Commission, and the Elections
9 Assistance Commission, which has taken on that function.

10 Thank you.

11 CHAIRPERSON KYLE: Any questions from the panel?

12 Thank you very much Mr. Kibrick.

13 We have someone who's got to catch a flight to --
14 if they have haven't left already -- to the Philippines.
15 So I'm going to ask Faith Bautista to come up to the --
16 she ran out of here to catch the flight.

17 I'd like to ask Chris Norby, Supervisor from
18 Orange County to come up.

19 ORANGE COUNTY SUPERVISOR NORBY: My name is Chris
20 Norby. I am a Supervisor from the County of Orange, the
21 4th District. I specifically represent the cities of
22 Anaheim, Fullerton, Buena Park, LaHabra, and Placentia.
23 But the county that I serve is now the second largest
24 county in the State. We have the second largest number of
25 voters. And I think that our experience will be helpful

1 to the panel in deciding where to go with the information
2 that you have.

3 Our March 2nd election we used the Hart
4 InterCivic System. It is an electronic system. It is not
5 a touch screen. We call it the E-slate. It's the one
6 where you have to move a dial at the bottom. It's sort of
7 like the old Etch-A-Sketch. You see something on the
8 screen, but you don't touch the screen, you move the dial
9 at the bottom.

10 And we chose this system because we felt it was
11 more effective and more efficient and more accurate than
12 the touch screen systems.

13 We had over 500,000 people voting in our primary
14 election, 6,000 volunteers over 1,100 polling places
15 throughout the county of Orange. And of course there were
16 challenges as there are with any new system whether it's a
17 new car or a new suit or a new house. But we feel that
18 these challenges are manageable and we feel that the
19 lessons we learned from these challenges can help us make
20 the November election even more successful and free of
21 problems.

22 Following the election, we held a thank you
23 barbecue about a month later for the volunteers. We had
24 about 3,000 people come to this event, both volunteer
25 workers and their families. And there we systematically

1 gathered information through focus groups, through asking
2 them questions, through written information. All five
3 members of the Board of Supervisors were there at this
4 even. We got a lot of good and helpful information.

5 Also, following the election, the Chairman of our
6 Board of Supervisors, Chairman Tom Wilson appointed myself
7 and my colleagues, Supervisor Campbell, Supervisor Bill
8 Campbell, former legislator, now supervisor of the 3rd
9 district, to hold regional hearings throughout the county
10 and gather information from people, voters and volunteers
11 as to what we can make better from this system that we
12 chose.

13 We had three hearings in Irvine, Fullerton and in
14 Santa Ana. And the hearings went on for about six hours.
15 We had over 50 people testify at these hearings. And the
16 testimony ranged from very, very positive, no problems to
17 those that were critical of the system, as you might
18 imagine, as all hearings are.

19 Some people said hey, it was too much of a
20 hassle, I'm going to vote by mail. Others said hey, I
21 came in, I was going to turn in my absentee ballot. And
22 it looked so much fun voting by this new system, I decided
23 to go with it.

24 Mostly, the improvements that we can make in this
25 system were things that we can make with any system.

1 Better voter training in terms of introducing them to a
2 new system. Proper labeling. We combined, as you often
3 do in a Primary election, you'll combine precincts into a
4 polling location, which might have several precincts.

5 And simply properly labeling the roster so the
6 volunteers know that there are multiple precincts within
7 each voting area will be helpful. And this, of course,
8 we're going to be doing. Getting more poll workers
9 involved in the election process is important. Many of
10 our poll workers are older. They've done this for a
11 number of times and now they're literally no longer able
12 to do it or physically no longer around. So we're trying
13 to educate a whole new generation of people that
14 volunteering to work at the polls is important.

15 We have a very successful outreach to the local
16 high schools, in terms of getting high school workers in.
17 And high school workers can be as young as 16 or be
18 seniors in high school. And that's been effective. We
19 have identified, however, a glitch in State law, which
20 says that if a high school poll worker volunteers to work
21 in the polls that it's counted as an excused absence, but
22 the school does not get its average daily attendance, so
23 schools are actually penalized for allowing their
24 workers -- their students to work in the polls. And there
25 is pending State legislation which we believe you are very

1 much in support of, which would allow that.

2 I'm a former high school government teacher
3 myself. And allowing a kid to work at the polls, a
4 13-hour day working at the polls, is certainly an
5 educational experience, worth missing one day of school
6 for.

7 We're working on better notification of people as
8 to where they vote. Many of us are creatures of habit.
9 We're used to voting at this school or at this church.
10 And when for some reason that polling place is moved, we
11 oftentimes don't look at our sample ballot, we go to where
12 we've gone before. But sometimes by necessity these
13 things have to be done and we're working on that.

14 We don't believe simply throwing out the entire
15 system and going back to paper ballots, as some
16 legislators would suggest, is the answer. Some say, well
17 we don't want to be like another Florida. But the reason
18 Florida had this problem is because they had paper and
19 cardboard, and of course because they had a very, very
20 close election, which was going to determine who the next
21 President of the United States would be.

22 And any State where you have an election that is
23 close for the presidency, and you're using paper and
24 cardboard, of course you're going to have controversy.

25 So to simply go back to the old system, we don't

1 think is the answer. Yes, there have been problems with
2 other electronic systems, especially your panel is looking
3 at the Diebold system. The Diebold was one of the
4 finalists of Orange County. We're choosing between one of
5 about six different systems.

6 And we finally chose the Hart system, because we
7 thought it was the best and most efficient electronic
8 system. So you simply should not link all the systems
9 together, and throw all the babies out with the bath
10 water, because there are a number of different babies and
11 there are a number of different baths. And some of the
12 bath water is still pretty clear and good enough to use
13 again in November. We feel that ours is.

14 We feel especially important that this is a
15 decision of the Secretary of State. The Secretary of
16 State is not a glorified bureaucrat. He is, after all,
17 elected by the voters of the State of California. And by
18 statute the Secretary of State, your boss, is the one who
19 should make these decisions.

20 As important as these decisions are, legislators
21 should hesitate to make snap decisions based on certain
22 reporting in the papers.

23 This is the Secretary of State's decision. I'm
24 confident that should the Legislature pass legislation,
25 the Governor will likely veto it, because he as a

1 constitutional office holder should defer to the Secretary
2 of State.

3 The Secretary of State has said that by the 2006
4 election all electronic systems must have a verified paper
5 trail. We're willing to live with that in Orange County
6 and work with our vendor to make sure that occurs. By
7 November it would be too soon to do it. But simply
8 because we can't have a paper trail by November, and
9 because the Secretary of State hasn't required it, doesn't
10 mean we should go back fully to a paper system, because
11 there are problems with all voting systems.

12 And the reason we're going to an electronic
13 voting system from a paper system is the same way we went
14 to the electric light from a kerosene lantern. Yes, there
15 are problems with it but it's better than kerosene and we
16 believe that the electronic system overall is better than
17 simply going back to paper and cardboard.

18 If you're going to look at specific systems that
19 failed, look at those systems. Our system isn't perfect.
20 No system is. But we feel that the lessons that we have
21 learned and the outreach we've done since March will make
22 our system better in November. And we feel that we want
23 to stick with that system and continue to work with your
24 office in a positive way.

25 Thank you for giving me this opportunity to

1 speak, and we wish you all the best in the recommendations
2 you'll make to the Secretary of State.

3 CHAIRPERSON KYLE: Thank you, Supervisor Norby.

4 VICE CHAIRPERSON CARREL: I have a question.
5 Thank you for not describing the Secretary's not a
6 glorified bureaucrat although sometimes maybe I feel like
7 I am. And not about, but I feel that way about me.

8 (Laughter.)

9 ORANGE COUNTY SUPERVISOR NORBY: You're his
10 deputy. You were appointed by him. That makes you all
11 bureaucrats. In other words, no job security, but more
12 power.

13 VICE CHAIRPERSON CARREL: I will say your comment
14 on what you said about student poll workers, yes, we are
15 supportive of that legislation. We'd like to see that
16 pass. And we feel that students are among the best poll
17 workers that come with the most energy and the most
18 passion.

19 I do have a comment, though, about what you said
20 about certain legislators pushing to decertify all
21 electronic voting systems. One of them represents your
22 county.

23 ORANGE COUNTY SUPERVISOR NORBY: Right.

24 VICE CHAIRPERSON CARREL: And then you made a
25 reference to the Governor hopefully deferring to the

1 Secretary of State. I would think he would, he is the
2 Governor, and he makes his own decisions on legislation.

3 And I know that the Senator representing your
4 county, Senator Ross Johnson --

5 ORANGE COUNT SUPERVISOR NORBY: We've been in
6 touch with his office and I'll be meeting with some of his
7 people later on today.

8 VICE CHAIRPERSON CARREL: Okay. Yeah, my
9 question is, is he representing the views of not only the
10 Board of Supervisors in your county, but do you have any
11 sense of the people of Orange county and the people who
12 voted?

13 ORANGE COUNT SUPERVISOR NORBY: We had six hours
14 of public testimony. We heard from almost 100 different
15 poll workers and voters. And, of course, I got phone
16 calls, I got Emails. I would say about 85 percent were
17 very supportive of the system. They gave us suggestions
18 as to how to make it better. Obviously, when you hear
19 from people, the percentages that aren't happy are usually
20 a lot more than the people that are happy, because they
21 don't contact you.

22 So I think overall once they realized that it is
23 not a touch screen system. I mean I worked the polls
24 myself. I was a volunteer worker. I had 13 hours at the
25 polls. I helped them. I escorted them in. I said, okay

1 move the dial, it moves here, punch number. Oh, I see.
2 Once they did that, they were pretty happy with the
3 system.

4 The difficulty for us was getting -- we had so
5 many different ballots, different languages. We had a
6 primary system where they had to vote according to party.
7 You had this new glitch in the law, which people had never
8 experienced before, which I was aware of, which said that
9 even if you're a declined-to-state, you can vote in part
10 of the Democratic Primary, and part of the Republican
11 Primary, and I think part of the Peace and Freedom
12 Primary.

13 So a lot of the poll workers were asking people
14 right then, okay, you're a declined-to-state, but do you
15 want to vote Democrat or Republican. There was a lot of
16 confusion. Some people thought they had to re-register on
17 the spot or they were being asked to say what preference
18 they had, when we were simply giving them an option, which
19 was brand new.

20 So we had all these things thrown at us. And I
21 think under those circumstances, the system worked fairly
22 well and the voters were fairly happy with it.

23 I think that the term electronic voting system
24 has been merged together in legislator's minds, and
25 they're looking at these all together rather than trying

1 to pick them apart. And we are working with Ross
2 Johnson's office. We have a very close relationship with
3 him, and we'll be working to refine that legislation.

4 But our board of supervisors has gone on record
5 as opposing the bill as currently written.

6 VICE CHAIRPERSON CARREL: Thank you very much.

7 ORANGE COUNTY SUPERVISOR NORBY: Thank you.

8 CHAIRPERSON KYLE: Any other questions from the
9 panel?

10 Thank you very much, Supervisor.

11 Is Carmen Spurling here. She also had a time
12 constraint, and maybe I blew that time constraint as well.

13 Carmen Spurling?

14 All right.

15 ELECTIONS ANALYST WAGAMAN: She left her
16 comments and I'll enter it in the record.

17 CHAIRPERSON KYLE: Okay. Thank you very much.
18 We'll enter those into the record.

19 Great.

20 Is Cindy Cohn here.

21 MS. COHN: Yes. Thank you. Good afternoon. My
22 name is Cindy Cohn. I'm the legal director of the
23 Electronic Frontier Foundation based in San Francisco.

24 I'd like to take the panel -- oh, my name is
25 spelled C-o-h-n, though it's pronounced Cohn.

1 I would like to thank the panel for the
2 opportunity to address you on this important topic. EFF
3 believes that the very integrity of our democracy is at
4 stake in this debate. I apologize to the panel, but I do
5 have to leave. I have a speaking engagement that I must
6 make elsewhere. But I would like to address, if I may,
7 very briefly Agenda items 1 through 3.

8 I believe that addressed together they paint a
9 very clear picture of what decisions need to be made in
10 order to ensure a secure and accessible vote for the
11 November election.

12 The Electronic Frontier Foundation is a San
13 Francisco based nonprofit public interest organization
14 dedicated to protecting civil liberties in cyberspace.
15 EFF represents the interests of the public, both in court
16 cases and in the broader policy debates surrounding the
17 application of law in the digital age.

18 EFF is supportive of the Secretary of State's
19 decision to require paper trails and other security
20 measures by the mid-2006. Events since then however have
21 demonstrated that the security dangers, as well as the
22 practical difficulties arising from the use of
23 computerized voting machines are much worse than we had
24 believed.

25 As to agenda Item 1, concerning Diebold, this

1 panel is well aware that Diebold failed to abide by
2 California Election Law and Procedures. The State
3 Election Code contains two fundamental checks to ensure
4 that the systems that Californians use have not been
5 tampered with.

6 First it requires that all elections systems in
7 whole or in part be decertified prior to any use.

8 The certification requirement ensures that the
9 Code works as advertised and falls within at least a
10 minimum security -- minimum level of robustness and
11 security.

12 Second, it requires that a complete copy of any
13 elections system be placed into escrow, ensuring that the
14 State can check for tampering. It's now established that
15 Diebold violated both of these requirements, putting the
16 security of the March 2nd election in jeopardy. And it
17 did so in every single Diebold voting machine used in the
18 state.

19 This was no momentary lapse or experimental
20 system or emergency situation. Breaking California
21 election law appears to have been business as usual at
22 Diebold.

23 As yesterday's Oakland Tribune demonstrated
24 Diebold's Efforts after this was revealed appear not to be
25 focused upon fixing the problem, instead appear to be

1 focused on paying their attorneys thousands of dollars to
2 find ways to evade taking responsibility for breaking the
3 law.

4 I'm quite familiar with the ordinary software
5 development practices and recognize that ongoing releases
6 of updates and patches are commonplace for mass-marketed
7 software. But the same is not true for machines running
8 sophisticated mission critical systems. And it is
9 certainly not true for machines where maintaining the
10 integrity of the Code is an important issue. And both of
11 these are true for our election machines.

12 I'm also quite disturbed by the pattern I've seen
13 in the scientific studies that have been done with the
14 Diebold code. I think it's important to remember that
15 while Professor Avi Rubin did a study that is of recent
16 memory, several years prior to that, there was some
17 research done by some investigators with the University of
18 Iowa as part of the Iowa certification processes in
19 looking at Diebold code that discovered the exact same
20 errors, such that these sorts of errors, these design
21 errors that have acknowledged now were known for several
22 years by Diebold, prior to the Rubin/Wallach study. They
23 were found again in the SAIC study. They were found again
24 in the RABA study. There's a pattern here of failing to
25 fix errors that I think is quite troubling and ought to be

1 quite troubling to this committee.

2 Also, I was Professor Rubin's and Professor
3 Wallach's attorney for purposes of figuring out whether
4 they could do the study on the Diebold code. And I
5 must -- I didn't want to say this, but I must really
6 object to the characterization that this was a homework
7 project.

8 This was a significant study. I believe that
9 what Mr. Rubin said was while they thought they were going
10 to do -- and I can tell you honestly -- that they thought
11 they you were going to take two months to look at this
12 code. After a weekend, the amount of time they would
13 spend on a homework project, they discovered such serious
14 concerns that they went public much sooner than they had
15 anticipated.

16 This reference to a homework assignment was a
17 reference to the fact that the problems in the Diebold
18 code were so prevalent and so easy to find, that you could
19 find them in the course of a homework study, rather than a
20 full study.

21 Now, as to agenda Item 2, it's now clear that the
22 widespread problems with electronic voting machines cause
23 widespread disenfranchisement in several counties in the
24 state of California. I believe others are going to
25 address that. And given that time is short, I will not.

1 But I do want to point out though, because that's the
2 second point that led us to our conclusion, that we need
3 to urge decertification of these machines in time for the
4 November election.

5 Now, in urging the Secretary of State to
6 decertify, we are sensitive to the requirements of the
7 disabled and non-english speaking communities who have
8 benefited tremendously from these systems. And I believe
9 that ensuring accessibly voting must remain of paramount
10 concern.

11 We believe, however, that any attempt to construe
12 this discussion as a trade-off between secure and
13 accessible voting presents a false choice. While
14 long-term solutions are more elegant, we believe that for
15 the purposes of the November 2004 election accessible
16 voting can be accomplished by the counties by relying on
17 their current optical scan systems used for absentee
18 ballots.

19 As for disabled voters, counties can meet their
20 requirements of reasonable accommodation under the federal
21 law in one of several ways. For Tom this may mean
22 conditionally certifying assisted technologies that allow
23 accessible voting on optical scan systems. The company
24 ES&S just introduced one, but there are several others
25 around.

1 Second, there are for some -- for others, there's
2 equipment, some being certified by Sequoia AccuPoll and
3 Avante. They will offer certified machines for use by the
4 November election. And they may be possible to secure
5 sufficient numbers of those to allow one machine per
6 polling place that is a DRE, but also has a paper trail.

7 We suggest that the Secretary of State spend some
8 time to try to assist counties in locating, and if
9 necessary sharing paper-trail equipment to allow this to
10 occur.

11 Now, if none of these solutions are appropriate
12 for a particular county, and I recognize that there are
13 going to be different questions for different counties, we
14 suggest that counties be allowed to permit the county to
15 petition the Secretary for a one-time waiver of the
16 decertification order in order to allow the county to
17 create a few specific locations for the use of
18 non-paper-trail machines, as long as these locations are
19 staffed by election officials with specific training and
20 general training in these machines in case there are
21 glitches or failures, but also specific training in the
22 use of helping disabled people and non-english speakers
23 use these machines, because we've had quite a few reports
24 that these machines actually didn't work so well for those
25 communities and that the people at these polls were unable

1 to assist them with the special assisted technologies that
2 they contain.

3 We also suggest that the Secretary require that
4 any such machines be used in the California elections
5 comply with additional security measures, at a minimum
6 those discussed in the RABA Report.

7 EFF applauds the Secretary of State and this
8 panel for the courageous steps that you've taken so far to
9 ensure secure voting in California. Unfortunately, the
10 computerized voting machines being used and sold today
11 that do not contain paper trails simply are not ready for
12 prime time.

13 And the risk of injuring our democracy is too
14 great for us to simply cross our fingers and hope that the
15 significant problems we've experienced so far won't occur
16 in November. Accordingly, EFF Urges the Secretary of
17 State to immediately decertify all voting equipment that
18 does not contain a paper trail and to make the sorts of
19 reasonable accommodations that I've mentioned above.

20 Thank you.

21 CHAIRPERSON KYLE: Thank you. Are there any
22 questions from the panel?

23 Mr. Miller.

24 PANEL MEMBER MILLER: Actually, I think, I may be
25 wrong, but I think I'm the lucky recipient of some 13,700

1 Emails from your web site directed to the Secretary of
2 State, but using my address.

3 MS. COHN: I apologize. If you would have called
4 us, we would have put it to the right address.

5 PANEL MEMBER MILLER: No need to apologize. I've
6 been able to avoid a lot of other work, since those 13,700
7 Emails.

8 (Laughter.)

9 MS. COHN: Well, I hope that aside from the
10 announcement, you recognize that we did that in actually a
11 pretty short period of time, and the rate of response was
12 tremendous.

13 PANEL MEMBER MILLER: The technology works very
14 well.

15 (Laughter.)

16 MS. COHN: But the number of people is real, you
17 know. Those are a lot of people. It's a pretty small
18 subset.

19 PANEL MEMBER MILLER: Actually, could you explain
20 how that works. I mean these are form Emails. Are they
21 real people?

22 MS. COHN: Oh, yes. What happens is we send out
23 an alert to our readership on our newsletter saying if
24 you're concerned about this, come to our web site, we can
25 assist you in sending Emails where you can voice your

1 concerns directly. They are a comment system. Lots of
2 nonprofits have them. And individuals come. They fill
3 out a form. You've got the names of all the people who
4 sent these things, and identifying information.

5 If you wanted to double check you can -- I'll
6 show you our audit logs too. Individuals come to our web
7 site. They fill out the form and all we really do is give
8 them a sample letter, which they can change, and we make
9 sure that it goes to the right address. Apparently there
10 might have been a glitch in that.

11 PANEL MEMBER MILLER: It gets there. I mean, I
12 do make sure that it gets to the right address.

13 MS. COHN: It was an alert that was sent only to
14 California residents. I mean, we have many more members
15 and supporters nationwide, but we limited this.

16 PANEL MEMBER MILLER: Oh, dear.

17 (Laughter.)

18 MS. COHN: We limited this to California, because
19 we thought it was especially important, and we didn't want
20 the California voices to get diluted in a broader sea,
21 which I can guarantee you we could have at least doubled
22 or tripled it, if we'd gone national, because -- I know
23 this because, you know, EFF got involved in this issue
24 because we heard from our members that this was important
25 and that we needed to get involved. So we are responsive

1 in some ways.

2 PANEL MEMBER MILLER: So it's not just your
3 mailing list itself. That's all.

4 MS. COHN: No, no, no. This is a public -- you
5 can go to our web site, if anybody wants to do it now.

6 PANEL MEMBER MILLER: No. No, never mind.

7 (Laughter.)

8 MS. COHN: You can go to our web site, but this
9 goes to -- goes out with our weekly newsletter. It's also
10 available on our web site.

11 CHAIRPERSON KYLE: I'm going to move it along.
12 Thank you. It's been very interesting learning about that
13 and thank you for your time.

14 Would Los Angeles County Registrar of Voters
15 Conny McCormack please come up.

16 MS. McCORMACK: Members of the panel, thank you.
17 I'm a little bit confused. I thought we were on Item 1,
18 and that last didn't seem to be on Item 1.

19 I certainly understand the Supervisor from Orange
20 County having to leave. I would like to begin -- I'm
21 compelled to make a response to Freddie Oakley from Yolo
22 County's comments about her colleagues, and also was not
23 on Item 1, I don't think.

24 But first of all, she mentioned that these
25 counties had bought this equipment and it wasn't accurate

1 and they didn't know what they were doing, and apparently
2 they were just wasting -- now, they're concerned about
3 wasting the county's money or something. So I just think
4 that's -- first of all, Freddie Oakley has never used
5 electronic voting equipment in her county. The other
6 counties have. And you've heard today from those who have
7 come to the podium, such as Ann Barnett and Debbie Hench
8 and others who have used the equipment at Diebold and used
9 it successfully.

10 I would also like to add LA county to that
11 picture. We've been using Diebold equipment successfully
12 for three and a half years. It has passed the tests at
13 the federal level. The accuracy has never been
14 questioned. Indeed, I don't believe in your own
15 certification processes, when you looked at the equipment,
16 it has ever failed to count votes accurately. And surely
17 you wouldn't have even allowed even a conditional
18 certification to equipment that didn't count accurately.

19 So it's been approved at the federal and state
20 levels to count accurately. Even though we weren't
21 privileged to have a copy of your report on the election
22 until it was out on the Internet last night, almost close
23 to midnight, and didn't have an opportunity to look at
24 this, there is a review of what your own panel decided to
25 do as to a parallel monitor to check the accuracy of

1 electronic equipment in the state. That's one of the
2 things you wanted to do and the counties did that.

3 Most of those counties, to my understanding, I
4 wasn't one of them chosen, but my colleagues have told me
5 that they were told they would be given the results of
6 that parallel monitoring before the end of their
7 certification process for the March election. They were
8 not. They have now received it at around midnight last
9 night.

10 But I think most importantly it doesn't really
11 matter what I say or what Freddie Oakley says, it really
12 matters what you say in your own report, which says in the
13 report that the results of the reconciliation analysis
14 indicate of the parallel monitoring that the DRE equipment
15 tested on March 2nd, which was all the equipment in the
16 state, in all of the Diebold counties, record the votes as
17 cast with 100 percent accuracy.

18 That's not my statement. That's yours. So I'm
19 having a little bit of difficulty dealing with the
20 accuracy issue, and the fact that there is still no proof
21 or evidence of any electronic voting system in this
22 country counting ballots inaccurately. Indeed, the
23 problems have been with paper-based systems, which we're
24 all very familiar with. And indeed several counties had
25 problems with it in the March election that -- and some of

1 those counties are here today, Napa Valley being one of
2 them, and has been very forthcoming about what occurred
3 with those systems.

4 So I know I've planned on speaking on number 3,
5 but I would like to mention that as John Mott-Smith is
6 aware over the last several years, over two years we've --
7 right around two years, we've been in contract -- working
8 on a contract with Diebold to finalize tabulation of our
9 elections on their system, and that would -- that's a huge
10 contract. It's a contract that we have to have the
11 capacity to count our ballots in the future on these
12 systems we've been working toward, because our own
13 grand-fathered-in system that LA county has been patching
14 and using for about 30 years is now not in HAVA
15 compliance.

16 And we made that decision two years ago with our
17 whole county systems, and our engineers and our IT people.
18 And my chief administrative officer is here today to talk
19 about this situation on item number 3 later, and with our
20 board of supervisors determined to move into this
21 direction and order a full contract to count ballots on
22 the GEMS system, which we had hoped to do in the March
23 election, but we were unable to do for many reasons that
24 you're aware of.

25 So therefore we don't have the capacity -- it was

1 a three-year expectation if we'd moved into just trying to
2 revise our current system. We don't have three years to
3 get to HAVA compliance, and we've been in a two-year
4 contract. So those are some of the repercussions that
5 would be devastating to LA County should Diebold be
6 decertified. And if we decertify, we would have nothing
7 but inaccuracy and inaccurate tabulation in Los Angeles
8 county.

9 Thank you.

10 CHAIRPERSON KYLE: Thank you. Any questions from
11 the panel?

12 Thank you very much, Ms. McCormack.

13 I want to take a break in a few minutes, but I'm
14 trying to juggle the various requests we've had for
15 timeliness. So I'm going to do the last two that I think
16 are timely, and then we'll take a break.

17 Is Bev Harris here?

18 Then Tracey Graham after Bev Harris. And then I
19 think we can take a break.

20 MS. HARRIS: My name is Bev Harris, and I'm from
21 blackboxvoting.org, a national watchdog group for voting.
22 I'm here on behalf of our California constituency.

23 I don't have that much to say, because so many
24 people have said it first.

25 But what concerns me is you see voting is a

1 public trust. And on topic number one, Diebold, we have a
2 company that lies. Yes, I'll say it lies. Up here this
3 morning they were saying they've made all the changes in
4 the software to fix the multiple flaws. They would have
5 never been found in the beginning if I hadn't found their
6 files on the web site, by the way.

7 But you see there's something called release
8 notes. It's a legal document. It is something that must
9 show everything you did and did not change when you put
10 out a new version. I obtained the release notes for GEMS,
11 which miscounted nearly 3,000 votes on March 2nd in San
12 Diego county. It's the central tabulator. They did not
13 fix any of the problems. I have those now on the
14 Internet, because I -- don't believe just me, go look.

15 This stuff was never corrected. I don't know
16 what to say. How can you have a company say we want
17 secret software that nobody, even the county registrars
18 who are here testifying on their behalf, is allowed to
19 look at. And when you look at it, you find flaws. And
20 then they say oh, you don't know what you're talking
21 about. So you turn it over to scientific panels. They
22 find flaws. They say, oh, don't worry about it, we
23 corrected it, and that's a lie.

24 I'm sorry. This is our vote. Our ancestors died
25 for the right to vote, and we need to get out there and

1 protect it. And if it's a little awkward and it gets some
2 people kind of upset, so be it, we've got to roll up our
3 sleeves and get our there and fix this thing.

4 Now, Diebold will shut me down if I put the link
5 to where I put these things on my web site. They did that
6 last fall. They shut down my web site for nearly a month.

7 So I'll read it into the record. You can find
8 all the release notes of GEMS and their touch screen
9 machines and see for yourself they did not correct these
10 problems. Their web address is home.comcast.net/~ --
11 which is the little squiggly do -- texex/releasenotes --
12 all lower case -- .zip.

13 You'll also find another group of files in which
14 they claim to the Secretary of State, according to their
15 lawyer's notes, that they made no changes to the voter
16 card encoder software. That's under the same address
17 except that the last -- after the last slash it says
18 NewDieboldMemos.zip and each letter in that -- each word
19 in that is capitalized.

20 As for, very quickly, the need to have a paper
21 ballot. Folks, the vote counting is of bookkeeping.
22 We're making it this big fancy computer problem. All it
23 is is accounting. We've got to be able to show our work.
24 This is exactly equivalent to saying let's throw away the
25 invoice, let's throw away all our canceled checks, let's

1 throw away our bank statements, let's get rid of all our
2 receipts. We're going to just believe what the bookkeeper
3 put into computer.

4 By the way, when the bookkeeper lies, you've got
5 a problem. I had a bookkeeper once that lied about such a
6 simple matter, one mailed letter. And it had nothing to
7 do with anything. But it bothered me. I had him audited.
8 It turned out he'd stolen \$8,000 from my company. If I
9 didn't have paper records, I could not have found that if
10 I just looked at his computer records.

11 But let's look at some other very simple things
12 about the paper ballot. San Diego county --

13 CHAIRPERSON KYLE: Ms. Harris.

14 MS. HARRIS: Yes.

15 CHAIRPERSON KYLE: Can you take a minute or two
16 and wrap it up.

17 MS. HARRIS: It's very quick. San Diego county
18 sent \$33 million worth of voting machines home with 1,600
19 poll workers without even checking for their ID. I want
20 to show you what Diebold put on as the seal. I thought it
21 might have just been San Diego, but no they did this in
22 Georgia too.

23 It looks like this, slightly larger. You do have
24 to cut it off, but they gave them extras. If we had a
25 paper ballot, it probably wouldn't matter because you'd be

1 able to see if somebody had done something they shouldn't
2 have. Right now in San Diego nobody has any idea what was
3 on those machines, because they sent them home with people
4 for a month before the election and they didn't even check
5 the ID of these people.

6 And I will wrap it up, because people will speak
7 eloquently about paper ballots. But I do urge that we
8 decertify Diebold. It is time, as Jim March said, to vote
9 them off the island. You can't step up and tell lie after
10 lie after lie and count my vote. And my California
11 constituents feel the same way.

12 Thank you.

13 CHAIRPERSON KYLE: Thank you very much. Any
14 questions from the panel?

15 Thank you very much, Ms. Harris.

16 I'm noticing that Tracey Graham can actually
17 testify a little bit later. So I would prefer if we could
18 take a 30-minute break and then we'll put Tracey Graham on
19 first.

20 Thank you.

21 (Thereupon a lunch break was taken.)

22

23

24

25

1 AFTERNOON SESSION

2 CHAIRPERSON KYLE: Let's go back on the record.

3 Some people will speak to item number 3, because of
4 timeliness issues which we had promised earlier in the
5 day. I want to remind everyone before we get started
6 again to turn off your cell phones and your pagers or put
7 them on silent or vibrate or whatever you need to stop
8 them from beeping.

9 So here's what I'm going to do, I'm going to
10 carve out a couple of exceptions for folks who are
11 indicating they have planes to catch mid-afternoon, one
12 person having to leave momentarily. And then we're going
13 to go back to testimony strictly on Item 1. We are here
14 talking about Diebold, the investigation of Diebold,
15 accusations that have been raised, the report that's been
16 issued. And if folks could keep focused on that, I'd
17 appreciate it.

18 Now, having said that, again I'm going to make an
19 exception for the couple of folks who have a timeliness
20 issue. And I want to ask Tracey Graham to come up and
21 make a statement, please.

22 Tracey Graham.

23 Okay. She's asked to leave in ten minutes to
24 catch her plane.

25 MS. GRAHAM: Mr. Chairman, and members of the

1 Voting Systems Panel, my name is Tracey Graham, spelled
2 G-r-a-h-a-m. And I am the president of the Sequoia Voting
3 Systems.

4 I'd firstly like to thank you for accommodating
5 my schedule, and my comments are really relevant to Item
6 number 3. And I do have other representatives here today
7 and tomorrow to take any questions on behalf of Sequoia,
8 but I felt it very well important that I make some remarks
9 myself.

10 As the panel is aware, Sequoia is a California
11 based company with a 100-year track record of supplying
12 high quality voting equipment supplies and support for
13 elections administrators. Our company's values underpin
14 our every action. We align ourselves to the values of
15 security, integrity and trust in all that we do.

16 In our history, we have produced punch-card
17 voting systems, optical scan technology, and for the last
18 25 years, we have helped officials conduct extremely
19 successfully elections with two different types of
20 electronic voting systems. During the 25 years Sequoia
21 has been supplying electronic voting equipment, our
22 technology has never been victimized by a security breach.

23 Sequoia shares the concerns of this panel and
24 many of the members of this audience after witnessing some
25 of the problems that took place in other counties during

1 the primary and recall elections.

2 However, we strongly believe that the
3 inappropriate actions of other companies should not be
4 used as the reason to punish Sequoia or indeed our
5 customers. I am proud, very proud to report that the
6 touch screens we provided to California counties performed
7 extremely well during the October recall election and
8 again during the local elections in November and performed
9 consistently well in our counties during the presidential
10 primary elections in March.

11 The six counties that used more than 14,000
12 Sequoia touch screens during the primary all reported
13 extremely successful elections and a very positive
14 experience for poll workers and for voters.

15 The systems Sequoia counties deployed is a tried
16 and tested product and has received all of the required
17 State certification criteria long ago. The equipment our
18 counties received from Sequoia was delivered on time or
19 ahead of schedule. The initial implementation and
20 training the counties received was provided by what I
21 firmly believe is the most experienced and capable
22 operational support team in the industry.

23 The proper system design, the track record of our
24 product, the experience of our support team and the effort
25 expended by our client counties all came together to

1 ensure an exceptional voting experience in March.

2 Sequoia will continue to provide that same level
3 of support for our customers in November and will be able
4 to offer some additional support to other counties if
5 called upon to do so.

6 While we do not believe our competitors would
7 ever act in a way that would intentionally compromise the
8 accuracy of an election, compliance with all the legal
9 requirements surrounding elections is of paramount
10 importance. Perception is nearly as important as reality
11 when it comes to elections and to voter confidence.

12 We think it is very important for the panel to
13 look closely at the issues that occurred in other vendor
14 counties in March and make a determination if those issues
15 are likely to be resolved before November.

16 We also suggest you look at the options available
17 to you and make a determination whether those alternatives
18 will be more or less problematic than the existing system.
19 We believe that the decertification of all DRE voting
20 systems would create an enormous risk for the state and
21 create potentially catastrophic problems in November.

22 When the State decertified precinct punch cards
23 in 2001, this office suggested that the most responsible
24 approach would be to provide counties with five years to
25 make the transition to another technology.

1 That timeframe was changed to four years and then
2 the courts ruled that the State had to abandon that
3 technology by 2004.

4 It now appears evident that the accelerated
5 timetable was problematic for some, but not all counties
6 in the state. Requiring a change in voting systems just
7 six months prior to a national election in all 14 DRE
8 counties, which represent 6.5 million registered voters
9 and nearly 45 percent of the entire state could be an
10 invitation to disaster.

11 DRE systems have repeatedly proven to be more
12 accurate and accessible than all other voting
13 technologies. To abandon that success in favor of less
14 reliable technologies, which are known to count a large
15 percentage of all ballots cast, would be in error by the
16 states. And it is this State that helped lead the way in
17 voting reforms and the modernization of elections.

18 As this panel and the Secretary consider options
19 for November, I believe the State can and should have a
20 great deal of confidence in the electronic voting systems
21 provided by Sequoia voting systems. Voters and poll
22 workers routinely praise our system for its ease of use,
23 accuracy and accessibility.

24 There are some fairly compelling statistics from
25 the recent primary that back up the benefits of Sequoia's

1 DRE voting system. We researched the residual rate of
2 votes not cast for ballot measures during the California
3 primary and found that the rate of votes not cast was
4 dramatically lower for Sequoia DRE customers than it was
5 for the balance of the state.

6 For example, the official statement of vote
7 published by this office showed that 8.7 percent of voters
8 who turned out to vote in the primary recorded a no-vote
9 for Proposition 57. When you look closely at the turn-out
10 statistics, you will see that in those counties that used
11 Sequoia's touch screens for precinct voting the number of
12 votes not cast is below three percent.

13 When the Sequoia DRE counties are removed from
14 the statewide total, the balance of the state reported
15 nearly a ten percent residual rate. Which means that
16 voters who voted on Sequoia touch screens were three times
17 more likely to have their vote counted than voters using
18 other systems.

19 More voters have access, more ballots are
20 completed correctly and more ballots are tabulated
21 accurately when Sequoia DRE systems are used.

22 Having said that, Sequoia understands and
23 appreciates the value that voter verified paper records
24 will have for voter confidence. While they are not an
25 essential component of a secure and accurate election,

1 they will address the concern of a number of voters.

2 As I mentioned earlier, we cannot overstate the
3 value of perception in the electoral process. Sequoia is
4 in the process of seeking federal certification of our
5 voter verified printer, which will provide them with a
6 paper record that they can review and accept or revise
7 prior to casting their ballots and leaving the polling
8 place. This feature will be available as an upgrade to
9 all existing Sequoia touch screens and will be used for
10 the first time this fall in the State of Nevada.

11 We believe that our product meets or exceeds all
12 federal requirements as well as the draft standards
13 circulated by this office.

14 CHAIRPERSON KYLE: Ms. Graham, could you --

15 MS. GRAHAM: I'm coming to a close on this issue,
16 I promise.

17 We will seek State certification as soon as
18 possible. But unfortunately we do not believe it is
19 likely that the product will be available for all of our
20 California customers in time for the presidential election
21 this November.

22 In closing, we are pleased to have played an
23 important role in the State's transition from error-prone
24 paper-based election systems to the recent implementation
25 of the most user-friendly, accessible, reliable and

1 accessible voting technology available today.

2 Thank you.

3 CHAIRPERSON KYLE: Thank you.

4 Mr. Jefferson, you indicated you had a question.

5 PANEL MEMBER JEFFERSON: So you were on Topic 3
6 now, not Topic 1. And so sorry this is out of turn.

7 So you keep mentioning the words "accurate,
8 reliable, accessible" but I do not hear the word "secure".
9 And then -- which is different. And I also -- you made a
10 remark which I would like to then question. That while
11 you are -- you appreciate the value of adding a voter
12 verified paper trail to allay the concerns of some voters,
13 you do not consider it to be a contribution to the
14 security of the system.

15 But in the last 14, 15 months, almost the entire
16 computer security computing in the United States has taken
17 the opposite position, that they feel it is absolutely
18 essential for a secure electronic voting system. How
19 would you respond?

20 MS. GRAHAM: Mr. Jefferson, I have
21 representatives here that will be able to answer any
22 questions you have in more detail, both later today and
23 tomorrow.

24 If I could just make a couple of remarks that I
25 think may be helpful. Sequoia is trying to take a

1 leadership position in the marketplace by listening to the
2 requirements both of the proponents for a voter verified
3 paper trail and for the proponents of electronic
4 verification and we are pursuing both of those options as
5 part of our development.

6 When we introduced our first DRE touch screen in
7 the state of California in Riverside County, we did so and
8 stand behind the accuracy and security of this system. We
9 are demonstrating a leadership position in moving forward
10 with new ideas for our products.

11 Just a couple of comments, however, and I'll make
12 one about the report, if I may. Sequoia provided our
13 source codes, all of our equipment to an external company
14 to review and come up with suggestions or areas that the
15 product could be improved, part of a security risk
16 assessment.

17 Despite access to our code, testers were unable
18 to create any calls for use in the system. They were
19 unable, even with our codes, to attack without detection
20 any part of the system. I just need to make that as a
21 statement, that we voluntarily gave our code to our
22 equipment, and at that time it was the latest version of
23 certified code in the state, and they were unable, despite
24 having all of our equipment, to launch a successful
25 attack.

1 PANEL MEMBER JEFFERSON: Do we have a copy of
2 that report?

3 MS. GRAHAM: I can provide that language to you,
4 but that is a true fact.

5 PANEL MEMBER JEFFERSON: I believe I would like
6 to see the report of course.

7 Okay, but back to my question. So if I thought
8 that -- I think you said that you recognized the need for
9 some sort of a verification. You are questioning
10 whether a paper trail style of voter verification is the
11 best method, is that what you're saying?

12 MS. GRAHAM: What I'm saying is we are going to
13 try to meet all the different requirements because there
14 are a number of our customers that would like to move
15 forward with a voter verifiable paper audit trail, and
16 believe that their voters or the Boards in question would
17 see that as an option. There are other customers that see
18 the logistics, the operational issues that may come out of
19 that, as not the route to go. And therefore, we will work
20 with them on an electronic method.

21 PANEL MEMBER JEFFERSON: Thank you.

22 CHAIRPERSON KYLE: Thank you very much.

23 MS. GRAHAM: Thank you.

24 CHAIRPERSON KYLE: I'll call the supervisor from
25 Riverside County, Mr. John --

1 RIVERSIDE COUNTY SUPERVISOR TAVAGLIONE: I'll
2 pronounce it for you.

3 CHAIRPERSON KYLE: Thank you.

4 RIVERSIDE COUNTY SUPERVISOR TAVAGLIONE: It's
5 Tavaglione. I'm going to move this because I don't want
6 to step on this.

7 Mr. Kyle and members of the Commission, thank you
8 very much. I'm John Tavaglione and I'm a member of the
9 Riverside County Board of Supervisors. On behalf of my
10 colleagues on the Board and Registrar, I want to thank you
11 for allowing me to speak today.

12 I'd like to speak today on Item 3. And we urge
13 you -- Riverside County urges you not to decertify the
14 electronic voting systems for the November election, and
15 we have three compelling reasons.

16 First, is noncompliance with federal mandates.
17 The second would be existing State and county agreements.
18 And the third would be operational and fiscal
19 consequences.

20 I'm going to first start off with the federal
21 mandates. Both the federal court order for nine counties
22 and the Help America Vote Act required more accurate and
23 accessible voting systems that can be implemented in nine
24 counties throughout the state.

25 Now, we were not one of those. And as the prior

1 speaker mentioned, Riverside County was the first in the
2 state of California to implement electronic voting. We
3 did so about five years ago. We've gone through four
4 major elections and one sample election when we
5 implemented the first system in a small city recall and
6 it's worked flawlessly. And we have not had any problems,
7 and we continue to not have problems with our system.

8 County and state agreements to consider
9 decertification of the most accurate and only fully
10 accessible voting system available in the State does not
11 reflect the will of the people.

12 It was only two years ago on March 5th that the
13 voters of California approved Prop 41 to allow for \$200
14 million in bond money to purchase electronic voting
15 systems. And that system has now been -- that process has
16 now been started. Many of the counties are here to
17 testify on behalf of their systems.

18 Riverside County to date has received seven and a
19 half million of our \$14 million investment. In fact,
20 Secretary Shelley traveled to Riverside County and very
21 graciously presented us the seven and a half million
22 dollar check from Prop 41, and commended our county for
23 taking the lead throughout the state of California and for
24 doing the right thing and for implementing an electronic
25 voting system. Now, it appears he doesn't feel that those

1 systems are working properly.

2 Riverside County has complied with the legal
3 requirements imposed by both HAVA and Prop 41 and signed
4 the appropriate agreements for the state to receive our
5 proportionate shares. As it relates to the operational
6 and fiscal consequences, with the county -- excuse me the
7 candidate filing period for the November election,
8 commencing less than three months from now, there surely
9 is not sufficient time nor the resources to wash away the
10 electronic voting system and go back to ballot counting.

11 I just don't know how we're going to do it. I
12 don't know how other counties are going to do it, and I
13 think you're going to -- if you do decertify, it will
14 surely disrupt the entire system.

15 Voters, county staff and precinct workers would
16 have to be subject to relearning an entirely new system.
17 Early voting programs, which we implemented as part of our
18 electronic voting system, would have to be disbanded.

19 Recruitment of poll workers has been easier with
20 the new voting system, because the procedures have been
21 streamlined. With a major election ballot, supply boxes
22 weighed eight to 100 pounds. And reconciliation of those
23 thousands of ballots and cards took 14 days and resulted
24 in human error and time delay.

25 Recently, we went through a major recount of an

1 election, a supervisorial election, there were no flaws in
2 the electronic aspects of the recount. There were certain
3 errors, double counting, double voting by certain voters
4 in the paper ballots, and we did find those errors.

5 We can provide you with a less -- I won't read
6 you excerpts from one of our poll workers about how she
7 believes the system has worked so much better since the
8 paper ballots. And we'd be glad to provide you with
9 hundreds of letters from our poll workers.

10 Voter confidence remains high, and the written
11 surveys are consistently reflecting a 95 to 99 percent
12 approval rating in Riverside County. And to convert our
13 DRE system to a countywide optical scan system
14 conservatively would cost a minimum of \$5 million in
15 Riverside County alone.

16 The County of Riverside is having to take \$126
17 million, unrelated now to the electronic voting, because
18 of State actions, State budget foul-ups over the last four
19 or five years -- Riverside County alone, as a large
20 county, 5th largest county in the state of California --
21 will have to take a \$126 million hit from the State budget
22 and now you're asking us to add to that hit by redoing --
23 or doing away with the electronic voting system.

24 In summary, I'd like to remind Secretary Shelley,
25 Mr. Kyle, we've had the opportunity to talk, the Secretary

1 praised all California counties in October 2003 during the
2 statewide special election because the election was done
3 in half the normal time, preparation time.

4 Many of those counties continue to use the DRE
5 system and they use them very successfully. Riverside
6 County as well as others have had multiple successful
7 elections as I mentioned earlier four -- in the last four
8 years and one sample election making a total of five years
9 in existence.

10 Only California's DRE system complies with
11 federal and State laws which require voting systems to be
12 fully accessible to voters with special needs, this man
13 behind me with his guide dog. We have a very, very
14 diverse county, Riverside County, as most southern
15 California counties are.

16 Why do we want to go back into the dark ages,
17 print ballots at a huge cost and a very time-consuming
18 process, when we can do so through our electronic voting
19 system.

20 Voters can currently verify their selections,
21 review the screen, either make a change on their screen
22 before they submit their ballot, confirm their choice and
23 then cast their ballot. And this takes -- this reduces
24 significant -- having to implement the optical base system
25 would not allow us to do that.

1 There is a paper audit trail in which either the
2 summary totals or and/or ballot images can be printed for
3 the purpose of manual recount of election results.

4 So we'd like to make some recommendations. We
5 think it's time for the Secretary of State to take a
6 leadership role and to build upon the voter confidence of
7 the state of California voters and what has been achieved
8 through the existing and current DRE systems that are in
9 place.

10 Let's not go back 20 years. Let's not go back
11 into the dark ages. If you have security issues that you
12 need to deal with certain manufacturers, then that's a
13 fair thing to do. But when a system works such as the
14 Sequoia system has worked successfully for four and a half
15 years in Riverside County, don't leave us in the dark
16 ages. We don't want to go back to the dark ages.

17 Kevin Shelley said it best when he signed the
18 rebuttal to the argument of Prop 41 in 2002. And he said
19 and I quote, "This is no time for political scare tactics.
20 The right to vote and the right to have your vote count
21 are fundamental values in our democracy. Prop 41 goes a
22 long way toward guaranteeing those rights." This is when
23 he was an Assembly Member.

24 Rather than premature and unjustified,
25 shoot-from-the-hip discussions of decertifying voting

1 systems, it is recommended that the Secretary of State
2 carry out the will of the electorate in the State of
3 California when they passed Prop 41.

4 Continue to work and support your counties --
5 your counties that took the big step and converted to
6 electronic voting, support them, strengthen the testing,
7 training and simplify the election-day procedures, not
8 complicate them by introducing unnecessary and costly
9 changes. Reaffirm the use and confidence of the existing
10 State certified DRE voting system for the imminent
11 November 2nd, 2004 election.

12 Thank you for your time. I'll take any questions
13 that you have.

14 CHAIRPERSON KYLE: Thank you, Supervisor.

15 Any questions, panel?

16 Thank you very much.

17 And our last exception to the subject matter
18 rule -- would David Janssen please come up.

19 MR. JANSSEN: Thank you very much, Mr. Chairman.
20 I'm David Janssen. I'm the Chief Administrative Officer
21 for Los Angeles county.

22 I want to first of all thank you for the
23 education that I've had this morning. In my position I
24 don't often learn the details of what goes on, and the
25 organization. I certainly have learned a lot about what

1 goes on in voting in California. And I can attest to the
2 fact that the confidence that the citizens have in the
3 vote is an important issue. It is not the only issue that
4 we worry about in government. We have health and safety
5 to worry about as well.

6 But the confidence of the voter in the system is
7 very important, in Los Angeles county. I don't have to be
8 here today. We didn't buy the equipment. We were going
9 to buy the equipment. We were on a path to buy the
10 equipment, but we stopped when the Secretary of State
11 issued the new requirement for a voter paper trail. It
12 doesn't exist. And I'm not going to spend \$100 million on
13 a system that doesn't exist. It wasn't a tough decision
14 actually.

15 But we used electronic voting simply for early
16 voting. It is a convenience to our voters. We've done it
17 for three and a half years. They are very satisfied.
18 We've not had problems with it. A decertification for
19 that purpose would mean we would not able to do early
20 voting in Los Angeles. We still obviously would be able
21 to conduct an election for the four million people that
22 are registered in Los Angeles county.

23 I had the opportunity in the last three elections
24 to work the polls myself. The recall election was
25 chaotic, I guess would probably be the best way to state

1 it. Although, the March Primary was extraordinarily
2 difficult. And I will confirm what Supervisor Norby said,
3 that the system that is being used is not the only issue
4 we have when we vote in California.

5 The laws are extraordinarily complicated. The
6 training is very critical. The age of the poll workers is
7 extraordinarily important. Working the polls is a tough
8 challenge in California. It doesn't matter whether you
9 use paper or whether you use electronics.

10 The point I really want to make, since my primary
11 responsibility is worrying about money. And in any
12 organization, I can attest to the fact that there aren't a
13 lot of people that worry about money. Most people worry
14 about programs. There was one, I think, the Registrar
15 from Yolo County said money shouldn't be an issue. Well,
16 I guess they must have plenty of money in Yolo county. I
17 know that we don't. And I know even more that you don't.
18 The State of California has got a \$22 billion problem. We
19 don't just spend the money for the hell of it.

20 And if your staff report is accurate, that the
21 March election was -- the votes were counted with 100
22 percent accuracy, and I don't know how else to read that
23 statement that's buried in the report, then there is no
24 explanation for causing us to spend \$20 million or \$30
25 million one time on a short notice -- and it's clear from

1 the testimony that you can't implement these systems
2 quickly. That's where you get into trouble is trying to
3 do it quickly -- that we can't afford nor should you
4 require when it's worth it to spend that kind of money.
5 And I would be happy to take the \$11 million check back
6 with me that you guys owe us for conducting the recall
7 election, but I don't --

8 (Laughter.)

9 MR. JANSSEN: Thank you adjusting with my
10 schedule.

11 CHAIRPERSON KYLE: Thank you.

12 Any questions?

13 PANEL MEMBER MOTT-SMITH: I do have one.

14 CHAIRPERSON KYLE: Mr. Janssen.

15 PANEL MEMBER MOTT-SMITH: I might have
16 misunderstood, but you don't have touch screens with the
17 exception of early voting. So were you referring to \$20
18 million to \$30 million?

19 MR. JANSSEN: Statewide. Other counties would
20 have --

21 PANEL MEMBER MOTT-SMITH: That's your estimate of
22 a statewide --

23 MR. JANSSEN: Yes. That wouldn't cost me,
24 because I'd simply not do it. But there are other
25 counties obviously who did go out, buy the equipment.

1 They can't use it, they've got to replace it with
2 something.

3 PANEL MEMBER MOTT-SMITH: And do you know where
4 that number came from?

5 MR. JANSSEN: It's on a -- Where did it come
6 from?

7 Asia Pacific Legal Foundation. She will be
8 talking to you, and they're the people that are suing us
9 because we're not doing electronic voting.

10 (Laughter.)

11 CHAIRPERSON KYLE: Thank you very much, Mr.
12 Janssen.

13 Assuming no further questions?

14 All right. Now, back on the subject matter at
15 hand. Diebold investigation, though I am going to make
16 another timeliness accommodation.

17 Cindy Lennon.

18 Is Cindy Lennon in the room?

19 MS. LENNON: My name is Cindy Lennon. I'm from
20 Able-Disable Advocacy in San Diego. That's L-e-n-n-o-n.

21 Able-Disable Advocacy is a nonprofit organization
22 that provides services to people with all types of
23 disabilities including the blind, deaf, mobility impaired,
24 voting disabled, people with psychiatric disabilities and
25 others.

1 We strongly support the use of technology that
2 will give people with disabilities the same opportunities
3 as other citizens. The Diebold voting machines can
4 provide the opportunity for people with certain
5 disabilities, such as those who are blind and those with
6 learning disabilities, the opportunity to vote without the
7 assistance of another individual.

8 As an organization, we strongly support the use
9 of technology to ensure come confidentiality in the voting
10 process for every voter. The Diebold machines are
11 user-friendly and disability friendly. They've been
12 endorsed by the National Federation of the Blind.

13 As a show of support for the efforts of our
14 county to improve voting access for people with
15 disabilities through the use of technology, our
16 organization has offered to work with the Registrar of
17 Voters to provide community outreach and training in the
18 use of the new voting machines, in an effort to increase
19 participation in the electoral process.

20 I think my point would best be made, I'd like to
21 read a letter, by one of our participants who voted using
22 the Diebold machines in the last election.

23 "My name is Michael Meeham. I am
24 totally blind. I've been a registered
25 voter since 1972, and have voted in

1 every local and federal election since
2 that time. This year was the first time
3 that I've been able to truly cast a
4 secret ballot, because the voting
5 machines have been accessible to me.

6 "This was the first time I've not
7 had to rely on another person to read
8 the ballot to me, and that my vote was
9 my private affair. I believe that all
10 people who are blind or have other
11 disabilities that would prevent them
12 from voting in secret will benefit from
13 the Diebold machines. "This technology
14 is of immense benefit for people who
15 need this kind of access to technology."

16 I have another letter, but I'm not going to take
17 the time to read it. I think I've made my point, and I'll
18 just submit it for the record.

19 CHAIRPERSON KYLE: Thank you very much, Ms.
20 Lennon.

21 Members, any questions?

22 VICE CHAIRPERSON CARREL: I just have one. You
23 mentioned that you were working with a registrar in a
24 county. Which county?

25 MS. LENNON: San Diego. We have offered to and

1 they have expressed some interest. So we'll hopefully go
2 forward with that.

3 VICE CHAIRPERSON CARREL: Thank you.

4 CHAIRPERSON KYLE: Thank you very much.

5 Okay. Is Kim Alexander in the room?

6 I saw her earlier.

7 We are back to Item 1 as of the last speaker.

8 MS. ALEXANDER: Good afternoon. I'm Kim
9 Alexander, president and founder of the California Voter
10 Foundation. It's A-l-e-x-a-n-d-e-r.

11 I came before this panel on January 14th and
12 asked you to decertify the TSx. I don't know if you
13 remember that. This committee didn't, even after it came
14 to your attention that it was not federally approved.
15 It's been painfully apparent that Diebold has a problem
16 with certification in this state.

17 But this problem is bigger than just one company.
18 I think that what we're seeing is that to put it bluntly
19 we're all in over our heads with this voting equipment. I
20 want to share with you some of the results from last
21 election.

22 But before I do, my comments are on all three
23 items, so I'm going to jump around here a little bit.

24 The California Voter Foundation is hoping that
25 this panel and the Secretary of State will decertify

1 paperless computerized voting systems and prevent the use
2 of these systems in California this November. And we
3 recommend that counties use paper ballots in polling
4 places, and in the process ensure that voters of our state
5 will vote with confidence.

6 There are a couple of obvious reasons why we
7 should put the Evoting machines away and prohibit them --
8 their use in November. One is because there was
9 widespread technical difficulties with Evoting systems in
10 the March election, which led to voter disenfranchisement
11 and undermined voter confidence in the accuracy of the
12 election results.

13 We've heard about Alameda county, where problems
14 with Diebold smart card encoders impacted 186 of the
15 county's 763 polling places, preventing voters from
16 casting ballots on touch screens during part of the day.
17 In San Diego county smart card encoder problems impacted
18 573 of the county's 1,611 polling places.

19 In Orange County, thousands of voters were given
20 the wrong electronic ballots with their new Hart
21 Inter-civic system and many were unable to vote in
22 contests for which they were eligible. The problems in
23 Orange County and San Diego got the most attention, but
24 there were problems elsewhere as well.

25 In San Bernardino officials waited three hours

1 for the new Sequoia vote counting computer to process the
2 results before resorting to shutting down the computer and
3 starting over.

4 In San Joaquin County a public radio reporter who
5 selected a polling place at random to interview voters
6 found people standing around unable to vote because the
7 TSx smart card encoder machine was not working.

8 In Merced County, ES&S equipment that had been
9 delivered to one city had been programmed with the ballots
10 of another. And we heard examples of problems with the
11 absentee voting systems as well.

12 In Napa county officials discovered their Sequoia
13 optical scanners had not been properly calibrated to
14 detect the various types of inks with which primary
15 ballots would be marked.

16 In San Diego Diebold software attributed several
17 thousand votes cast on paper absentee ballots for
18 democratic presidential primary candidate John Kerry to
19 Dick Gephardt.

20 Last October, Alameda discovered that Diebold's
21 optical scan software attributed thousands of votes again
22 to a socialist recall candidate that should had have gone
23 to Cruz Bustamante.

24 This leads to the second reason why we should
25 decertify paperless electronic systems. They produce

1 results that cannot be verified. Even if everything
2 appears to go perfectly, we can't verify the results.
3 Now, some might point to those examples of the absentee
4 ballot count problems and say well, that's why we
5 shouldn't use paper systems.

6 They have it completely wrong. That's why we
7 need a paper record, so we can verify the accuracy of the
8 software count. Where we have that paper record, we find
9 mistakes and we can recover from them.

10 The registrars say that no system is perfect, but
11 some systems are more imperfect than others. Paperbased
12 systems produce results that can be verified and Evoting
13 systems produce results that cannot be verified and that
14 is simply unacceptable.

15 Whether the voting system errors that have
16 already occurred are accidental problems or intentional
17 efforts to tamper with election results is unknown. What
18 we do know is that technical problems are inevitable,
19 regardless of what voting system is used. And when errors
20 occur with paperbased systems, we manage to recover from
21 them. When they occur with paperless electronic systems,
22 we may not even detect them. And if we do, we can't
23 recover from them.

24 The public has good reason to question the
25 reliability of our voting systems, given the fact that

1 it's become painfully apparent that government at all
2 levels has done a poor job regulating voting systems.
3 Diebold essentially beta tested its new smart card encoder
4 on San Diego and Alameda counties, and the State, federal
5 and local governments let them. Potentially thousands of
6 voters were disenfranchised because of it.

7 For the counties that had purchased and used
8 voting machines that lack federal approval, there are four
9 counties that have done this. They purchased these
10 machines, the TSx, before they were even certified by the
11 State. Seventeen counties were found to be using
12 uncertified software or hardware in a recent survey by the
13 Secretary of State.

14 None of our systems are tested to meet the 2002
15 federal standards. It's the 1990 standards to which our
16 systems are tested, and there is no sign that the federal
17 government has any intention of funding NIST, the National
18 Institute for Standards and Technology, the only federal
19 agency that could possibly implement meaningful voting
20 system standards at the federal level.

21 This panel approved electronic provisional voting
22 systems. It certified the TSx even though the machine had
23 lacked federal approval. It approved the use of Diebold
24 smart card devices knowing it had gone through limited
25 testing.

1 At the county level, registrars have taken
2 delivery of equipment they know is not certified. As
3 Conny McCormack, LA County Registrar told the Los Angeles
4 Times last November, "All of us make changes to our
5 software, even major changes, and none of us have gone
6 back to the Secretary of State, but it was no secret we've
7 been doing this all along."

8 It's bad enough that we are using any software to
9 tabulate ballots given how inadequate federal, State and
10 local oversight of our voting systems is. But the idea of
11 allowing paperless electronic voting systems, which
12 produce results that cannot be verified, given this weak
13 regulatory oversight that exists today, is irresponsible
14 and dangerous.

15 If the Secretary of State or the California
16 Legislature act to prohibit paperless electronic voting in
17 California this November, the 14 counties that purchased
18 these systems have other alternatives. All of these
19 counties purchased and are using paperbased optical scan
20 systems to facilitate absentee voting.

21 Expanding the use of these voting systems is
22 simply a matter of printing more ballots. There is no
23 additional equipment that needs to be purchased and
24 fielded in polling places for an optical scan system. All
25 you need are paper ballots. And in fact, four of the 14

1 DRE counties Orange, San Bernardino, San Joaquin and Napa
2 used their paperbased optical scan systems in polling
3 places during last October's recall election, because
4 their electronic systems weren't ready for deployment.

5 We didn't hear about major catastrophes or
6 Florida-style meltdowns following that election. I'm
7 quite confident that all the counties that are using DREs
8 are perfectly capable of deploying paper ballots in their
9 polling places this fall.

10 In conclusion, some say that we can't afford to
11 change our systems this late in the process. I ask how
12 can we afford not to. Which is the greater risk?
13 Counties having to spend a few extra hours or days
14 scanning paper ballots on election night or the prospect
15 of thousands of California voters again being
16 disenfranchised.

17 Ask Alameda, San Diego and Orange counties what
18 they had to spend in staff investigating the last election
19 problems trying to determine what went wrong? It costs a
20 lot less to maintain confidence in elections than it does
21 to restore it.

22 I'm happy to take your questions.

23 CHAIRPERSON KYLE: Any questions from the panel?

24 Thank you very much, Ms. Alexander.

25 Are you going to be submitting that?

1 MS. ALEXANDER: Yes.

2 CHAIRPERSON KYLE: Is Bill Barnes here?

3 Bill Barnes San Joaquin County.

4 Anybody know if Bill Barnes is around?

5 MR. BARNES: Good afternoon. My name is Bill
6 Barnes, B-a-r-n-e-s.

7 I am the project manager for the electronic
8 voting machines system rollout in San Joaquin county. I'm
9 an IT professional. I have three certifications.

10 I've worked, before I worked for San Joaquin
11 county, as a defense contractor for projects such as
12 StarWars, the Stealth Bomber, F-16, deploying and
13 maintaining IT systems, specifically information gathering
14 systems.

15 The reason I bring this up, security seems to be
16 the major driving issue of today's conversation. The
17 greatest form of security, whether it's military, election
18 systems, what have you, is physical security, things you
19 want to be secured in a place that people cannot get to.
20 I hear about all of these potential software hacks, things
21 of this nature. But I haven't heard anybody say that they
22 have successfully accomplished this and what were the
23 results if they did.

24 So that brings to mind that number one they may
25 not be as easy to do this as people indicate they were

1 being.

2 Two, how much time would it have to do this? Our
3 GEMS server, as Debbie Hench indicated earlier, is locked
4 inside of a glass room. It's visible by the public so
5 that they can see how we conduct elections.

6 And so the question remains, all of this
7 security, who's done anything about it? And if there is,
8 let me know. It's my job to make sure that these systems
9 are secure and continue to be secure. I go to Black Box
10 Org. I go to all the other sites looking for substance,
11 so that I can use this to harden our system. Personally,
12 I haven't found anything yet that is beyond what it is we
13 normally do in our day-to-day business.

14 I have also -- I'm going to keep on topic about
15 Diebold. I feel Diebold has been very helpful in
16 supporting their systems. I feel their equipment is
17 excellent. And believe me, if I had a chance to get the
18 PCM 500, I'd take as many as I could use.

19 I think a lot of the problems were due to lack of
20 adequate time to train for these systems, and they are
21 complex. We use computers for everything. We fly planes
22 with them. We do everything. We certainly can rely on
23 them for this application.

24 But I think we all need to work together to
25 achieve a common cause, so that we can dispel any

1 questions that anyone has about these systems being
2 accurate.

3 I think, according to the report that I had a
4 chance to look at today, they're accurate. There is no
5 question in my mind.

6 Anyway, hopefully I will be speaking on the other
7 two phases of this, so I'll just keep this brief.

8 CHAIRPERSON KYLE: Thank you.

9 Questions?

10 Mr. Jefferson.

11 PANEL MEMBER JEFFERSON: So you say you have been
12 looking for substance. And if anybody's ever been able to
13 break into these systems. Have you read the RABA Report?

14 MR. BARNES: Yes, I have. I've read all of them.

15 PANEL MEMBER JEFFERSON: All right. So then you
16 know that they perfectly well were able to break into
17 these systems in seconds. And I have the report in front
18 of me. I can quote it for you.

19 So why would you make a statement that you have
20 never heard of anybody being able to break into these
21 systems?

22 MR. BARNES: Now the "red team" report that
23 you're referring to there.

24 PANEL MEMBER JEFFERSON: Yes.

25 MR. BARNES: This was not in a production

1 environment. This was in a laboratory environment.

2 PANEL MEMBER JEFFERSON: This makes a difference?

3 (Laughter.)

4 MR. BARNES: It absolutely makes a difference.

5 PANEL MEMBER JEFFERSON: Well, right, to your
6 blanket statement that you have never read anything about
7 anybody breaking into these systems. I'll read you for
8 example how easy it was, all right.

9 The RABA Report says, "red team
10 members were able to guess these
11 passwords. Indeed, the passwords used
12 to protect both types of smart cards
13 provided to the team appeared in the
14 source code that the Hopkins team
15 evaluated. Initial guesses on the
16 team's part provided instant access to
17 the card's contents."

18 Okay, this is not the difference between a
19 laboratory environment and a field environment.

20 MR. BARNES: What did they do with that
21 information?

22 PANEL MEMBER JEFFERSON: They were able to control
23 the system entirely from that information.

24 MR. BARNES: And do what?

25 PANEL MEMBER JEFFERSON: Well, the point is --

1 (Laughter.)

2 PANEL MEMBER JEFFERSON: It's not -- I'm not
3 going to read the whole RABA Report. But the point is the
4 RABA team was able to break into this system without any
5 difficulty.

6 MR. BARNES: My point is is that it takes a
7 minimum of a minute to cast a vote. Even if you do this
8 thing by heart. You went like this, cast, like this,
9 cast. How much damage is someone going to do --

10 PANEL MEMBER JEFFERSON: Well, you're talking
11 about the damage of a voter. And there's a damage if
12 somebody has access to the GEMS system. And there are
13 other players involved.

14 MR. BARNES: Wait a minute here. Now, there's
15 two disparate things. One is the actual ballot station.
16 The other is the server, software where the votes are
17 tabulated.

18 PANEL MEMBER JEFFERSON: Yes, of course.

19 MR. BARNES: Okay.

20 PANEL MEMBER JEFFERSON: Yes. And you don't
21 think that that's part of the discussion as well.

22 MR. BARNES: It absolutely is. But what I'm
23 saying is that in the amount of time that someone would
24 have to do something to the ballot station, they could
25 only affect a certain amount of the results. And by the

1 time that you justified this against the roster, you would
2 know that there was more votes than voters.

3 PANEL MEMBER JEFFERSON: My point is only that
4 your blanket statement that no one has ever been able to
5 break into these systems is just wrong. And if you had
6 read the RABA Report, you would have to agree, would you
7 not?

8 MR. BARNES: Here, again I differentiate between
9 a lab environment and a RealTime, real world scenario.

10 PANEL MEMBER JEFFERSON: Thank you.

11 VICE CHAIRPERSON CARREL: I had a question, but
12 I'm going to reserve -- hold off on it. And if you're
13 planning on coming back for Item 3, I think it's more
14 appropriate. It's a physical security issue and it's not
15 related to Diebold. So if you're planning on coming back,
16 I'll ask you the questions.

17 MR. BARNES: Absolutely, I will be here.

18 Thank you.

19 CHAIRPERSON KYLE: Thank you.

20 Brina-Rae Schuchman.

21 MS. SCHUCHMAN: Good afternoon. My name is
22 Brina-Rae Schuchman, and I am from San Diego, California.

23 In San Diego we were victimized by the most
24 over-sold under-effective in fact damaging voting system
25 in the history of America. Many older voters said they

1 were never so worried about an election.

2 It wasn't poor training that caused battery
3 failures that should have been avoided. It's not right to
4 feel the loss of any single vote. No one can say that
5 Diebold voting system or GEMS counters helped to create a
6 safe, accurate, confident, lawful election for us.

7 They made promises they didn't keep. And they
8 used unlawful, uncertified software in San Diego and
9 everywhere in the state. In short, Diebold is not a
10 trustworthy election ally.

11 Time after time in your hearings they've lied,
12 they've passed blame, they have not taken responsibility
13 for their actions. In my view, their company gets a Z in
14 citizenship, and in corporate responsibility. They
15 deserve no more chances. The will of the electorate is
16 only for safe, accurate, verifiable, honest elections.

17 Every vote, every single vote and every single
18 voter, every single time has to count. There is a higher
19 standard to be held here. There's only one standard, 100
20 percent or nothing. The best we can do.

21 So opposition to Diebold is good election policy.
22 Opposition to Diebold is good for democracy. Opposition
23 to Diebold is good for America. I beg you to give up all
24 these machines that don't give us safe, accurate elections
25 with paper ballots we can recount. We must have

1 trustworthy elections. Not Diebold counting them. Not
2 Diebold providing it.

3 Thank you.

4 CHAIRPERSON KYLE: Questions, panel?

5 Thank you very much.

6 Austin Erdman.

7 MR. ERDMAN: Austin Erdman, E-r-d-m-a-n,
8 Assistant Registrar of Voters for San Joaquin county.

9 This issue with Diebold has come up for
10 decertification, and now it's all electronic systems in
11 California.

12 I think it's absolutely ludicrous to eliminate a
13 system that has worked fine, especially in San Joaquin
14 county. Thirty-seven percent of the voters in the state,
15 5.6 million of 15 million in March voted on systems in
16 seven counties that used software that has never been
17 submitted for federal review or testing.

18 No ITA certification or NASED numbers were
19 required of these systems even though several of them are
20 recently new. Some of these systems that could be easily
21 argued are relatively new such as the Inka-Vote Optical
22 312 system. Why isn't this panel focused on the systems
23 that have no review of their software.

24 There is continuous changes, as you well know, in
25 California, the nation, in federal and State laws, rules

1 and regulations. The AB 190 which went into effect which
2 was voted in June of '03 was implemented in January of
3 '04.

4 You are asking these companies to submit and get
5 through the ITA testing, which takes approximately nine
6 months, to have information and have this software
7 available to us, which it can't be physically done.

8 You're changing laws on a regular basis, and
9 we're having to move and change with those particular
10 issues as time goes on. And we have to implement those
11 changes almost on an instant basis. We're asking today,
12 in San Joaquin county as we use the Diebold system, to not
13 decertify Diebold and the rest of the DRE systems that are
14 available to the state of California.

15 Again, you, Mr. Jefferson, have talked about the
16 RABA Report. In the RABA Report they did not use
17 certified equipment. It was used on a PC and it was not
18 used on equipment that is used by Diebold. The actual --

19 PANEL MEMBER JEFFERSON: You're talking about the
20 Hopkins Report.

21 MR. ERDMAN: Yes, the Hopkins Report.

22 PANEL MEMBER JEFFERSON: Not the -- the RABA
23 Report they did use certified equipment.

24 MR. ERDMAN: Yes. Right, the Hopkins Report.

25 And that information was lifted from the Diebold site. We

1 don't know what information exactly they had except for
2 what was disclosed.

3 Included in the RABA report, if you'll notice it
4 was two- and three-year old information that he was
5 referring to. In computerland or computerworld as we all
6 know, two and three years is a huge difference in the
7 amount of time and ability that we change in our computer
8 technology, as shown here by your panel with just a PCM
9 500.

10 We're asking again, please do not decertify
11 Diebold or the election, the electronic equipment in
12 California, and please allow us to use it in November.
13 You're going to cause chaos throughout this nation as this
14 begins to move forward and this begins to spread.

15 Touch screen voting worked, versus the voter
16 card. Yes, batteries and voter cards may have failed,
17 they caused the screens to come to desktops. The problem
18 has been identified and procedures are being prepared to
19 avoid this from happening again.

20 However, in California -- in San Joaquin county,
21 we used the touch screen to burn the cards, not the PCM
22 100s or 500s, and we ran a successful election.

23 Thank you.

24 VICE CHAIRPERSON CARREL: Thank you.

25 CHAIRPERSON KYLE: Any questions from the panel?

1 Thank you, Mr. Erdman.

2 Jim Hamilton.

3 MR. HAMILTON: Hello. My name is Jim Hamilton
4 I'm a resident of San Diego county. And basically what I
5 want to say is that Diebold has shown a blatant disregard
6 for the California Election Code. At least three times I
7 can think of, and there may be more, of, one, using
8 equipment that had not been certified.

9 Second, that they were using equipment that has
10 failures in security and educators -- Elections Code does
11 say that the systems used in the state must be safe from
12 manipulation and fraud.

13 And third, that they did not deliver open source
14 information to the Secretary of State's Office on their
15 software.

16 Now, in San Diego county, we had some problems,
17 as you know. And we've been told that apparently these
18 machines, the Diebold systems included, do not make
19 mistakes. Well, obviously in San Diego they did. 2,821
20 votes were transferred incorrectly from John Kerry to
21 Richard Gephardt.

22 How many other mistakes there were, we don't
23 know. You just can't tell with these machines. Of
24 course, there's no paper trail with them, no verified
25 voter paper ballot. So we don't know. It's as if you

1 went to the bank and someone was asking was the bank
2 robbed? Well, the bank had never counted how much money
3 they had in it, so how do they know how much money was
4 stolen from it.

5 You know, this is the kind of security that we're
6 expected to believe in. The bank is not going to operate
7 that way and the California voter should not be expected
8 to live in that fashion.

9 Now, we've heard a lot that these citizens just
10 really love these machines. Now, in San Diego we did run
11 a poll-watching operation. We had about 30 people out in
12 the field, and we did something different.

13 First, we asked the question do you like these
14 machines? The answer was yes, we absolutely like these
15 machines. They're fun to operate and so on.

16 Then we asked do you feel secure in your vote?
17 And they go oh, I hadn't thought about that. We said you
18 know there's no possibility of a recount. And they said
19 oh. And all of sudden, they enjoyed the machines but they
20 were troubled.

21 So there's a second question that never gets
22 asked of the California citizen. Do you feel secure with
23 your vote when there is no recount available?

24 It makes a difference. And this is the question
25 that we're wrestling with today.

1 Second, in San Diego county we have -- I
2 personally asked the Board of Supervisors if members of
3 our group, Save Democracy, if we could participate in the
4 study that they were doing of the failures of March 2nd.

5 I told them that we had a knowledgeable computer
6 expert who was actually on the Hopkins Study. We had a
7 person who was a poll worker, it happened to be my
8 daughter, but who has a lot of interesting things to say.
9 And Pam Smith is in the audience today. We were told no.

10 Later on I was taking a tour of the Voter
11 Registrar's office during the recount. And the person
12 leading us on the tour said that -- well, I asked them do
13 you let people come in and comment on the election
14 afterwards?

15 And he says well, yeah we do have handicap groups
16 come in and they tell us -- you know we talk to them about
17 access issues. And I said well, that's great. Would it
18 be okay if our group came in and discussed some of the
19 situations that we found, some of the problems that we
20 found and maybe help you with that. And the answer was
21 no, we don't want to hear from you.

22 So you may hear information from these county
23 Registrar of Voters, some of them, that everything went
24 well, there were no problems at all. And yet at the same
25 time we, as a knowledgeable group, we spent a lot of

1 time on this, and we have a lot people who are very
2 knowledgeable in the area of computer expertise and so on,
3 were not given an opportunity to participate.

4 So how can these -- this county, San Diego county
5 in particular, step forward and say that we have done a
6 study, it was in-house only. They wanted nobody from
7 outside to participate, how can we believe the results of
8 these? We can't.

9 And we have to -- we have to think that there
10 must be an opportunity for citizens to participate in
11 these elections, because the information that you are
12 receiving may be flawed. These machines don't make
13 mistakes. The counts are -- you know, the voting count is
14 100 percent, sure.

15 The study that we did the County says is perfect.
16 We ironed out all the problems. Sure. Just as Diebold
17 has said that they have solved all of their problems. We
18 know different.

19 And thank you very much.

20 CHAIRPERSON KYLE: Thank you, Mr. Hamilton.

21 Any questions from the panel?

22 Thank you.

23 Alexandra Allman-VanZee.

24 MS. ALLMAN-VANZEE: Mr. Kyle, if you don't mind
25 since my comments sort of encompass all three agenda

1 items, I'm willing to defer till tomorrow.

2 CHAIRPERSON KYLE: Thank you very much, and so
3 does the rest of the audience.

4 (Laughter.)

5 CHAIRPERSON KYLE: Judy Bertlesen.

6 MS. BERTLESEN: I submitted a written statement
7 to you so I won't try to recapitulate that. I'll just
8 make a very brief statement.

9 The paperless system, if perfect, would be, in my
10 opinion, inadequate, because it doesn't provide a voter
11 verified independent ballot to hand count as a check
12 against the electronic results, or to do a meaningful
13 recount.

14 But we know that these systems aren't perfect and
15 haven't worked perfectly. We also know that it's been
16 asserted that we haven't proved that the paperless
17 systems have this problem or -- you know, have this
18 inaccuracy or that, but that's the nature of the system
19 that we can't find that proof, so it's not reassuring to
20 me.

21 We do know that the electronic systems, when we
22 can check, the electronic system like GEMS, et cetera do
23 make mistakes. And the way we know that is that we can go
24 back and count the paper ballots.

25 So I ask you to please not subject us to

1 paperless systems for this upcoming election. There have
2 been so many problems. This is such a crucial election.
3 We really need to be able to have confidence that there is
4 a voter verified paper ballot that can be used to do a
5 meaningful sample and also can be used for a meaningful
6 recount.

7 CHAIRPERSON KYLE: Thank you.

8 Any questions from the panel?

9 Thank you.

10 Phelps Hobart.

11 Is Mr. Hobart in the audience?

12 It's hard to see everywhere here.

13 No, okay, we lost one.

14 I'm sorry for mispronunciation, Moise Berger?

15 MR. BERGER: I think everything I had to say was
16 covered very well by earlier speakers. But I did have
17 comments for Agenda 3. I have to catch a plane at 5:30,
18 could I get consideration on that before 5:30?

19 CHAIRPERSON KYLE: Certainly. Why don't we --
20 I'm actually going to review the remainder of the cards
21 for time purposes, realizing what time it is now. So we
22 may shuffle things around a little bit. So let me run
23 through and reconsider that.

24 Michael J. Smith and Maureen Smith.

25 Gordon Mors.

1 MR. SMITH: Thank you very much for holding this
2 session today. And my name is Michael Smith from Santa
3 Cruz county. I've entered a document into the record with
4 my full statements regarding, particularly Diebold.

5 After reading all of the problems that they've
6 had not only in California but throughout the states for
7 about a year now, I find one word I think came up earlier
8 in one of the people's comments, and that was abysmal.
9 And I find that to be quite indicative of what I've read
10 and what I've heard, and from your report as to the
11 performance, as to the qualifications, as to the sincerity
12 of Diebold Corporation.

13 And I would whole-heartedly as a voter of
14 California ask that you decertify Diebold immediately
15 because you have little time to make that decision within
16 your six-month range before the next election.

17 And I think another word that comes up
18 particularly is "perception". And increasingly the
19 perception of the voters in California despite what some
20 of these people from the election departments are saying,
21 the perception is that without a paper trail, without
22 something they can actually see in print, they do not
23 believe in the accuracy or in the product. They believe
24 that their vote simply goes into a machine, and where it
25 goes from there they do not know.

1 Now, I understand that some of the electronic
2 voting systems can do the printout of ballots after the
3 fact. I would have to ask the election departments how
4 many of them actually do these printouts and compare their
5 ballots against the -- or the actual results that were
6 printed out on the machines.

7 I do not believe that this is a system that has
8 been refined enough. I think it's been a rush to
9 judgment. And I whole-heartedly hope that you will not
10 certify anything further from Diebold, that you will
11 decertify all of their equipment, and that you will demand
12 paper ballots in the next election.

13 Thank you.

14 CHAIRPERSON KYLE: Thank you very much.

15 Maureen Smith.

16 MS. SMITH: Yes, Maureen Smith, Santa Cruz county
17 also. I'd like to make some brief comments. I want to
18 thank, and I feel very grateful to Diebold for all the
19 mistakes that they have made, because it has focused
20 people more on the problem. And I think also that each
21 person in California at least is entitled to an absentee
22 ballot. Absentee ballots are paper. If you can do
23 absentee ballots for every person in California, there
24 should be no reason that you can't do paper ballots for
25 every person in California and be able to count them. It

1 does not make any sense that people could vote absentee
2 and not have a paper ballot if they go to the polls.

3 Finally, I would like to say -- and I will say
4 more on the other items, especially on Sequoia, but I'd
5 like to say that I think that the Pacific -- Asian
6 Pacific Group does a great injustice to the people of
7 California by trying to put a minority issue over the
8 issue of all the voters having their votes counted in
9 California is outrageous, absolutely outrageous.

10 And there was no privacy in Sequoia and Santa
11 Clara, California. Anybody standing behind the person
12 voting can read everything they vote. There is no privacy
13 with those systems.

14 CHAIRPERSON KYLE: Thank you.

15 Panel members, please jump in if there's
16 questions.

17 Gordon Mors, and then Jim March, and Lowell
18 Finley.

19 Gordon Mors?

20 Going once, twice.

21 Jim March.

22 Reiteration of topic number 1.

23 MR. MARCH: Folks, thank you for being here.

24 Most of the commentators on Diebold have compared their
25 voting systems to their ATM business. They do a paper

1 trail on one, they ought to do a paper trail on the other.

2 However, the current Diebold line of business
3 that I think is worthy of even more closer consideration,
4 they sell bank vault security systems. The electronic
5 controls access millions of dollars worth of money. It
6 would be unthinkable for Diebold to say oh, by the way
7 Wells Fargo, we installed the security system. We're also
8 going to have the passwords and we're going to be able to
9 go traipsing through your cash any time we want. But
10 don't worry we won't take any. You couldn't even think of
11 Diebold asking something like that.

12 Yet, in Kern County that's exactly what they
13 asked for, folks. They asked for unlimited access to the
14 GEMS server, off-duty, after hours, whatever with no
15 oversight.

16 Now, Kern County was smart enough to say that's
17 madness. And they violated the contract, but of course no
18 judge would enforce it. So Kern County threw out that
19 part of the contract and is not obeying it. But Diebold
20 shouldn't have asked, folks.

21 You have seen cited in various memos I've written
22 for this panel, Ken Clark memos saying well, of course, I
23 have the password to the system so they can't keep me out.
24 And he was absolutely right.

25 You've also seen a memo from a Diebold tech named

1 Rob Chen. In October of 2002 he was on-site in Alameda
2 County writing a memo back to home base saying yeah, I'm
3 accessing the GEMS box with an ordinary laptop computer,
4 dialing into it as if I was a ballot station terminal.
5 That means on election night, with all the terminals in
6 the field, dialing the results back to the GEMS box, that
7 GEMS box is sitting there with open modem ports ready to
8 receive incoming communications, which could include
9 another laptop plugging straight in.

10 I'll make one other quick comment, because the
11 Registrar for San Joaquin county said that I had no
12 problems with what happened in San Joaquin.

13 Well, yeah, I was there that night and I
14 definitely did have problems. The first thing I saw was
15 that there was thousands of dollars worth of modem
16 communication equipment sitting in the server room turned
17 off because it was unsafe to use. San Joaquin County to
18 their credit did not use that rapid communication feature
19 back from the field, but that's only because it was
20 unsafe.

21 The RABA Report said that it was only safe to use
22 that equipment if there was a verbal handshake before each
23 session began, so that somebody could record how many
24 terminals called in, so that there wasn't something extra
25 slipping into the system.

1 Well, in doing so, the RABA Report effectively
2 said you can't use the mode of communications for election
3 night, because there's no way to do that kind of hand
4 processing of that many incoming, 4,000 plus modem
5 sessions.

6 The other thing I observed in San Joaquin county
7 is in a room to the side of the main server room, was a
8 bank of TSx terminals -- I'm almost done -- a bank of TSx
9 terminals that are being used to feed memory cards in from
10 the field. They were hand carried, PCM ballots,
11 electronic ballots, in from the field, pumping them into
12 this bank of TSx terminals, which went through a short
13 ethernet wire over to the server.

14 No problems so far, except that the guide pumping
15 the cards in, in that corner room, which was not fully
16 visible to public view -- he was out of view to the public
17 most of the time -- was a Diebold employee wearing a
18 Diebold shirt. And myself and a camera crew present
19 noticed this. He was told to put a jacket on over his
20 Diebold T-shirt by Mr. Erdman, who's already spoken and
21 he's around here somewhere.

22 Anyway, Diebold has consistently tried to gain
23 access to our votes themselves, improperly. I used to
24 sell network computer systems and network installations.
25 When my company walked away, we didn't know the customer's

1 password. We sure as heck didn't hardwire in 1,1,1,1.

2 Diebold has acted maliciously in this. Once your
3 staff prepared this report -- I'd like to thank the staff
4 for this report -- they made it impossible to run another
5 election on a Diebold product, because doubts will always
6 remain about, not only their honesty, as this report
7 mentions, but about their sanity.

8 (Laughter.)

9 MR. MARCH: You have got to vote them off the
10 island. I asked you that back in the dark days, when I
11 was one of only a dozen activists in this room. I can
12 still see there's Kim Alexander on her computer in the
13 corner. She was there when this room was empty. So were
14 the Smiths, Jodi Holder and a handful of others.

15 It's time to do it, folks. You laughed before,
16 but I think you're taking me a little more seriously now.

17 Thank you very much.

18 VICE CHAIRPERSON CARREL: I have one question.

19 May I?

20 MR. MARCH: Sure.

21 VICE CHAIRPERSON CARREL: The item that I
22 discussed with Mr. Urosevich and his attorney earlier
23 today regarding the PCM device and Windows CE was in our
24 list to Diebold, and was in there as a result of a request
25 that you made, we added that.

1 And so I just wanted your clarification on what
2 you intended by that? Were you talking about smart card
3 encoders in the TSx itself or were you talking -- because
4 the word platform was used, did you include any other
5 peripheral?

6 MR. MARCH: Let's go over that. First of all, we
7 know from their testimony after that little debate that
8 the TSx is capable of all the same card burning functions
9 as a PCM 500. So one big question is are those separate
10 card burning functions built into the TSx, were they
11 certified or was only the vote tallying portion of the TSx
12 certified?

13 We know from the Bev Harris stash that there were
14 multiple versions of a program called VC Program, one of
15 several different applications that are used to program
16 smart cards.

17 VC Programmer is one. We know that there's
18 versions of it -- for every version they release, they do
19 it in two editions. One that's Windows NT compatible and
20 one that's Windows CE compatible.

21 So they can run that same voter card encoder on a
22 standard PC laptop running Windows NT XP2000 series, or
23 they can run it on any of their CE devices, which includes
24 the TS, TSx -- I assume it includes the TS. It definitely
25 includes TSx. It definitely includes the PCM 500.

1 So there are those ballot burning -- those vote
2 card burning functions are definitely built into TSx. So
3 at least some questions of that area were asked.

4 The main reason I am -- by the way, the day
5 before you printed those ten questions, I printed one full
6 page of questions on nothing but smart cards, multiple
7 questions that pin this down, but that's all right.

8 VICE CHAIRPERSON CARREL: Were you aware -- I
9 mean this is January 15th and we obviously weren't
10 discussing the PCMs at that point --

11 MR. MARCH: No, no, no. I'll tell you what I
12 knew at that point. There were Diebold internal memos,
13 it's the one that mentions USA. If you look for the words
14 USA Today in the Diebold memo stash, you'll come across
15 Ken Clark saying, "There is no real security in our smart
16 card system. And we are replacing the firmware and all
17 the software connected to the SPYRUS Rosetta smart card
18 burner. That's --

19 VICE CHAIRPERSON CARREL: Which was the burner
20 they used prior to the PCM.

21 MR. MARCH: That's the little hand-held. Okay.

22 Now, they were changing the firmware on that
23 thing and they're changing the software that produces the
24 smart card. One of the things that scared me the most
25 about these boxes, when you go to vote you're inserting a

1 128K memory card into the machine through software
2 processors that have never been certified.

3 You have no idea what you're sticking into that
4 machine when you vote. You could be hacking the vote
5 yourself. This is just one of a number of situations
6 where Diebold has set up internal access by themselves to
7 the voting process. This is completely improper.

8 VICE CHAIRPERSON CARREL: But you're still --

9 MR. MARCH: Okay, to get back to your point.

10 VICE CHAIRPERSON CARREL: Yes.

11 MR. MARCH: The way we finally phrased the
12 question on the 15th should have covered the smart card
13 burning functions of the TSx at a minimum.

14 VICE CHAIRPERSON CARREL: It did, because --

15 MR. MARCH: Now, the question should have covered
16 that.

17 VICE CHAIRPERSON CARREL: Let me read you --

18 MR. MARCH: And they were highly evasive.

19 VICE CHAIRPERSON CARREL: Well, not commenting on
20 the response, let's just comment on our question.

21 MR. MARCH: Sure.

22 VICE CHAIRPERSON CARREL: It said number 9,
23 "Requesting documentation regarding any modifications to
24 the smart card hardware or software for use on the TS, TSx
25 platforms." That's how we framed it.

1 MR. MARCH: At a minimum, that question would
2 have covered the voter card encoder process that we know
3 is built into the TSx, because that's how San Joaquin ran
4 their election. At a minimum, it should have covered that
5 much.

6 VICE CHAIRPERSON CARREL: Right. And the
7 response -- now to go to the response. Their response was
8 I read earlier, "DESI does not modify smart card hardware
9 or software used in DESI's TS and TSx platforms in
10 California." Standard Windows CE serial force driver is
11 used."

12 MR. MARCH: Well, that's for Windows CE to talk
13 to the card hardware. But there's the application that
14 creates the smart card would not be covered by that
15 question.

16 VICE CHAIRPERSON CARREL: I'm not asking for an
17 answer that you're clearly not going to know.

18 MR. MARCH: No, no, I know that. But what I'm
19 saying is their answer is not responsive. There's no way
20 it's responsive.

21 VICE CHAIRPERSON CARREL: Well, going back to my
22 question to you, and if you don't know the answer, just
23 tell me you don't know the answer. When you asked us to
24 incorporate that into the list, and we incorporated it in
25 such a way that we were trying to accommodate the things

1 that you were speaking of at that point, and maybe we
2 didn't frame it as well as possible, but I think, at least
3 from my position, we were talking about any smart card
4 encoders, the hardware or the software used in DESI's TSx
5 platforms.

6 MR. MARCH: Oh, I was personal --

7 VICE CHAIRPERSON CARREL: From my standpoint it
8 includes anything peripheral that would be a part of the
9 system and not just the TSx machine.

10 MR. MARCH: Because I was personally thinking of
11 the little hand-held encoder, the SPYRUS Rosetta hardware.

12 VICE CHAIRPERSON CARREL: Right. So you weren't
13 speaking specifically of PCMs at that point?

14 MR. MARCH: No, not at all. I was also talking
15 about external hardware.

16 VICE CHAIRPERSON CARREL: Thank you.

17 MR. MARCH: Any other questions?

18 Thank you very much, folks.

19 CHAIRPERSON KYLE: Pam Smith.

20 Lowell Finley, I think I actually had.

21 Go ahead.

22 MS. SMITH: Thanks for this opportunity. My name
23 is Pamela Smith. I'm from San Diego county.

24 You've been told today several times, I think,
25 that you'll cause chaos in the state if you decertify

1 Diebold. Frankly, I think if you wanted to see chaos, you
2 should have been in San Diego county on March 2nd in the
3 early hours of the day.

4 The PCM failures that they couldn't deny were in
5 some 30 percent or so of the precincts. But, in fact,
6 people were starting to start up their precincts at 5:30
7 in the morning, between 5:30 and 7:00. Some of them
8 solved the problem on their own. So if they were open at
9 7:00 that wasn't counted in the 30 percent.

10 The rover, at the precinct where I went to
11 observe, said it was his understanding that the PCMs
12 failed in upwards of 80 percent of the precincts.

13 It's my contention that if you have a good
14 system, a good voting system, and you don't have good
15 procedures, you're going to have problems. If you have a
16 bad system and good procedures you're still going to have
17 problems.

18 If you have a bad system and bad procedures,
19 welcome to San Diego. Now, December 9th when the Board of
20 Systems was warming up their rubber stamp for the 30 plus
21 million dollars they were going to spend on the Diebold
22 contract, we asked them to hold off.

23 Why?

24 Because we'd been doing our due diligence. Four
25 out of the five reports that have been made public

1 detailed security flaws you could drive a truck through in
2 the Diebold system had already come out by then. And we
3 also knew that the system wasn't certified and we said so.
4 And they said yes, it is. Then they signed a contract.

5 By February the most damning report of all had
6 come out, RABA confirmed nothing had changed at all at
7 Diebold. And we told the County at least do what the
8 Secretary of State asked, make paper ballots available at
9 the precincts as a backup. They did not.

10 Once Diebold had been busted in Maryland by the
11 RABA red team, they had to change at least their infamous
12 code of 1111. And so they did in Maryland. They didn't
13 change it in California or anywhere else, which to me is
14 just not good business practices.

15 On March 16th at the Board of Supervisors
16 Meeting, the one that you came to, Mr. Carrel, Bob
17 Urosevich had to be asked to come forward and speak to the
18 county supervisors. And when he did, he said in front of
19 God and everybody we didn't submit our PCM for testing
20 until January of 2004, because we didn't know it had to be
21 tested. It's a peripheral.

22 Well, that's a bald faced lie. Excuse me, but
23 the reason we've been told that we can't have voter
24 verified paper ballots yet is because nothing is
25 certified. It hasn't been certified yet. Well, a printer

1 is a peripheral, Mr. Urosevich.

2 And it's only used to print out data. It's not
3 used to insert data. So if that has to be certified, I
4 really can't see why the president of an elections system
5 can't understand why a PCM would need certification.

6 I recently spoke at a church group about
7 electronic voting. And there was a woman there who had
8 been a poll worker in the March 2 Primary. And she said
9 well, you know, it's all going to be fixed by Diebold for
10 November and, you know, it's a good company.

11 And I said, you know, so far they've shown no
12 evidence that they're inclined, much less capable, of
13 fixing what's wrong. And as far as reputable, I suppose
14 so if you don't mind a company that has outright lied and
15 violated State election laws.

16 This company does not merit the right to do
17 business in California. Please decertify them without
18 delay.

19 Thank you.

20 CHAIRPERSON KYLE: Thank you.

21 Any questions?

22 Lowell Finley.

23 MR. FINLEY: I'm Lowell Finley. My last name is
24 spelled F-i-n-l-e-y. I'll be very brief. I want to focus
25 exclusively on the security issue.

1 Earlier Mr. Jefferson in conversation with the
2 Diebold representatives quoted one sentence from the RABA
3 Report, which I believe Diebold's president here indicated
4 he was in fairly complete agreement with.

5 That sentence was, "It is our
6 opinion that the current Diebold
7 software reflects a layered approach to
8 security: As objections are raised,
9 additional layers are added."

10 Well, I'd just like to take a few moments to read
11 the rest of that paragraph.

12 "True security can only come via
13 established security models, trust
14 models and software engineering
15 processes that follow these models. We
16 feel that a pervasive code rewrite would
17 be necessary to instantiate the level of
18 best practice security necessary to
19 eliminate the risks we have outlined in
20 the previous sections. Our analysis
21 lacked the time and resources to
22 determine if Diebold has the expertise
23 to accomplish this task."

24 That's the end the quote.

25 I would like to see the Diebold representatives

1 who are here answer the question, how many, if any, of the
2 13 recommendations that that paragraph refers to have they
3 performed or do they plan to perform in time to receive
4 state or federal certification and qualification?

5 If the panel would indulge me and other members
6 of the public in following up on that point, I think it
7 would be highly instructive.

8 Thank you.

9 CHAIRPERSON KYLE: Thank you, Mr. Finley.

10 Any questions from the panel?

11 Ann Barnett.

12 MS. BARNETT: Ann Barnett, B-a-r-n-e-t-t.

13 Your panel asked me earlier a question about a
14 clause in our contract. And I regret that I did not make
15 it clear that that line has not been installed, and
16 Diebold was not the instigator of that clause. Our county
17 was.

18 Thank you.

19 CHAIRPERSON KYLE: Thank you, Ms. Barnett.

20 PANEL MEMBER MILLER: Thank you.

21 CHAIRPERSON KYLE: Jodi Holder.

22 MR. HOLDER: Good afternoon. Joseph or Jodi
23 Holder, H-o-l-d-e-r.

24 I hope the election officials and the vendors
25 look around this room and wake up to the fact, you are

1 messing with the foundation of the only power the citizen
2 has for peaceful change in our government, our vote. We
3 trusted that when we voted in California our votes were
4 recorded accurately and they were counted accurately.

5 We trusted that the Elections Code in this state
6 was enforced, that the State had taken steps designed to
7 ensure that every voting system used in this state was
8 reliable, accurate and secure.

9 Instead, through a Public Records Act request, I
10 have discovered that the certification rules are ignored
11 for the benefit of some vendors. There is not a rigorous
12 and thorough testing of the proposed voting systems in
13 this state.

14 It was wrong when Diebold was given special
15 preferential treatment last fall and certified over many
16 strenuous objections. That was a betrayal of our trust.

17 We have trusted that our local elected officials
18 would place the sanctity of their citizens' votes over
19 their own self interest. They place the blame on the poll
20 workers, the voters, everyone but themselves and the
21 vendors. They have defended the indefensible. They have
22 been apologists for the vendors and have betrayed their
23 oaths of office.

24 When the Secretary tries to correct the
25 deficiencies, they rebel and sue. They have betrayed our

1 trust. I've discovered that expediency, greed, ego and
2 political ambition have taken precedence over the
3 interests of the voter.

4 There are conscientious vendors and officials who
5 respect the laws of the state and the sanctity of our
6 vote, who recognize those dangers and try hard to make
7 sure the voting systems used are reliable, accurate and
8 secure. Unfortunately, their voice has not been the
9 loudest.

10 We are adding our voice to theirs. We demand
11 that those officials that are supposed to represent the
12 citizens of our state take their oath of office seriously
13 and do their job.

14 I ask the Secretary of State to decertify all
15 electronic methods of voting, including optical scan and
16 touch screen, until each voting system is proven reliable,
17 accurate and secure by effective and thorough testing and
18 review by experts in the field of computing.

19 I do not trust these electronic voting systems.

20 Thank you.

21 CHAIRPERSON KYLE: Thank you.

22 Any questions?

23 I'm going to call a few folks who were not here,
24 who I'm not sure whether they left or not.

25 Carmen Spurling was not here when I called her

1 before.

2 Gordon Mors?

3 Is Gordon here?

4 And Phelps Hobart.

5 Phelps Hobart?

6 Okay, then I guess we missed them.

7 We are at the end of this testimony. It is now
8 not quite 10 minutes to 4:00. We've been going for a
9 little over an hour and a half. I want to take a few
10 minutes break. I need to work with my staff on the rest
11 of the day. So let's reconvene in 15 minutes, please.

12 (Thereupon a recess was taken.)

13 CHAIRPERSON KYLE: Okay. We're going to resume
14 the meeting. When we started the meeting this morning, I
15 promised that those folks who would not be here
16 tomorrow -- could not be here tomorrow would get an
17 opportunity to testify today.

18 So I'm going to make the second exception of the
19 day by allowing -- what I was having staff do before was
20 cull out those folks who we know aren't going to be here,
21 can't be here tomorrow and are coming from a distance and
22 need to testify today. So I want to do that now, because
23 it's 4:10. I know at least one person has a 5:30 flight
24 or several people. We're going to deviate. Some of it is
25 on Diebold. Some of it is on the other agenda items, and

1 then we'll come back and attempt to wrap up agenda item
2 number 1.

3 If anyone didn't get their card in to staff to
4 indicate that they need to speak today rather than
5 tomorrow, please do so now while we do this. And I'd like
6 to ask Kathay Fong to come up.

7 MS. FONG: Good afternoon. My name is Kathay
8 Fong and I'm with the Asian-Pacific American Legal Center.
9 And I asked Ardis to stand with me so that we could save a
10 little bit of time, since we're catching a 5:00 o'clock
11 flight.

12 MS. BAZYN: I'm Ardis Bazyn from California
13 Council of the Blind.

14 MS. FONG: We are on the eve of the 5th
15 anniversary of Brown versus the Board of Education, only a
16 month away. And we would do well to remember the historic
17 lessons that our nation, I hope, has learned, and that is
18 that separate is not equal, and that segregation has no
19 place in our diverse democracy.

20 Going back to optical scan is tantamount to
21 resegregating voters between those who have the ability to
22 easily use paper or these Inka-Vote machines or optical
23 scan, and those of us who have to use some special system
24 in order to vote.

25 And I am really troubled by some of the comments

1 that were made by speakers before who suggest somehow that
2 it's okay to deem certain citizens to become second class
3 citizens, and it's okay if their vote is not -- if they're
4 not able to cast it with a fully private and assured means
5 of casting that vote, while others have an easy way of
6 voting.

7 The March 2004 California election proved to be a
8 watershed for many Asian-Pacific American voters, Latino
9 voters and voters with disabilities. In 15 California
10 counties, voters who needed language assistance could, for
11 the first time, use electronic voting machines to choose
12 their ballot language and vote privately at their polling
13 places, a tremendous breakthrough.

14 There are seven counties that federal law
15 mandates to provide assistance in three or more languages.
16 And it impacts over a million limited English voters.
17 This is a right that many of us who speak English fluently
18 or who have full use of our eyesight take for granted, the
19 ability to step into a voting booth, to read the ballot
20 and to cast our vote in privacy without fear of coercion
21 from an employer, a party boss or even a caregiver.

22 It is one that until now thousands of voters with
23 disabilities, with language assistance needs or who were
24 illiterate could not even begin to imagine partaking in.

25 Until recently, most voters were forced to use

1 optical scan machines or punch card voting, and language
2 prohibited minority voters had to rely on interpreters or
3 compare a translated ballot, hold it side by side next to
4 the English language one, and hope that what they punched
5 through or that they marked matched up with the ballot.

6 And for folks who know Inka-Vote system which we
7 fondly call, and I apologize to Conny, the Stinka-Vote
8 system, it is extremely prone to voter error because it's
9 very hard to match it up, to mark where you meant to mark,
10 to make sure that the ballot isn't smudged or even to make
11 sure that the bubble that you marked really was indicating
12 the choice that you meant to choose.

13 When we use touch screens or other machines, the
14 beauty of it is that before you hit the cast button, you
15 get to see the entire list of choices or listen to it on
16 an earphone before you push that button and you know that
17 what you marked really is what's recorded in the machine.

18 Let me just skip through my presentation. I've
19 given the whole written version to Dawn, and I'm hoping
20 that she'll share that with everybody and you'll have a
21 chance to read through it. But I did want to just address
22 quickly some observations that we've made in the field.

23 For over a decade we've been poll monitoring and
24 we've gone into hundreds of poll sites to see how
25 elections work. And as Conny will well attest, as Steve

1 Rodermund will also attest, we're always a pain in the
2 neck. We're not in bed with them. Quite often we submit
3 reports about the problems that happen on election day.

4 And what we have found time and time again is
5 that these older systems, including optical scan and our
6 decertified punch-card ballot systems, present
7 substantially more problems than electronic voting
8 machines.

9 Studies by Stanford and the University of
10 Michigan show that optical scan ballots have significantly
11 higher error rates than electronic voting machines. And
12 in addition, there are well documented incidents just this
13 last March in Los Angeles of voters complaining that the
14 optical scan voting machines, these little machines, were
15 jamming, that they had to take them off line because there
16 were little bits of paper stuck inside, that their pens
17 ran out of ink or that they smeared or that when they
18 pulled out the ballot it hadn't marked it at all.

19 And these are voters who are trying to be
20 conscientious about making sure that the ballot that they
21 turned in really had a marked vote that indicated their
22 choice.

23 In San Francisco, in Los Angeles, in many
24 counties that continue to use optical scan, there are
25 always reports of poll sites running out of the optical

1 scan ballots. And this is just the same kind of problem
2 that we see in election after election.

3 And worse yet, our accounts in San Francisco of
4 limited English speaking voters being forced to kneel down
5 on the ground in order for poll workers to show them how
6 to use the optical scan ballots because it is the only way
7 that they could get a group of people to show them how to
8 use the ballots, and you had to have a flat surface.

9 They had groups of voters on the ground. Imagine
10 how humiliating that is. That would have been done away
11 with if San Francisco and other counties had gone to touch
12 screen. In San Diego, we've heard that the use of optical
13 scanners have resulted, unfortunately, in the miscounts of
14 almost 3,000 votes.

15 Let's remember that many of the vendors that
16 we're talking about, including Diebold, are the vendors
17 for both the electronic vote machines and also the optical
18 scan machines. So while we're busy bashing electronic
19 voting, that in fact it's the same vendor that's doing it
20 for both. And if you're going to consider problems with
21 management or reporting or honesty or integrity, it
22 implicates something much larger than just electronic
23 voting.

24 Fact number two is that poll worker recruitment
25 and training and not technology challenges remains --

1 continues to remain the biggest hurdle for running a fair
2 election. I'm not going to go into it, but all of us know
3 that in most of our counties we pay our poll workers
4 between \$50 and \$100. And that's paltry for a 16-hour
5 day. And frankly you get what you pay for.

6 People are tired out. They can't always figure
7 it out. In LA and San Diego and many other parts we poll
8 monitored it. The problems come because we have an
9 unusual primary system that's semi-open, and poll workers
10 are frankly just a little confused about what ballot to
11 give people or how to instruct them in a way that didn't
12 overly steer them into a particular primary or using a
13 particular ballot.

14 And so those kinds of problems occurred whether
15 it was a touch screen county or an optical scan county.
16 It had to do with poll workers needing to learn a system
17 that was, in all fairness, extremely complicated.

18 Number three, switching to electronic voting
19 machines -- from electronic voting machines back to
20 optical scan will result in \$30 million costs to the State
21 for a single election. I can talk to you a little bit
22 more about where we got those numbers, but I called up
23 personally each one of the registrars, talked with them
24 about where you get those numbers from, what you base it
25 on.

1 Quite frankly, this number, I think, is a
2 conservative one, because it assumes that for some
3 counties, they're not even going to buy precinct scanners.
4 So if you're going to assume that for some counties they
5 haven't worked in one of the largest costs, but the only
6 way to ensure that the error rate is as low as with touch
7 screens is to have precinct scanners.

8 Fact number four is that the allegations of wrong
9 doing by a particular manufacturer are not a justification
10 to scrap the entire technology or to punish all
11 manufacturers.

12 Let's be logical about this. If an investigation
13 needs to be had, if there needs to be prosecution, let's
14 do that, but let's not throw the baby out with the bath
15 water.

16 And fact number five, voters prefer electronic
17 voting, because of the ease and accuracy. And let me just
18 return to the comment that was made by a previous speaker
19 that somehow or another this electronic voting is liked
20 only by voters with disabilities or voters who had
21 language needs and not by all voters. Time and time again
22 in surveys that have been done officially and
23 unofficially, they have found approval ratings of 90, 95,
24 97 percent in counties throughout California for all these
25 machines. That people feel very safe in voting on these

1 machines, and also that they prefer it because it's
2 frankly much easier.

3 It's a lot easier to know that you cast your
4 ballot the way you want to using a touch screen than using
5 Stinka-Vote.

6 Let me just conclude by saying that California's
7 electoral process certainly has much room for improvement.
8 And we are the first to try to work with the State and the
9 counties to look for where those changes can be had. But
10 I would once again reiterate that it would be wasteful of
11 millions, \$30 million, and also imprudent to chuck a whole
12 technology in order to satisfy what is, at this point, a
13 hypothetical problem.

14 Thank you.

15 MS. BAZYN: I just want to add one question. How
16 would you feel if you had to vote and someone else had to
17 tell you what was on the ballot and you knew they were on
18 an opposite party and the opposite opinions from you? How
19 comfortable would you feel with their casting your vote?

20 Thank you.

21 CHAIRPERSON KYLE: Any questions from the panel?

22 Thank you both.

23 PANEL MEMBER MILLER: A couple of questions, Mr.
24 Chairman.

25 CHAIRPERSON KYLE: Mr. Miller.

1 PANEL MEMBER MILLER: Did you parse out -- on the
2 \$30 million figure, did you parse out what it would be
3 without the precinct-based scanning machines, because you
4 indicated that as a significant portion?

5 MS. FONG: Our estimate is that it would still be
6 about 20 million. So you get a \$10 million savings. If
7 you said that you wanted to have optical scan voting and
8 that you wanted it to be as accurate and error free for
9 voters as touch screen, at this point, and you required
10 precinct scanners, that number would jump to about \$40
11 million to \$50 million, depending on, you know, how much
12 the vendors will charge now that they know that they've
13 got a monopoly.

14 PANEL MEMBER MILLER: Second question. With
15 respect to the use of Inka-Vote in Los Angeles county, did
16 you do any numbers with respect to how many members of the
17 disability language minority community used the early
18 voting option down there? Any numbers at all?

19 MS. FONG: That's a number that we could probably
20 work very quickly to get from the county. It's hard for
21 us to be at all places in all times and in 5,000 poll
22 sites. But we do know that in our bringing people who
23 don't speak English to go and vote early-voting -- and
24 these folks who -- they're not computer savvy. They don't
25 use ATMs. They're not people who are die-hard technology

1 users. They don't have a black berry.

2 And when they got on those machines without much
3 explanation, they immediately -- intuitively understood
4 how to pick their language and then how to touch the
5 screen and vote. And it was extremely popular, and so
6 much so that many people went back to their homes and said
7 hey, it's not so intimidating, come out and vote. So it
8 became a voter mobilization tool.

9 PANEL MEMBER MILLER: Thank you so much. And I
10 particularly thank Ardis Bazyn for helping to present the
11 item.

12 Thank you.

13 CHAIRPERSON KYLE: Mr. Carrel.

14 VICE CHAIRPERSON CARREL: Yeah, I have a number
15 of questions. Sorry for making you leave the podium.

16 We're talking about Item 3, and so there's some
17 questions that I have. And since you won't be here
18 tomorrow, I want to get them out so I have all the
19 answers.

20 I'm sort of wondering what -- and I don't know
21 who has information, whether you have it or not. But I'm
22 interested in the number of non-English voters --
23 approximate number of non-English voters that you're
24 talking about statewide, and the number of disabled,
25 either visual impaired or mobility impaired voters you're

1 talking about who are moving from a paperbased to DRE and
2 who don't want to see it move back or that -- let's start
3 with the numbers.

4 MS. FONG: I guess I'm going to start with the
5 census tells us that there are 800,000 and 1.2 million
6 voters who are limited English proficient and eligible to
7 vote. Actually, the number is as high as two million, but
8 we are estimating on the low end, because we want to be as
9 precise as possible.

10 How many people would switch over? I guess, what
11 we'd have to do is go county by county and figure out for
12 those 14 counties that currently have optical -- that
13 currently have touch screen what percentage they
14 represent.

15 I will say that several of the counties are the
16 very counties that are required by federal law to provide
17 multiple language ballots. And those include Santa Clara,
18 San Diego, Alameda and Orange county. Just by the way of
19 example, for instance, Orange County has to provide
20 English, Spanish, Vietnamese, Korean and Chinese.

21 It is an extremely daunting task for them to try
22 to print up those materials. It doesn't fit on an optical
23 scan. Like it as we might, we have to comply with federal
24 law. And the most equal system that ensures fair access
25 is the touch screen, because people then, instead of

1 having to use pamphlets or hope that there's somebody who
2 can translate for them, they actually can go and use every
3 single poll site. It's an open-door access.

4 It's like saying we promise that every single
5 poll site will have disability, wheelchair ramps and an
6 ability for people who are visually impaired to vote.
7 It's the same thing. It's saying that every single poll
8 site that has touch screen will also have the ability to
9 vote in language.

10 MS. BAZYN: As far as disabilities go, I think
11 there's approximately 250,000. But I'm not sure how many
12 of those, you know, need to use the systems that
13 accommodate them. Some of them could use, you know, other
14 systems.

15 MS. FONG: We can get back to you on the number.
16 I just don't know.

17 VICE CHAIRPERSON CARREL: You're saying 250,000
18 and you saying 1.2.

19 MS. FONG: Well, I think she's talking about
20 minority --

21 VICE CHAIRPERSON CARREL: As these two figures --
22 these two populations, are you talking about eligible
23 voters or registered voters, do you know?

24 MS. FONG: Eligible. And we can crunch to tell
25 you the registered voters.

1 VICE CHAIRPERSON CARREL: So these people are
2 just populations who are 18 years and older and are
3 eligible.

4 MS. FONG: Or citizens who --

5 VICE CHAIRPERSON CARREL: Thank you.

6 MS. FONG: Unfortunately, we don't always -- you
7 know each county has their own steps. So in order to turn
8 that number out, we have to kind of go county by county.
9 And it's not an easy thing to just get at our fingertips.
10 I could certainly try to look for those numbers if that
11 assists the panel in making the decision.

12 Let me assure you, though, that even if we just
13 reduce it to the 14 counties that provide touch screen,
14 and those that are required to provide language
15 assistance, we're still talking about hundreds of
16 thousands of voters and it's not a small number.

17 VICE CHAIRPERSON CARREL: Right. Well in those
18 counties that aren't required to have language assistance,
19 and most of them do not provide it, because they're not
20 required under the Voting Rights Act, those voters who
21 speak -- who don't speak English and thus potentially the
22 only way they can vote is by having someone assist them
23 with English ballots. So they're paperbased. They can't
24 vote DRE if there's no DRE language there.

25 MS. FONG: They're one hundred percent foreclosed

1 from any type of private votes.

2 VICE CHAIRPERSON CARREL: Okay. You've talked
3 about access. And I don't diminish the issue of access.
4 In fact, I've been a proponent of access throughout this
5 whole process, ask anyone on the technical taskforce,
6 about moving forward to try to make sure that as we move
7 forward on these -- through the modernization issues to
8 electronic voting, that we don't diminish the need for
9 accessibility for any population. And that we encourage
10 the ability for every voter in this state to be able to
11 vote privately and independently without assistance.

12 But I didn't hear you say anything about
13 security, except in saying that it's a false choice. Let
14 me just stress my view that we have to deal with
15 accessibility, but we also have to do with security. And
16 the Secretary came out with his directive in November on a
17 voter verified paper trail. But we've changed language.
18 A voter verified paper trail to an accessible voter
19 verified paper trail.

20 And as a result, that has, I hope, changed the
21 discussion, because his concern was that there are two
22 issues here of paramount importance when we're moving
23 forward that have not been addressed adequately, both
24 accessibility and security.

25 So when you talk about not forgetting the

1 accessible -- the need for access for populations that
2 don't have the access currently without DREs, how do you
3 respond to the concerns from many people who spoke here
4 today about the fact that DREs don't provide adequate
5 security?

6 MS. FONG: Again, this is purely based on our own
7 field poll monitoring, and going into the poll sites. And
8 unfortunately, every election, watching a whole slough of
9 problems happen at the poll site level. I'm not trying to
10 blame anybody whether it's voters or the poll workers. It
11 just happens, okay.

12 And those kinds of security problems, voter error
13 and poll worker error happen whether it's a touch screen
14 system or an optical scan system.

15 What I'm concerned about is that we're creating
16 two standards. One is this extremely high one for
17 electronic voting, because there's a lot of attention to
18 it. And there's a lot of excitement about it. And then
19 another one that says, hey, optical scan voting, you can
20 be at this shoddy level and we're not going to really look
21 at it. And if there are unmarked ballots or if people are
22 confused or if voter error is extremely high, oh, well,
23 that's just the system.

24 The other piece of it is that you think that it's
25 a matter of timing. And that if the timing was better,

1 okay, the money came at the right time, that there was
2 actually a certified VVPAT or some type of other certified
3 audit trail that you could feel comfortable with, that was
4 available for our counties to purchase or to turn back to
5 the vendors to solicit bids from, then we would support
6 that.

7 The difficulty is that we've got this
8 disjuncture. We've got a huge presidential election about
9 to happen. People are very worried about the results.
10 But at the same time, we're asking for something that
11 currently doesn't exist. I mean there's something that's
12 out there that is being floated, I believe, by Avante.
13 But has it been certified by California? Has it been
14 tested in the field? Is it better to put in something
15 that hasn't been tested at all than to go with a system
16 that we know, at this point, hasn't been broken into?

17 And I guess I would just say that we know, it has
18 been proven, that there is a higher rate of voter error on
19 optical scan machines. Six percent compared to one
20 percent on touch screens. And somehow we seem to say that
21 that's acceptable. But this hypothetical tampering with
22 touch screens is what we've focused all of our energy on.

23 And I would just suggest to you that --

24 VICE CHAIRPERSON CARREL: Well, I can say that we
25 haven't focused all of our energy yet. We've focused on

1 accessibility as well.

2 MS. FONG: Okay. And I would just suggest to you
3 that part of it is a timing issue. And we would hope that
4 there could be a solution that everybody could be
5 satisfied with, but in the meantime we are pleading with
6 you do not decertify electronic voting systems for
7 November, because in those 13 counties or -- 13 counties
8 plus Los Angeles where people have the opportunity to
9 vote, it does constitute 43 percent of the state's
10 population.

11 And for those counties it is a new opportunity to
12 enter into an integrated and equal vote. And that's what
13 I'm just asking from the panel.

14 VICE CHAIRPERSON CARREL: Thank you.

15 CHAIRPERSON KYLE: Any other questions?

16 Thank you very much.

17 Kathleen Williams, Registrar of Voters for Plumas
18 County.

19 MS. WILLIAMS: I'm Kathleen Williams. I'm the
20 Registrar of Voters in Plumas County, California.

21 No one's mentioned any of the problems that we
22 had in the last election, because we didn't have any in
23 Plumas. I've been in elections for about 16 years and
24 we've had the Data-Vote system previous to our touch
25 screen voting system.

1 We've conducted four major elections and several
2 small elections with Diebold. We've had very positive
3 feedback at the polls from our voters, especially from our
4 senior citizens.

5 We have one polling place inspector that we've
6 had for 40 years continuously and she's seen several
7 different methods of voting. She called me frantic, and
8 said please don't let them take the system away from us.
9 Our voters love it and we want to keep it.

10 When we purchased the system, we felt that we
11 were bringing technology to our small county that we've
12 only dreamed about in the past. Our voters began to enjoy
13 the ease and security of voting on modern, accessible
14 state approved equipment.

15 It would cost us an estimated \$125,000 to go back
16 to paper ballots. One of the statements that we heard
17 was, "You're to be congratulated for your pioneering role
18 and for taking the risks associated with being among the
19 first to make a conversion to a new technology.

20 "We all benefit from the trail blazing experience
21 and I want to express my deep appreciation for your hard
22 work, the work of your staff and the courage and foresight
23 of the Plumas County Board of Supervisors." Signed Kevin
24 Shelley.

25 We would have never imagined that within two

1 years we would be facing the possibility of losing our
2 \$300,000 system to decertification with no means to
3 replace it at all.

4 At the recent primary election none of our
5 equipment or software failed. All of our precincts were
6 open at 7 a.m. and serving our voters without any delay.
7 The poll monitors sent by the Secretary of State's Office
8 commended us on our precinct workers and the manner in
9 which we had conducted our election. I really believe
10 that the realization is with repeated testing and good
11 solid training for every election the system works.

12 We urge you to consider this as you make your
13 decision.

14 Thank you very much.

15 CHAIRPERSON KYLE: Thank you. Any questions from
16 the panel?

17 VICE CHAIRPERSON CARREL: A minor question, did
18 you use the PCM device in the election?

19 MS. WILLIAMS: No, we did not. We used the
20 SPYRUS encoders.

21 VICE CHAIRPERSON CARREL: Thank you.

22 PANEL MEMBER MILLER: One quick question.

23 Well, being from Plumas county we have to stick
24 together on this.

25 Was there a problem with the write-in, some issue

1 about write-ins.

2 MS. WILLIAMS: There was an issue occurred but it
3 was not due to a failure of the equipment. It was due to
4 the Secretary of State not approving a fix to the software
5 prior to the election.

6 What would occur is if a voter chose to write in
7 a candidate in two different races, particularly the
8 Democrat particular ticket I believe, that voter's ballot
9 was then failed, an error message came onto the screen and
10 that person would have to vote provisionally. That
11 happened twice with our election that day.

12 PANEL MEMBER MILLER: But you had a paper backup?

13 MS. WILLIAMS: Yes, we did. We had provisional
14 ballots that were paper.

15 PANEL MEMBER MILLER: So the voters could use
16 paper.

17 MS. WILLIAMS: Absolutely. No voter was
18 disenfranchised.

19 PANEL MEMBER MILLER: Thank you very much.

20 CHAIRPERSON KYLE: Napa county Registrar of
21 Voters John Tuteur.

22 MR. TUTEUR: Chairman Kyle, John Tuteur. That's
23 T-u-t-e-u-r. There are 24 ways to spell it and get it
24 wrong.

25 (Laughter.)

1 MR. TUTEUR: Chairman Kyle, thank you for having
2 these hearings today. First of all, I want to compliment
3 the two poll monitors that I worked with in Napa county
4 personally on two different occasions. And we've had a
5 wonderful relationship with the professional staff of the
6 Secretary's Office for many years.

7 And your March 2nd report, which I'm speaking
8 both on two and three since I won't be here yesterday.
9 The March 2nd report gave a clean bill of health to Napa
10 county. Did I say yesterday?

11 (Laughter.)

12 MR. TUTEUR: That's an old Beatles song that I
13 just can't get out of my head. I won't be here tomorrow.

14 They gave us a clean bill of health for the
15 electronic part of our system. Unfortunately, our optical
16 scan system had a failure, which we were able to correct
17 before we finished the semi-official canvass.

18 One thing I'm concerned about in the March 2nd
19 report is, and it was mentioned by an earlier speaker, we
20 need to keep the process simple at the polling place, both
21 for our poll workers and for voters. And I'm very
22 concerned about requiring a paper option at all polling
23 places in November.

24 We plan to be totally electronic at the polling
25 place. We did have provisional paper ballots in March,

1 but we're planning to have provisional ballots as
2 Riverside County does on our Sequoia DRE machines in
3 November.

4 And I'm very concerned, not just because of the
5 impact of having two voting systems at a polling place.
6 Our poll workers love the new electronic system. They
7 don't have to count ballots at the end. They don't have
8 to tally. They don't have to do any of that. They look
9 at the report on the screen. They pull the cartridges
10 out. They seal them up and return them to us and mark on
11 their qualification sheet what they found there. And
12 several members of the staff -- at least one of the
13 members of your staff were there while we did that.

14 So I'm very concerned about that. I want to
15 raise that issue with you. We would have strong concerns
16 about paper ballots available at every polling place.
17 Now, in this last election approximately 23,400 people
18 voted electronically, and four people came to our office
19 to vote on paper, which was the option we gave them.

20 I'm willing to keep that option open to everyone.
21 I do not want to advertise that if someone doesn't want to
22 vote on an electronic system, they should vote absentee,
23 because I believe that contributes to an erosion of the
24 public confidence in the voting systems of California.
25 And I certainly don't want to participate in that.

1 Please do not decertify touch screen systems in
2 November. It would cost Napa County \$200,000 to go back
3 to all paper optical scan. We did have problems with
4 paper optical scan in the March election. Optical scan
5 ballots are more prone to error than electronic systems.
6 You cannot over vote on an electronic system. There are a
7 number of reasons we would not want to return to an all
8 paper ballot.

9 Finally, Chairman Kyle mentioned at the beginning
10 of the meeting that this is democracy in action today.
11 Democracy in action is not the unilateral actions of
12 Secretary Shelley, which are eroding public confidence in
13 their basic privilege as Americans for fair, accurate and
14 secure and secret voting.

15 Democracy in action is Congress passing and
16 President Bush signing the Help America Vote Act, which
17 mandated accessible voting systems in every polling place
18 in America. We have three, on average, DREs in each of
19 our polling places. We'd have to have one anyway. If you
20 decertify them, we won't be in conformance with federal
21 law in November 2004.

22 Democracy in action is the vote of the people of
23 this state to invest \$200 million in electronic voting
24 systems. I urge Secretary Shelley to take steps to repair
25 the damage he has done over 15 months, in what has been a

1 40-year excellent relationship between local elections
2 officials and prior Secretaries of State.

3 I'd be happy to answer any questions.

4 CHAIRPERSON KYLE: Thank you very much Mr.
5 Tuteur.

6 Mr. Carrel.

7 VICE CHAIRPERSON CARREL: Yeah. I want to
8 correct the record of a statement made by Ms. Williams of
9 Plumas County. She said that it was the Secretary of
10 State not certifying a correction upon the question of Mr.
11 Miller. I'm of the understanding, and we can get a
12 clarification later on, but I'm of the understanding that
13 was a firmware version 4.4.5, which included that
14 correction in it, which was submitted to us in mid-January
15 for approval, which we rejected, simply because it had
16 never been approved by the federal -- never been qualified
17 federally. And we said that you can return when it is
18 qualified.

19 So we didn't approve it, because it hadn't
20 received federal qualification either.

21 PANEL MEMBER MILLER: Then it is my recollection
22 that it only ran on one 1.18.19 and we're running only on
23 18.18.

24 VICE CHAIRPERSON CARREL: Right, 1.18.19 has
25 never -- we've never reviewed that for certification, so

1 it's not certified in California.

2 CHAIRPERSON KYLE: Not only did it not get
3 federal qualification, it wasn't finished with federal
4 testing.

5 VICE CHAIRPERSON CARREL: So, yeah. I'll leave
6 it at that.

7 CHAIRPERSON KYLE: Moise Berger.

8 MS. BERGER: Good afternoon, members of the VSP
9 committee. My name is Moise Berger. That's spelled
10 M-o-i-s-e, Berger, B-e-r-g-e-r. I'm from San Diego.

11 These remarks are in addition to the letters of
12 April 6th and April 13th that I sent to you. How
13 important is an issue that would cause me to travel over
14 500 miles from San Diego to speak for only three minutes?

15 I wasn't paid by anybody to come here today. I
16 came because public confidence in our democratic system is
17 at stake. I'm an attorney and also a pilot. The say an
18 airliner can take off in Los Angeles and land in New York
19 completely on automation. How many of you would fly on
20 that airplane?

21 (Laughter.)

22 MR. BERGER: We need the human eye to verify that
23 everything is working properly. It's too important to
24 take any chances. Likewise, how many of you would deposit
25 \$5,000 at your local bank without getting a receipt and

1 looking at it before you left the bank. That's
2 verification by a human eye.

3 What if the teller told you, you don't need a
4 receipt. I typed it into the computer. See, it's right
5 there on the screen. Would you walk out without a receipt
6 in your hand? Of course not. That's verification by
7 human eye and with a paper trail. With that paper you can
8 check mistakes later if necessary.

9 In an election without visually verifying the
10 ballot, we are relying on something that has been put into
11 a machine and stored electronically, that no human eye has
12 ever seen. Even if it seems to work, we have to ask how
13 do you know it worked properly. There was nothing to
14 check the machine against that a human eye ever verified
15 is correct.

16 In case of an election contest, the human eye
17 verified ballot will tell us whether our machine worked
18 properly. It would also provide us with an accurate
19 recount. We need a voter verified paper audit trail. But
20 we won't have them by 2004.

21 Diebold and all of the manufacturers drag their
22 feet on this. So the Secretary of State was right to put
23 it off until 2006.

24 Some people, however, are jumping the gun. They
25 want to use touch screens without a voter verified paper

1 trail, without adequate testing, and even without
2 additional security measures that the Secretary of State
3 directed. There are a lot of problems in the last
4 election as I noted in my April 13th letter.

5 You may be criticized now for decertifying by
6 people who have a monetary stake. But that will be
7 nothing compared to a presidential election with glitches
8 and electronic mishaps. I urge you to prevent another
9 Florida fiasco. I ask you to prevent a nightmare. Do not
10 take our state into an election flying on unverified
11 instruments.

12 I urge you to decertify these machines for the
13 November 2004 election and use paper ballots. Paper
14 ballots can be verified by human eye and can be recounted,
15 if necessary.

16 Thank you.

17 CHAIRPERSON KYLE: Thank you. Any questions?

18 Thank you very much.

19 Eve Roberson.

20 MS. ROBERSON: Mr. Chairman, members of the
21 Board, I'm Eve Roberson, from Petaluma, California.
22 That's R-o-b-e-r-s-o-n.

23 And I am a retired city clerk, and I'm a lifetime
24 member of the California City Clerks Association. And as
25 a retired election official, I am here to urge this Board

1 to support the Secretary of State to decertify the
2 paperless touch screen voting machines for the November
3 2004 election, and that our votes be cast using paper
4 ballots and optical scanning machines, which are
5 available.

6 City elections -- or the California Election Code
7 requires that one percent of all votes cast to be hand-
8 counted to verify the vote as part of the canvass after
9 the election is over.

10 Closed elections require recounts, which require
11 paper ballots to provide it -- computerized voting system
12 would just repeat a provisional count with no verification
13 of the actual votes that were cast. Computerized voting
14 systems can be slower and more confusing than most optical
15 scan balloting methods, including even for persons with
16 disabilities.

17 And we have heard a lot about that today, but
18 adequate justice can be made and they are made. In this
19 time of tight budgets, optical scan machines cost
20 one-tenth the cost of computerized machines.

21 But with all this aside, the most important
22 reason to decertify computerized voting machines is
23 because they have been proven in too many cases to break
24 down, to have programming errors, they're easily hacked,
25 they create a false votes total. This causes lack of

1 voter confidence and discourages voting.

2 After all the reasons I've stated, I am -- and
3 for all that you have heard here today, I urge your
4 support of decertifying computerized touch tone screen
5 voting.

6 I'd be pleased to answer any questions you might
7 have.

8 CHAIRPERSON KYLE: One question.

9 PANEL MEMBER JEFFERSON: Just which jurisdiction
10 were you from when you were serving as an election --

11 MS. ROBERSON: I'm sorry?

12 PANEL MEMBER JEFFERSON: Which jurisdiction were
13 you from?

14 MS. ROBERSON: I am a retired city clerk from a
15 California city, South Lake Tahoe, California. Yeah, for
16 15 years.

17 CHAIRPERSON KYLE: Jim Adler.

18 MR. ADLER: Good afternoon. Thank you, Mr.
19 Chairman and members of the panel. My name is Jim Adler,
20 spelled A-d-l-e-r.

21 I founded Vote Here in 1996. And we began
22 focusing our talents on electronic voting in '98. In '99
23 I served on the Internet Voting Taskforce in California.
24 And currently I co-chair, along with David Aragon at Voter
25 March, the I triple E task group on voter verification

1 where we are laying out standards and we discuss this type
2 of topic at great, great, great length.

3 At the software company we don't make DREs. We
4 make software that goes inside DREs. And our technology
5 proves in every election that DREs and the back-end
6 tabulation databases aren't cheating or making mistakes
7 and provides for a meaningful audit. And I think we'd all
8 agree that confidence in results is what we're all after.

9 Last summer we announced a non-exclusive
10 agreement with Sequoia Voting Systems to integrate our
11 technology into their DREs and we look forward to
12 performing trials with that technology.

13 So what are we talking about here? I think
14 there's been a false bipolar debate on the security issue.
15 On the one hand DREs are fine as is. And on the other
16 hand, the only way forward is to go back to paper.

17 Well, I'm here to tell you there's a third way, a
18 third class of solutions that provide this proof and
19 verification that we all want.

20 Our technology is called DHTI. It goes beyond
21 the contemporaneous paper tower, the voter verified paper
22 audit trail. And that allows voters to verify not just
23 that their vote was recorded, but that their vote actually
24 got counted, even when faced with hackers and malicious
25 software and procedural missteps and software bugs that

1 may compromise the ballot along the way, all without
2 introducing the known weaknesses of paper or violating the
3 voter's secret ballot.

4 This is a pretty bold statement. I understand
5 that. But the effectiveness of this technology doesn't
6 rely on securing software source code or hardware, but
7 instead on a transparent audit process that it enables.

8 It doesn't protect the election from compromise.
9 It detects when elections are compromised, whether by
10 hackers, corrupt insiders or software bugs. Yes, it's
11 always good to build big fences. But it is crucial to
12 have a guard dog that barks when intrusions occur.

13 By providing voters the ability to verify that
14 their vote was counted as they intended, and providing
15 third parties the ability to verify election results, this
16 technology is that guard dog.

17 So the practical matter, tracking our votes is
18 really as simple as tracking a package sent by FedEx or
19 UPS or the postal service. Every day, actually, 12
20 million of us track our packages every day. It's ironic
21 if we know the destiny of our packages why can't we know
22 the destiny of our votes?

23 Well, now we can. Providing voters an
24 opportunity to verify their vote provides tremendous
25 advantages for detecting election problems. I'm happy to

1 go into how it works, but I know we're short on time.
2 It's been a long day for everyone. Suffice it to say that
3 the voter can verify in the polling place. Afterward they
4 could verify their vote actually counted. The public can
5 tally the election independently. That's the audit trail
6 we're talking about.

7 Since all ballots are published into what we call
8 an election transcript, you can actually let your
9 scientists or watch-dog groups participate in this audit.
10 And so it provides a level of transparency.

11 So the question is then how many voters need to
12 verify and safeguard the election? Well, before I get to
13 that question, I think it's important to understand that
14 before Election 2000 many believed that elections were
15 perfect. And, of course, that idyllic belief was
16 shattered. And, I think, today's hearing testifies to the
17 fact that we're struggling with the reality that elections
18 aren't perfect.

19 But without defining and quantifying this
20 confidence, we're in this really uncomfortable place,
21 where we're tempted to manage perceptions rather than
22 scientifically provable reality. And I want to give you
23 an example actually from the California Election Code
24 which I know some people have mentioned here today. It's
25 15360, which is the one that requires at least one percent

1 of the precincts be randomly chosen for hand recounts. It
2 seems like a great idea and is a good idea.

3 But if you really run the statistics, and this is
4 just basic statistics where they figure out the margin of
5 error on polling results, if you run the same statistics
6 on the one percent hand recount, it turns out that you
7 could change 60 percent or 150,000 ballots in a
8 Congressional race and get away with it, without the one
9 percent recount detecting anything, which is astounding.

10 When we ran those numbers, we were blown away by
11 that reality. And so the fact is, it seems like a great
12 idea. But unless you really get the science behind it and
13 understand that science, you're really just kicking around
14 in the dark.

15 However, if you allow 2,000 voters in the same
16 congressional district to verify their votes, that 60
17 percent margin of error dropped to a quarter percent. So
18 you couldn't defraud a quarter percent of the ballots
19 without detection. So voter verification, coupled with
20 third-party audit provides the entire election with
21 quantifiable trust.

22 One thing I want to talk about before I finish up
23 is this idea of transparency, and we talked about that as
24 well.

25 Elections are safeguarded by transparent

1 third-party audit. Typical voters do not understand how a
2 level machine works or how a punch-card system works or
3 how a ballot is optically scanned. However, they trust
4 that, authorities, party observers and watch-dog groups
5 will scrutinize both the mechanism and process of
6 elections. Transparency enables that the scrutiny can
7 happen.

8 And to that end, we've been very committed to
9 that, and we recognize the importance of openness. And
10 being good students of cryptography, and we are, we
11 understand there's no security in obscurity. After all,
12 if I hide my money in my backyard, I may think it's safe,
13 but most would agree that it's really not secure.

14 So we began a full disclosure process in '99. We
15 filed patents that get published. We released all
16 technical documentation for our technology last September.
17 And early this month we released all the source code that
18 implements our technology for public and scientific
19 scrutiny.

20 CHAIRPERSON KYLE: Mr. Adler --

21 MR. ADLER: I'm done.

22 CHAIRPERSON KYLE: -- could you wrap up?

23 MR. ADLER: Yes, I sure can. So the real
24 fundamentals in this debate are voter verification that
25 allowed the voter to ensure that their vote is counted as

1 they intended.

2 Two, results verification that allows the public
3 to verify the election results and perform a meaningful
4 audit.

5 And three, enough transparency in the process so
6 one and two can happen in every election.

7 These fundamentals prove that the election
8 technology procedures didn't cheat or make mistakes, and
9 election results can be meaningfully audited. This is the
10 promise of electronic voting, not just that electronic
11 voting can be as good as paper. Electronic voting can be
12 better than paper.

13 When I vote absentee, I put it in the mail. I
14 hope for the best, maybe it gets counted, maybe it
15 doesn't. If I vote at my favorite ballot polling place,
16 maybe it gets counted maybe it doesn't.

17 Electronic voting can actually allow the voter to
18 verify the vote actually got counted. So that's an
19 amazing ability.

20 And I urge you not to shut the door on innovation
21 that will benefit all the voters. So thank you very much
22 and I'll take any questions you might have.

23 CHAIRPERSON KYLE: Mr. Jefferson.

24 PANEL MEMBER JEFFERSON: Yeah, I just had one
25 question. As you know, I'm pretty familiar with your

1 system, and there are two things that I really like about
2 it. I do think it's an interesting third way. I do think
3 it has to remain on the table. It has to meet for
4 consideration for use in real elections. I like the
5 emphasis on quantitative error bars. And I like the fact
6 that you have enough confidence in your technology to open
7 the source code.

8 So my question is I know you have a partnership
9 with Sequoia that you just talked about. What is the
10 status of the federal certification -- or qualification
11 process for Sequoia's DREs integrated with your software
12 and theirs.

13 MR. ADLER: Well, as you know since this
14 technology is inside those DREs, we're in the process in
15 this integration. We don't have status of when it's going
16 to pop out. We'll make that announcement when it's time.
17 And we are, in this environment, trying to figure out
18 which counties, where the trial is, where we can fit into
19 and have firm knowledge of when this is going to pop
20 out --

21 PANEL MEMBER JEFFERSON: The federal
22 qualification.

23 MR. ADLER: Federal qualification and
24 certification.

25 PANEL MEMBER JEFFERSON: You have submitted for

1 federal qualification or not yet?

2 MR. ADLER: No, not yet.

3 VICE CHAIRPERSON CARREL: We've talked before
4 about it.

5 MR. ADLER: How are you?

6 VICE CHAIRPERSON CARREL: Fine. I don't know
7 that you have, but a lot of what you said today, I think,
8 is applicable to the development of the standards for a
9 voter verified paper trial. And I would encourage you to
10 not just submit your remarks today, but formal comments if
11 you had already. I know the comment period closed a
12 couple days ago, but I'd be very interested in hearing
13 your reaction to the standards and to any other
14 suggestions related to that.

15 MR. ADLER: I did submit a written letter by the
16 cutoff. I tried to keep it brief to one page, but I'm
17 more than happy to discuss other nuances of the standards.
18 And I certainly have opinions.

19 VICE CHAIRPERSON CARREL: Well, we are happy that
20 you shared them before.

21 Thank you very much.

22 MR. ADLER: Thank you.

23 CHAIRPERSON KYLE: Thank you.

24 Jack Gerbel.

25 MR. GERBEL: Mr. Chairman and committee and

1 panel, thank you for listening to me. My name is Jack
2 Gerbel. And I am the president of Unilect Corporation.
3 We are headquartered in Dublin, California in the Bay
4 Area. And our Patriot Touch Screen Voting System is
5 certified in California.

6 Just as a little bit of background, I was one of
7 four founders of CES, Computer Election Systems. As a
8 matter of fact, the only guy that's still involved in the
9 election equipment business.

10 After 40 years in this business, and I'm not that
11 old. Yes, I am. I hope that I can speak a little bit
12 from experience. Unilect was -- we were the very first
13 developer of touch screens in the United States. Now, I
14 mean that in the area of commercial touch screens used in
15 elections.

16 What happened is that now this election coming up
17 in November will be our third presidential election. No
18 other touch screen company can say that. We do
19 acknowledge the frustrations of everybody in the room and
20 yourselves. And we also have the frustration from the
21 standpoint of we kind of developed touch screens. We did
22 develop it, and so we're sorry to see people not
23 understanding it.

24 We are here, however, to urge you restraint in
25 labeling touch screens bad, because it basically is not.

1 Touch screens systems are much more accurate, much more
2 secure and much more easier to use than either punch
3 cards, optical scan, lever machines, whatever you have.

4 A good example was yesterday in the San Francisco
5 Chronicle, there were a couple of people who were running
6 for Congress, congressional candidates, that were knocked
7 off the ballot, both of them, because of -- this happened
8 to be with write-ins, but it had to be the situation where
9 the voter wrote the guy's name in or the lady's name and
10 then forgot to fill-in the little arrow or the little
11 bubble.

12 This is because it's somewhat more difficult to
13 use. There is no easier system to use than touch screens,
14 certainly ours.

15 Both candidates, of course, lost their bid to run
16 in November. In any voting system human error is almost
17 the leading -- is always the leading -- the leading cause
18 of problems. Touch screens are, as I mentioned before,
19 the simplest, secure, easier system to use than anything
20 on the market.

21 One problem, however, in this election industry
22 is that problems sell newspapers, and successes don't.
23 And yet all of us in this business have had plenty of
24 major successes.

25 Here's an example about Unilect which you may not

1 know. Our Patriot system in all of our over 200
2 countywide county-run elections has never ever had a
3 significant problem of any kind. It has never had -- we
4 have always rather finished early on election night. We
5 have had seven recounts, including one hand count, because
6 we do have a paper trail. And each one of those matched
7 exactly the election night totals. All of our customers
8 are extremely happy and none have ever left.

9 Every touch screen company is different
10 architecture. Ours is different than anyone else's. We
11 do not use smart cards. We do not use voter cartridges.
12 We do not use access codes. And we do not use wireless
13 devices. We are never on the Internet. We are never on a
14 network. We are never directly attached to the web.

15 What we believe in is we -- but we have
16 programmed the rules for counting each -- for counting
17 ballots. Our customer's code the ballot each election, so
18 neither can commit any fraud, because they have to use our
19 rules and we have to use their ballots. So without really
20 vast numbers of people on both sides, there can be no real
21 collusion.

22 Touch screens are by far the best, the easiest to
23 use and the most economical over a period of time. With
24 our Patriot system customers, the voters, the poll workers
25 and the election boards wouldn't want to use anything

1 else. We ask you to just ask them.

2 Thank you for listening to me, and I'll be happy
3 to answer any questions.

4 CHAIRPERSON KYLE: Thank you very much.

5 MR. GERBEL: Thank you.

6 CHAIRPERSON KYLE: I believe that concludes our
7 out-of-order testimony.

8 Well go back to item agenda -- no, we have one
9 more. Did you hand in a card?

10 MS. YEAGER: I gave it to them.

11 CHAIRPERSON KYLE: All right. Come over, Ms.
12 Yeager and find your card.

13 Is there anyone else?

14 Did you submit a card?

15 Okay so why don't you stand there ready.

16 Ms. Yeager.

17 MS. YEAGER: I'm Patricia Yeager, Director of the
18 California Foundation for Independent Living Center. We
19 represent 28 independent living centers. We provide
20 services and advocacy for people with all types of
21 disabilities. We are non-residential and we serve people
22 across all the ages.

23 You have a letter from us opposing the ban on
24 touch screens. I want to just chat a little bit about how
25 this works for people with disabilities. You know up

1 until 1999 people who are visually impaired and those with
2 manual problems -- dexterity problems were acquiescent to
3 the fact that we had to tell somebody our vote, because
4 there was no other option.

5 So we went with the flow and said, all right,
6 we'll tell somebody else our vote or else we won't vote at
7 all. And there are many people who don't. In 1999 touch
8 screens were invented and that began our liberation to be
9 able to vote in a private independent manner.

10 In this country since 1979/78, the Rehabilitation
11 Act has stated in Section 504, "That when acceptable
12 equipment is available for government or any program that
13 receives over \$2,500 of federal funds..." which I believe
14 we do that in running elections, "...you must purchase at
15 least one accessible piece of equipment at each location
16 where you're going to hold that program."

17 And that's what we are asking for in a lawsuit
18 that we have filed against four counties and against the
19 Secretary of State, is to say that one touch screen is
20 available for people with disabilities, and the people
21 with language problems and those who do not read, so that
22 they can vote securely, they can vote expectedly and
23 privately for the first time in their lives for many
24 people.

25 Yes, the Secretary of State did require an

1 acceptable voter verified paper trail. Our hat is off to
2 that, except it does not exist and we don't think that it
3 will be certified in time before all the HAVA money gets
4 spent. The county under AB 714 Leno's bill are not
5 required to spend money they don't have on accessible
6 equipment, if they don't have it.

7 So our fear is that this money will evaporate on
8 optical scan or other equipment, and then when our turn
9 comes, when equipment is acceptable to us, the State will
10 be well, we don't have any money, we'll have to do this
11 another way.

12 That has been our experience. I am a person with
13 a disability. I've been in this field for 25 years, and
14 that has been our experience over and over again. And we
15 don't want to see this happen with touch screen machines.
16 The people who you are going to affect when you decertify
17 this machine are people who don't work, by and large
18 because of a disability, because they don't read and
19 because they don't speak English as a second language.
20 They're not running companies. They're not out there
21 making a middle class living, and they're not going to
22 have a very accessible way of voting on policy that
23 impacts them.

24 I find it just truly amazing and somewhat
25 political that we're having this discussion to shut off

1 this group of people to put them back into, you've got to
2 tell somebody your vote, so that it's safe.

3 So my suggestion in all of this is that if you're
4 going to do away with touch screen, because it's a
5 computer, you must also do away with optical scan, because
6 it too has its problems and is not acceptable. And
7 perhaps all of us in the state can vote the way blind
8 people vote now, and that is that we all march into a
9 voter booth and we tell a poll worker what our vote is and
10 that we bring in a third party, probably someone from
11 outside the state, who can be equivalent of international
12 observer to our election so that all of us vote the same
13 way and we all have eyes and ears to verify that, in fact,
14 the vote was marked as we dictated it.

15 I think it would accomplish one thing, it would
16 turn off voting in this state completely. And I have to
17 wonder if, in some way, this isn't the purpose of this
18 whole political circus is to enfranchise a group of
19 low-income people and not work towards a solution that
20 enfranchises all of us and is safe at the same time.

21 If you ban those machines, you will
22 disenfranchise people in 14 counties. And we ask you not
23 to do that.

24 Thank you.

25 CHAIRPERSON KYLE: Any questions, panel members?

1 Thank you, Ms. Yeager.

2 MS. JACOBI: Veronica Jacobi.

3 CHAIRPERSON KYLE: Say that into the mic again.

4 MS. JACOBI: Veronica Jacobi, J-a-c-o-b-i, Santa
5 Rosa in Sonoma county.

6 I would appreciate an audible paper trail.
7 Voting is so important, and it's certainly important this
8 November. Until 2000 I've had faith that my other
9 American's votes count. This is very important to me.
10 It's so important to all voters.

11 Yes, people have struggled and died for the right
12 to vote. We deserve for our votes to count. There is
13 zero excuse for votes to be vulnerable. This is the first
14 time I've come all the way to Sacramento to speak up.
15 Please protect my vote. Every vote should count. I do
16 not trust Diebold. Diebold failed numerous voters. I
17 want secure and accessible voting.

18 I've heard the people with disabilities and who
19 have language issues, and I certainly hope that their
20 needs can be met this November. And I'd also like my
21 needs met. I do want a voter verified paper receipt to
22 turn in for an audible paper trail in November. Voter
23 confidence is worth the expense.

24 Thank you for your attention.

25 CHAIRPERSON KYLE: Thank you.

1 Anyone else who's not going to be here tomorrow?

2 Going once.

3 Going twice.

4 Third.

5 Okay, now we will return to Agenda Item number 1.

6 Noting the hour, I would just ask -- Mr. Urosevich, I was

7 told that you had a few comments that you would like to

8 make.

9 MR. UROSEVICH: May I?

10 CHAIRPERSON KYLE: Sure, if you have the

11 intervening will, then please make your comments.

12 MR. DORSE: I recognize it is a late hour, and

13 you may or may not want to take up the opportunity to what

14 I'm going to mention, which is we do have from discussion

15 today, some discussions, allegations about security

16 issues, technical issues on versions and so forth. We do

17 have with us our chief developer who can get into details

18 that would be specific concerns. Some have been raised by

19 Ms. Harris or Mr. March or others.

20 I'd hate for those to just lie on the record as

21 if they're proof of facts because they were said. So I

22 mention that. We'd like to be able to trust those, but at

23 the late hour, they are technical issues that may not be

24 easily absorbed.

25 CHAIRPERSON KYLE: Okay. I appreciate that

1 preamble. Why don't we get started and see whether our
2 heads start to droop when it gets there, except for Mr.
3 Jefferson.

4 (Laughter.)

5 MR. DORSE: Mr. Tab Iredale has a couple of
6 issues.

7 MR. IREDALE: There was a couple of issues that
8 were discussed here earlier today that I think there's
9 some misunderstanding I hear, and we'd like the
10 opportunity to clarify.

11 One of the issues that had been addressed twice
12 today is the question about smart card hardware and
13 software, and whether we modify it, and what that meant.

14 I was the one who answered that question. To me
15 a question about smart card hardware has a very definite
16 meaning. Smart card hardware is a smart card hardware
17 that we buy from another manufacturer and put it in our
18 unit.

19 The software that's on that smart card hardware
20 is produced by that manufacturer. To ask whether we
21 modified that? No we don't, okay.

22 Does our system have code in it to access that
23 and to write data on to that? Yes. When somebody asked
24 do we modify that? I find that a strange question to ask,
25 because it's our system. We created it. So in trying to

1 answer your question, we were trying to be
2 straightforward. We were not trying to be elusive or
3 anything like that.

4 Okay. And that sort of leads me to the other
5 issue of, you know, I know that there's this impression
6 that we have tried to be subsurface in some of the things
7 we did. We're not trying to do that. We're trying to
8 work with our customers, with you people to resolve
9 issues, okay.

10 One of the things that has impeded this in the
11 last year has been the changes in certification
12 requirements. And that has come to us as unexpected
13 delays. And when we have been asked are we going to be
14 certified in this timeframe, we, to the best of our
15 knowledge, say yes because according to prior experience,
16 that's what's going to happen.

17 The rules have changed.

18 VICE CHAIRPERSON CARREL: You're speaking of the
19 federal?

20 MR. IREDALE: I'm talking about the feds, okay.
21 I'm talking about the federal rules that have changed,
22 okay.

23 And in some ways they've -- you know hopefully
24 they're changing for the better. Hopefully the federal
25 government and ITAs are doing more detailed scrutiny.

1 They are now doing end-to-end testing, which that's good,
2 but it's things that do delay the ability to make a change
3 and say here it is, okay.

4 So when we sit here and say we change our law, we
5 require a new change for California, it's not something
6 that we can develop tests. Four months later we actually
7 submit to certification. Certainly we used to be able to
8 get certified in two months. That's no longer the case,
9 okay, or at least has not been.

10 Federal certification is also going through a
11 review process, because they are finding the bid process
12 is taking too long, and things need to be done.

13 The other issue that was raised here, and I just
14 want to address it directly, was a question about our
15 ballot station version 4.4.3.27-Cal and why it did not --
16 we did not pursue that through the federal certification.

17 The reason is because that version would not
18 achieve federal certification under 2002 requirements.
19 They changed some of the requirements, in particular, for
20 the visually impaired and said that version would no
21 longer meet the requirements.

22 The things that do meet that requirement are in
23 our later version. So that's the version we pursued with.
24 Now, we were pursuing that six months ago. We're still
25 trying to work through that process. It's taking that

1 long, okay.

2 So it's not that we're sitting and saying well,
3 we'll drop that intentionally. We could not pursue that,
4 because the rules have changed.

5 VICE CHAIRPERSON CARREL: Okay. If I may ask a
6 question. When you introduced or submitted 4.4.27, it was
7 not in the Cal version. The Cal version came about, am I
8 correct, because the testing labs said to you there were
9 some changes you needed to make, and you wanted to modify
10 then the successive version, which had more -- did a lot
11 more than just that version did or just those three
12 modifications. And so you went ahead and tried to include
13 it in a later version, which I guess was 4.4.5.

14 And that was submitted to us before it had been
15 qualified or tested --

16 MR. IREDALE: No, it was in testing.

17 VICE CHAIRPERSON CARREL: In test, okay. But
18 apart from submitting the 4.4.5 to us in McKinney when our
19 technical consultant and our staff went to test, they were
20 not informed until then that you were incorporating it
21 into 4.4.5 and had dropped 4.27 and that you needed to --
22 and I believe, maybe I'm incorrect, you were told then --
23 we didn't realize that you were proceeding only with 4.4.5
24 and not with the initial 27. And that led you to create
25 4.4.27-Cal to accommodate our needs to obtain a qualified

1 version.

2 MR. IREDALE: Right.

3 VICE CHAIRPERSON CARREL: So I'm correct?

4 MR. IREDALE: I'm trying to understand --

5 VICE CHAIRPERSON CARREL: The Cal version -- the
6 27-Cal only came about once we found out that you had
7 intended on incorporating the changes into 4.4.5.

8 MR. IREDALE: They had already been done there.

9 VICE CHAIRPERSON CARREL: Okay. And not pursuing
10 the initial 4.4.27?

11 MR. IREDALE: We could not get NASED
12 certification on 4.3.27. That could not happen, okay. We
13 pursued 4.4.5 trying to get it certified in time.

14 And because it was going to take too long, we
15 went back and corrected 4.4.3.27-Cal just for California.
16 And the ITAs reviewed it, but would not ever give us a
17 federal number for it. It was done strictly for
18 California. And it only had the change that was required
19 for California, and it would never go through the full --

20 VICE CHAIRPERSON CARREL: Is 4.4.5 through
21 testing at the federal level now?

22 MR. IREDALE: That is the letter that was
23 submitted that says --

24 VICE CHAIRPERSON CARREL: So now it has completed
25 testing, but we still don't have a NASED number on it,

1 yet.

2 MR. IREDALE: That's right.

3 VICE CHAIRPERSON CARREL: Thank you.

4 PANEL MEMBER JEFFERSON: I just have a couple of
5 general questions. I don't know how this works. Any
6 vendor that has customers that aren't states, and you do,
7 you have to -- of course, you have federal qualification
8 thinking. Then you've got to satisfy the certification
9 requirements in different states that have different
10 election codes and all that.

11 So my question is logistically how do you manage
12 all of the different versions for the different states?
13 Do you have a linear sequence of software versions, and
14 every state has to have one of them? Or do you have
15 trees, so that there's a California development tree and a
16 Georgia and Maryland development. Just how does it work?

17 MR. IREDALE: We try to reduce the trees. We try
18 to make sure everybody's on the same path, okay. That's
19 not always possible because of the way when certification
20 requires, when enhancements are required, that will often
21 trigger California changes in their law. We just hit this
22 in Ohio. They changed the rules saying we need this.

23 Rather than being able to wait until we've
24 California and Ohio and Maryland and Georgia all together,
25 and say okay let's go, we end up having to stagger these,

1 and that is what technicians run into is how do you
2 control this. We try to make sure everybody is on the
3 same release.

4 And what we're taking through right now is -- has
5 a certain level. There will be another release down the
6 road that has other things in it, okay.

7 PANEL MEMBER JEFFERSON: So just to let you know,
8 I have profound sympathy for this problem. I realize it's
9 an extraordinary management problem.

10 VICE CHAIRPERSON CARREL: Let me follow up with
11 the last question that I had asked, and I realize that
12 there was the next obvious question that I didn't ask, so
13 let me try to ask that obvious question. You were going
14 to proceed with 4.4.5 to include the corrections that you
15 needed from the initial version that you submitted and
16 were planning on using 4.4.5 in the March election with
17 all of your clients?

18 MR. IREDALE: Again, you're talking about in
19 California?

20 VICE CHAIRPERSON CARREL: Yes.

21 MR. IREDALE: That was our original goal, yes.

22 VICE CHAIRPERSON CARREL: So that was -- so were
23 you then going to proceed on that. But as we all have
24 seen, it still doesn't have a NASED number today, and it's
25 only just received testing, and we're already a month and

1 19 days out of the election. So you submitted it to us.
2 It had not been completed testing with the feds. It had
3 not been qualified at the feds, and we rejected it because
4 of that, and we asked you to go back and thus we -- I hope
5 you understand why we were very upset, because we
6 didn't -- and I think we were correct -- expect it to get
7 out in time, to be tested, qualified, certified,
8 installed, tested at the local level, et cetera.

9 What was your plan? What was Diebold's plan for
10 this software?

11 MR. IREDALE: For the 4.4.5?

12 VICE CHAIRPERSON CARREL: Yeah.

13 MR. IREDALE: Why did we use -- 4.4.5. went into
14 certification six to nine months ago. That's how long it
15 has taken to get through, okay.

16 We would never have believed it would take that
17 long, okay. They changed the rules halfway through on
18 some of these things. We had to go back and do more work.

19 VICE CHAIRPERSON CARREL: Again, I understand
20 that.

21 MR. IREDALE: Okay. Now, what was our plan,
22 given that we knew or that we found out that 4.4.3.27
23 would not work, was that we were going to have to go and
24 try and get 4.4.3.27 through certification. We had no
25 choice.

1 VICE CHAIRPERSON CARREL: But we pressed you to
2 get 4.4.3.27 through recertification when we found out
3 that you were initially intending on getting 4.4.5 through
4 certification relying on that. And I guess my concern is,
5 as a company with clients, who -- and this was January,
6 two months before the election. So you were going to rely
7 on something that you yourself said you didn't believe it
8 would have taken that long.

9 To my knowledge, and I mentioned this earlier
10 today, there were ten applications for changes to your
11 systems or to your software or your firmware in just the
12 eight weeks before the election. And no other vendor was
13 at that level. In fact, the highest next was three, I
14 think.

15 Okay, so from my standpoint, I guess I'm looking
16 at these other vendors and they're saying, we market a
17 system, we sell a system, and they buy a system after it
18 is qualified and certified. But what I'm seeing here is
19 that your system was not fully qualified, because you
20 still had this problem with 4.4.5.

21 MR. IREDALE: 4.4.5 had enhancements on it, so
22 additions.

23 VICE CHAIRPERSON CARREL: So your system needed
24 the enhancements though to meet California law; wasn't
25 that correct?

1 MR. IREDALE: No.

2 VICE CHAIRPERSON CARREL: No. So what were the
3 enhancements?

4 MR. IREDALE: The enhancements were to support
5 the change in the law for the provisional -- or the
6 decline-to-state voter.

7 VICE CHAIRPERSON CARREL: So it wasn't required
8 to be used. Under our law, you needed -- it wasn't the
9 specific change in law, but it was to accommodate the
10 requirements under our law.

11 MR. IREDALE: That's right.

12 VICE CHAIRPERSON CARREL: So I don't know. I'll
13 leave it there. I think I am --

14 MR. IREDALE: I understand your frustration. I
15 understand where -- you're saying --

16 VICE CHAIRPERSON CARREL: And I recognize you may
17 have been frustrated throughout the process with the feds.
18 I think all of us at many times get frustrated with the
19 length of time it takes the feds to go through it, but I
20 guess my question -- my frustration is in addition based
21 on your company --

22 MR. IREDALE: -- why did we sell something that
23 we didn't think we can run.

24 VICE CHAIRPERSON CARREL: There you go.

25 MR. IREDALE: That's the question.

1 (Laughter.)

2 VICE CHAIRPERSON CARREL: And I didn't think I
3 could frame it that way, but there you go.

4 PANEL MEMBER MILLER: Go ahead.

5 MR. IREDALE: Our expectation is that based on
6 historical information, which is all we can use to
7 project, is that we should have been able to get that
8 certified. We look at how long it took us to get previous
9 versions certified. We look at when we take it into
10 certification, we said we should have lots of time. We
11 took it into federal certification nine months before we
12 needed it. That, historically said, we've got lots of
13 time.

14 But because they changed the rules in 2002, it
15 suddenly became not -- and they didn't tell us up front
16 that is all different. It's only as you're in it, they
17 came back and said, well you need to do this. Oh, we've
18 got a draft change here, you've got to implement that.
19 These are all unexpected things. We don't sit there and
20 go oh, we think we can squeeze it through, we'll sell this
21 and we'll force them, no.

22 PANEL MEMBER JEFFERSON: And the change in rules
23 you're talking about is the transition from the 1990 to
24 2002 standards?

25 MR. IREDALE: Passing that transition was that

1 part.

2 PANEL MEMBER JEFFERSON: What other -- go ahead.

3 MR. IREDALE: When we got into that certification
4 they decided they wanted to certify complete systems not
5 just the text screen, okay.

6 PANEL MEMBER JEFFERSON: End-to-end?

7 MR. IREDALE: End-to-end testing, that's right.

8 PANEL MEMBER JEFFERSON: And so the delay up to
9 nine months was not due to some lengthy back and forth due
10 to problems that were discovered and documented in the
11 record or something like that. It was not an
12 abnormally-- it was not an abnormal certification
13 process. We never got in. They didn't discover a long
14 string of problems that they didn't previously in other
15 systems discover?

16 MR. IREDALE: What they did is they came back and
17 said we don't like these comments in your code. There was
18 a whole bunch of iterations. We want a comment out here.
19 We don't like this comment. Things like that.

20 PANEL MEMBER JEFFERSON: Documentation standards.

21 MR. IREDALE: Their interpretation.

22 PANEL MEMBER JEFFERSON: Their interpretation.
23 Okay. But really that was it?

24 MR. IREDALE: Yeah, that was it.

25 PANEL MEMBER MILLER: Refresh my recollection

1 please, 4.4.5, would it run on 1.18.18 or did that run on
2 1.18.19?

3 MR. IREDALE: 4.4.5 includes the security
4 enhancements that Maryland requested. That's required
5 under the new version of GEMS to have security on that
6 side.

7 PANEL MEMBER MILLER: So we were even further
8 away from having --

9 MR. IREDALE: GEMS 1.18.18.19 has been through
10 FEC certification was done.

11 PANEL MEMBER MILLER: But has not qualified in
12 California or certified for California?

13 MR. IREDALE: No, but that was part of it. When
14 you say we submitted ten requests, it was to support all
15 of those changes.

16 VICE CHAIRPERSON CARREL: But I don't believe we
17 ever received a request for one -- oh, there's a GEMS --
18 yes we did receive a request, but before it was federally
19 qualified, I guess.

20 MR. IREDALE: Before we had the NASED number,
21 yes. It had completed federal testing.

22 PANEL MEMBER MILLER: Thank you.

23 MR. IREDALE: Just one final note, again just for
24 clarification. I think it's been clarified somewhat, but
25 I just want to make sure everybody understands. The PCM

1 which used our -- the precinct -- the voter card, is an
2 optional component. It is not required, okay. You can
3 run a perfectly successful election without it.

4 VICE CHAIRPERSON CARREL: Was that made clear to
5 every county and was it explained to them that this was
6 new equipment and they should have a backup?

7 MR. IREDALE: Since I'm in development and I
8 don't talk to the counties, I can't answer that question.

9 VICE CHAIRPERSON CARREL: Okay. Is there someone
10 else who can answer that question?

11 MR. IREDALE: I don't know on a county by county.

12 VICE CHAIRPERSON CARREL: Mr. Urosevich, since
13 you brought up the question -- I mean it's a broad
14 subject.

15 MR. UROSEVICH: Tab's in development, he's
16 correct. I'm president of the company. I'm not sure what
17 our people talked to the counties. I am sure that they
18 knew that the single failure, which was brought up by
19 David, is that was obviously made known to the county and
20 that TSx units themselves are the end carrier backup. So
21 I'm sure that that was --

22 PANEL MEMBER JEFFERSON: But it actually --
23 somehow that did not -- that information didn't get to the
24 precinct workers who would otherwise have used that,
25 right?

1 MR. UROSEVICH: In some areas I believe they did,
2 at least through the procedures and the testing, some
3 counties may not have gone that road. I do not know that
4 particularly.

5 VICE CHAIRPERSON CARREL: I'll leave it.

6 MR. IREDALE: That's all the comments I had. I
7 just wanted to make sure that --

8 VICE CHAIRPERSON CARREL: Thank you. You've been
9 helpful.

10 MR. IREDALE: -- if there was any -- and again if
11 there are any technical questions, I don't like to feel
12 that --

13 CHAIRPERSON KYLE: We're going to have more
14 questions later.

15 Thank you.

16 Mr. Singleton.

17 MR. SINGLETON: Good after, Mr. Chairman. For
18 the record My name is Marvin Singleton, S-i-n-g-l-e-t-o-n.

19 I want to make one comment. It's reflected in
20 the staff report.

21 MS. HENCH: I just want to make one comment.

22 CHAIRPERSON KYLE: Can you identify yourself for
23 the record, Ms. Hench.

24 MS. HENCH: Deborah Hench, San Joaquin County.
25 We were given the option and that's the option I took.

1 The TSx was the option I took, so we did have --

2 CHAIRPERSON KYLE: That was clear from your
3 testimony earlier.

4 PANEL MEMBER JEFFERSON: I noted that actually.

5 VICE CHAIRPERSON CARREL: I recognize what you
6 said, but I'm trying to understand whether that was made
7 well aware to all counties.

8 Thank you.

9 CHAIRPERSON KYLE: Please continue, Mr.
10 Singleton.

11 MR. SINGLETON: My comment, Mr. Chairman, is
12 going towards the staff report. Foot note number 2.
13 There's no page number, so I can reference it, but it's in
14 regards to Attachment A.

15 It says, "In a letter dated April
16 14th 2004, Diebold now admits that, in
17 its haste, it failed to install these on
18 at least 34 voting machines, requiring
19 partial recounts."

20 That's inaccurate. I spoke with Mr. Mott-Smith
21 on the day that we submitted the letter. What we have
22 been trying to do in the last couple of months is be very
23 forthright and open and communicate with your office, the
24 staff and the election staff as well.

25 We divulged this information after finding out

1 about it during the post-canvassing period. We do not run
2 elections. The counties do. We provide the hardware.
3 They have their own counting procedures. How do they go
4 about upgrading certain documents? So we do not touch
5 these machines. It's almost a Catch 22, because if, in
6 fact, we had gone out and touched all these things, there
7 would be comments to the opposite.

8 So I'd like, for the record, Mr. Chairman that
9 footnote be included that this is not an accurate
10 statement.

11 CHAIRPERSON KYLE: Your comment is duly noted in
12 the record.

13 MR. DORSE: And finally, if I may, Mr. Chairman.
14 I know it's been a long day. I hope, however, that Mr.
15 Urosevich's opening statements are still fresh in the
16 panel's mind. Those opening statements, of course, are
17 the acknowledgement, the apology and the commitment to
18 work in a serious and professional way with this panel and
19 the Secretary of State.

20 With that said, it's obvious that the report that
21 we received with the findings demonstrate the
22 credibility -- the perceived credibility gap. I
23 understand that.

24 I think I've made the point that there are some
25 explanations for the credibility gap, like a lot of things

1 in life, is a failure of communication. And hopefully
2 this process, as difficult as it is for all involved, can
3 be a productive process in opening up and maybe sincerely
4 changing the way communications occur.

5 The report that we have has some very serious
6 accusations, and we believe incorrect conclusions
7 regarding -- I mentioned earlier -- for example, the
8 November -- the alleged misrepresentations about the
9 status of certification in November. We just feel those
10 are just demonstrably false.

11 We could certainly present evidence, you know,
12 tangible admissible evidence to prove our point on that
13 and would ask for that opportunity, certainly before
14 adverse findings are made with respect to the confusion on
15 the 27-Cal issue. I believe Mr. Iredale has been
16 forthright and direct.

17 And again, I think that the actual facts do not
18 demonstrate any sort of undermining or abandonment on our
19 part. It's a complex situation. There is a complex
20 situation at the federal labs. Federal standards have
21 changed. Timelines have drawn out. That is not our
22 fault. We are working vigorously to readjust, to regame
23 our systems and to get on track and to get open, honest
24 communications with your staff and your office.

25 I believe one of the panel members was kind

1 enough to acknowledge that Mr. Singleton, who I can tell
2 you works 100 hours a week on doing nothing more than
3 trying to be a clear line of communication between our
4 company and yourselves.

5 Mr. Urosevich's commitment is that that will
6 continue to be the case. And, as he said, we do hear you
7 loud and clear. We think it is important to make the
8 point that while we hear the current Secretary of State
9 loud and clear, any fair assessment would acknowledge, not
10 just at the federal level but even at the State level,
11 that there has been a, if you will, change of regulatory
12 direction and emphasis.

13 The Elections Division did a report, surveying
14 ten years of election division files, and I think very
15 candidly acknowledged that within their own -- the
16 Secretary's own office, not necessarily this Secretary but
17 historically, there have been inconsistent practices on
18 software certification. That's a fact.

19 As a vendor, we have lived through those
20 inconsistent practices. They have communicated
21 conflicting signals about software certification to
22 vendors and others. This hearing is being focused on
23 Diebold's practices and, you know, the alleged failure to
24 follow the law.

25 However, a fuller examination of the record we

1 would suggest would show that this is not, if you will, a
2 problem that's been limited to Diebold. The Elections
3 Division report last year recommended an audit of all
4 vendors in the state. To our knowledge, that audit was
5 supposed to go forward, but the results are not on the
6 record. This is incomplete information. It's not
7 possible to assess Diebold's conduct in a vacuum or in
8 isolation. A complete record of the circumstances would
9 have to include a candid honest assessment of the
10 Secretary of State's own practices with respect to
11 software certification.

12 Those practices include the fact that
13 certifications did not even include a software version
14 number on the certification documents. Those practices
15 include that when the Secretary of State reviewed a system
16 there was no independent review of the software components
17 of an election system. And those practices have to
18 include, one of the references that was made, that
19 millions of voters now, today, last election and in future
20 elections, are voting on systems, not our systems, that
21 have never been through a federal qualification, have not
22 had independent software analysis, these card systems.
23 They're 20, 30 years old.

24 Okay. Diebold hears you loud and clear. And
25 there has been a statement that we said there's a new day,

1 but you don't believe it. Well, Mr. Urosevich spent -- it
2 took a couple minutes for him to list through the
3 positive, proactive actions that we have been engaged in
4 in the last number of months. And I took awhile to read
5 that list, and that's a substantial list. And it's a
6 sincere list and it will continue.

7 Now, with that said, there is information that we
8 suggest you really need to have to have the complete
9 picture, not only the actions of other vendors, the
10 parallel monitoring results, which there's really no
11 narrative explanation, but my quick assessment of those
12 show 100 percent reliability. To talk about decertifying
13 a system that has 100 percent reliability, I think, has to
14 be thought, rethought and rejected.

15 We've also, as you know, we've given the
16 Secretary of State Diebold's source code at the Secretary
17 of State's request for source code review. To date, we
18 have not heard any word back on that or any results from
19 that. We have to conclude by that, that it didn't really
20 show anything new.

21 Also, there's a reference in the findings to Mr.
22 Freeman having prepared a report and a review. He was
23 focused, as we understand it, on the prior versions and
24 the compatibility and the inter-compatibility of prior
25 versions. To our understanding he satisfied himself that

1 there was no technical issues. There were no vote
2 counting issues here. So we don't have Mr. Freeman's
3 report.

4 As you know, we've asked for various public
5 records that we think will show just the practice, the
6 prior historical practice, the practice that we lived in
7 as a company, that we think is important context.

8 The totality of which, going back to Mr.
9 Urosevich's comment, demonstrate, I think very clearly,
10 there was never any improper intent on Diebold's part,
11 improper motive or otherwise. The primary problems found
12 in the State audit 14 counties -- 17 counties that were
13 audited. Fourteen of those counties had the GEMS version
14 that did have the NASED number. True, it did not have
15 separate, as I understand it, did not have a separate
16 State piece of paper.

17 However, the reality is that California is a
18 member of NASED. California's technical consultant is on
19 NASED. I'm not aware of any situation where California
20 has rejected a system that did have a NASED number. It
21 was a mistake, you know, in hindsight not to have that
22 State certificate.

23 However, to put it in perspective, this is a
24 system that was federally qualified. There were several
25 counties, which we've explained it's only three counties,

1 unique circumstances. And that's the subject we believe
2 in Mr. Freeman's analysis that there was, in a sense, no
3 harm, no foul.

4 Regardless of the prior practices, we think the
5 broader context demonstrate conflicting signals on the
6 regulatory side, on one hand, and on the other hand a
7 broader context of circumstances that show no ill-motive
8 or intent on the company's part. By the same token, we
9 hear the current message loud and clear. Hopefully, the
10 panel will have an open mind to the view of viewing this
11 as part of a process of having a constructive, productive
12 dialogue where there is true transparency and
13 communications with all vendors in the state, and where
14 DESI's practices, you know, are not the only ones that are
15 considered in looking at that.

16 With that said, you know, we have your report.
17 There's detailed, you know, technical information that we
18 certainly would ask for the opportunity to give before any
19 decisions are made, and haven't had the opportunity to do
20 that to date.

21 But we stand ready to do so, and hope to do so.

22 CHAIRPERSON KYLE: Thank you Mr. Dorse.

23 I have more questions and some comments.

24 However, given the late hour of the day, the volume of
25 testimony that the panel has heard, I'm sure there are

1 other questions and comments. I'm going to continue this
2 hearing and role this agenda item over till tomorrow
3 morning, where we'll continue it, and finish it and then
4 pursue the March 2nd Report and the third agenda item.

5 I'm hoping that all four of you gentlemen can be
6 here tomorrow morning as well.

7 MR. DORSE: We have no other plans.

8 CHAIRPERSON KYLE: Thank you very much.

9 Thank you everyone in the audience.

10 (Thereupon the California Secretary of
11 State's Voting Systems and Procedures

12 Panel recessed at 5:45 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Secretary of State's Voting Systems
7 and Procedures Panel meeting was reported in shorthand by
8 me, James F. Peters, a Certified Shorthand Reporter of the
9 State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 25th day of April, 2004.

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JAMES F. PETERS, CSR, RPR

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