

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

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

THURSDAY, APRIL 22, 2004

10:00 A.M.

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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. John Ahman, Election Data Corp
Ms. Alexandra Allman-VanZee, R.N./Ground Zero Volunteer
Mr. Joe Andrew
Ms. Ann Barnett, Kern County
Mr. Bill Barnes, San Joaquin County
Mr. Dwight Beattie
Ms. Judy Bertlesen

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APPEARANCES CONTINUED

ALSO PRESENT

Ms. Julie Bustamante, Lassen County
Mr. Art Cassel
Mr. Kevin Chung, Avante Technology
Mr. Jim Dickson, American Association of People with Disabilities
Mr. Austin Erdman, San Joaquin County
Ms. Nancy Fenton, Alameda County Counsel
Mr. Brian Floyd
Ms. Elaine Ginnold, Alameda County
Ms. Gretchen Godfrey, Disability Rights
Mr. Jim Hamilton, Save-Democracy
Mr. David Hart, Hart InterCivic
Ms. Deborah Hench, San Joaquin County Registrar of Voters
Mr. Ralph Hogen
Mr. Joseph Holder
Ms. Diana Honig, Protection and Advocacy
Ms. Gen Katz
Mr. Robert Kibrick, VerifiedVoter.org
Mr. Scott Konopasek, San Bernardino
Mr. Dan Kysor, California Council of the Blind
Ms. Juill Lavine, Sacramento County
Mr. Joseph Lucsko
Ms. Martha Mahoney, University of Miami School of Law

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Jim March

Ms. Conny McCormack, Los Angeles County Registrar of Voters

Ms. Laura Oftedahl, Alameda County

Mr. Dennis Paull, Commonweal Institute

Ms. Ann Reed, Shasta County

Mr. Steve Rodermund, Orange County

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

Mr. Marvin Singleton, Diebold Election Systems

Ms. Maureen Smith, Peace and Freedom Party

Mr. Michael Smith, Marin County Registrar

Ms. Pamela Smith, Save-Democracy

Mr. Tom Stanionis, Yolo County Elections

Mr. Dan Tokaji, Ohio State University Law Professor

Ms. Mischelle Townsend, Riverside Registrar

Ms. Jolena Vorrhis, California State Association of Counties

Mr. Nathan Wardrip-Fruin

Ms. Jocelyn Whitney, Consultant, R&G Associates

Mr. Steve Wier, Contra Costa

Ms. Carolyn Young, Western Law Center

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CHAIRPERSON KYLE: Good morning. For those of you who weren't here yesterday, my name is Mark Kyle. I'm the Undersecretary of State and Chair of the Voting Systems and Procedures Panel. The Board welcomes you this morning. My apologies for the delay.

Welcome to Day 2. Let me just restate the ground rules. We have a lot of folks here today. We want to hear testimony from everyone who wants to testify. A lot of folks testified yesterday. We were able to hear from everyone. Sometimes a few times and that was good.

We want to try to allow folks to speak as completely as possible. We're sort of adhering to a timeline. But again to accommodate people, we do want to hear almost everything you have to say, but if you can, stick with the broad strokes. If you have something in writing to submit, that will help facilitate things.

Please no heckling, no clapping no booing, no cheering, no stomping of feet. Everyone was great yesterday and I appreciate that. Again spontaneous chuckles are okay, but nothing beyond that.

And we will continue -- just in terms of where we are today, we will continue the Agenda Item number 1 on the Diebold Investigation. We will then go to Item number 2, the March 2nd Election Report. We will have a staff

1 report, take comments on that. That's more or less
2 reading the report into the record, but we're interested
3 in comments. And we will then segue way into the third
4 agenda item on Voting Systems for November.

5 I know many of you are here today to address that
6 item, and we're interested in your thoughts, again,
7 written as well as oral testimony. We want to try to
8 accommodate everyone, and then we will take it from there.
9 I'm anticipating a lot of testimony. And one more ground
10 rule, if people can please turn off their cell phones and
11 pagers or turn them to silent or vibrate, so we don't hear
12 them or are interrupted. Our transcriber down here is
13 easily distracted, and he has hard time with names let
14 alone beeping noises.

15 Yesterday we heard a lot of testimony from the
16 vendor Diebold and from audience members regarding that.
17 Diebold had a chance to close out the day yesterday, Mr.
18 Urosevich, counsel and other staff. And I would like to
19 now turn to panel discussion on all the testimony and then
20 see if we have any motions for recommendations to be made
21 to the Secretary.

22 So I'm going to open the panel for a panel
23 discussion. I'm closing the testimony part of the day, so
24 we will not take anymore testimony at this point in time.
25 It's going to be panel discussion.

1 So, panel, I have a number of comments I would
2 like to make for the record, but I will defer until the
3 end. If there's anyone who would like to start, or I'll
4 start if other folks want to defer.

5 VICE CHAIRPERSON CARREL: Why don't we defer to
6 the Chair.

7 CHAIRPERSON KYLE: Okay. I want to comment on a
8 number of items raised yesterday by various parties
9 regarding the subject at hand.

10 First of all, I want to comment on the point that
11 was made a couple of times by Diebold, by both the
12 Chairman and by his counsel, that they had made requests
13 for a meeting to sit down and discuss things and seek
14 clarification.

15 I was taken a little aback by that suggestion
16 that, in fact, you folks had a hard time getting direction
17 from the Secretary of State's office, because we wouldn't
18 sit down and meet with you and have some kind of a
19 dialogue.

20 And I just wanted to dispel that for the record.
21 That in fact there was extensive communications between
22 numerous people on our staff and numerous people in your
23 organization. There were -- through numerous mediums.
24 There were letters. There were telephone calls. There
25 were Emails from myself, from the Vice Chair of this

1 panel, from the head of our Elections Department, from
2 technical staff on our Elections Department, from
3 technical staff who are consultants, to our general
4 counsel, to our elections counsel, to your general counsel
5 to other counsel, to Marvin Singleton, to the president,
6 to technical staff on your staff, repeated communications,
7 multiple times during the week, sometimes daily.

8 Now, if we had to sit down and meet every single
9 time there's a communication, we'd be meeting five times a
10 day every single day of the week. So I find it ludicrous
11 and offensive that that insinuation and accusation has
12 been made.

13 What is established by the record, and is in the
14 Diebold report, is that clarification was sought from
15 Diebold from our office repeatedly at the last minute. We
16 would send a letter saying we want X types of
17 communication documents provided. And a day or two before
18 they were due, we got a communication seeking
19 clarification.

20 It was mentioned just the other day about an
21 Email that came in from counsel Jones Day seeking just
22 such a clarification on Monday, two days before this
23 hearing. That's indicative of the kinds of behavior we've
24 seen from Diebold for the last nine months. Repeatedly
25 Diebold has provided information to us at the very last

1 minute. Repeatedly Diebold has provided incomplete
2 documentation and incomplete information.

3 So when counsel says on the record, as Mr. Dorse
4 said yesterday, there's been daily communication with SOS
5 technical staff, I find it contradictory and hypocritical
6 that you'll throw your hands up and say, "Gosh, we would
7 have done better, had you given us a little bit more
8 direction, and had we been able to sit down." It just
9 rings hollow.

10 The second point I want to make addresses a claim
11 that a lot of this process would have gone a lot smoother
12 over the last six months or last nine months if there
13 hadn't been a change from NASED to NIST at the federal
14 level, if there hadn't been a change in administration in
15 the SOS over the last year and a half, from a Bill Jones
16 administration to a Kevin Shelley administration, if there
17 weren't standards that were modifications -- that were in
18 transit, that there was a shift in standards. And boy it
19 was kind of hard to grasp that and we were struggling
20 really hard, but we didn't know what standards to perform
21 at.

22 So I'm going to read the last paragraph of the
23 conditional certification for the TSx system, and I want
24 to enter it into the record that this paragraph is on
25 every single certification that goes out of our office and

1 has done so for every vendor for the last decade, if not
2 14 years to my knowledge, back to the early 1990s back to
3 1990.

4 It's boilerplate language. And it reads as
5 follows:

6 "No further changes or modifications
7 to the voting systems shall be made
8 until the Secretary of State has been
9 notified in writing and has determined
10 that the change or modification does not
11 impair its accuracy and efficiency
12 sufficient to require reexamination and
13 approval."

14 Every single certification. That went out to
15 you. That went out last July for the GEMS 1.18.18
16 certification. That went out for every certification that
17 you ever received as it has to every other vendor. So the
18 fact that you've been on notice that any modification has
19 to come to us for review, and that you didn't know you had
20 to do that again rings hollow. And I find it offensive
21 that you're suggesting to the contrary.

22 Another issue I want to raise and make note of is
23 the issue having to do with the PCM 100 and PCM 500. And
24 again I think this contradiction in testimony illuminates
25 the problems that we've been plagued with as an agency in

1 dealing with Diebold over the last six to nine months.

2 When we raised the issue that there was a problem
3 with the loss of battery charge for the PCM, and that loss
4 had the consequence of delaying the opening and operation
5 of precincts in Alameda county and in San Diego county,
6 President and CEO and his counsel testified they didn't
7 either know about that problem prior to the election or it
8 was a baseless allegation made by us.

9 We then heard testimony from an ex-employee that
10 they were aware of the problem as a company as early as
11 February. And we heard testimony from a registrar of
12 voter using those very pieces of equipment that they were
13 aware of that problem in mid-January.

14 Well, there's contradictory testimony there
15 folks. And it sounds like somebody's not being truthful.
16 So again the disclaimer of, "Gosh, we didn't know it" or
17 "Gosh, the panel you're making baseless allegations,"
18 again rings hollow.

19 The last point I want to talk about now has to do
20 with the certification and qualification of the firmware
21 having to do with the TSx. In the early part of the
22 testimony yesterday, we asked the question, and made the
23 assertion, that Diebold stopped seeking approval of the
24 version 4.4.3.27 -- please bear with me those of you who
25 haven't been immersed in this -- and instead sought --

1 despite the fact that 3.27 what was -- is what the
2 firmware that was requested for certification at the end
3 of last year.

4 And we found out indirectly through
5 communications with the San Diego Registrar of Voters that
6 in fact you were seeking ITA approval of 4.4.5, a
7 different version, upgraded, ostensibly to address a
8 number of items. That may have been legitimate. But
9 unbeknownst to us one was dropped, the one that was before
10 us, and another one was being pursued. One that's been
11 forwarded to a client, quite honestly, illegally.

12 And when we raised that and put it in the report,
13 it was either told we didn't know anything about that. We
14 didn't do anything. We're not sure what you're talking
15 about. Or again your attorney it's a baseless claim.
16 It's a baseless allegation.

17 The problem is that your senior engineer late
18 yesterday basically admitted that's what you did. We
19 stopped seeking approval of 4.4.3.27 and instead sought
20 approval for 4.4.5. Great.

21 So just to make it clear, this version was
22 submitted, 3.27. What ran on March 2nd was 3.27-Cal, and
23 the letter we got yesterday was 4.4.5. It appears to me
24 it's switch and bate time again. And I find it offensive
25 that you say hey, we got the certification. Here's the

1 letter from the testing authorities saying that testing is
2 done, and it's not even a system that's currently in front
3 of the Board. It's not the system that was submitted at
4 the end of last year. It's not the system that ran the
5 election in March. It's a switch and bate tactic. And
6 quite honestly the panel is sick of it.

7 I also find it deeply troubling that this letter
8 materialized two days before the panel or the day before
9 the panel. It's dated April 20th. We saw it for the
10 first time yesterday. If I'm not mistaken, you made
11 representations that you saw it either for the first time
12 yesterday or late the day before. And it coincidentally
13 occurs a day before you're to be questioned about
14 certification, decertification or some other consequence
15 to the investigation over the last few months.

16 In mid-February we went through a similar version
17 with the PCM where we had repeatedly asked for federal
18 qualification. You had repeatedly said it wasn't needed,
19 until we put it in writing that we weren't going to go
20 forward. And low and behold a week later or days later a
21 letter materialized from Wyle.

22 Now, we understand that the ITAs, including Wyle,
23 are private enterprises. And we understand that you, as a
24 vendor, enter into contractual relationships with that
25 private enterprise and pay them a lot of money to do the

1 testing.

2 Unfortunately, this casts aspersions on Wyle and
3 casts aspersions on the ITA process, and casts aspersions
4 on the relationship between vendor and Wyle -- the vendor
5 and Wyle, or there's just a heck of a lot of coincidence
6 occurring in 2004, but I find it troubling.

7 And just to be clear, we still don't have a NASED
8 number for the machinery that -- and the system that ran
9 the election in March. We still don't have a NASED number
10 for federal qualification for the system that ran the
11 March election or was submitted before us.

12 So this is interesting for a lot of reasons, but
13 it doesn't do the trick. It's merely troubling and raises
14 more questions.

15 Those are my initial comments.

16 Any other panel members?

17 PANEL MEMBER MILLER: How do you really feel, Mr.
18 Chairman?

19 (Laughter.)

20 CHAIRPERSON KYLE: No more spontaneous laughing.

21 Any other panel members?

22 (Laughter.)

23 VICE CHAIRPERSON CARREL: I'll make some. Let me
24 just say the spin was making me dizzy yesterday from the
25 gentlemen from Diebold.

1 I was part of some of the exchanges. And it was
2 certainly frustrating to hear the exchanges that we had
3 had between Diebold and this office framed in such a way.

4 You know, we heard from Mr. Dunn yesterday. He
5 gave testimony to us yesterday. And, you know, he's
6 issued a declaration with those same statements to the
7 Superior Court of California. And he signed it under
8 penalty of perjury. And I don't know of anyone else who
9 has signed a document under penalty of perjury regarding
10 any of the statements that we've spoken of yesterday,
11 regarding the TSx certification, regarding the firmware
12 certification, regarding the PCM 100 and 500
13 certifications.

14 Mr. Urosevich sent a letter, and it's in the
15 Diebold report, December 19th, 2003.

16 It starts, "Dear Secretary Shelley: Today is a
17 new day at Diebold Elections Systems..." We heard
18 apologies yesterday. We've heard apologies before. It's
19 all belied by their actions and their statements. We keep
20 hearing apologies. We keep hearing misleading statements.
21 I feel like Bill Murray in Ground Hog Day.

22 (Laughter.)

23 VICE CHAIRPERSON CARREL: It just keeps repeating
24 and repeating and repeating. And personally I've come to
25 a point where my statements at several meetings ago are

1 still relevant today. I'm disgusted by the actions of
2 this company, and I think that we should forward the
3 recommendations to the attorney general. The
4 investigation that we've done and forward everything we've
5 found to the attorney general, because I can't believe
6 that -- I can't believe that a lot of the statements that
7 were made yesterday were accurate.

8 There's a letter of January 15th that we sent to
9 Mr. Urosevich based on the VSP meeting of that date, and
10 Diebold has failed to send us factory compliance with the
11 conditions of the certification, by failing to provide us
12 all the information.

13 They've given us some documents. They claim
14 they've given us something for everything. But you know
15 when we're still getting documents a day or two ago,
16 clearly we haven't received everything, except for a lot
17 of legal double talk.

18 And with regard to the Wyle letter that was shown
19 yesterday, you know, and the statements of Mr. Iredale
20 later in the day, it's clear that -- well, my suspicions
21 were confirmed. I think all of our suspicions were
22 confirmed that this company sought and obtained
23 certification of one version, used a second version in
24 March and proceeded with federal approval of a third
25 version. And that's disturbing.

1 It doesn't matter if it's gross incompetence. It
2 doesn't matter if it's intentional deceit, the result is
3 the same. They've been stringing us along. They've been
4 jerking us around. And they've been doing a bait and
5 switch on software that has resulted in the
6 disenfranchisement of voters in various counties, and that
7 has resulted in a reduction in the confidence, not only of
8 DREs but in voting in general, and that's disturbing.
9 That's very disturbing to me.

10 CHAIRPERSON KYLE: Mr. Jefferson.

11 PANEL MEMBER JEFFERSON: So I would like to talk
12 about security. The products we're talking about here
13 today, the TS and TSx DREs, those are the ones that I'm
14 talking about. I'm not talking about the optical scan
15 systems.

16 I asked yesterday -- I asked Diebold, Mr.
17 Urosevich, yesterday what the difference is between the
18 two versions of software, the TS and the TSx. He said
19 they are the same. As a result, my comments from now will
20 apply equally to both of them.

21 I asked his technical right-hand man about
22 whether there is a tree sequence or a linear sequence of
23 versions to deal with the problem that they have so many
24 states and different election codes to deal with. He said
25 insofar it's possible they try to make it linear, meaning

1 there is not a tree of versions, but there's a sequence.

2 And that's, of course, the right thing to do.

3 That's the best thing to do. That's really the only way
4 to manage a complex software development like this. But
5 at a consequence that at any given time there are at most
6 one, two or three versions of the software in use
7 nationally.

8 That means as well that if there is a bug in one
9 or a vulnerability in one, that bug or vulnerability
10 doesn't just apply to California, it applies to every
11 jurisdiction in the United States where all of these
12 machines were used, in particular states like Maryland and
13 Florida where -- and Georgia whether they use it
14 statewide. So we're talking about a national issue here,
15 not just a California issue.

16 Now, from my point of view, election's security
17 is an aspect of national security. This is not your
18 ordinary IT application. This is not an Ecommerce
19 application. This is the fundamental bureaucratic process
20 of democracy. It has to have the very highest standards
21 of security possible. It has to, while protecting your
22 privacy, prevent any outsider from being able to affect
23 the integrity of the election and also protect from any
24 insider being able to do so, and that includes election
25 officials and that includes vendors and contractors and

1 clerks and anyone else. That's the standard of security
2 that we have to have, or at any rate we must aspire to.

3 Now, as I said, these systems are already
4 certified to the 1990 standards. They have apparently
5 gotten part way through or most of the way through
6 certification to the 2002 standards -- sorry
7 qualification, federal qualification to those standards.

8 From what I'm about to say, you will be able to
9 infer that I think those standards are inadequate. The
10 fact that those standards are inadequate is not Diebold's
11 fault or any of the other vendors' fault. It's a complex
12 process to produce new standards, especially when
13 technology is racing much faster than people's
14 consciousness of the need for new standards. And so it's
15 not their fault that the standards are inadequate.

16 Nonetheless, the fact that the standards are
17 inadequate does not excuse a company, and Diebold is not
18 the only company that does this, others do too, from
19 saying, "Well, we've met all the standards. We've been
20 qualified. We've been certified. What more do you want?"

21 What I want is a secure election's system,
22 regardless of the standards. Now, how do we know whether
23 their system is secure or not?

24 Well, there have been four independent studies of
25 the security of the TS, and because the code is the same,

1 the TSx system. Okay. The first was by Johns Hopkins.
2 And I read into the record the summary paragraph from the
3 abstract of the Johns Hopkins report yesterday, in which
4 they indicated that the security architecture inside this
5 product was, at the time they examined it, which was in
6 about July of a year ago, far below the minimum security
7 standards expected for a product like this. And they
8 recommended in no uncertain terms that it was not ready
9 for use in a public elections system.

10 Now, the response of Diebold to this was
11 extremely disheartening. Their primary response was to
12 try to dismiss the report, try to impugn its authors and
13 the status of it. We heard some of this yesterday. I was
14 astonished, because this has been going on for a year.
15 I've been keeping track of this issue for a long time.

16 I know the authors. I know the subject. Okay.
17 We heard it yesterday. Mr. Urosevich tried to dismiss
18 this study as a homework exercise. Well, you heard
19 from -- I hadn't heard that particular dismissal before.
20 You heard the actual story behind it from Cindy Cohn
21 yesterday afternoon in her testimony here.

22 I checked that with Professor Rubin myself last
23 night, and he laughed about it. He said they've been
24 saying this before. My usual response, he said, is to
25 quip, "If that was a homework assignment, imagine what

1 would have happened if we had done a real investigation."

2 (Laughter.)

3 PANEL MEMBER JEFFERSON: Now, I take this study
4 seriously. And in fact I take it the most seriously of
5 the four studies fundamentally because nobody paid them,
6 all right. This is an academic study that was done by
7 some of the world's finest security experts. And they
8 weren't paid by anyone and they were free to say what they
9 thought, and they did.

10 The other three studies with their varying
11 strengths and weaknesses were all paid for, two by the
12 State of Maryland and one by the State of Ohio. And the
13 authors of those reports were given charters by the
14 states. In the case of Maryland, in both cases they were
15 asked rather narrow questions. I'm talking about the SAIC
16 report and the RABA Report, which I will come back to.
17 And they were fundamentally asked, you know, can we use
18 these systems in the March 2nd election or not?

19 Maryland was in the same position that this state
20 was in. And so the authors of those reports were studying
21 from that point of view as much as from the general point
22 of view of the security concerns of the software. And the
23 RABA Report even reflects that in their language.

24 Now, the SAIC report, the second of the four,
25 Hopkins, SAIC, Compuware for Ohio and the RABA Report,

1 unfortunately has been redacted by the State of Maryland.
2 Two-thirds of that report is unavailable. I have asked
3 for a copy in the name of the Secretary of State of
4 California. Maryland will not give me an unredacted copy.

5 It was redacted, not because of Diebold's
6 request, I want to make that clear. The State of Maryland
7 did that.

8 So we don't know much of what it says or
9 two-thirds of what it says. But the expectation in it --
10 and they clearly indicated that they redacted as much as
11 they did because of security concerns. That if this
12 somehow got out, either potential attackers would be aided
13 by the information in that report or voter confidence
14 somehow would be diminished or both.

15 So because we only have a redacted version of
16 that report, I'm not going to comment too much on it,
17 except to say that in summary they agreed with and
18 disagreed with, in part, the Hopkins Report. And it was
19 sort of a mixed report.

20 They found many of the -- they reported many
21 vulnerabilities of their own not mentioned in the Hopkins
22 Report, I might add.

23 The RABA Report took place six months later,
24 seven months later. Several improvements had been made in
25 the code since then as a result of the responses to the

1 first two reports, at least that's my understanding.

2 The RABA Report was in some sense the most
3 penetrating, because they actually did try to break into
4 the code. They said -- they put themselves in the
5 position of an election official or somebody running the
6 canvass process or some other kind of insider and said,
7 you know, can we break this system, can we cheat? And
8 they found they were easily able to do so and in multiple
9 ways and without any great difficulty, okay.

10 And in their summary, and I want to read it,
11 because I think the language is quite remarkable. And by
12 the way, I have talked to two of the key authors of the
13 RABA Report. Part of this I read yesterday and I want to
14 repeat it.

15 "It is our opinion that the current
16 Diebold software..." -- this is the last
17 of the four reports after whatever
18 response was done to the previous three
19 -- "...the current Diebold software
20 reflects a layered approach to security:
21 as objections are raised additional
22 layers are added."

23 Now, in the security world that's code. What
24 that means is you're patching the security architecture
25 together, folks. You didn't have a fundamental security

1 architecture in the first place. Every time there's an
2 objection, you nail another shingle over that leak, okay.

3 "True security..." they say, "...can
4 only come via established security
5 models, trust models, and software
6 engineering processes that follow these
7 models; we feel that a pervasive code
8 rewrite would be necessary to
9 instantiate the level of best practice
10 security necessary to eliminate the
11 risks we have outlined in the previous
12 sections."

13 "A pervasive code rewrite..." That means start
14 over, folks. That's what it means. It means, you know,
15 you can't patch this thing into being a secure system.

16 The RABA Report is written by very competent
17 security experts, people who understand national security.
18 As I said, that organization is basically a spin off of
19 the National Security Agency. They understand that we
20 have to be treating election security as a national
21 security issue.

22 All right. So Diebold is stuck with four
23 negative security reviews in a row. What is the response
24 of the company?

25 Unfortunately, the response has not been very

1 positive. Here are some things they could have done.
2 They could have invited Professor Rubin and his
3 colleagues, or perhaps some other equally eminent security
4 experts, into the fold and said, "Hey, folks, we've got a
5 problem. We want you to help us fix this system. Give us
6 your advice. We'll do whatever you say. We've got
7 trouble here. Let's improve it." That's not what
8 happened.

9 I might add that another company, ES&S, actually
10 did put a feeler out in response to the criticism of
11 Diebold to Professor Rubin saying, "Hey, I don't know if
12 we've got this problem, but maybe you'd like to come and
13 look at our code."

14 That in fact did not happen, but at least, you
15 know, somebody at ES&S thought about that. Apparently,
16 that's not -- apparently Diebold didn't respond that way.

17 They could have responded by saying, "Hey, all
18 right, you looked at our code, but nobody's looked at the
19 other people's code as well. Maybe our code is not so bad
20 comparatively. Maybe we should have a code review of all
21 major vendor's code. Maybe we should..." -- and I and the
22 rest of the security community would have stood up and
23 cheered at that. We would have said, "Yes, we desperately
24 need that." But they didn't say that.

25 There are a lot of other responses they could

1 have made that I would have thought would have been
2 affirmative that would have said to the public and to the
3 security community, "We know we need help. We do not want
4 to run insecure elections. Let's all, as a nation, as a
5 profession, as an organization of vendors work to fix
6 this, so we can have secure electronic elections in the
7 future."

8 But that's not what happened. What we've seen is
9 a pervasive, repeated, continuing unfortunate spin
10 control. You heard yesterday Mr. Urosevich characterize
11 the code that Professor Rubin, and later others, studied
12 as being stolen.

13 It was not stolen. It was left on a free FTP
14 site unencrypted for the world. Bev Harris happened to be
15 the one that found it. They might as well have printed it
16 out and left it in the public square, okay.

17 Now, Bev Harris then sent it to servers
18 worldwide, okay. The first server I saw it on was in New
19 Zealand. So by the time Avi Rubin got to it this was
20 basically public information.

21 Secondly, the code wasn't stolen in the sense
22 that Diebold was deprived of it. They, of course, had it.
23 What he really means to say is he believes that there was
24 a copyright violation. Reasonable men can differ as to
25 whether that was the case, but it wasn't stolen.

1 Nonetheless, throwing that word out in a
2 discussion casts aspersions on the people doing this
3 analysis, which I object to.

4 There were more. He called it -- yesterday, you
5 heard him call it a homework assignment. You heard the
6 resolution of that particular phrase, which has been used
7 before.

8 He tried to indicate that Avi Rubin had at least
9 partially repudiated his report. Now, it is true that Avi
10 Rubin did act as a clerk for an election in Maryland in
11 the March 2nd Primary, and he had a fascinating experience
12 with that. And he wrote up that experience. And there
13 were some paragraphs in which he said he now realizes that
14 some of the attacks that he had written about are probably
15 harder to pull off in practice than he had thought.

16 And that was all to his credit, okay. When you
17 learn something new, you make modifications.

18 But to characterize this as a change in his
19 position is completely wrong. And he has heard about this
20 and so he said it's been -- this is an Email that was
21 passed out widely, dated March 31st, just a couple of
22 weeks ago.

23 "It has been brought to my attention
24 that some people are taking recent
25 comments of mine about my experience as

1 an election judge out of context and
2 misrepresenting my position."
3 Let me skip down and read what his position is.

4 "I continue to believe that the
5 Diebold voting machines represent a huge
6 threat to our democracy. I
7 fundamentally believe we have thrown our
8 trust in the outcome of elections into
9 the hands of a handful of companies,
10 Diebold, Sequoia, ES&S and Hart, who are
11 in a position to control the final
12 outcome of elections."

13 "In a position to" not suggesting anybody in
14 those companies actually would, mind you. But just that
15 the way the world is structured in who controls the code
16 and how much control that has over the elections process,
17 those companies are in that position.

18 He said, "I also believe that the
19 outcomes can be changed..." -- "...the
20 outcomes can be changed..." --
21 "...without any knowledge by election
22 judges or anyone else." Without any
23 knowledge, undetectably.

24 "Further more, meaningful recounts
25 are impossible with these machines."

1 Don't let anybody tell you that Professor Rubin
2 has changed his opinion.

3 All right, so there is a pervasive kind of denial
4 and spin attached to the results of these reports. After
5 the RABA Report, the fourth of these reports, Diebold's
6 public relations apparatus said something to the effect of
7 and I can't quote it exactly, we are glad to hear that the
8 RABA Report validates our claim that we can run a secure
9 election in the state of Maryland.

10 And it did in fact have a sentence in there that
11 said something to the effect of all right if a whole bunch
12 of these changes are made, you can go ahead and run the
13 Maryland March 2nd election, because you don't have a lot
14 of choice, but much more profound changes and they go on
15 to say a pervasive rewrite should be done.

16 They are not accurately characterizing the depth
17 of this problem. They are not responding to it
18 constructively. They are responding to it minimally. And
19 they're doing a lot of other things that I find
20 disturbing.

21 For example, in that famous stash of Email
22 messages that was leaked by somebody in Diebold to Bev
23 Harris and is now public information as well, I find an
24 Email from me to my own colleagues on the State of
25 California taskforce five years ago. Now, it wasn't

1 exactly secret, but I don't like internal activities of
2 these taskforces to be monitored that closely. I don't
3 like my Email in an Email database. This is a personal
4 complaint. But I would like to see a completely different
5 attitude on the part of vendors than I see.

6 So my summary is something like this. You know,
7 the world has changed when these systems -- when the
8 Diebold system was first certified, there was a lot we
9 didn't know. The security community was not -- had not
10 studied these issues. They were not up in arms about it.
11 It was not an irrational thing perhaps to certify
12 initially.

13 In general, DRE systems offer a lot of advantages
14 to the world, which I am the first to tout. But the world
15 has changed now. We know a lot more. And now we know, I
16 think we can say without any hedging, that the security
17 architecture of this system is inadequate for the national
18 security standards that we need to apply to public
19 elections.

20 The fact that they have not responded
21 constructively to that and have responded, in fact, very
22 unconstructively over the last nine months, says to me
23 that if there was ever a case where the power of
24 certification/decertification has to be used, this is that
25 case.

1 CHAIRPERSON KYLE: Thank you.

2 Anyone else?

3 Mr. Mott-Smith.

4 PANEL MEMBER MOTT-SMITH: Well, I didn't realize
5 when I got here this morning that we were going to have
6 quite the speech making that we have had. But I
7 appreciate hearing from everybody. And I'm going to try
8 and be brief and I'm going to speak from notes, which I
9 don't usually do, because I want to say some things and
10 not forget some others.

11 The first is I want you to know my personal bias
12 is I vote on a Data-Vote system. It's a paper-based
13 system. I like that system. I like to go to the polling
14 place. I don't like to vote absentee. But, in my view,
15 electronic voting is the future of voting in California
16 and in the rest of the country. And my personal bias
17 isn't going to stand in the way of that.

18 Secondly, in my view, we are in a new day and
19 David went to some length to try and describe that. But
20 my personal interpretation of that is that all of us, the
21 Secretary of State, the counties and the vendors do not
22 yet have our minds around just exactly what this new day
23 is, in terms of how we manage voting technology in a time
24 when the technology is changing faster in a day than it
25 used to change in 20 years. Maybe that's a little bit of

1 an exaggeration, but you know what I mean.

2 We conducted an audit of all of the 58 counties.

3 And the next step -- that is just a first step -- it's to
4 establish a baseline of what is being used. The next step
5 is to establish an accounting process so that we know that
6 what is being used is being managed and accounted for.

7 The next step after that is to manage the
8 installation and modification of new changes to the
9 system. That's going to be true whether or not the
10 systems are paper systems or whether they are electronic
11 systems.

12 Moving from the general to the more specific. I
13 ask everybody, because as I have listened in the last two
14 days, I don't think that the thoroughness of the record
15 that is established in the report has been adequately
16 communicated. I don't know that you've all had time to
17 read the report. I think we can take responsibility for
18 that, but read the report. Read the record. Read the
19 step by step by step exposition of what this problem is.
20 Because it is -- a part of the problem is that we still
21 don't quite appreciate, as I said, what the structure of
22 management of this -- of voting technology is going to be.

23 And the record that is established in this report
24 illuminates a lot of what those challenges are for us,
25 because we have challenges. We've had deficiencies that

1 we're going to have to answer for.

2 I do believe that Diebold should have an
3 opportunity to respond to that record. They should be
4 able to respond in writing, and in a thorough fashion. I
5 want to tell you what bothers me, I guess, about this
6 particular subject.

7 One is the numerous requests for last minute
8 changes. And several people have spoken about that. And
9 I tried to speak yesterday about a little bit of what that
10 means to me in terms of my impression of how this all
11 works.

12 The last minute requests oftentimes come in to
13 us, and I forget the numbers, I think you said eight or
14 ten or whatever just from one vendor but -- there's 16, 17
15 whatever the number of requests for modifications to some
16 part of the system in the last couple months, couple weeks
17 and in some cases after the election.

18 Many of these are not federally qualified or
19 state tested and certified. That puts us in a very
20 difficult situation, because our instinct is to try and
21 help the counties run their elections. The other instinct
22 is to try and make sure that what they're using to do that
23 is secure and has been tested and the public can have
24 confidence in that.

25 The tension that develops between our office and

1 the counties is to me one of the most damaging outgrowths
2 of these last-minute qualifications. And I take -- or the
3 applications. I take very seriously the fact that so many
4 of these come in and the consequence of the relationships
5 that result from that.

6 Second, most of the big problems in the March
7 election had to do with Diebold equipment. It's
8 inescapable -- the PCMs, as mentioned yesterday, resulted
9 in the disenfranchisement of voters. That's a straight
10 simple statement. People did not get to vote because
11 those things didn't function. And that's not acceptable.

12 The provisional ballots, the changes that were
13 required to be made to accommodate new law and to account
14 for partial provisionals were not made. They could not
15 be -- the accounting and tabulation of those ballots could
16 not be made on the system as it was constructed. It had
17 to be a work-around. It had to be something that was
18 incredibly manually labor intensive. That's not
19 acceptable.

20 The accuracy of the system also was brought into
21 question when it was discovered that the absentee ballots
22 in one county were counted incorrectly. We're talking
23 about disenfranchisement. We're talking about the
24 relationships of the elections community. We're talking
25 about accuracy of the voting system. And those are all

1 big words that relate to the public confidence in terms of
2 voting in California.

3 In my view -- and I don't know what other
4 people's view is -- but in my view we need a clean slate
5 with this vendor. We need for this system -- and I'm not
6 including optical scan systems -- but with this system,
7 with this vendor, we need a clean slate. We need to start
8 over. We need for them to come in with a system that is
9 fully tested and qualified at the federal level, that we
10 can look at and fully test and qualify and not do it under
11 the gun of an election within two weeks, two days or
12 whatever. And that's going to be reflected in my vote
13 when we get to that point.

14 CHAIRPERSON KYLE: Ms. Riley, any comments?

15 PANEL MEMBER RILEY: None at this time.

16 Thank you.

17 CHAIRPERSON KYLE: Caren?

18 PANEL MEMBER DANIELS-MEADE: It's all been
19 covered.

20 CHAIRPERSON KYLE: Mr. Miller?

21 PANEL MEMBER MILLER: No comments.

22 CHAIRPERSON KYLE: Ms. Jones.

23 PANEL MEMBER JONES: No.

24 CHAIRPERSON KYLE: Okay. Are there any motions
25 from the Board then, from the panel?

1 PANEL MEMBER MILLER: I can talk now.

2 CHAIRPERSON KYLE: If you want to.

3 PANEL MEMBER MILLER: Well, since I've thought a
4 lot about it and actually have written something down
5 while you were talking, yes.

6 (Laughter.)

7 CHAIRPERSON KYLE: Please.

8 PANEL MEMBER MILLER: Mr. Chairman, I'm sorry.

9 I think Diebold can see their culprit here by
10 simply looking in any mirror. The fact of the matter is
11 voters were disenfranchised using the TSx system and
12 that's unacceptable.

13 Being sorry isn't really enough. Apologizing
14 isn't really enough. Therefore, I would like to make the
15 following motion, Mr. Chairman.

16 I move that the Voting Systems and Procedures
17 Panel recommend to the Secretary of State the following:

18 The Diebold AccuVote-TSx Voting System consisting
19 of the AccuVote-TSx hardware and firmware, as
20 conditionally certified on November 20th, 2003, should be
21 decertified for use in California. This recommendation is
22 based on at least three separate grounds, each of which
23 independently requires decertification of the voting
24 system.

25 These grounds are one, the failure of that voting

1 system to receive federal qualification.

2 Two, the failure to fully satisfy the conditions
3 set forth in the conditional certification of November
4 20th, 2003.

5 And three, the disenfranchisement of voters
6 attempting to use that system at the March 2nd, 2004
7 presidential primary election.

8 Mr. Chairman, that is my motion.

9 CHAIRPERSON KYLE: Do I hear a second?

10 VICE CHAIRPERSON CARREL: Mr. Chairman, I would
11 like to second with an amendment.

12 CHAIRPERSON KYLE: Can I get a copy of that, Mr.
13 Miller?

14 PANEL MEMBER MILLER: You probably can't read it.

15 VICE CHAIRPERSON CARREL: I'd like
16 to amend the motion so that following
17 the statement made by Mr. Miller we add,
18 "In addition, when the panel adopts
19 and hereby incorporates the findings and
20 analysis contained in the staff report
21 on this item; and that accordingly the
22 panel recommends that the Secretary of
23 State withdraw the conditional
24 certification of the TSx system.

25 "We further recommend the Secretary

1 of State refer the findings of our
2 investigation to the Attorney General
3 for possible civil and criminal action.

4 "And we also recommend that the
5 Secretary urge the Legislature to
6 expeditiously adopt pending legislation,
7 Senate Bill 1376, to strengthen the
8 Secretary of State's powers regarding
9 voting system certification, including
10 the following:

11 "That the Secretary make it a felony
12 to gain -- that is a felony to gain
13 unauthorized access to a voting machine
14 for the purpose of tampering with the
15 system.

16 "That it is a felony to insert
17 uncertified hardware and software or
18 firmware into any voting system.

19 "That the Secretary of State, the
20 Attorney General and local elections
21 officials are authorized to bring a
22 civil action against anyone who tampers
23 with the voting system or any individual
24 voting machine.

25 "That it is a felony for a vendor to

1 fail to notify the Secretary of State
2 prior to any change in hardware,
3 software or firmware to a certified
4 voting system.

5 "And that the Secretary of State may
6 authorize fines and sanctions against
7 any voting system vendor who violates
8 the State Voting Systems Certification
9 Laws and Procedures."

10 I would make that amendment, because
11 unfortunately, after review with our attorneys, we don't
12 have the authority to issue sanctions beyond everything in
13 that motion. So I would ask that that motion be amended,
14 and I second it as such, if the person making the motion,
15 Mr. Miller, approves it.

16 PANEL MEMBER MILLER: I certainly accept the
17 amendment and make that part of the motion.

18 CHAIRPERSON KYLE: Okay.

19 Having a second, all those in favor say?

20 PANEL MEMBER MILLER: Discussion?

21 CHAIRPERSON KYLE: Certainly.

22 Mr. Jefferson.

23 PANEL MEMBER JEFFERSON: I just wanted to ask
24 that you said specifically the TSx system. The TS is not
25 covered by the motion. Are we going to discuss the TS

1 system as well?

2 PANEL MEMBER MILLER: My motion only goes to the
3 TSx system as conditionally certified.

4 PANEL MEMBER MOTT-SMITH: I just want to clarify
5 you said hardware and firmware, so we are not talking
6 about the software that runs the optical scan systems?

7 PANEL MEMBER MILLER: That's correct, Mr.
8 Mott-Smith.

9 PANEL MEMBER MOTT-SMITH: And I also want to be
10 clear that this is a recommendation to the Secretary and
11 it does not foreclose, but rather still enables a written
12 response to the staff report from Diebold to the Secretary
13 as part of his consideration?

14 PANEL MEMBER MILLER: That's correct.

15 VICE CHAIRPERSON CARREL: In fact, I would
16 encourage Diebold to issue their response to the report
17 and to our motion so that the Secretary can review that
18 along with what we're doing today.

19 PANEL MEMBER MILLER: May I suggest we put a
20 timeframe in there, like maybe noon on Monday.

21 VICE CHAIRPERSON CARREL: You want to add that to
22 the motion or do you want to do that separately?

23 CHAIRPERSON KYLE: I think that can stand
24 separate. And I also believe that the entering for
25 discussion -- I'm just going to enter the whole report and

1 the recommendations into the record now. I don't think we
2 formally need a motion on that.

3 So, further discussion?

4 PANEL MEMBER DANIELS-MEADE: Mr. Chairman, I
5 would just like to state I'm concerned that there has not
6 been concern expressed with respect to the impact that
7 this is going to have on the disabled community. And I'm
8 also concerned about how these four counties are going to
9 be able to conduct their election.

10 However, I think it's very, very clear, because
11 of the disenfranchisement that happened using this system
12 and the failure to comply with the conditions that were
13 set upon the conditional certification last November, that
14 there isn't much choice about which way we need to vote.

15 CHAIRPERSON KYLE: Thank you.

16 Any further discussion?

17 (Thereupon a discussion occurred
18 off the record.)

19 CHAIRPERSON KYLE: We're not -- this is out of
20 order. I'm not going to entertain discussion from the
21 floor.

22 (Thereupon a discussion occurred
23 off the record.)

24 CHAIRPERSON KYLE: Would you please be quiet.
25 Thank you very much. We asked other folks and

1 specifically I had requests from certain Registrars of
2 Voters to make sure people weren't rude. I would like to
3 have that reciprocated.

4 Thank you.

5 I'd like to take the vote.

6 All those in favor say aye?

7 (Ayes.)

8 CHAIRPERSON KYLE: All those opposed say no?

9 Any abstentions?

10 The ayes have it.

11 Thank you very much.

12 We'll take a ten minute break and then move onto
13 the next agenda item.

14 (Thereupon a recess was taken.)

15 CHAIRPERSON KYLE: We're going to get started now
16 that we have all the panel members.

17 We're going to Agenda Item number 2, Reports on
18 the March 2nd 2004 Primary Election. Mr. Wagaman, are you
19 prepared to make a report?

20 ELECTIONS ANALYST WAGAMAN: Yes, sir.

21 CHAIRPERSON KYLE: Please do so then.

22 ELECTIONS ANALYST WAGAMAN: The March 2nd
23 election was unique for several reasons, one of which it
24 had one of the highest rates of absentee voting ever,
25 almost 33 percent. It was also an important milestone,

1 because it was the first election in which a significant
2 portion of California voters voted on touch screen voting
3 systems -- over 40 percent were eligible to vote on touch
4 screen voting systems, over 40 percent.

5 Technology and voting systems are continuing to
6 change for a series of reasons. The passage of Prop 41,
7 the new Help Americans Vote Act on the federal level,
8 changes triggered by the Florida fiasco, and also
9 improving and changing -- and more importantly changing
10 technology, including touch screen DRE systems.

11 Those systems -- new systems present a series of
12 trade-offs, including trade-offs between improving
13 accessibility, along with creating new potential problems
14 with security.

15 Those trying to meet both those improved
16 accessibility along with the problems of security are why
17 the Secretary directed the AVVPAT, accessible voter
18 verified paper audit trail, for 2006. In the interim as
19 problems were -- significant problems were reported,
20 particularly with the DRE systems, the Secretary directed
21 the staff to draft this report on the March Election to
22 examine those problems and make recommendations as to how
23 to prevent them in the future.

24 The analysis focused on five primary points,
25 pre-election issues, many of which we've obviously been

1 discussing over the last day about compliance with federal
2 and State qualification and certification standards.

3 Reliability, the sturdiness and dependability of
4 the system.

5 Accuracy, confidence that the system is
6 tabulating votes correctly, and capturing voter intent.

7 Security, to prevent the system against
8 tampering.

9 And to poll-worker training, the human factor
10 within this piece, new systems.

11 Touching on Item 1, pre-election issues. As has
12 been discussed, there is a change going on on the federal
13 level along with our review of our State testing
14 procedures. This has resulted in some delays in obtaining
15 qualification and certification.

16 That has been further complicated by a proclivity
17 from some of the vendors towards making late applications
18 as was -- there was a point of confusion earlier, there
19 were 16 applications filed in the two months prior to the
20 election, ten from Diebold, which have obviously been
21 discussed at length, so I won't go back to them, three --
22 one from Sequoia, that application was withdrawn when they
23 found a work-around; one from Los Angeles, which was
24 tested and administratively approved; one from the Hart
25 system, which again went through -- received a federal

1 NASED qualification number and was subsequently approved;
2 three from ES&S, all of which work-arounds were identified
3 and then the applications were withdrawn.

4 This evolving technol -- the number of
5 applications though shows that this is an evolving
6 technology. This is a technology that is continuing to
7 change, and, as shown by the record, that even in the
8 months prior to the election many applications have to be
9 filed, often with concerns that an election could not be
10 conducted if they were not approved.

11 Moving on to Item number 2, Reliability. This is
12 the issue of disenfranchisement that Mr. Miller talked to
13 on earlier items. Going first to the most significant
14 issue of reliability the PCM issue, which has been
15 discussed at length. If the panel would like me to talk
16 more about it, there is a PCM -- a report including the
17 attached documents regarding the State's testing to verify
18 that the cause is of those problems.

19 The case in Alameda, just to pull that out, the
20 issues with PCM were somewhat mitigated there, because
21 they had a paper backup on their provisional voting
22 system. That was not the case in San Diego where the
23 problems there were somewhat more significant.

24 There's one other significant reliability issue,
25 which has not been discussed and it is not with DRE

1 systems. It was with an optical scan system. In Napa
2 County it was discovered that their system had not been
3 properly calibrated to detect die-based inks, so they
4 weren't catching those -- catching those ballots and
5 catching those votes. That was discovered during the one
6 percent manual recount, and was corrected. It does show
7 the importance of a paper backup, because that would not
8 have been discovered without that paper backup.

9 There are other minor problems in several other
10 counties, which I won't touch on, though they are
11 contained within the report.

12 Item number 3, Accuracy. Obviously, the biggest
13 part of accuracy is that the votes are actually counted
14 correctly. Another part is obviously that the people get
15 the correct ballots, which were issues in several areas.
16 There's a broad issue statewide relating to the
17 decline-to-state -- the new change with decline-to-states
18 being able to request certain party ballots and compliance
19 with that.

20 There was a specific issue in Orange County where
21 voters were -- where precincts were consolidated where two
22 different -- where people would be voting in different
23 districts, and people were assigned a wrong ballot, and
24 there was no way to reconcile that after the election.
25 That's an issue of both poll-worker training, precinct

1 consolidation, as I mentioned, and to a certain degree
2 it's inherent to the technology, because with touch
3 screens systems people are able to vote on the system,
4 cast their ballot before going back to talk to a poll
5 worker and maybe raising a concern, that I don't think I
6 was in the right district in this election.

7 There was also an issue in San Diego county
8 relating to provisional ballots. There's, again, a new
9 State law requiring that provisional ballots be counted in
10 all the races in which they are eligible, even though
11 somebody voted in the wrong area. It was discovered after
12 the election that the Diebold GEMS software could not
13 accommodate that. Normally, a work-around was put in
14 place and that has been discussed during the previous
15 item.

16 There was also again a minor issue in Napa
17 relating to permanent absentee voters being mailed their
18 incorrect ballots.

19 On all the accuracy issues again emphasizing the
20 importance of AVVPAT, having that paper record in order to
21 go back and actually be able to verify whether the votes
22 are being reported accurately.

23 Moving on to security. There's a long analysis
24 of the four reports, which Mr. Jefferson has obviously
25 already covered, so I will not return to those items.

1 However, there is a section on additional
2 security measures that the Secretary ordered in response
3 to those security reports, along with additional security
4 concerns that have been raised.

5 The Secretary had ordered a series of additional
6 security measures for March. I will just touch on a few.
7 Many of which are old policies that were reinstated and
8 reinforced. That they were important to be complied with,
9 many of which were also new measures that the Secretary
10 directed, including posting copies of the results at the
11 polling places, prohibiting the use of wireless
12 technology, requiring both vendors and counties to submit
13 security measure plans, and requiring the locations where
14 results are being tabulated to be secure, the physical
15 security component.

16 In addition, the Secretary directed for the four
17 TSx counties, which have been discussed, that the full
18 paper ballots be printed -- ballot images be printed for
19 every vote cast on those machines.

20 Generally, there was widespread compliance with
21 the directives. There were some -- there was some
22 non-compliance, which is represented in the report. One
23 record, which I will mention, to pull out is parallel
24 monitoring. This was a program which we cooperated with
25 eight different counties to take voting machines that

1 would have otherwise gone to polling places on election
2 day, took them out of service, and voted them with
3 Secretary of State staff, according to a predetermined
4 script, in order to verify that those machines were
5 recording votes accurately.

6 The purpose being to detect certain types of
7 malicious code. It was not designed to detect all types
8 of malicious code. If there's a desire to go back, I can
9 explain that at more length. I also have the consultant
10 from R&G who helped run the program here if you have
11 questions.

12 Moving forward to training. On all the issues
13 I've discussed before, poll-worker training is important.
14 It's not just about the technology. It's about the human
15 factor.

16 Touching on some of the problems already brought
17 up. PCM issue is again part of an issue of poll-worker
18 training. The poll worker -- the system failed, but the
19 poll workers weren't trained on how to rectify that
20 failure. The Orange County issue with people being
21 assigned to the wrong precinct. The poll workers
22 weren't -- did not have enough training, in some cases, to
23 assign people to their proper precinct.

24 So again we cannot ignore -- the one thing that
25 the report does pull out is that we cannot ignore the

1 importance of the human factor with these systems.

2 Poll monitoring. One last thing to mention,
3 there's poll monitoring which kind of covers all these
4 things, where the Secretary of State staff sent monitors
5 to help assist the counties and help identify problems on
6 election day, monitoring the polling place conditions.

7 There's a series of recommendations, which we can
8 cover if the panel so desires on all five items. In
9 addition, I will just finally point out that there are
10 three supporting documents to the March 2nd Report. One
11 on the poll monitoring program. One on the parallel
12 monitoring program. And one on the PCM Report.

13 I now will open it up to any questions if the
14 panel so desires on the report.

15 CHAIRPERSON KYLE: Thank you, Mr. Wagaman. Good
16 summation.

17 Panel members, does anyone have a desire to delve
18 into this?

19 I'm going to just formally move it into the
20 record now, the entire report and --

21 ELECTIONS ANALYST WAGAMAN: One additional
22 factor --

23 CHAIRPERSON KYLE: -- writings and
24 recommendations.

25 ELECTIONS ANALYST WAGAMAN: -- public comment.

1 There were three timely correspondences, primarily focused
2 on this item; one relating to poll-worker training, one
3 supporting the security measures from this office; one
4 expressing opposition to those security measures.

5 In addition, many of the correspondences on items
6 1 and 3 reference the March election in support of their
7 position on those items.

8 CHAIRPERSON KYLE: Thank you.

9 Panel members to my left, and questions or
10 comments on this?

11 I believe we'll have an opportunity to hear a lot
12 more testimony in Item number 3, that general direction
13 with regards to this report.

14 Okay. Hearing none, I'm going to open it to
15 public testimony. Testimony is specific to the March 2nd
16 report. I do not want to revisit agenda item number 1.
17 And I want to reserve the remainder of the afternoon for
18 our Agenda Item number 3, where we are anxious to hear
19 everyone's point of view.

20 I'd like to call Steven Gutierrez to the podium,
21 San Joaquin County Board of Supervisor.

22 Can I call Tom Stanionis. Am I pronouncing that
23 correctly?

24 MR. STANIONIS: Yes, you are.

25 Thank you for letting me speak here today. My

1 name is Tom Stanionis. That's S-t-a-n-i-o-n-i-s. I'm a
2 technology director with Yolo county.

3 CHAIRPERSON KYLE: Can you speak directly into
4 the mic, thank you.

5 MR. STANIONIS: Our county is a smaller --

6 CHAIRPERSON KYLE: Can folks hear that? Sounds
7 like it's still off.

8 Michael, would you mind adjusting that.

9 Hold on a second there.

10 MR. STANIONIS: Is that better?

11 CHAIRPERSON KYLE: Not from what I can tell.

12 MR. STANIONIS: There we go.

13 PANEL MEMBER DANIELS-MEADE: Start over.

14 MR. STANIONIS: I didn't think I was this
15 speechless.

16 I'm from Yolo County, across the river here. I'm
17 the technology director there.

18 We use the Data-Vote system, which is one of the
19 best paper based ballot systems. However, we, like most
20 counties here, are looking at the day when we will have to
21 switch over to the DRE systems. For that purpose, we have
22 formed a committee in our county to review technology
23 issues. And as part of that, I've been reviewing how
24 other counties have fared with the DREs in the March
25 election.

1 The presidential primary election is by far the
2 toughest challenge in planning and administering an
3 election. From the technological point of view, it's
4 incredibly complicated, with the large number of ballots
5 and ballot types and races and parties. And we all
6 understand that. So by the time we next have a
7 presidential primary election, we fully intend to have a
8 DRE system in our county.

9 So we have been looking closely at the other
10 counties and their experiences with the DREs. Breaking
11 them down by the vendors, obviously Diebold is the first
12 one, and there's been much discussion about Diebold and
13 the problems they had.

14 In particular, I notice that there was far fewer
15 problems with the smaller counties. And I wondered if
16 that has to do with what was sold to the counties or
17 whether the system is just not suitable for larger
18 counties but for smaller counties. Or whether the smaller
19 counties were just able to more fully test the system
20 before the election.

21 Looking at the counties that use Sequoia. The
22 most notable ones were San Bernardino and Riverside
23 County. One of the concerns that I have is in discussing
24 elections people talk about the voters liking the system.
25 I'm more concerned whether the candidates and their

1 lawyers come out of an election feeling that they can
2 absolutely trust the results.

3 And both San Bernardino and Riverside are facing
4 lawsuits coming out of their election, which tells me that
5 the candidates and their lawyers did not trust those
6 results and did not feel confident that their votes were
7 counted accurately.

8 And then the third system that had problems was
9 Hart. And as an election official, I have great concerns
10 whenever somebody discusses poll-worker failures. Poll
11 workers are wonderful. They're the best people in the
12 world. To really know America is to spend time with poll
13 workers.

14 And to ask them to be technicians is far too
15 much. That is not what they're in the polling place for.
16 The Hart system is wonderful, but it does not have a
17 workable poll-worker interface that's clear and easy to
18 use. I would love their system if their poll-worker
19 interface was as easy to use as their voter interface. I
20 think vendors should address the poll-worker interface as
21 strongly as they address the voter interface, and make it
22 as easy to use, so that we don't have to worry about
23 planning all-day sessions to train poll workers on how to
24 use a voting system that they'll only use for one day.

25 In summary, I think that the systems that have

1 been in place are not quite ready yet. I think this
2 Board's -- this Board needs to make it clear that we
3 expect more from the vendors. We expect them to provide a
4 voting system that is the best in the world, and we can
5 ask that of them.

6 And most importantly, we need to make it clear
7 that the vendors need to demonstrate their trust and
8 worthiness to us on an ongoing basis. And they need to
9 build to what we need rather than to what the law
10 requires.

11 That's it for today.

12 Thank you.

13 CHAIRPERSON KYLE: Thank you.

14 Any questions from the panel?

15 Thank you very much.

16 Can I ask that the person in charge of audio,
17 Mike, if you could adjust the podium so that there's less
18 feedback, maybe for the whole thing and more volume.

19 Alexandra Allman-VanZee.

20 MS. ALLMAN-VANZEE: Thank you very much. I
21 didn't expect to be called up so soon, because my comments
22 range on everything, and I was certain that there would be
23 more election officials speaking.

24 My name is Ali VanZee. That's V- as in Victor
25 A-n- capital Z- as in Zebra e-e.

1 CHAIRPERSON KYLE: Ms. Allman-VanZee, are your
2 comments more appropriate for the third item.

3 MS. ALLMAN-VanZEE: I'm sorry?

4 CHAIRPERSON KYLE: Are your comments more
5 appropriate for the third agenda item.

6 MS. ALLMAN-VanZEE: It's a kind of wrap up, yeah.
7 If you'd like me to defer again, I'd be happy to.

8 CHAIRPERSON KYLE: Yeah, I'd appreciate that. I
9 would like to stick to comments specific to the report.

10 MS. ALLMAN-VanZEE: Yes.

11 CHAIRPERSON KYLE: Thank you very. And we'll put
12 you back on Item number 3.

13 Mr. Scott Konopasek from San Bernardino County.

14 MR. KONOPASEK: Good morning. I'd like to thank
15 the panel for the opportunity to address them today.

16 My name is Scott Konopasek, K-o-n-o-p-a-s-e-k. I
17 am the Registrar of Voters in San Bernardino County. We
18 just completed a countywide implementation -- a successful
19 countywide implementation of touch screen voting. It was
20 the second successful implementation of touch screen
21 voting that I personally have been involved with.

22 As many people have offered some type of
23 introduction to who they were or the authority by which
24 they make certain statements, I'd like to take just a
25 brief moment, for the record, to note that I've been an

1 election official in three states. I've used every voting
2 system that is certified for use in the country.

3 I've conducted elections under the three states'
4 elections laws. I'm a political scientist. And I haven't
5 been my whole career in the elections business.

6 I spent 15 years as an Army intelligence and
7 security officer, where a large part of my
8 responsibilities had to do with the security and
9 protection of physical items as well as automation
10 communication security. So I understand the security
11 world, and the secure paradigm.

12 Also, let me make my own pithy comments about
13 patriotism, which I have to echo some that have been made
14 earlier, not just in yesterday's meeting, but in previous
15 meetings to this panel.

16 I'm a decorated combat veteran, and I resent
17 people claiming an exclusive hold on patriotism or concern
18 for the sanctity for the democratic process or of voting
19 in this state and in this country. I take it quite
20 personally actually.

21 This has been an interesting process to observe
22 and watch. I have been amazed by the outrageous comments
23 that I've heard, not just from this lectern but coming
24 from the panel as well. The whole premise behind this
25 report that's being presented is that there is a

1 perception that there are security problems with touch
2 screen voting systems or electronic voting systems in
3 general, which tends to overlook the fact that there are
4 security issues with any voting system.

5 At the beginning of the issue here in the State
6 of California about 14 months ago, the differences of
7 opinion tended to be philosophical. They quickly evolved
8 to scientific disagreements or interpretations. As we got
9 closer to the presidential election and presidential
10 primaries, this whole discussion about the integrity of
11 electronic voting systems took on political
12 characteristics.

13 Many Americans feel that the election of 2000 was
14 stolen. I talk to those voters all the time. There's a
15 large number of Americans, probably even half, who don't
16 have confidence in the 2000 presidential election, causing
17 them to have a lack of confidence in this presidential
18 election. And the closer we get to this presidential
19 election the more people are voicing concerns.

20 I would suppose that next year at this time this
21 won't be a hot topic, given the cycle of public interest
22 in politics. However, in 2000, technology was
23 scapegoated, the chad punch-card. Technology had to be
24 the culprit.

25 And what happened as a result? Congress and this

1 State banned the use of punch cards. We didn't look at
2 the fact that problems with elections result -- and
3 specifically the Florida scenario, resulted from having
4 bad election laws, resulted from having poorly thought out
5 administrative procedures, and were a result of voter
6 error. Those explanations for those problems are not as
7 neat and tidy as scapegoating technology.

8 Now, counties throughout this country have made a
9 good faith effort to respond to the concerns raised out of
10 the 2000 election, and to upgrade their technology.

11 But now, as we approach the election again, there
12 are many who have sworn that they will never let another
13 election be stolen in this country, so we are preemptively
14 scapegoating the technology that will be used in this
15 election.

16 Let me come specifically back to the issue here.
17 The issue has now taken on, not just political
18 ramifications, but religious ramifications.

19 Let me explain what I mean.

20 First of all, in a religious conflict facts do
21 not matter. Facts are irrelevant to the conflict. And
22 that's where I think we're at.

23 Let me give you an example in this report. The
24 Secretary of State 23 days prior to the election issued
25 some security mandates that exceeded what we, in many

1 cases, would do. One of the most significant of those new
2 requirements was the parallel monitoring.

3 Parallel monitoring to make sure that the votes
4 were actually being recorded. It was a verification
5 process intended to prove whether or not there were
6 programming errors with the technology.

7 We were given this requirement while we were in
8 the last stages of preparing for the primary election, the
9 most complicated election conducted in this country.

10 We, in good faith, did what we needed to do. The
11 parallel monitoring occurred. The parallel monitoring by
12 this report itself showed the machines were 100 percent
13 accurate. Why then did not this information get released
14 immediately. Concerns were raised about the integrity of
15 the voting system. We tested it. We proved it. You
16 tested it. You proved it. And you sat on the results for
17 48 days.

18 I don't understand. It's an example of how facts
19 don't matter if you have a point of view that says that
20 they're not secure.

21 Another fact that doesn't matter is the number of
22 voters that have confidence in these systems that actually
23 use them. I conducted an extensive poll of voters in my
24 county. I have written paper-trail evidence, not
25 anecdotal, of their responses, nearly 130,000 people. But

1 because those opinions do not match up with the opinions
2 of others, they're dismissed as the voters being naive and
3 foolish, not knowing what they mean, not knowing what they
4 intended to say.

5 Another example of where facts don't matter is
6 the historical record. It was pointed out yesterday that
7 there is not one documented case of successful tampering
8 with election voting systems that have been used in this
9 country for over 15 years. I am amazed at the response
10 that Mr. Jefferson gave to that fact. And I'm amazed that
11 I hear that argument made by people who are more
12 intelligent and who should know better. It's dishonest to
13 say that you don't know what you don't know. That's an
14 argument that you make when you know that the facts go
15 against your opinion.

16 It's intellectually dishonest to make the
17 argument that you don't know what you don't know. Mr.
18 Jefferson, I was amazed to hear virtually those words come
19 out of your mouth yesterday.

20 Now, there are some other things where facts
21 don't matter. There has been some deliberately misleading
22 allegations about security, and about the processes of
23 security, that have been made today and have been made on
24 this issue.

25 First of all, vulnerability does not equal risk.

1 Let me say that again, vulnerability does not equal risk.
2 Let me give you a very simple example of what I mean. If
3 I have a brick of gold, it is vulnerable to being stolen,
4 given its inherent value. If I leave it on a park bench
5 and walk away from it, that full vulnerability is likely
6 to be realized, and it's going to be stolen.

7 But if I take that same brick of gold and I
8 secure it, I put it behind locked doors, I put it behind
9 locked guards, I control access to it, I inventory it
10 daily, hourly, I have surveillance on it, that gold is not
11 at risk. So to identify a vulnerability is not to equate
12 to risk and it's dishonest to make that innuendo.

13 The second thing, security of voting systems is
14 more than software and hardware security. If you have the
15 most secure software, the most secure hardware, it can be
16 defeated in a nanosecond by a human being who doesn't do
17 what they're supposed to do. It can be defeated in a
18 nanosecond if there are not supporting physical security
19 procedures in place to support that hardware and software
20 security

21 So to say that a system can only be determined to
22 be reliable based upon hardware and software is dishonest
23 and it is not consistent with professional security risk
24 management principles.

25 CHAIRPERSON KYLE: Mr. Konopasek, can you wrap

1 up?

2 MR. KONOPASEK: Let me wrap up. I'm just about
3 done. There's one other thing, a very important point I
4 want to make. The threat that we face our voting systems
5 today is not from some hypothetical hacker. It's not from
6 some negligent elections official, but it's from those
7 very people who I believe are well intentioned that want
8 to make sure that this next election does not end in
9 ambiguity that the last election did. They are posing a
10 serious threat to actually the conduct of this election.

11 I'll give you a very specific example.
12 Yesterday, there was a person who testified here who's
13 name I will not mention who is actively recruiting people
14 to infiltrate the ranks of our poll workers to be loyal to
15 her, to her agenda and not to the process and not to the
16 voters in that jurisdiction. Those Black Box moles are
17 voting vigilantes and pose a serious threat to this
18 election.

19 I am upgrading the security in my facilities.
20 I'm screening poll workers, because I feel that this --
21 not the vendors, not software hackers, I believe that this
22 poses the most serious threat to this next election.

23 The same person and others have made threats of
24 intimidation and threatening to embarrass elections
25 officials to humiliate -- yesterday, I was given a booklet

1 delivered personally about how to do my job. These
2 people, who I believe -- and let me say again, I believe
3 are well intentioned -- have embarked upon a dangerous
4 course.

5 Now, this panel and this State has a lot of
6 decisions to make about how they're going to respond to
7 all the concerns that are being raised. Inevitably what
8 happens in a religious conflict is war, violence,
9 conflict, unless the sides can find a way to coexist
10 together, state of jihad, think of Northern Ireland. We
11 are so entrenched in positions right now that it is
12 tantamount to a religious conflict.

13 So I would like to propose that this panel and
14 those interested in this issue open the dialogue that
15 there be more transparency in the Secretary of State's
16 office and in the operations of this panel. That the
17 diatribes get dropped on both sides.

18 As elections officials that we acknowledge that
19 the status quo is no longer adequate. And that we will
20 refrain from radical destructive actions that will
21 directly lead to the disruption of this November's
22 election. Those drastic actions being decertification --
23 additional decertification of voting systems, as well as
24 converting DREs to a paper ballot generating device. I
25 didn't say paper audit trail. I said paper ballot

1 generating device.

2 Thank you for the opportunity and the indulgence
3 of the panel as I make comments

4 CHAIRPERSON KYLE: Thank you for the comments.

5 Any questions or comments from the panel?

6 Mr. Mott-Smith.

7 PANEL MEMBER MOTT-SMITH: Mr. Chairman, I do have
8 a comment. And it's not a question, you don't need to
9 respond, Mr. Konopasek. The gentleman sitting to my
10 right, David Jefferson, I've known for, I don't know, 10,
11 15 years or so. He is probably one of the most
12 intellectually honest people that I've ever met. And I
13 think that you erred in characterizing him differently

14 MR. KONOPASEK: My characterization was not of
15 Mr. Jefferson personally. And I apologize if it was
16 intended that way. It was a disagreement with an argument
17 that I think is intellectually dishonest.

18 CHAIRPERSON KYLE: Mr. Carrel

19 VICE CHAIRPERSON CARREL: Thank you. I've heard
20 your reference regarding AVVPAT. I don't entirely
21 understand it, and I encourage you to give me a call in
22 the future so you can explain it in such a way that I do
23 understand it, the differentiation you're trying to make.

24 MR. KONOPASEK: I submitted for the record to
25 this meeting an extended, extensive, exhaustive

1 explanation that makes sense to most people. So hopefully
2 you can see it.

3 VICE CHAIRPERSON CARREL: Okay. I still may need
4 you to explain it to me in person. Sometimes too many
5 words confuse me.

6 (Laughter.)

7 VICE CHAIRPERSON CARREL: The issue being brought
8 up about physical security does concern me. I wanted --
9 you know there's aspects in the report regarding physical
10 security, not just technical security, regarding -- and I
11 wanted to -- I really want to see us move forward on
12 addressing some of those issues regarding physical
13 security. And I'm aware of the effort by the individual
14 to recruit poll workers of which I agree with you is
15 potentially destructive, undermines the process and only
16 encourages a lack of confidence in the system when poll
17 workers are not -- have an agenda other than serving the
18 interests of the voters and serving the interests of the
19 jurisdiction that they're serving.

20 And I think the issues related to the report
21 regarding physical security are an issue that every county
22 has to deal with, this agency has to deal with, because if
23 it's not going to be that individual and a core that she
24 recruits, it's going to be somebody else who may not be
25 there just to embarrass, but may be there actually to

1 tamper or to create havoc.

2 And I would encourage -- I would like to see this
3 agency work with, and I know there's a recommendation in
4 the report, regarding conducting a survey of all the
5 counties -- in getting a third party to conduct a survey
6 of counties regarding physical security of the systems.

7 I'm concerned that once DOE is out of the hands
8 of the elections officials, and I don't dispute the
9 security that most counties have regarding the physical
10 security, you know, and have DREs under lock and key and
11 have them in secure rooms. They make sure that people
12 don't have access to them until a couple days before the
13 election, they go out to a poll worker and then
14 essentially it is on the honor system.

15 And that to me is a huge breakdown, a huge gap in
16 the physical security. Now, there may not be an answer to
17 it, because we may have to rely --

18 MR. KONOPASEK: There are access and there are
19 controls and there are procedures. If someone really
20 wanted to affect the outcome of an election, they would
21 steal or destroy the voting equipment the day before
22 election or on election day on an electronic voting system
23 or any voting system.

24 That denial of service, attack, physical
25 disruption or taking of the equipment that is where --

1 that is the biggest risk. Our voting systems are most
2 vulnerable when the polls are open during the day. That
3 is the weakest part of the whole security process for any
4 voting system. And the security issues that really need
5 to be addressed by elections officials and by this state
6 have nothing to do with -- are not technology specific.

7 And the things that pose a risk to any election
8 have nothing to do with the technology. An election can
9 be screwed up with any technology and no technology
10 guarantees a successful election.

11 My colleague from Yolo county a minute ago made a
12 factual misstatement that I'd like to correct for the
13 record. San Bernardino County is not being sued over the
14 results of the election or the use of touch screen voting
15 in San Bernardino county.

16 VICE CHAIRPERSON CARREL: Okay. With regard to
17 not necessarily the physical security but other
18 poll-worker issues and training issues, I'd like to -- and
19 maybe this is -- I don't know if you're scheduled to talk
20 under Item 3, if you are, then I'll ask you the question
21 there, but it's regarding what type of training you
22 provided and what type of training you plan on providing,
23 the numbers of poll workers. You have a very -- you have
24 a jurisdiction that's larger than most states in terms of
25 -- it geographically is the largest --

1 MR. KONOPASEK: It's the largest jurisdiction in
2 the United States.

3 VICE CHAIRPERSON CARREL: Geographically.

4 MR. KONOPASEK: Geographically.

5 CHAIRPERSON KYLE: I'm going to cut you off, Mr.
6 Carrel. We'll preserve that for item number 3.

7 VICE CHAIRPERSON CARREL: Okay.

8 Any other comments or questions?

9 PANEL MEMBER JEFFERSON: Yeah, just a comment. I
10 know there's been a substantive disagreement between you
11 and me, say, and all perfectly well intentioned on both
12 sides. You asked -- you called for the possibility of
13 dialogue and I just want to tell you I would be most happy
14 to start a discussion with you, not here, but of course
15 off-line and see if we can't narrow some differences.

16 MR. KONOPASEK: Thank you. I appreciate that
17 offer.

18 CHAIRPERSON KYLE: Any other questions or
19 comments from the panel?

20 Thank you very much.

21 Michael Smith from Marin county.

22 Deborah Hench from San Joaquin.

23 Kathleen Williams?

24 She stepped out also.

25 Austin Erdman from San Joaquin county.

1 Is Mike Smith absent for the day or -- thank you.

2 All right, then I'm going to ask Art Cassel to
3 come to the podium. Is Mr. Cassel here?

4 MR. CASSEL: Mr. Chairman, members of the panel,
5 I would be remiss -- my name is Art Cassel, spelled
6 C-a-s-s-e-l. I'm from Riverside County. I would be
7 remiss without commenting on the panel and its expertise
8 and the level of questioning. It's the first time I've
9 been here and given testimony in the State Capitol. And
10 I'm very impressed with what I've seen at these hearings.

11 Moving along. We have cards in to speak for Item
12 2, 3 and 5. And I'd like to, as much as possible, sum it
13 up on this and allow you to move forward quickly as
14 possible.

15 I'll make a couple of brief comments on some
16 other issues, and then I'll go into my main issue.

17 Somebody yesterday mentioned FedEx tracking, that
18 we ought to use FedEx tracking and trust computers to show
19 us these things. The simile between that false part when
20 you look at the difference between electronic voting and
21 FedEx. The equivalent would be if you track your package
22 with FedEx and whether it arrives, all that you find
23 inside is a picture of what the supplier supposedly sent
24 you, because that's all you get out of electronic voting.

25 One of the things that computer experts show up

1 with on a sustaining basis on this is if people are not
2 involved within industry itself or within government, the
3 higher the level of expertise on computers, it seems the
4 more reluctant people are to accept the concept of
5 electronic voting.

6 Provisional ballots. I voted by provisional, and
7 my vote was not anonymous. My anonymity has not been
8 preserved. When I called up to find out whether my vote
9 had been counted, I had a tracking number. They didn't
10 want the tracking number. They wanted my name. My name
11 was preserved on an electronic ballot, along with my
12 tracking number, along with a sheet of paper that has my
13 name and my tracking number on it. So my anonymity is not
14 preserved.

15 Moving along to the main topic that I'm here on.
16 On March 2nd of this year began the longest day of my
17 life. It's still continuing. We were at an election
18 party. I was working as a volunteer for a candidate in
19 the supervisorial election. We were at an election party.
20 It was very, very close to the registrar's office. And we
21 received a call from an observer in Temecula that had said
22 that the registrar of voters had suspended the count.

23 So we immediately jumped in the car and drove
24 over to the registrar's office. At that point, we were
25 told by the registrar that the count hadn't been

1 suspended, in spite of the fact that we had been told
2 that -- the Temecula count center had said the count was
3 suspended. There was no activity going on in the count
4 room at that time except for the fact there were two
5 people sitting at a terminal. That terminal, as I later
6 learned, is connected by Ethernet to the county server.
7 It's the only place it goes.

8 Didn't know who the two gentlemen were. One was
9 wearing a white badge that appeared to be a county badge.
10 The other one was wearing a metal badge that we couldn't
11 read from that distance. The two men sitting at those --
12 the two men at those terminals were Mike Frontera, who we
13 later learned was the vice president of Sequoia, and a
14 gentleman by the name of Ed Campbell, who works for
15 Sequoia.

16 Other than the registrar of voters there was
17 nobody else in that room, and the registrar of voters paid
18 no attention whatsoever to these gentlemen being at that
19 terminal. At that point, the vote had already been
20 started counting. There were 47 out of 150 precincts
21 reported in.

22 These gentlemen were typing at the terminal. It
23 wasn't until later that we found out they were Sequoia
24 employees. There were no county employees over them,
25 watching them, or doing anything about them. We had a lot

1 of concern about this happening at the time.

2 Ten days later we observed another Sequoia
3 employee with a flash card in his pocket enter that same
4 count room with an employee of the registrar of voters, go
5 over to the same terminal that I had seen Mr. Campbell and
6 Mr. Frontera on. This time it was Mr. Campbell.

7 Mr. Campbell was trying to get a flash card to
8 read in the terminal -- in the count room. He was put on
9 by password into the registrar of voter's system. I know
10 the splash screen. I had watched it for two days at that
11 point and I know the registrar's splash screen. He was
12 signed on. The Riverside county employee left, leaving
13 Mr. Campbell in there with his card. Mr. Campbell tried a
14 couple of drop-down screens on it. And after doing this
15 the system rejected him and booted him out back to
16 windows.

17 Mr. Campbell looked around, did not see anyone in
18 there other than himself, and immediately put in what was
19 the same password, or very, very close to the same
20 password because there was an odd stretch and it was only
21 four or five letters that were involved in the password.
22 Mr. Campbell tried this two more times on that terminal
23 with the same result, getting booted out of the system.
24 He moved to another terminal that was located next to it
25 and tried it two more times over there. Was unsuccessful

1 there. Moved to a terminal that I could not see directly.
2 But he apparently tried it either one or two more times
3 before moving back to the original terminal.

4 At this point an employee of the registrar's came
5 in. He said something to her. She came over to the
6 screen, used two more drop-down menus, walked away. He
7 put the card in. The same box that came up when I was
8 watching them tally ballot cards came up at that point.
9 When that happened, Mr. Campbell turned, glared at myself,
10 and picked up his card and left the room. We later found
11 out he had left that afternoon for Denver with his card.

12 Security? Security? I don't think so. I
13 recommend to people now that as long as these DRE machines
14 are there, vote absentee. Absentees used to be the bane
15 of people running for office because they were tamperable.
16 They are now gold. They are hard copies of a person's
17 vote. And it's really sad that it isn't because they've
18 become better, it's because the bar has been lowered so
19 far. This is a constitutional issue. It's the right to
20 vote. And I'll be damned if I let the Constitution get
21 trampled on.

22 Thank you.

23 CHAIRPERSON KYLE: Any questions from the panel?

24 Thank you, Mr. Cassel.

25 Brian Floyd.

1 Again I'm going to reiterate, those who can keep
2 this to Item No. 2 will have an opportunity for a bigger
3 conversation on Item No. 3. This is supposed to be on the
4 report itself, comments on the report.

5 MR. FLOYD: My name is Brian Floyd, Brian
6 B-r-i-a-n Floyd F-l-o-y-d. I am also from Riverside,
7 California. And I was the campaign manager in the
8 election question you just heard about for a Linda
9 Soubirovs in that election.

10 And what I want to address specifically is
11 reliability, security, and accuracy in that election
12 within our county and concerns that have come up.

13 And hearing some of the things we have people who
14 don't like touch screen voting or DREs or characterize --
15 let me give you my background. I've been involved in
16 politics probably since the third grade. My uncle was
17 Assemblyman Dick Floyd from the South Bay for 20 years.
18 That means that I'm a conservative Republican. I worked
19 for Assemblymember Rod Pacheco for three terms. And I do
20 not believe the election in Florida was stolen.

21 (Laughter.)

22 MR. FLOYD: So there was a comment -- we -- that
23 election, the results wound up missing a runoff by less
24 than a tenth of a percent. That was a 49 vote difference.
25 Anyone who's worked in politics knows you have to go for

1 the recount at that point. So my client, Linda Soubirovs,
2 filed her letter of intent for the recount, asked for 44
3 additional items that we considered relevant material
4 under the guidance of our attorney, and that letter was
5 submitted.

6 We started counting the paper ballots. Two
7 hundred seventy-six votes that had never been counted in
8 the first place were found. The margin of victory for the
9 incumbent was reduced to 35 or 36 votes. I don't recall
10 off the top of my head. And then we went into the
11 electronic votes.

12 You heard a representative from the County of
13 Riverside say yesterday, and I quote, "No flaws in the
14 electronic voting section of the recount were found." We
15 don't know that. And why we don't know that is because
16 when we recounted the electronic voting, they brought in
17 the Edge machines, inserted the cards and started running
18 summary totals, which is all right. That's part of our
19 request.

20 But what we wanted was to compare the summary
21 totals to the summary totals, if not from the ballot
22 images, off the redundant memory within the Edge machines
23 themselves that were used in the First Supervisorial
24 District. This was denied to us by the County of
25 Riverside's lawyer. They had an outside law firm. This

1 was denied to us by their lawyers as being a not relevant
2 issue.

3 In Monday's edition of the Press Enterprise where
4 they talked about this hearing that was going to take
5 place, there is a specific diagram on the back page of our
6 front section that says that the cartridges have a copy of
7 the ballot. A copy is then taken and counted. And if I
8 understand the Elections Code law, we don't want to count
9 a copy; we want to count the ballot. And that didn't
10 happen. Had that happened, I could stand up here today
11 and tell you, "Guess what? The machines work great. But,
12 guess what? We got big problems in Riverside." Right now
13 I don't know what to tell you because we don't know.

14 The other thing that I find extremely interesting
15 is one of the items that we asked for was the chain of
16 custody: Who sent the machines out, who set them up, who
17 put the cartridges in them, who returned them, what order
18 were they counted in, and where they've been stored. That
19 has not been provided to us.

20 And the answer is either it's not relevant or it
21 doesn't exist. So they are unwilling or unable to provide
22 that to us. I believe it's very important in a close
23 election to be able to recount the precincts in the exact
24 order they were counted in on election night. And it's
25 also very important in any election that we know who was

1 handling the cartridges and were all procedures followed
2 the way they should have been.

3 The provisional ballots that they counted out
4 were the summaries.

5 The provisional ballots were very interesting,
6 because what happened is the panels that were employed
7 that day had white sheets of paper that had the names of
8 the folks who were running in each office. Now,
9 originally I thought this might be a ballot image. I am
10 not sure if there's a ballot image, because I have never
11 seen a ballot in a presidential contest where the
12 President's name wasn't listed first.

13 CHAIRPERSON KYLE: Mr. Floyd, you're going to
14 wrap it up soon, I guess?

15 MR. FLOYD: Yes, I am.

16 CHAIRPERSON KYLE: So far it's alluding me as how
17 this is germane to Item No. 2.

18 MR. FLOYD: It's germane because I think it's
19 information that needs to be contained in that report,
20 sir.

21 The other thing is Sequoia's representative said
22 perception is nearly as important as reality in the
23 elections. And the fact is I saw Mr. Ed Campbell with
24 that flash card outside. And he lifted it out of his
25 pocket -- it was outside the building -- said, "Let's see

1 if this works" or something to that effect to a registrar
2 of voters' employee. I attempted to stop him. I asked
3 him what's in his pocket. He said it's just a flash card.
4 I tried to stop him from going into the count room and it
5 didn't happen.

6 I would want to just conclude that in there
7 because, one, we paid for the recount, and we should be
8 allowed to view a redundant memory on these machines. And
9 the policies and procedures hopefully will be in place.
10 But, additionally, if you can walk in and out of the count
11 room -- if this was a bank, I would not leave my money
12 there because the vault is just wide open.

13 And I'll take your questions.

14 CHAIRPERSON KYLE: Thank you.

15 Any questions from the panel?

16 Mr. Carrel.

17 VICE CHAIRPERSON CARREL: It's always me.

18 I'm confused a little bit about what you said in
19 terms of the chain of custody. You were saying that
20 you've made a request for the flash cards or -- what
21 exactly did you want provided and counted in front of you
22 again?

23 MR. FLOYD: In the letter the way -- we simply
24 wanted the absentees and I believe the mail-in ballots or
25 mail -- be counted first. And then the candidate wanted

1 the electronic votes counted with the -- either the
2 summaries or the ballot images from the cards and from the
3 redundant memory -- forgive me if my terms are not
4 technical, I'm a political guy -- to be compared to make
5 sure that they match up with -- that the voter intent was
6 copied correctly onto the cards in that counting.

7 VICE CHAIRPERSON CARREL: Okay. Thank you.

8 CHAIRPERSON KYLE: Any other questions?

9 Thank you for raising that.

10 I'm going to go back to Deborah Hench. She's
11 back in the room.

12 Ms. Hench.

13 MS. HENCH: I'm Deborah Hench, San Joaquin County
14 Registrar of Voters. And I was part of the parallel
15 monitoring on the TSx machines.

16 And from all of the reports that I know of the
17 TSx performed with 100 percent accuracy, which I find
18 unusual since you've recommended decertification.

19 We initially got the Secretary of State's mandate
20 to do parallel monitoring and initially it stated that
21 units were going to be taken from precincts. And we said
22 the letter we sent was you can't do that, basically. That
23 is the same as taking paper ballots out of the polling
24 place, and we objected. The Secretary of State agreed.
25 We then changed some of the monitoring guidelines so that

1 we could comply.

2 And it's been said that we didn't comply fully,
3 and that's incorrect. We complied with parallel
4 monitoring and posting a tape at the polling place.

5 Now, we did -- we do have in every unit a paper
6 trail. It has a zero summary report -- in the morning
7 when we open the polls. And it prints a zero summary
8 report -- not zero -- but a total summary of each unit in
9 ballots cast except for the provisionals. The
10 provisionals are not considered an official ballot cast
11 until we at the office go through the process of verifying
12 provisionals before it can be accepted.

13 That is why you can say -- well, we do have a
14 paper audit trail. It will add up to everything but the
15 provisionals included. And until that time it will match
16 our summary report and our statement of votes. We print
17 an unofficial once so we can, in the process of our
18 canvass, verify votes cast.

19 So we verify in the canvass, as required by law,
20 the summary report from each unit, from each precinct,
21 along with a statement of votes and the roster. Now, all
22 these counts have to verify. There is no running amuck
23 of, you know, we don't want -- we don't care. We do care.

24 As for security issues, we went several steps
25 further. Once I heard someone say that they could walk

1 in -- at one of these VSP panels, that they could walk
2 into any polling place and tear apart a unit. We started
3 instructing our precinct officers that it's a felony;
4 anyone that touches a unit in any way other than voting
5 will be arrested; that no one other than someone in my
6 office with a badge from my office to shut down the
7 machine because of -- it's gone dark or whatever
8 without -- you know, they're to call the police
9 immediately.

10 Our server is in a locked glassed-in room. The
11 only people allowed in there are staff that have badges
12 during the election system. The whole process we gave
13 badges to each staff member.

14 This was done just as a precaution. We've never
15 done that before. But because now we have people that are
16 trying their best to infiltrate and to damage our system,
17 instead of being able to be concerned and advise us
18 that -- you know, the concern, that they are trying
19 instead to do other things.

20 And I would like to remind this panel that I
21 believe the only system that was ever hacked in the
22 election business is the State's website when they were
23 posting election night results. I think it was in 1998 or
24 2000, if I remember right.

25 John or Tony would remember. But somehow they

1 posted inaccurate -- managed to go through the website and
2 post different results.

3 It didn't happen from the elections office, but
4 it happened from the State's own office.

5 We can't ever assume there's enough security, and
6 no one here has ever said that we do. Every one of us use
7 different precautions. We all have alarms. We all have
8 cameras. We all have secured locked doors. And we have
9 antivirus and firewalls and all these things in place
10 because there's never too much security.

11 We registrars take every vote seriously. It is
12 our jobs. And we have done so for years. I myself have
13 21 years in elections. Never once have we had a person in
14 the office, a staff person who intentionally did anything
15 that would cause a disruption of an election.

16 I myself have had a background check. I don't
17 know how many others have. But I don't background check
18 my polling place workers, because it's so hard right now
19 to even get someone to volunteer to do that job, that, no,
20 we don't give background checks.

21 But once we start that, I hope the State can do
22 the background checks for us and supply the people at the
23 polling place, because we're not going to have any.

24 Some of these issues we take very realistically,
25 and we have to use them in context of what we have to do

1 on election day.

2 And the other thing we have to do -- and there's
3 never been a change or a cancellation except in the City
4 of New York when we had a major terrorist attack -- is the
5 cancelled elections.

6 When we had a fire -- we had to work around the
7 fires in L.A. to comply with the elections and evacuees.
8 We always perform. And now we're going to be performing
9 with another problem and, that is, now the perception is
10 the registrars in this state really do not care about our
11 jobs.

12 CHAIRPERSON KYLE: Thank you.

13 Any questions?

14 Thank you.

15 Kathleen Williams, is she back in the room?

16 All right. Joseph Lucsko.

17 MR. LUCSKO: That's L-u-c-s-k-O.

18 Thank you, Honorable Commission. I'd like to
19 commend you for all the good work that you've done.

20 And I'd like to say I've been kind of disturbed
21 by some of the comments that I've heard here today. This
22 isn't a Republican issue. This isn't a Democrat issue.
23 This is an American issue, the sanctity of our right to
24 vote.

25 And I've heard people say that we're

1 over-regulated. Perhaps we need more rules and
2 regulations as it pertains to the voting process.

3 I'm from Riverside County. Prior to using the
4 touch screen voting, of which I did on March -- and that's
5 how it pertains to this issue -- I tried to vote for one
6 person. Someone else's name popped up on the check list.
7 I cleared it and tried it again and again and again, five
8 separate times before it would register appropriately.

9 I'm voting absentee from now on. I'm not going
10 to vote with those machines.

11 But what's disturbing to me is Secretary Shelley,
12 who I think's doing a wonderful job, he just asked for
13 additional security measures, and registrars said, no,
14 they weren't going to do it, or certain registrars or some
15 registrars. Perhaps we need to look at the enabling
16 legislation regarding the whole political process.
17 Perhaps maybe an appointment isn't best. Because they're
18 political appointees in some cases, not all. Some cases
19 they're elected officials; some cases, not all. Perhaps
20 that is causing some of the acrimony that I've heard
21 members of the Commission express.

22 So I would just say, I'm proud of the job -- and
23 I don't know if I said this. I've been a lifelong
24 conservative Republican, and I'm proud that we have a
25 Secretary of State like Kevin Shelley.

1 Thank you.

2 CHAIRPERSON KYLE: Thank you.

3 Any questions from the panel?

4 Ed Katz?

5 All right. Jim Hamilton?

6 We have Item 3, remember, this afternoon. And I
7 want to -- sometime soon.

8 MR. HAMILTON: I want to talk about -- well, I
9 don't have the book with me -- but the study you did of
10 the March 2nd primary.

11 PANEL MEMBER DANIELS-MEADE: A little louder.

12 MR. HAMILTON: Okay. I basically want to talk
13 about the March 2nd primary.

14 Now, if you'll look in your book, if you have it,
15 I'm talking about San Diego County, No. 16.

16 While you're finding that, there's a couple
17 things I wish to say that upset me deeply.

18 Comments were made that the people who are the
19 worst danger to the voting system are the black box rules.
20 Doesn't that sound terrible? Well, I'm from a group
21 called Save-Democracy. My wife and I conducted a process
22 of poll watching for this group.

23 We did have a couple people who were poll
24 workers, my daughter included. Now, when those people
25 went to work there was no thought of undermining the

1 election process. The intent was to understand the
2 election process.

3 A comment has also been made that if we would
4 just talk to the registrars of voters, then we could come
5 to an agreement and things would be okay. In San Diego
6 County we have made this request. At first, we were
7 ignored. And later we were treated with hostility,
8 something Mr. Carrel can speak to. That's the same
9 meeting I made the request to work with the county on
10 their investigation committee.

11 I'm not saying that we think the registrar of
12 voters don't take their jobs seriously. It's just if you
13 are involved in a citizens group that has the nerve to
14 take exception to something said by a board of supervisor
15 or a registrar of voter, then you are treated with
16 disdain. I think we need to be upfront about that, we
17 need to recognize that.

18 Now, getting to the subject of San Diego
19 County -- and I don't mean to be critical of Mr. Carrel.
20 I respect you greatly. But, you know, being from one of
21 these wild groups, I have to say something.

22 (Laughter.)

23 MR. HAMILTON: First of all, it says one in
24 twenty persons requested paper ballots. First of all,
25 people were not asked if they would prefer to have a paper

1 ballot. Here's the machine. You want to use it? What
2 choice?

3 Second, if you were to use a paper ballot in San
4 Diego County, you'd have to drive to the Registrar of
5 Voter's Office on Ruffin Road in Claremont in San Diego.
6 For some of us -- I live in Oceanside. For me that's 30
7 to 45 minute drive one way.

8 Second, a lot of people have extolled the virtues
9 of absentee ballot. I went to the Registrar of Voters
10 Office during the recount. I talked with the person who
11 was conducting the interview. I asked him three times
12 this because I could not believe the answer. I asked him
13 questions about the absentee voter recount. And I was
14 told that "It is a very difficult process to count
15 absentee ballots. So what we do is we find the smallest
16 precinct we can find and we count those absentee ballots."
17 So I said, "Well, how many ballots did you count?" He
18 said, "Two."

19 Now, I asked him three times this. I got the
20 same answer every time. It's in my notes. I was talking
21 to somebody yesterday and they said that in their county
22 the registrar of voters did not count absentee ballots at
23 all. Well, that disturbed me because that was the one
24 area where we could actually see how, you know, honest and
25 truthful the election results were.

1 Secondly, Item B, it says that they believe more
2 than 15 percent of the polling locations were down after
3 7:30 a.m. -- excuse me -- yeah, it was -- we had 30
4 people, poll watchers, that day. I myself in the morning
5 visited three. And every one I visited was down after
6 7:30. Some of them up to 9 o'clock, 9:30.

7 Secondly, going onto the statement by polling
8 place monitor Maria Collins that voters are enthusiastic
9 about electronic voting machines. I mentioned this
10 yesterday. But when we asked people about the machines,
11 we said, "Do you love them?" And they said, "Oh, they're
12 terrific. They're so easy to use. They make voting
13 easy." So we asked them, "Did you know that there's no
14 ballot?" "No." "Did you know that if there's need for a
15 recount, it's not possible?" And they said, "No.
16 Really?" And all of a sudden their attitude changed.
17 They were not as excited then as they are now -- excuse
18 me -- as they were before.

19 Another thing that I've seen happen an awful lot
20 is there is a great deal of blame placed on the poll
21 workers. In the process of this we had a lot of chances
22 to talk to poll workers. They were not all moles. The
23 majority of them were not moles. They were just people
24 doing their job.

25 And to give you an example of what happened.

1 Now, my daughter was a poll worker. She was running the
2 computer, trying to do a good job. She's a very
3 conscientious person. She's not -- calling her a mole's
4 ridiculous.

5 Anyway, I was there when she was trying to get
6 the machine started. She's a lot smarter than I am. She
7 knows computers -- her way around computers a lot better
8 than I do. When she turned the machine on, she got the
9 first screen, you know, the -- the first screen. She had
10 to -- on that screen she had to look through files --
11 there were a list of files. She had to go through that.
12 She finally found one that she thought was good. So she
13 clicked that. Then she found another file -- on the next
14 page she was looking through the files, she found another
15 one, and she clicked it and it worked.

16 The third screen that she found had the words,
17 something to the extent that -- it had a big "yes" and a
18 big "no" button on it. And it said, "If you press
19 'yes'" -- and if my memory serves me correctly, the "yes"
20 was in red -- "if you press 'yes', then you will overwrite
21 the file program."

22 She looked at that and she said, "I've been
23 around computers a lot. I'm not pressing that button."

24 Now, I've talked with some young people and I've
25 talked with some old people. This is interesting. The

1 younger people that I talked to say, "Oh, I tried it three
2 or four times. And then if I didn't do anything, I'd
3 press the 'yes' button."

4 CHAIRPERSON KYLE: Mr. Hamilton, can you please
5 sum it up.

6 MR. HAMILTON: Okay.

7 CHAIRPERSON KYLE: Thank you.

8 MR. HAMILTON: These are specifics on how the
9 system works.

10 Anyway --

11 CHAIRPERSON KYLE: If you have something written
12 that you want to submit, we'll --

13 MR. HAMILTON: Precinct captains -- another
14 problem we have in San Diego County was the precinct
15 captains are allowed to choose their polling place
16 workers. So you could have all four -- the workers at a
17 polling place be from the same group. I find that
18 difficult and wrong, but I was told that's no problem.

19 Second, voting machines and PCMs were stored in
20 the homes of the person in charge of the machines. My
21 daughter, having this job, I actually had six of the TSx
22 machines in my home, plus a PCM. And the security on them
23 is nil. I did present a four-page paper for my daughter
24 to go over some of this.

25 One of the persons, we found out -- one of the

1 poll workers had his machines in his car for a week
2 because his apartment was too small to store them.

3 Now, the point I was trying to get to in my long
4 story about that difficulty of getting into the machines
5 is that we blame the polling workers for not being
6 trained. Well, every program I know, when you open it up,
7 it's supposed to go to a page and it gives you
8 instructions, you follow the instructions and it opens.
9 These machines did not do that. It's a machine failure;
10 it's not a poll worker failure. And it's very interesting
11 to me that nobody has thought of use -- of ease for the
12 poll workers. They're getting a very bad wrap for this.
13 I think it's terrible.

14 I do have a comment -- or a statement I want to
15 make real fast, a suggestion that I have, is that -- I'm a
16 former special ed teacher, 25 years doing that and other
17 things. I've never served in the service. I don't know
18 if I'm -- hero or something. Apparently not.

19 (Laughter.)

20 MR. HAMILTON: But basically I think -- it's
21 something we have to go through in education, particularly
22 in special education, and I think something that you
23 should think of. And the more I see you in operation, I
24 think the better you're prepared for this.

25 I would like to see the Secretary of State set up

1 committees of accreditation. I would like these
2 committees to go out on a regular basis to analyze the
3 elections after they're taken and come up with a true
4 analysis of what happens. Now, what we saw in San Diego
5 was three people came down, maybe had a day or two, and
6 then they had to leave. I'd like to see something in
7 greater depth.

8 I would also like to see in these committees
9 persons who are experts in the field, the Avi Rubins and
10 David Dills and people like that. I would also like to
11 see people from the community who are knowledgeable about,
12 you know, electronic voting. I would include Kim
13 Alexander; from my group, Pam Smith; maybe Brina-Rae
14 Schuchman -- all sorts of people like that on the group.
15 And of course you'd want to have representatives from
16 others.

17 But I would like to see something like this. And
18 I think it would be very successful. I think you would
19 come back with some real information. And of course I
20 would include registrars of voters on this group. But I
21 think this would do a lot towards gathering information on
22 these machines.

23 Thank you very much.

24 CHAIRPERSON KYLE: Thank you.

25 Any questions?

1 VICE CHAIRPERSON CARREL: I'm going to make one
2 minor correction. In terms of your statements regarding
3 poll workers, I don't think anyone on this panel nor any
4 registrar is seeking to demean poll workers. And I think
5 they are the engine that makes elections work on election
6 day.

7 The reference to moles you made was, I think, a
8 reference to a discussion that I had with the registrar
9 from San Bernardino regarding what one person is hoping to
10 do in the future and not anything reflective of what might
11 have occurred on March 2nd.

12 And the third, if I understood you, you said that
13 absentees were not counted. We do not certify the vote
14 and the registrars do not certify the vote in their
15 counties unless every single vote is counted, and that
16 includes every single absentee.

17 MR. HAMILTON: I misspoke. What I meant was not
18 recounted. I apologize for that.

19 And as far as the mole comment, that did not come
20 from anyone up there. It was from the audience.

21 Thank you very much.

22 And, Mr. Carrel, I saw you at the San Diego
23 County Board of Supervisors, and I very much appreciate
24 you're being there. I thought you were excellent.

25 VICE CHAIRPERSON CARREL: Thank you.

1 CHAIRPERSON KYLE: Thank you for your comments.
2 Sticking with Item No. 2 Austin Erdman.
3 Did the folks from San Joaquin leave?
4 All right. I'm going to assume that's true.
5 Then we'll go to Joe Holder, keeping it on Item
6 No. 2.

7 MR. HOLDER: Good afternoon.

8 It's been interesting what I've heard. And so
9 I'm going to start off with an experience that I had with
10 Stanislaus County on March 2nd.

11 I'd lost my precinct. I was forced to go to
12 absentee balloting because my precinct was too small. So
13 the last several elections I've been voting absentee.

14 But what I've learned in the last year, I started
15 having concerns about that, and especially when I hear
16 about some of the absentee ballots have been thrown out
17 because the signatures didn't match. I have a lousy
18 signature. And I signed my signature card back in the
19 mid-eighties. So I got concerned and I went down to the
20 election central in Modesto at about 5:30 on election day
21 to hand-submit my absentee ballots.

22 And one of the questions I wanted to ask -- they
23 offered to take it from me. I said, "No, I want to make
24 sure that my signature matches." So they checked my
25 signature on the computer screen. They said, "It does

1 match. There'll be no problem." So I handed them my
2 absentee ballots.

3 While I'm standing there, I see a room in which
4 the machinery and the GEMS server -- not GEMS server, but
5 vote tech serving everything is sitting and it does have
6 words on it, does have glass you can see quite a bit into
7 it. The poll workers that were working -- the elections
8 division were all wearing a special T-shirt that had
9 special signs on it talking about the primary 2004.

10 I looked in the counting room where the optical
11 scan machines are -- we're an optical scan machine county
12 that uses DSS. And from being at these meetings I
13 recognized Lou Dedier. I also saw two other people in
14 there wearing black shirts -- polo shirts. One was
15 sitting at a computer console, the other one
16 was gleaning -- of the optical scan machine. And Lou was
17 walking back and forth. So I observed for about 25
18 minutes.

19 During that period -- entire period of time, no
20 election officials went into that room. And seeing an
21 ES&S person sitting in front of the computer console I
22 find disturbing. And then I find out that other people
23 observed the same type of thing.

24 So that's my experience on election day.

25 There's been talk about the parallel monitoring.

1 And at several times yesterday and then again today people
2 have talked about the 100 percent accuracy of that. So
3 last night I went to the staff report -- not the staff --
4 the report on the -- the March 2nd report and I read about
5 what that consisted of.

6 And basically as you took machines out prior to
7 going out to the polls, you tested TS -- the TS machines
8 themselves to see if they would accurately record. And
9 you did a totals printout and then you also did the memory
10 cards. And it was 100 percent accurate.

11 The RABA report, the Compuware report, all
12 reports, they do list vulnerabilities and they do list
13 risks, and they do separate that.

14 And I take exception to the one man making such a
15 big deal about -- only of vulnerability. There are risks
16 and they were identified.

17 And they had -- the Compuware report had almost a
18 full page of potential attack points. And the vast
19 majority of those were downstream of the DRE machine.

20 There are many, many other points of attack. The
21 parallel monitoring did not prove anything. It did not
22 prove that the voting system was 100 percent accurate,
23 only that the DRE recorded accurately.

24 The other thing was a manual -- the one-percent
25 manual recount. From the report they just said that over

1 40 percent of the people in the state on March 2nd did
2 vote on DRE-type machines. Also 33 percent voted on
3 optical scan. That means that over 73 percent of our
4 votes now are automatically tabulated. The law is that
5 we'd run a one-percent recount to make sure that the
6 automated count is accurate.

7 We have heard that some counties did not even
8 count the absentee as part of that manual recount one
9 percent. I'd never heard the story today except until
10 just now. The law says it's supposed to be a random
11 selection of the precincts. And now he's saying that they
12 find the smallest precinct in numbers. That's against the
13 law. And also it does not effectively create the audit
14 that we expect and we want. And I see that as a way of
15 skirting that.

16 So I have less confidence the more I hear. And I
17 would really like -- I'll bring up -- Jim Adler brought up
18 something about they did a scientific study -- and I'm
19 very glad to hear it finally -- that how inadequate a
20 one-percent of the precincts manual recount is for
21 actually proving or disproving accuracy. I would really
22 like to see the state, through the legislation, if it's
23 necessary, examine that and do an actual scientific
24 establishment of what it needs to be for a manual percent
25 recount to confirm any kind of automated counting.

1 That's it.

2 CHAIRPERSON KYLE: Thank you.

3 Can you repeat what county you're from.

4 MR. HOLDER: Stanislaus County.

5 CHAIRPERSON KYLE: Thank you.

6 Three outstanding officials from San Joaquin
7 County still on the list. I just want to make sure I
8 don't miss them.

9 Okay. Thank you.

10 I think I'm going to take one more and
11 contemplate a break.

12 Robert Kibrick, on Item No. 2.

13 MR. KIBRICK: Robert Kibrick from Santa Cruz
14 County. Last name is Kibrick, K-i-b-r-i-c-k. I'm here
15 today representing verifiedvoting.org, a nonpartisan,
16 nonprofit organization, looking for secure verifiable
17 elections.

18 I would like to second the comments of others,
19 that this is not a partisan issue. I would also say it is
20 not a religious issue. And I think to characterize it as
21 such is counterproductive.

22 But I'd like to talk about a number of the items
23 specifically in the report, but I would also like to take
24 a moment to respond to a couple of the comments from Mr.
25 Konopasek. He talked about the importance of facts. And

1 I agree, facts are important. And I would like to talk
2 about some.

3 Intellectual honesty is also important. One of
4 the statements that was made up here regarding the March
5 2nd election was the survey conducted in San Bernardino
6 County designed to show that the voters there were
7 confident that their votes were accurately counted.

8 Now, I actually had someone call the assistant
9 registrar of the voters in San Bernardino County to find
10 out the methodology used for that survey. That survey was
11 handed out to people in the polling places.

12 Now, as your own report indicates, the primary
13 election set a record for the number of voters who cast
14 absentee ballots. A number of people who cast absentee
15 ballots did so because of concerns that their votes would
16 not be counted accurately on a DRE.

17 So now you conduct a survey in which the survey
18 forms were only given to people in the polling place.
19 They're not distributed to absentee voters. So you have
20 now biased your sample. This is not a representative
21 sample if people who didn't come to vote on DREs aren't
22 asked their opinion. So to then use that survey to say
23 that these numbers are representative is not
24 intellectually honest.

25 Okay. I'd also like to talk about a couple of

1 other statements that were made as statements of fact.
2 The lady from the Asian Pacific American Legal Center,
3 Kathay Fong, made a remark to the effect that optical scan
4 is less accurate than DREs. She said there were two
5 studies which she made at Stanford and Michigan that
6 gave -- citation. She gave them a quantity of numbers.

7 The definite study that I'm aware of was done by
8 two of our country's most prestigious engineering schools,
9 Cal Tech and MIT, was formally the Cal Tech/MIT Voting
10 Project. In that report on page 21, Table 1, is a list of
11 residual vote errors for different voting technologies.

12 I quote from that report: "In presidential
13 races, optical scan residual vote errors, 1.5 percent;
14 DRE, 2.3 percent. In races for Governor and Senator,
15 optical scan, 3.5 percent; DRE 5.9."

16 So those are the facts as I know them. And then
17 I think it's important to note that there are a number of
18 other studies, George Washington University, that also
19 bear out these numbers and show that these are very cost
20 effective systems.

21 I'd like to talk about a couple of things that
22 should have been in the March 2nd primary report that were
23 not. First, we've heard a lot about the problems that
24 ordinary voters encountered voting DRE voting machines.
25 Heard a lot of bad things about Diebold Systems.

1 But there were voters in other counties with
2 other systems that had problems. And I'm speaking
3 specifically of blind voters. There was a survey
4 conducted by the Silicon Valley Council of the Blind.
5 That survey has been turned in to the Registrar of Voters
6 of Santa Clara County and the Board of Supervisors of
7 Santa Clara County. And it recounts numerous instances of
8 blind voters who went to the poll in anticipation of being
9 able to cast their first secret ballot of their lives and
10 who came away severely disappointed.

11 Cases where it took over an hour for people to
12 get through the process because they had to load special
13 software into the machine and the people at the polls
14 didn't know how to do it. When they loaded it, it came up
15 and got stuck in a loop, asking them what language they
16 wanted to vote in. Other blind voters simply gave up and
17 had the poll worker vote on their behalf because they
18 couldn't get the system to work.

19 Now, I believe the blind, the disabled, the
20 language impaired, the visually impaired deserve better
21 than this. And I think accessibility in electronic voting
22 systems is important. I think it's a goal we all have to
23 work for. And, you know, we need to hold the vendors
24 accountable for making good on that promise.

25 Now, a lot of people from that community have

1 spoken to just how important this is, to be able to cast a
2 secret ballot. And I agree, and I support this. And I
3 think -- I applaud the efforts of this panel and all that
4 it has done to ensure that those accessibility concerns
5 are addressed, that many provisions of voter verifiable
6 paper ballots be accessible. I commend you in the state
7 guidelines that have been proposed to making sure that
8 accessibility issues are addressed.

9 But it is ironic to me that for many other voters
10 in the March 2nd election, for the first time in their
11 lives, they were not able to cast a secret ballot. This
12 is truly ironic. And there were several reasons for this.
13 As we've already heard, there were a number of others who
14 were not able to cast any ballot at all because the
15 machines weren't working when they came to the polls. And
16 that is a much more serious type of disenfranchisement.
17 When you talk about being disenfranchised because you
18 didn't -- you weren't able to vote in secret, that's not
19 as serious an issue as when you're not able to vote at
20 all.

21 But let's get back to ballot secrecy. We've
22 heard a number of cases across different vendor systems
23 where ballot secrecy was compromised simply by the way
24 these machines were set up. Other people standing in line
25 and waiting to vote had clear views of the screens and

1 could see how people vote. Okay? This is something that
2 needs to get corrected in terms of how polling places get
3 set up.

4 But there's a worse problem and, that is, when
5 there are problems with these DRE voting machines. The
6 voter is put in a very difficult position if the machine
7 is malfunctioning. And let me give two examples that came
8 from San Diego County where there were machine
9 malfunctions.

10 CHAIRPERSON KYLE: Mr. Kibrick, could you try to
11 sum up.

12 MR. KIBRICK: On this note.

13 In one case some had voted. They got to the --
14 they get final summary screen and the summary screen was
15 blank. So they went over to the poll worker and said,
16 "This machine isn't working right." And the poll worker
17 said, "Well, show me how it isn't working right." So they
18 had to scroll through his ballot. And the poll worker
19 confirmed that, yes, they had checked each of the races
20 and the summary screen was blank. Well, ballot secrecy
21 there went out the window. And there were other instances
22 of this as well.

23 So how is a voter voting on a machine that is
24 malfunctioning supposed to prove his case that it's
25 malfunctioning without compromising the secrecy of the

1 ballot?

2 The same concerns apply to malfunctions of a
3 voter verifiable paper printer. If you're having
4 difficulties with that, it just messes up two times in a
5 row and you're about to have your third strike in terms of
6 printing this thing out, how do you convince the poll
7 worker that you've got a machine malfunction that is not
8 your fault without compromising the secrecy of your
9 ballot?

10 So I think when we hear concerns from the
11 disabled community -- and I think they're valid concerns
12 and I support their need to accessibility -- we should --
13 it's important that they have a private secret ballot, but
14 it's also important that all of us have a private and a
15 secret ballot.

16 Thank you.

17 CHAIRPERSON KYLE: Thank you.

18 I'm going to call for a 30 minute recess. So
19 we'll reconvene at 1:40.

20 (Thereupon a lunch break was taken.)

21

22

23

24

25

1 AFTERNOON SESSION

2 CHAIRPERSON KYLE: All right. We're back on the
3 record.

4 I had another half a dozen to eight requests to
5 speak on Item No. 2. At times I'm noticing, and I blame
6 myself for this, is that people are addressing Item No. 2,
7 either directly or obliquely, and then talking about
8 everything else that seem to be falling under Item No. 3.
9 We have four times as many requests for Item No. 3 to
10 speak.

11 It's now 10 of 2:00. And I would like to hear
12 everyone. Though I'm beginning to have some doubts about
13 the ability to pull it off today. So I'm going to do 2
14 things: I'm going to ask that those folks who are
15 remaining who indicated that they wanted to speak on Item
16 No. 2, do so; but I'm going to shift the agenda to Item
17 No. 3, allow those folks who want to address Item No. 2 to
18 speak. I've kept your cards, so I'll call you. A number
19 of folks remaining to speak also indicated they wanted to
20 speak on Item No. 3.

21 So when I call you, you can speak on Item No. 3.
22 And if you want to say something about Item No. 2, we'll
23 be happy to entertain that at that time as well. And then
24 we'll revisit Item No. 2 at the end of the day to close on
25 it, see if there's any motions. And, if we're lucky, we

1 may be able to do that with Item No. 3 as well.

2 The second thing I'm going to do is I'm going to
3 be much more strictly enforcing the time. As I said
4 before, I was lenient. And I was lenient again this
5 morning. Some folks -- and I'm not protesting, I'm just
6 pointing out -- spoke as long as seven to almost ten
7 minutes. We're not going to do that. We're going to set
8 the timer for three minutes, and I'm going to cut you off
9 shortly thereafter. So when you hear the beeper go off,
10 please keep in mind that in 15 more seconds I'm going to
11 ask you to be quiet.

12 And that way we'll actually be able to maybe pull
13 this off in another two or three hours.

14 So the second thing I want to say is -- it's a
15 procedure, but it's to -- really what we want to do in
16 talking with the vendors today and talking with the
17 registrars today is really engage in information
18 gathering. It's not us versus the vendors, it's not the
19 agencies versus the counties. It's you telling us what
20 you believe about November and what's possible and what's
21 not possible and what a scenario would look like for
22 success and what scenarios might look like to not be
23 successful. And we're going to ask questions along that
24 line. And they should not be interpreted as hostile
25 questions, but rather we really want to get a good handle

1 on what people think is plausible for November.

2 So the third indulgence is: I'm really trying to
3 abide by people's time constraints. And also those folks
4 who patiently waited for No. 2 and I'm now shifting the
5 ground under them a little bit, to respect them I'm going
6 to put them at the front of the list. But there's a
7 couple of folks who indicated that they do have time
8 constraints. And the Orange County Registrar of Voters
9 was one of them.

10 Is Steve still here?

11 Mr. Rodermund, please come forward.

12 MR. RODERMUND: Chair Kyle, members of the this
13 Panel. For the record I'm Steve Rodermund, Registrar of
14 Voters in Orange County. R-o-d-e-r-m-u-n-d.

15 I think the only main issue I've got today is
16 who's got the most patriotic tie on, Mr. Jefferson or
17 myself.

18 (Laughter.)

19 MR. RODERMUND: I do want to thank you for
20 allowing me to speak today. Also, I wanted to thank you
21 for allowing my Supervisor, Chris Norby, to speak
22 yesterday due to his time constraints.

23 A lot's been said here, so I just would like to
24 reemphasize a couple of the points from Orange County's
25 perspective. As was brought up yesterday by Supervisor

1 Norby, we ask that any decisions that this panel makes or
2 recommendations to the Secretary of State, look at the
3 voting systems as individual systems and the counties as
4 individual counties, and make your recommendations based
5 upon performance in those counties with those systems.

6 I think that Orange County's been very proactive
7 with the Secretary of State's Office and with our polling
8 places through the procurement of our voting system and
9 its implementation. Also, as Supervisor Norby said, that
10 after the election we put together a subcommittee from the
11 Board that actively solicited information from our poll
12 workers and voters so that we can assure we know what the
13 issues were with our election process and that we could
14 put an action plan together to make sure they're
15 non-issues in November.

16 I am very comfortable in saying that what has
17 come out of this is that we have to do a better job of
18 training for poll workers and our voters, but that the
19 equipment worked very well.

20 As far as security goes, as has been stated, we
21 are very much of a believer in security. We have a
22 multi-layered process. I would ask that if Mr. Jefferson
23 has the opportunity, that you or any of your people come
24 on down. Because if we do have a problem, I want one on
25 our side to make sure that they can show us that we have

1 an issue before somebody else tells us that we've got an
2 issue. So anything that this panel could do to assist us
3 to make sure that we've covered all the bases in that area
4 would be appreciated.

5 The one point I would really like to emphasize is
6 that with -- where we're going with this for like our
7 system is that, are we going to use it or are we not? And
8 that's obviously a decision that this panel's going to
9 make and the Secretary of State will implement. Because
10 at this point I don't believe that paper audit trails are
11 really germane to the argument, in that due to the time
12 constraints that it takes vendors to get through the
13 entire process, even if we said start today, it would be
14 exceedingly doubtful that most of the vendors could have a
15 system fully certified, built, deployed, everybody trained
16 for November.

17 So we -- as my supervisor said, we would like
18 this -- and I'll be real quick here -- to say, with the
19 Secretary of State, we like the process that the Secretary
20 of State is going through, a very methodical process to
21 make sure that we do it right the first time and we don't
22 have to do it over.

23 And in closing, I believe also we've worked very
24 closely with the Secretary of State's staff on the various
25 security measures that were implemented from the March

1 election. And we would ask that of all the measures which
2 we fully supported, that this panel and the Secretary look
3 at expanding the arrow and monitoring program for
4 November, and that that gives us the best way to give that
5 much more assurance to the process and still allows us to
6 move forward with wherever we're going to go with paper
7 audit trails.

8 CHAIRPERSON KYLE: Thanks for your comments. If
9 you could stick around for a second.

10 Any questions from the panel?

11 Mr. Carrel.

12 VICE CHAIRPERSON CARREL: Yeah. I'm interested
13 in hearing from most of the registrars who come up here a
14 couple questions. If you have DREs, and then I'll ask you
15 specifically, with your DRE program how long did it take
16 you to implement it? And, second of all, if this panel
17 does recommend that DREs not be used in November, how
18 would you run your election in November?

19 MR. RODERMUND: It took us over a year from when
20 we really started to work on this until we implemented.
21 One of the issues that has not been brought up with the
22 counties that implemented DRE systems was that a lot of us
23 had to basically stop everything we were doing for several
24 months because of the recall election. And all of our
25 energies had to be focused on that. And that really

1 compressed our time lines. I think that many of these
2 things that were brought up in the March election would
3 not have been issues had we not had that election to deal
4 with. But we -- it was over a year.

5 Do we have a system that can -- a paper system
6 that could be used on our ballot now? Yes, we used it for
7 our -- the recall election. However, the ballot system is
8 now a -- it's not designed to be a precinct county system.
9 It actually has serial numbers on every individual ballot,
10 and that's how they're tracked through. Because on the
11 absentee side you never can relate people to serial
12 numbers. And you have that difficulty when you have
13 serial numbers, then they go out there to the polling
14 places and you have to take a lot more precautions that
15 you don't equate back to a person.

16 Our biggest issue would be one with the logistics
17 of having it done at the precinct level, being able to get
18 that paper out and make sure we can account for it. And,
19 two, we'd have to buy a lot of scanning equipment because
20 our scanners are set up to use the seven day process that
21 we now have for absentees and the limited number of paper
22 ballots.

23 So we would have a sizable investment, even --
24 and we're not talking about at the polling place. We're
25 still talking about central. That we would have to figure

1 out how to get these machines in there so that we wouldn't
2 take four or five, six days to count and issue the
3 unofficial.

4 VICE CHAIRPERSON CARREL: Thank you.

5 CHAIRPERSON KYLE: Any other questions?

6 Thank you very much.

7 MR. RODERMUND: Thank you.

8 CHAIRPERSON KYLE: David Hart, Ann Reed, and then
9 Joe Andrew.

10 MR. HART: Good afternoon. My name is David Hart
11 and I'm Chairman of Hart InterCivic.

12 Let me tell you, first of all, that Hart
13 InterCivic has been in this business for over 90 years.
14 And our 90 years experience includes experience with paper
15 ballots, includes experience with punch cards, lever
16 machines, and -- scan ballots as well as DREs. So we have
17 a very broad perspective of election systems.

18 Currently we are certified to do business in
19 California and have been so since 19 -- excuse me -- since
20 2002. And we've worked through the certification process
21 with the California Secretary of State's Office. And I
22 hope you'll agree it's been satisfactory.

23 Our most recent software releases in California,
24 as you know, but for the record, have been certified
25 through -- with the 2002 voting system standards.

1 Currently Hart is installed at Orange County,
2 California, which is the largest county in California to
3 use electronic voting.

4 I'd like to make a few comments about that.

5 We were used county-wide with the DRE on March
6 2nd. And I believe that we can say with assurance that we
7 delivered the benefits that we promised that county,
8 including accessibility to the polling place, including
9 reduced residual votes. I made a count of overvotes in
10 the county in 2002 and compared them to 2004. And the
11 overvote count dropped from over 16,000 to less than
12 2,000, which was an 85 percent reduction. So I think you
13 can say that those people who previously lost their votes
14 now had their votes counted in Orange County.

15 Undervotes were significantly reduced as well. I
16 looked at a couple of the down-ballot races, in particular
17 central committee races. In the past, there was about 50
18 percent undervote based on past history. And the more
19 recent election, in 2004, on the DRE systems that number
20 dropped below 40 percent. So, again, more people were
21 voting using the system and more votes people had their
22 systems -- their votes counted on the system.

23 We also helped Orange County enable their
24 languages -- the five languages that were required by the
25 Department of Justice, all were presented at the polling

1 place in the native language of the speaker who wanted to
2 select a language other than English.

3 We delivered these benefits while emphasizing
4 accuracy and security. I'd like to give you a little
5 background about our company's perspective on security and
6 accuracy.

7 First of all, our system was designed from the
8 ground up under ISO 9000 guidelines, not just hardware but
9 also software. And I believe we're the only system in the
10 country who has actually started out and developed our
11 system under ISO 9000 quality guidelines.

12 We more recently have been recommended under
13 British Standard 1799 for security within our own security
14 operations.

15 CHAIRPERSON KYLE: It's three minutes. Wrap it
16 up.

17 MR. HART: They're up?

18 CHAIRPERSON KYLE: They're up, but go ahead and
19 finish your thought.

20 MR. HART: Okay. Well, my thought really is
21 this: And, that is, that we're different, we're unique,
22 we don't use touch screens, we don't windows, we don't use
23 smart cards, we have distributed physically separate audit
24 trails in our systems. Our failure rate -- we had 13
25 pieces not work, as advertised, out of 10,500 pieces

1 before in Orange County, California. And I'd suggest to
2 you that perhaps you should look -- system, and maybe we
3 had a quality problem and maybe we don't have a security
4 problem. And that when you review the record for each of
5 the systems, hopefully you'll do it and address each
6 individual company on their own merits as you consider
7 how -- moving forward in November of 2004.

8 Thank you.

9 CHAIRPERSON KYLE: Thank you.

10 Questions from the panel.

11 PANEL MEMBER MILLER: Quickly. I assume the
12 2,000 overvotes you had came from absentees.

13 MR. HART: That's correct, they we're all taking
14 place down --

15 PANEL MEMBER MILLER: Thank you.

16 CHAIRPERSON KYLE: Mr. Carrel.

17 VICE CHAIRPERSON CARREL: My question is: Is
18 your company working towards the development of a paper
19 audit trail accessory to your machine or a machine that
20 includes it? And if so, what's the time line?

21 MR. HART: Yes, we are working toward it. We
22 have a couple of design documents. And, frankly, we're
23 waiting for a final determination of standards in
24 California. I'm going to guess the time line would be as
25 follows: Once those are finally determined, it will

1 probably take us 60 days to finish the development of the
2 product against these standards. Following that, it will
3 probably take a minimum of 120 days with the -- to achieve
4 federal certification. And then following that we'll need
5 state certification. So if you take all that together,
6 end of the year. And that's sort of the best case
7 scenario.

8 VICE CHAIRPERSON CARREL: Thank you.

9 CHAIRPERSON KYLE: Thank you very much.

10 Ann Reed.

11 MS. REED: Thank you. Ann Reed R-e-e-d.

12 As the elected County Clerk/Registrar of Voters,
13 I was authorized by the Shasta County Board of Supervisors
14 to issue an RFP for the acquisition of a new voting system
15 in October of 2002, and following the State-ordered
16 decertification of our Votomatic voting system. An RFP
17 was subsequently issued and sent to all certified vendors,
18 who were certified by the Office of Secretary of State.

19 After extensive review and input by various
20 groups and concerned citizens, we negotiated a contract to
21 purchase Sequoia Edge Voting Systems. Since purchasing
22 the electronic voting system we have held three very
23 successful elections, and the touch screen units have been
24 used by Shasta County voters with great success. The
25 success is due to numerous safeguards and policies that

1 guarantee the security and accuracy of every vote cast.

2 Decertification of electronic voting systems
3 would cost Shasta County additional dollars that it does
4 not have. In addition to purchasing optical scanned paper
5 ballots for every voter, we would also need to purchase
6 portable voting booths, marking devices, ballot boxes, and
7 other related election supplies, plus hire additional
8 temporary clerks. The retraining of poll workers would
9 also be an additional expense.

10 Our current optical scan ballots have never been
11 used at the precinct level and does not have a poll worker
12 manual, whereas our electronic system does.

13 We would need to develop a new poll-worker
14 training curriculum and manual for the precinct level.

15 Also, if we went in a course that's designed for
16 the optical scan system, there would be much retraining on
17 the basics. And this would -- and this would be done
18 instead of building and refining the poll worker knowledge
19 that we have now.

20 Trained, confident, experienced DRE poll workers,
21 which we currently have a pool of, would be replaced by
22 inexperienced poll workers.

23 To decertify electronic voting at this time I
24 think is similar to decertifying airplanes as a mode of
25 transportation, because the general public who is flying

1 on them does not know how they work, does not know the
2 people who fly them, the mechanics who work on them, nor
3 the software that pilots them. They do not have direct
4 contracts to radio, tower or with flight plans.

5 In simpler terms, just because you can't
6 understand all the aspects of flying an airplane doesn't
7 mean that it is not a safe, excellent modern mode of
8 transportation to be legally offered to the public.

9 In my mind, decertifying electronic voting
10 systems is unthinkable as making air travel illegal.

11 I respectfully urge you not to modified or
12 decertify our present voting system.

13 Thank you.

14 CHAIRPERSON KYLE: Perfect timing, Ms. Reed.

15 (Laughter.)

16 CHAIRPERSON KYLE: Earlier in your comments you
17 were outlining a few of the cause -- and I didn't catch
18 all of them. You mentioned voting booths -- and I just
19 have other equipment. Would you mind just reciting those
20 again so I can get them down.

21 MS. REED: We have no ballot boxes. We have no
22 booths. We have no marking devices and all of the
23 supplies that would make voting at precincts on optical
24 scans needed.

25 CHAIRPERSON KYLE: Do you have any kind of a cost

1 estimate on what that would be, either general or from a
2 shoot from the hip or if you can look into it?

3 MS. REED: I think on there -- I think I told
4 them around 300,000.

5 CHAIRPERSON KYLE: Other questions?

6 MS. REED: Thank you.

7 CHAIRPERSON KYLE: Thank you very much.

8 Next I have Joe Andrew.

9 MR. ANDREW: Thank you, Mr. Chairman and Mr. Vice
10 chairman. I'm Joe Andrew. That's A-n-d-r-e-w.

11 I was the National Chair of the Democratic
12 National Committee from 1999 to 2001, serving in the last
13 two years of President Bill Clinton's term.

14 I'm also the owner of a small technology company
15 that does software testing, not here in California, and
16 certainly not in the election area.

17 And maybe most importantly, Mr. Chairman, I was
18 the Chief Deputy Secretary of State for the State of
19 Indiana in my past and have served in your position on
20 committees, frankly, exactly like this one. I want to
21 commend you and the Vice Chair and the members for all
22 your activities.

23 But I'm really here today with my most important
24 title, and that's simply citizen, a citizen of the United
25 States who is very concerned about the prospect that

1 California state a first, might be the first state to
2 eliminate electronic voting.

3 While three minutes, frankly, is not enough time
4 to address the arguments, let me raise three quick points
5 here as much as possible.

6 First, let's make sure that our search for
7 perfection here does not become the enemy of the good.
8 Second, that accuracy, accessibility, security, and plain
9 old fashioned practicality to make sure that these
10 machines can work and we can work with our great
11 registrars of voting and all the volunteers that are so
12 important in this process are all equal goals, and that we
13 don't eliminate one or make one more primary than any of
14 the other three.

15 And, fourth, I want to make sure that as you make
16 this consideration and make recommendations to your great
17 Secretary of State, that you look very carefully at four
18 different documents that have been given to you as part of
19 written testimony. And they are from people who, frankly,
20 have a lot more credibility than I do and maybe many of us
21 in this room. First, the authors of HAVA themselves,
22 bipartisan: Senators McConnell, Senators Dodd,
23 Congressman Ney, Congressman Hoyer, all who support
24 electronic voting.

25 Second, the Leadership Conference for Civil

1 Rights, the largest civil rights organization in the
2 United States of America and represents more than 180
3 civil rights organizations, that supports electronic
4 voting.

5 Secondly, the American Association of Disabled
6 People, the oldest and strongest group that have fought
7 for disabled across America, that supports electronic
8 voting.

9 And I also want to make sure that you pay
10 attention in particular to what I believe is one of the
11 more thoughtful academic pieces that have been done
12 recently by Professor Michael Shamos, who is the
13 distinguished Professor of Computer Science at Carnegie
14 Mellon University. He is presenting, as I believe Mr.
15 Jefferson -- Ted Jefferson and others know, "Paper
16 Tomorrow" at Berkeley, that addresses many of the issues
17 that David Jefferson and others have worked on as well.
18 And, in particular, answers 212 objections to electronic
19 voting specifically.

20 I think that is a good paper, that summarizes
21 much of the academic analysis and, frankly, much of the
22 conflict that's happened here between well meaning,
23 extremely well educated, and well thought-out positions by
24 different people in the academic community.

25 If you can look at those four things I think you

1 will make it very clear that we cannot allow perfection be
2 the enemy of good. There's no perfect voting system.
3 There never has been. Your job is complicated because all
4 of us as citizens of this country know well that the image
5 we have a perfect democracy is often complicated by the
6 messy reality of the voting process that we've had since
7 the beginning of this country. I hope you'll examine
8 those things and you'll seek very, very seriously before
9 you eliminate the best possibility, the best possibility
10 to enfranchise more Americans going forward.

11 Thank you.

12 CHAIRPERSON KYLE: Thank you very much.

13 Would you like to spell the last name of that
14 last report, the doctor, Michael Shamos.

15 MR. ANDREW: S-h-a-m-o-s. He's a distinguished
16 Professor of Computer Science at Carnegie Mellon. And is
17 a man who has a tremendous respect, I know, for David
18 Jefferson. And while they may disagree on minor issues
19 here, they are talking to -- about maybe the same issues.

20 CHAIRPERSON KYLE: Thank you very much.

21 Other questions?

22 PANEL MEMBER JEFFERSON: Well, I'll just let you
23 know, that I've known Professor Shamos for 35 years. And
24 we will be talking about this very thing tomorrow right
25 after his talk.

1 MR. ANDREW: Right. And I -- yes, I do -- only
2 because of the fact that I know that you and he disagree
3 on some points, I want to make sure that he would -- but I
4 think you both recognize those agreements are more of a
5 tone and temper and not intent here. An extremely
6 important paper because, unlike others, it literally takes
7 each one of the criticisms piece by piece and addresses
8 them going forward.

9 CHAIRPERSON KYLE: Thank you very much.

10 Other comments?

11 All right. Thank you.

12 MR. ANDREW: Thank you.

13 CHAIRPERSON KYLE: Marvin Singleton, then Steve
14 Wier, and then Alexander Allman-VanZee.

15 You want to -- you had wanted to speak on No. 2.
16 And so I want to go back to those folks and --

17 MR. SINGLETON: Well, Mr. Chairman, those
18 comments were yesterday. We were put on the card, not
19 knowing that we were going to have the opportunity to
20 speak yesterday morning.

21 CHAIRPERSON KYLE: Okay. Any comments on No. 3,
22 or should I come back to you?

23 MR. SINGLETON: Mr. Chairman and Panel, we were
24 prepared to give an election plan. But given the
25 circumstances this morning, I think we're going to regroup

1 and come back to you at the proper time.

2 CHAIRPERSON KYLE: Okay. Should I assume that
3 for the rest of your staff --

4 MR. SINGLETON: I believe so, sir. If you'd like
5 additional comments, they're about a five-minute walk
6 away.

7 CHAIRPERSON KYLE: Okay. Thank you.

8 Then Mr. Wier.

9 MR. WIER: Thank you, Mr. Chairman and members.

10 I had tailored my remarks in hopes of covering
11 two or three items as opposed to coming up three times.

12 I appreciate the work that you've done. I
13 attended your meeting on the 15th of January where the
14 tenor and the tone of the meeting was much more difficult.
15 And I appreciate you holding wane on that so that the
16 debate could be more dispassionate, and I want to thank
17 you.

18 You also passed at that time the Mark-a-Vote
19 System rules and regulations --

20 CHAIRPERSON KYLE: I'm sorry, Mr. Wier, would you
21 mind just identifying for the record.

22 MR. WIER: Steve Wier. I left a card for the
23 gentleman.

24 CHAIRPERSON KYLE: Contra Costa County --

25 MR. WIER: -- right, Registrar of Voters.

1 -- that they've approved a system for us so that
2 when I had a recount and I had a very unhappy candidate in
3 front of me, I could hold those rules up and say, "We
4 didn't make this up on the spot. These are the rules that
5 were in effect at the time that this election was called
6 and conducted." And so we appreciate that relationship
7 that we have with you.

8 I will also indicate though that I'm mindful of a
9 quote that came from Oliver Wendell Holmes, who was an
10 associate justice of the Supreme Court. He said the
11 greatest engine in determining truth is an aggressive
12 cross-examination.

13 Now, I will tell you, to get to the truth of
14 things, to use Mr. Holmes' analogy, you need an
15 independent judge, you need a neutral jury, and an
16 aggressive give and take between the conflicting parties.
17 Unfortunately, that doesn't exist with your system. And
18 I'm not faulting you. But I want to suggest to you that,
19 given the decision on Item No. 1, I think you'll be before
20 a court of proper venue very soon --

21 (Laughter.)

22 MR. WIER: -- to see that aggressive activity
23 take place.

24 But now I'm speaking to the Secretary of State,
25 through you, if you'll indulge me. I know time is of the

1 essence. And I know that we are now at E minus 194. And
2 by E minus 180 or thereabouts the Secretary has to make
3 his decisions.

4 I, nonetheless, was surprised by the decision
5 that was made. Let me make a suggestion. I know that he
6 needs to preserve his rights on this, as do I think the
7 other party that will be involved with you in seeking the
8 truth. And I would hope that he would avail himself to
9 the four registrars impacted, to sit down with them and
10 together go before any representative of Diebold that you
11 can find and say, 'You've got one month. Don't convince
12 me, the Secretary of State. Convince me, the Secretary of
13 State and those four counties that have been impacted.'
14 And if you could pull that off, perhaps that other course
15 of action that we're engaged in can be negated. That
16 would be my one great hope that could come out of this
17 process.

18 Secondly, let me say this -- because I know my
19 time is short. I almost feel like I need to get up here
20 defending a paper. And I really don't want to do that
21 because there's not much time. I was pleased to see in
22 here yesterday some of the opponents of touch screen
23 voting not saying vote by mail, because I'm here to tell
24 you, as a guy that has to vote by mail, I understand
25 disenfranchisement.

1 It was 1.86 percent at the last election for
2 Contra Costa County. I don't pretend to impute that to
3 the rest of the counties. However, if that rate was the
4 same, that's 45,000 voters. That's not theoretical.
5 That's real disenfranchisement. I think this body would
6 do well to go back and re-examine this process. I'm not
7 suggesting you decertify absentee voting.

8 (Laughter.)

9 MR. WIER: But I am suggesting that we ought to
10 take a strong look at those things, because those aren't
11 theoretical. Those are real disenfranchisements that take
12 place because of this process.

13 Last point. Ms. Graham from Sequoia yesterday
14 touted her system and her under and over vote based on
15 Prop 56. I think she was thinking about Prop 57. That
16 was the bell weather issue that got the most yes and no
17 votes.

18 But nobody should be up here touting the over and
19 under votes as being any indication of error or mistakes.
20 That is way off base in terms of how complicated this
21 issue is. I beat her standards. And if you used her
22 arguments and my standards of a 2.8 under vote on those,
23 you'd decertify Sequoia. And I don't think anyone's
24 suggesting that. I caution the vendors and the people
25 involved in this process, do not get caught in the

1 simplistic trap about over and under voting.

2 Last confession as a guy who votes with paper.

3 John Tuteur stood up here yesterday and kind of bared his
4 soul. And he's done that on the Internet for anyone that
5 reads it. I had, and didn't find out until 28 days after
6 the election, a voter come in and grab three pads of
7 ballots and leave a polling place. That's 150 ballots.
8 She brought them back. No one said anything. But in the
9 notes of our rover, "By the way, we had this thing
10 happen." I was appalled. They didn't steal a DRE. They
11 stole my ballots.

12 Now, your fraud unit and my D.A. now have that
13 information. There's nothing rock-solid clean about
14 conducting elections. If you're looking for it, you're
15 not going to find it.

16 CHAIRPERSON KYLE: Thank you very much, Mr. Wier.

17 Questions or comments?

18 VICE CHAIRPERSON CARREL: I'm inclined to make a
19 cross examination because of that.

20 (Laughter.)

21 VICE CHAIRPERSON CARREL: But, no, I won't.

22 CHAIRPERSON KYLE: Thank you very much.

23 Ms. Allman-VanZee.

24 MS. ALLMAN-VANZEE: Thanks again. I'm Alex
25 VanZee.

1 Before you start your timer, I would just ask
2 your indulgence for maybe a little -- like a minute over
3 the time line, as I've deferred my right to speak twice
4 now in following the agenda. But I feel an absolute need
5 to respond to Mr. Konopasek's assertions that those of us
6 who are seeking broad-based election reforms and
7 accountability and transparencies and being voter
8 watchdogs or whatever, which I don't happen to be, are
9 committing what is tantamount to jihad on the system and
10 provide the greater danger to our system.

11 But I want to tell you that I know all about
12 jihad, Mr. Konopasek. I was a volunteer at the World
13 Trade Center site and arrived just days after the attacks
14 of September 11, 2001, and I have absolutely everything
15 and more than I ever want to see about the results of a
16 jihad. I have things burned into my brain that no one
17 should have in their brain.

18 I'm also the nurse for the Seeds of Peace
19 International Peace Camp in Maine, an organization which
20 has been working for 12 years to provide the basis for
21 laying foundations of peace with the children of
22 conflicted countries all over the world, but primarily in
23 the Middle East.

24 I'm the only nurse outside of the state to have
25 been chosen for this position. I'm going again -- I've

1 been going since 2002. It's my response to the horrors I
2 saw.

3 And now I'll start my comments. And thank you
4 very much.

5 I am not opposed to touch screen voting. And I
6 don't think that many of us here really are, nor are you.
7 We're talking about a single company, perhaps other
8 companies, some of whom have questionable practices,
9 partisan affiliations, et cetera.

10 What I -- because I think that touch screen
11 voting does provide the most accurate and reliable method
12 for all of us, able or disabled, to have our voices heard
13 on election day.

14 However, these machines are vulnerable to
15 technical failure and/or partisan tinkering. And that's
16 not just conjecture or hypothetical. We actually have the
17 result of that possibility, in Indiana, by the way. In
18 Boone County last year an electronics system recorded
19 144,000 votes. That was great. Only the jurisdiction
20 only had 19,000 registered voters.

21 We've also heard about the problems in our own --
22 I vote in Alameda County -- in depth, Alameda and San
23 Diego County, both counties using Diebold, the company in
24 question.

25 We also have chilling statements by Diebold's

1 overall CEO from the parent company, Mr. Walden O'Dell,
2 who is a huge contributor to the Bush/Cheney campaign. He
3 goes to the ranch in Crawford quite often. But he is,
4 quote, "committed to delivering the highest electoral
5 votes to Bush," end quote.

6 We had Kathryn Harris -- we all know what that
7 meant -- who was Co-chair of the 2000 campaign -- Bush
8 campaign while acting as Secretary of State.

9 It's no wonder we have a low voter turnout. And
10 that is registered by the Committee for the Study of the
11 American Electorate, which reports that only 7.2 percent
12 of the 200,483,000 eligible voters participated in this
13 year's primaries through Super Tuesday on March 2nd.
14 That's deplorable. And that makes me beg the question of
15 the sometimes self-righteous and cavalier -- I'm sorry --
16 some of those county officials who testified yesterday
17 that 90 percent of voters in their districts have
18 confidence in and just love the touch screen voting
19 machines. Who are they referring to? Maybe the enormous
20 lack of voters at the polls is a more accurate measure of
21 voter confidence than their numbers would suggest.

22 The act of voting is the cornerstone of our
23 democracy, and all Americans must have the confidence that
24 their vote will be counted fairly and accurately. And
25 without a way to verify the internal software of many of

1 these machines independent of that internal software
2 itself, we're in trouble. Mr. Adler's company, True Vote,
3 provides some promise in that regard. But I don't think
4 we're going to be able to get it in every machine by
5 November -- this November.

6 We need guidelines for the future, serious
7 guidelines, assurance of the accuracy of the machines via
8 independent and public testing, a paper trail printout or
9 something such as True Vote as backup, and
10 across-the-board standards for security and recount
11 accuracy and fair representation. We need a higher
12 standard of accountability and transparency for the
13 companies that produce these machines, with the strict
14 enforceable laws that require manufacturers to adhere to
15 non-partisan policies and practices, whether Republican or
16 Democrat, or get their contracts cancelled and heavy fines
17 assessed.

18 We also need local election officials to be far
19 more vigilant in their oversight of vendors and the
20 overall election processes and procedures. That's the
21 future. What do we do about November?

22 I'm closing really fast. I'm speaking so fast.

23 In the counties where they use the DREs that do
24 provide paper-verified ballots or other transparent
25 accountability, let them continue. Nobody's saying throw

1 it all out. What we're saying is fix and provide remedies
2 for the companies that aren't promoting -- providing those
3 machines. And so for the rest of the counties that don't
4 have that, I'd say then why not go to mail-in ballots --
5 sorry about that -- like they do in Oregon, which seems to
6 be highly successful. It provides a paper trail. It is
7 private.

8 And if handicapped voters would indulge us during
9 this internal -- this interim temporary measure, I think
10 it provides a very important paper trail. And the mail-in
11 ballots could be included in every sample ballot sent to
12 registered voters in those counties.

13 No system is flawless or free from tampering by
14 those bent on doing so. But we know in advance of this
15 November election that we have serious questions regarding
16 some DREs, especially those manufactured by Diebold. We
17 need to save our precious, worth fighting and dying for,
18 inalienable right to vote from even the hint of
19 impropriety, much less the probability of such.

20 I urge you not to allow November 2nd, 2004, to be
21 deja vu all over again.

22 CHAIRPERSON KYLE: Thank you. Questions or
23 comments?

24 Thank you, Ms. Allman-VanZee. Thank you for
25 deferring your speaking times twice.

1 Mischelle, then Gen Katz, then Juill Lavine.

2 MS. TOWNSEND: Good Afternoon, Mr. Kyle, members
3 of the Panel. Mischelle Townsend, Registrar of Voters for
4 Riverside County. T-o-w-n-s-e-n-d.

5 It hardly seems like it was five years ago when I
6 was before the Voting Systems Panel across the hall and we
7 started on this incredible journey. But I want to thank
8 the Secretary of State's office because they've been a
9 strong ally and partner as we've explored this new voting
10 technology.

11 Why has it worked in Riverside County? It's
12 worked because we've kept things simple for the poll
13 workers. Our poll workers are traditional people.
14 They're not computer trained. And that's because the
15 equipment is simple to use. And our procedures were very
16 graphic, very simple in terms of their understanding of
17 them.

18 What will happen if our system is decertified for
19 the November election? Several things. For example, we
20 sold all of our voting booths to Los Angeles County. Only
21 have an integrated voting booth for the DRE and all of the
22 ancillary supplies that Ann mentioned. We sold our
23 surplus card readers to smaller counties because they
24 don't manufacture those card readers anymore. They've
25 been around since 1980 and we can't get them mass

1 manufactured.

2 Thirdly, we will have potentially a violation of
3 the Voting Rights Act. When that last census was done I
4 called John and I said, "What does this mean?" And we
5 have a native American tribe whose language is oral and
6 not written. So the DRE audio ballot provides
7 accessibility for them to vote independently and
8 with not -- with assistance.

9 We have -- as you know, when -- we've had
10 differences of opinion and we've had such constructive
11 dialogue when we served on the task force together. And
12 that's why the majority recommended independent electronic
13 verification rather than all of the problems with paper.

14 But at the election we had a plaintiff in
15 Riverside County, as you know, who sued the Secretary of
16 State's office and myself. And not only did Federal Judge
17 Steven Wilson declare that the system should be used, but
18 also the 9th Circuit of Appeals determined that it should
19 be used. And I think that those kinds of judicial actions
20 should be taken into consideration when we look to
21 November.

22 We also have our other esteemed colleague on the
23 task force, David Dills, on a recent interview said, you
24 know, exercise caution, think before you use it, to which
25 the San Jose Mercury news reporter said, "Yes, let's

1 think, but let's also use it."

2 And it reminds me, I guess we're all a product of
3 our environment and our growing up years. And my dad was
4 an automobile dealer in a small farming community, so I
5 was around cars a lot and went to the stock car races.
6 And next month the Indy 500, and that's an American
7 tradition as the World Series.

8 And yet we know that those cars have gotten
9 faster, better, stronger every race. But sometimes
10 because of operator error it will graze the wall or there
11 will be other tragedies. But the race doesn't stop and
12 the race goes on. And that's what I would urge us to do,
13 fix what needs fixing. But when you have multiple
14 benefits, like Judge Steven Wilson said, it advances
15 important state interests, that we ought to use these
16 systems for November.

17 Thank you very much.

18 CHAIRPERSON KYLE: Thank you, Ms. Townsend.

19 Mr. Carrel.

20 VICE CHAIRPERSON CARREL: Yes. I want to also
21 ask a similar question that I asked before, which -- you
22 were the first county to implement touch screen voting. I
23 was wondering how long it took for you to implement it?
24 And then also if there is a -- if there is a prohibition
25 on the DREs this year, I see that in this list it says an

1 estimate -- I assume it's from your office -- of \$2.55
2 million. And that includes what you talked about, card
3 readers, voting booths.

4 Is there anything else?

5 MS. TOWNSEND: We would probably have to
6 implement a whole new optical scan system. Because
7 currently we use our old Mark-a-Vote cards, and, as I
8 indicated, we can't acquire those card readers, so we
9 wouldn't have sufficient card readers. And if we
10 implemented a new optical scan system, it would be a
11 minimum of \$5 million.

12 VICE CHAIRPERSON CARREL: Okay. And then how
13 long did it take to implement the initial DRE?

14 MS. TOWNSEND: We started with a task force in
15 June of 1999, so it was about 18 months. But by the time
16 the contract was signed March 28th, we had all of our DRE
17 units in by Labor Day. So the actual implementation was
18 about 5 months. But the planning process took about 18
19 months.

20 VICE CHAIRPERSON CARREL: Okay. Thank you.

21 PANEL MEMBER MILLER: Excuse me. Quick question,
22 Ms. Townsend. I apologize because I should know the
23 answer, but I don't.

24 On any of your DREs -- as I recollect, they don't
25 have printers in the DRE themselves.

1 MS. TOWNSEND: Correct.

2 PANEL MEMBER MILLER: How do you establish is
3 there a vote total in them, beginning of their --

4 MS. TOWNSEND: Yeah, the poll workers are trained
5 to take that first voter, as we used to do with our
6 optical scanning, and we showed them the empty ballot box.
7 There's an LCD display on every one of the DRE units.
8 They take them down the line, show them that there's zero
9 votes in the electronic ballot box, and they sign on the
10 first line of the roster.

11 PANEL MEMBER MILLER: Thank you.

12 CHAIRPERSON KYLE: Thank you again.

13 Gen Katz.

14 MS. KATZ: Thank you very much. I'm from
15 Alameda. And --

16 CHAIRPERSON KYLE: Spell your name please for the
17 record.

18 MS. KATZ: Gen G-e-n Katz with a K-a-t-z.

19 I don't know the words to express the indignation
20 and distress of the citizens being turned away from the
21 polls. We didn't even have the TSx. We had the TS.

22 America is an inventive and forward-looking
23 country. What I see here is outdated standards, foot
24 dragging by vendors. ROVs, some, in an attempt to do the
25 right thing, have bought a barrel of lemons.

1 We were appalled at the attitude of some ROVs
2 telling the SOS, "Bug off our territory."

3 And the blind and the disabled -- who have long
4 been marginalized, I'm not discounting that, they have
5 been poorly treated -- but who want to have their piece of
6 the pie now -- and it's not a baked pie -- instead of
7 waiting to working together to get a better pie.

8 We don't -- the people in Alameda, or most of us,
9 don't want to Mickey Mouse the design. We want good specs
10 to handle what we need for a secure, accurate and
11 accessible system. We want some of -- we want some of you
12 guys to act out of the box.

13 For instance, regarding touch screens. The blind
14 do not touch or use the touch screen. They use key pads
15 and earphones.

16 I worked for years teaching people with severe
17 disabilities, cerebral palsy, how to use the computer.
18 Let me tell you, the TS -- the touch screen would be
19 poorly designed for someone using a match stick. They
20 would have to lean on the floor and they -- I'm sure that
21 they would prefer having the key pad and the earphones.

22 Let's address the needs instead of trying to make
23 their equipment fit.

24 Thank you.

25 CHAIRPERSON KYLE: Thank you very much, Ms. Katz.

1 Comments from the panel?

2 Juill Lavine.

3 MS. LAVINE: Juill Lavine. I'm the Sacramento
4 County Registrar. L-a-v-i-n-e.

5 Just a couple comments, panel.

6 On March 8th, 2004, a lawsuit was filed with the
7 United States District Court, Central District of
8 California naming Kevin Shelley, Secretary of State; Conny
9 McCormack, Registrar of Los Angeles County; Joseph
10 Holland, Clerk/Recorder of Santa Barbara County; John
11 Arntz, Director of Elections of San Francisco County; and
12 myself, Juill Lavine, Registrar of Sacramento County as
13 defendants.

14 The American Association of People with
15 Disabilities, California Council of the Blind, and the
16 California Foundation for Independent Living Centers filed
17 a complaint against us for the violations of the 14th
18 amendment, Americans with Disabilities Act, Section 504 of
19 the Rehabilitation Act of 1973, and California Election
20 Code.

21 The lawsuit is requesting that Sacramento County
22 and other counties previously named provide accessible
23 voting machines in every place to the maximum extent
24 feasible for the November 2004 election and in all future
25 elections.

1 If the Secretary of State decertifies all touch
2 screen voting systems, which are the only voting machines
3 that are currently certified and accessible to voters with
4 disabilities, and if the lawsuit is successful, that
5 leaves me either in contempt of court or using a
6 decertified voting system.

7 Thank you.

8 CHAIRPERSON KYLE: Thank you.

9 Any questions?

10 Mr. Carrel.

11 VICE CHAIRPERSON CARREL: I know that Sacramento
12 is putting an RFP out for DREs. And I'm wondering what's
13 your initial schedules for implementation and what system
14 would you use if we did not allow DREs?

15 MS. LAVINE: We are looking at a phased-in
16 approach. And it depends on what this Panel decides and
17 what the lawsuit decides of how far we can go with this
18 phased-in approach for November.

19 VICE CHAIRPERSON CARREL: Under the assumption
20 that we do not decertify DREs, your phase-in approach
21 would happen how?

22 MS. LAVINE: As many as possible, depending on
23 how many the vendor could supply. And, like I say once
24 again, it would be dependent on the lawsuit.

25 VICE CHAIRPERSON CARREL: So are you looking to

1 put just one in per polling place or put three or four per
2 polling place in lieu of paper ballots?

3 MS. LAVINE: Since we are in an RFP mode at this
4 point and we are waiting for the vendors to respond to
5 that question, I'd prefer not to elaborate too much.

6 VICE CHAIRPERSON CARREL: Okay. But when's your
7 bidding process completed?

8 MS. LAVINE: The bids are due May 4th.

9 VICE CHAIRPERSON CARREL: And you would hope
10 you'd install them or implement that system --

11 MS. LAVINE: We hope to remove, first of all, for
12 an optical scan -- optical scan system and then as --

13 VICE CHAIRPERSON CARREL: I see. Okay.

14 Thank you.

15 CHAIRPERSON KYLE: Thank you very much.

16 Kevin Chung.

17 MR. CHUNG: Good afternoon, Chairman Kyle and the
18 Board Panel. My name is Kevin Chung C-h-u-n-g. I'm the
19 CEO of the Foundation International.

20 I'd like to assure the California voters that
21 there are DRE voting systems that are proven accessible
22 voter verifiable paper audit trail that are available for
23 this November election in the State of California.

24 Avante and its teaming partner, Dell Computer,
25 Microsoft E-Government are more than capable and will be

1 more than happy to provide all of the 10,000 accessible
2 voting units for this state, if necessary.

3 Contrary to some, most believe that the voter
4 verifiable paper audit trail is not proven. Avante Vote
5 Tracker has actually -- has been used in five different
6 elections with great success.

7 Four of the elections in the State of Connecticut
8 in the year 2003 elections the system actually produced a
9 paper record that actually read back to the voter what now
10 is termed as accessible paper audit trail system.

11 And read back to -- the blind voter is provided
12 accessibility. I have here an endorsement from the
13 American Council of the Blind talking about the
14 accessibility in particular in relation to this paper
15 audit trail system. And they highly praise the systems to
16 provide that capability.

17 And in fact Mr. Jim Dickson here also looked at a
18 system. He said he will also consider systems accessible
19 as long as the system has been certified by NASED. And in
20 fact he says is that this is an elegant way to do it as --
21 if it has to be done, so to speak.

22 By the way, one of the elections that was in
23 Sacramento back in the year 2002 general election, I
24 should add, that it was for the first time in California
25 and U.S. election history that zero percent residual vote

1 was achieved.

2 In contrast, when folks talk about election in
3 the election business, telling you that there's hundred
4 percent accuracy, they never mention that potentially they
5 also have 12.3 percent never voted for U.S. Senator race
6 in the election year 2000 in Los Angeles as well using a
7 DRE machine.

8 Back to the more important matter is that there
9 will be one voting system available if this Board would
10 certify this particular system. The Vote Tracker EVC 308
11 SPR has both the DRE and optical module that has been
12 assigned a NASED number, N-1-12-22-11-001. We actually
13 have a NASED number to go with our certification as well.

14 For those counties like San Francisco that have
15 Avante voting, all of our DREs and optical modules also
16 have a voting module to achieve the goal as well.

17 Since my time is limited I guess, what I want to
18 say is that if the State really goes with total optical
19 system, our optical unit can actually -- we will pledge
20 here to provide the Golden State, all the 10 million
21 voters, with optical ballots, printing it, counting it,
22 calculating it in less than a dollar per ballot. So
23 there's really no extraneous cost if you really want to do
24 it.

25 Our system has been waiting for full

1 certification since April 5th. As we mentioned to the
2 Board in our application, we need the full and
3 unconditional certification by May 17th so that we can
4 satisfy Sacramento County's request for the RFP. We hope
5 that the Board can give proper consideration for us so we
6 can actually have a system in California that have an
7 accessible voter verifiable paper audit trail system.

8 Thank you very much.

9 CHAIRPERSON KYLE: Thank you.

10 Any questions from the panel?

11 MR. CHUNG: These are all the attachments.

12 CHAIRPERSON KYLE: Okay. Thank you very much.

13 The next three speakers, Jim March, Conny

14 McCormack, and John Ahman.

15 MR. MARCH: One of the things in the report -- in
16 Item 2 being discussed that is not in the report and it's
17 not being asked and it's apparently not being asked for
18 certification is a very simple question. With this system
19 that we're about to certify or review in case of the
20 report, can the vendor of that system hack the vote with
21 it?

22 Nobody's been asking that question. And we know
23 in the case of Diebold they can. We strongly suspect it
24 in the case of Sequoia and ES&S. And nobody's looking for
25 that issue: How much access to our vote does the vendor

1 have? And I would ask this panel to include that kind of
2 thinking in all future certification questions.

3 What I want to respond to is the gentleman
4 from -- well, there's two people I want to respond to.

5 The lady from San Joaquin County -- I was there
6 on election night. She says that Diebold employees did
7 not have direct access to the voting equipment. Well,
8 that's simply not true. They did not have access to the
9 server room, which has glassed in. But the person manning
10 the room where memory cards from the field were fed into a
11 bank of voting terminals that ran Ethernet from there over
12 to the servers, the guy manning that room was a Diebold
13 employee.

14 When I obviously noticed that and the film crew
15 with me caught that, Mr. Erdman, the Assistant Registrar
16 of Voters, asked that gentleman to put a jacket on over
17 his Diebold shirt to try to conceal the obvious. Didn't
18 work out. But, hey, nice try.

19 So in feeding memory cards into the terminals, we
20 don't know how many memory cards or where they came from
21 went in. I'm not saying they hacked the vote that night.
22 I strongly suspect they didn't considering the level of
23 scrutiny being applied right now. But he had that
24 ability, and that's wrong.

25 Okay. The final thing I want to comment on is

1 these concerns over Bev Harris's plan to have a small army
2 of people aware of voting issues, aware of voting security
3 issues, volunteer poll workers so that they can observe
4 what's going on and know how to report any problems they
5 see after the fact.

6 I'm speaking as one of the people who would
7 probably be taking in those reports from the field and, if
8 there's any trouble, helping them document that process.
9 Now, if you have a concern about how I did that, maybe you
10 ought to know where I was last Sunday. I was across town
11 about three miles from here in the living room of a
12 gentleman, taking his declaration and helping him prepare
13 it, having him do a final review on his own computer
14 screen and print it on his printer and have him sign it.
15 That gentleman's name was James Dunn.

16 Now, Mr. Carrel, you had absolutely no problem
17 with James Dunn's declaration and with the accuracy of his
18 testimony and his written statement. Well, I wrote that
19 statement. So -- with his oversight of course. So if you
20 have a problem with the kind of documentation of trouble
21 that Bev Harris's organization is planning, that's funny
22 because you praised our work a few -- a little while ago.

23 So those are the only things I want to say. To
24 think that Bev Harris's movement what she's trying to do
25 is some form of terrorism or disruption of the vote is

1 ridiculous. It's absolutely no different than Avi Rubin
2 having worked an election in Maryland in order to scope
3 out how this works and what's going on. It's no
4 different.

5 CHAIRPERSON KYLE: Times up.

6 MR. MARCH: Thank you.

7 CHAIRPERSON KYLE: Any questions?

8 Thank you very much.

9 Conny McCormack.

10 MS. McCORMACK: Thank you, members of the Panel,
11 for the opportunity to address you today.

12 I would like to -- I'm very pleased to have an
13 opportunity to talk about the consequences for November
14 and the consequences for Los Angeles County in our current
15 environment. I'm really glad you've asked the question.
16 I would like to ask some indulgence of more than three
17 minutes, because -- maybe it's for our shear size -- I
18 know I can't cover this material in three minutes. So
19 others have had longer, so I would ask if it's possible
20 not to turn that on. And if I do become obnoxious and you
21 need to get rid of me, give me the hook, you know. But I
22 would like to have an opportunity to address some of these
23 issues. They're very important.

24 CHAIRPERSON KYLE: We won't do that unless you
25 imitate the gentleman from San Bernardino.

1 Just kidding.

2 MS. McCORMACK: That's important. Humor, that's
3 important.

4 I would like to start by -- we did have a
5 precedent yesterday. And I think it would be appropriate
6 to have this -- the press kit read -- put into the record
7 since it is information that we felt that was critical and
8 important for this.

9 CHAIRPERSON KYLE: If you'll submit it, we'll do
10 that.

11 MS. McCORMACK: I will do that. Thank you.

12 It does contain survey data from four different
13 counties on touch -- that used touch screen voting in
14 March or previous elections. It does contain also the
15 HAVA author's letter that was referred to by an earlier
16 speaker. It does also contain a letter that I hope Mr.
17 Tokaji will have an opportunity to address you today
18 before it gets too late, because he came all the way from
19 Ohio. And it's a letter from a new coalition that -- a
20 newly formed coalition of civil rights advocates, the
21 election officials, academics, and voting equipment
22 experts at the national organization.

23 We're calling ourselves SAAFE, Secure, Accurate,
24 Accessible, and Fair Electronic voting. It does contain
25 our position paper that went to Congress today. Actually

1 I've got an advance copy where it came out yesterday in
2 California first.

3 On that group are a wide range of known experts
4 as well -- election officials, but as well as technical
5 experts such as Mr. Bret Williams, Professor Emeritus
6 from -- State University, very familiar with electronic
7 voting; Ted Silver from MIT University; and coalition
8 members that were mentioned earlier by another speaker,
9 including -- another member. So I thank -- thank you for
10 agreeing to allow that to be submitted into the record.
11 And I'll just provide it.

12 I think it'd be best -- and I also would like to
13 address a couple comments that have been made about me,
14 not being here yesterday -- and of the panel. And that
15 would be after. But I'd like to start off with I think
16 the topic which is the consequences to Los Angeles County.

17 And I would like to extend it beyond November,
18 because Mr. Carrel has been asking a lot of questions
19 about consequences of time lines. I think they're very
20 important questions and I'd like to be able to address
21 them. And in L.A. County we don't look a time line as the
22 next election. We're looking at a time line of at least
23 two to three down a road in every single election we run.
24 We have to. There's no way we can run a successful
25 election looking at an election that's seven or eight

1 months away. We just can't do that. And it would be
2 dangerous to a lack of success. And that's what we all
3 want, a successful election. We hope we've been
4 delivering that. We try very hard to do that.

5 As part of that, when -- I would like to address
6 the fact that we are a Diebold customer. And we're a
7 Diebold customer more than you might know. And I think
8 it's important for you to know that because it is a
9 consequence of all the pieces of their equipment. And
10 should this decertification recommendation you made
11 earlier be expanded -- and we don't know how much it might
12 be or might not be expanded -- what it might impact in our
13 organization I think it would be important for you to
14 know.

15 So what it would do, in addition to the touch
16 screens for early voting -- I'd like to get back to that
17 because I think you probably have a better understanding
18 of that. But I'd like to talk about two things you may
19 have a less of an understanding on.

20 One being that we entered into a legal contract
21 with Diebold almost exactly two years ago this month, that
22 was a multiple-faceted contract. It was our second time
23 that we'd gone out in a contractual environment since the
24 year 2000 since touch screens was first certified in
25 California in 1999. We wanted to immediately be able to

1 provide services to our very diverse community in Los
2 Angeles. That would include sight-impaired individuals,
3 that would include language minorities. We certainly
4 wanted to serve them.

5 So we've had two opportunities to go in a
6 solicitation process. The first was in 2000. The second
7 one was in 2002. During both of those solicitations we
8 invited every certified vendor to come in. And we had
9 rigorous requirements. We provided them our actual ballot
10 from the previous election. In 2002 it was from the
11 November 2000 election. From 2000 -- I can remember. It
12 must have been from '98. But it was a large election.

13 The point being that it had at least -- well, I
14 would like to say our March election we had over 3,000
15 ballot combinations. And that's before you get to the
16 languages, and we had seven languages. So we wanted to
17 make sure that not just we get people responding or an RFP
18 or solicitation, but also proof that they could actually
19 put our ballot together, which is an entire
20 component-included ballot layout, which is a part of our
21 contract that we're in now.

22 In both instances we invited all vendors. And
23 they all came and demonstrated their equipment. And in
24 both instances in the final analysis, when the evaluation
25 was done, in the first time in 2000 no other companies

1 came forward to do the project, only Diebold. The others
2 said, "There's no way we could do seven languages and
3 thousands of ballots." They just didn't even come
4 forward. So we didn't have really an opportunity to
5 assess anyone else. We went forward. It was a pilot.

6 We then went out to the full RFP and were -- and
7 did get all the vendors to come back in. And this was in
8 mid-2002, hopeful for more vendors' capabilities to be
9 demonstrated.

10 At that time, we had the close of our contract.
11 We had the RFP. We had the close of the RFP. We had two
12 companies respond. We had Diebold -- this was just about
13 two years ago -- Diebold and ES&S responded. Sequoia sent
14 us a letter that -- it was the day before the end of the
15 close -- that they were not capable technically of
16 providing our needs, they just didn't have the technical
17 capability. They put that in writing. We still have that
18 in our office. At the time, High Graphics wasn't a
19 certified vendor.

20 But of the two that did respond -- and through
21 the trials, ES&S was unable then to demonstrate -- after
22 two months with our existing ballot, with all the
23 ballots we had, gave them everything we had from November
24 of 2000 for two months, was unable to produce the ballot
25 in seven languages and the thousands of ballot styles that

1 we needed.

2 Therefore, once again, we had one vendor.

3 The other component of that very important
4 contract, is the part I want you to understand, is that
5 that's when we entered into, recognizing we're multiple
6 years out to start looking at where we're going to have to
7 be, a whole new system of ballot layout, which is
8 extremely complex, and ballot tally. And we wanted -- we
9 went into a -- we had an internal machine, however, we're
10 grandfathered in with our tally system. It's been over 30
11 years. A lot of the same developers are still with us.
12 They want to retire.

13 We had a meeting with them about two and a half
14 years ago. We said, "Do you want to take this on and
15 rewrite your whole system?" Talk about patches, Mr.
16 Jefferson. We have a lot of patches. And we are
17 grandfathered in. We have never been to an ITA, a federal
18 certification. It's a grandfathered-in product. And
19 Microsoft has patches too, and we have a lot of patches.

20 It's sort of like, I would compare it to eight,
21 ten years ago, we all remember having a dumb terminal on
22 our desk. And now we have PC, and what a difference of
23 what our capabilities are. And that's sort of where we
24 were. And so our Internal Services Department said, "We
25 really would rather you go out with a vendor and

1 solicitation. Those are professionals. This is what they
2 do for a living. They do ballot and they have to do
3 ballot tally."

4 Okay. Two years later, where we are, with having
5 passed all the compliance code we are in final testing
6 with that code. Over a million lines of code have been
7 written by Diebold in final testing both in Washington and
8 in terms of the ITA. And it's also -- we do our own
9 testing. We do -- when we talk about ballot testing in
10 our county before an election, we run about a half million
11 ballots through. It's not some small little test. We do
12 about a half a million ballots as a test.

13 So it's a huge endeavor to run this contract.
14 We're right at the end of it. And now -- the cost of that
15 component of the contract was 1.5 million. Our General
16 Services Department bid back two and half years ago -- if
17 they'd wanted it, but they said they didn't want it --
18 they did not want to go ahead and get back into this
19 business. They wanted out. But if they had to do it, it
20 would take them three years and \$6 to \$9 million.

21 So, you know, here we are very close to -- for
22 us -- 2006 is the election I'm working on. Keep asking me
23 where are we with HAVA compliance? I'm not thinking about
24 November as much as I'm thinking about 2006.

25 So here we are in a scenario that we have a very

1 limited time, about 20 months to get to 2006, and a
2 product that's ready to go as soon as it gets through
3 these final tests, which include our very rigorous tests
4 as well as the national tests and your own testing.

5 So that's where we are in terms of where we need
6 to be. And we had hoped to use the system as -- in March.
7 It wasn't ready, had just been through the federal.
8 Hadn't been through everything we wanted to do. But we
9 really are ready to go and really do need to be able to
10 use this product.

11 The other component or out -- two more components
12 of our contractual arrangements with Diebold in other
13 contracts are the Diebold vote remote. This is what
14 processes our absentee ballot processing. We do more
15 absentee ballot processing in Los Angeles County than all
16 but eight states count ballots.

17 With this vote remote product prior to purchasing
18 it in 2000 -- and I've been there eight years as the
19 registrar in Los Angeles. I'm sorry I didn't introduce
20 myself or spell my name. I hope you didn't -- I meant to
21 do that. I won't take the time on that. But half a
22 million ballots that we do, prior to that we needed about
23 350 temporary employees. And we strove for 48 to 72 hour
24 turnaround time, from application to turnaround. We get
25 30 to 40,000 absentee ballot applications a day in a big

1 election.

2 And to turn those around now, since we've had
3 vote remote with Diebold in year 2000 we now have a
4 hundred temporary employees instead of 350, and we now
5 guarantee a 48 hour turnaround. It's been a very
6 successful product for us and it's important that we keep
7 it in our line of products.

8 You also of course know that we are on Data
9 Information Management Systems, which is our --
10 registration election management product, which is now
11 also owned by Diebold. So you can see that our operation
12 is very tied to a vendor that we're very concerned about
13 your concern about their performance.

14 And I can only say that for Los Angeles County,
15 and I can say this on the record, will in a declaration if
16 I'm asked to do in court -- in a court of law that they
17 have delivered for us every expectation and more, every
18 single thing we've ever asked them to do. And that, we've
19 achieved the impossible. We really truly have. Thousands
20 of ballot styles, all these lines, and we've had no
21 problem.

22 To get to the other component, what would happen
23 in November if we didn't have the TS capability? And
24 we've been on TS for three and a half years. I think Mr.
25 Carrel asked yesterday about how many voters -- when

1 Kathay Fong and Ardis Bazyn were at the podium
2 yesterday -- two people, by the way, who were about 21.
3 And all of 30 million people in California that are 21,
4 the Secretary chose to be on your HAVA compliance
5 committee, and those two people were standing here, two
6 members of that; and both, as you know, excellent members
7 or the Secretary wouldn't have appointed them.

8 And they stood here and they -- you asked them
9 what would be the repercussions -- or how many people --
10 you attempted to quantify how many people in Los Angeles
11 could be impacted.

12 I think Kathay was very polite when she responded
13 that she would try to talk to me about that and it was a
14 census statistic.

15 But personally I felt that Ardis Bazyn did the
16 best job in one line. And I can't do one line and neither
17 could Kathay Fong. But she said it very eloquent,
18 concisely, when she said, "I want to vote privately and
19 independently."

20 And I don't want someone else that might be from
21 a different political party voting my ballot. And we
22 provide in Los Angeles County at the braille center
23 hundreds of -- hundreds of sight impaired voters come to
24 our braille center. I don't know how many of them use an
25 audio headset. I've never quantified it. But I know it's

1 quite a few.

2 I don't know how many of our language minority
3 voters vote in the other languages, but I know they come
4 by the bus loads to our early voting sites. So we have
5 had 85,000 people cast early ballots in Los Angeles in the
6 last three and a half years. I have to make some sort of
7 an estimate, but there's thousands of them who have been
8 serviced to vote in a way that is private and independent
9 and would be removed.

10 And as Juill Lavine said earlier, we are a
11 product of a lawsuit. I feel schizophrenic these days.
12 On one hand I worry if I'm going to lose my voting system,
13 a very important component of my voting system, the TS
14 component in November. On the other hand, I'm being sued
15 to add one per precinct by November, another thing that I
16 cannot do. It's not possible.

17 So one of the questions I would presume you would
18 ask is what would happen if I didn't have that. And I
19 wanted to make it perfectly clear that we have no capacity
20 between now and -- actually it's almost six months today
21 we start early voting -- to change to another early voting
22 vendor.

23 All reasons I mentioned, even if we didn't have
24 to do a contract, which of course we think we would, we
25 would have to have proof that another vendor could do a

1 more complex ballot, which isn't something we could
2 determine in a short period of time even if we had the
3 money and wanted to spend it on another vendor. We really
4 feel like we're being potentially penalized for success.
5 We've been successful. We know we've counted the ballots
6 accurately. Indeed, all of us in the room certify -- all
7 the registrars in the room certify to you, with our names
8 on it, that we've counted it accurately.

9 And I appreciate your comments earlier, Mark,
10 today when you corrected the perception of someone from
11 the podium mentioning that we -- maybe a county didn't
12 count absentee ballots. I really appreciated you
13 mentioning that, because that's our job and we put our
14 name on it. And in the eight years that I've been in Los
15 Angeles and then seven before that as San Diego's
16 registrar I've certified tens of millions of ballots to
17 the Secretary of State and that have been accurate. And
18 at this point there's not been one scintilla of evidence
19 to the contrary, not one shred of evidence has arisen on
20 any of the accuracy of the equipment that we've counted
21 on.

22 I think that not necessarily all vendors can say
23 that. I mean you have your own report. And I didn't
24 speak on No. 2, but I would just mention, you have your
25 own report that indicates that Orange County did not have

1 that fate and they indeed did count some ballots -- where
2 people voted on wrong ballots. And it wasn't one or two.
3 It was potentially enough to affect an election. That is
4 not the case with Diebold. It has not happened. And yet
5 the consequences of what happened -- the experience we
6 heard earlier this morning, I don't know what the
7 consequences of that might be with another vendor. I
8 can't speak to that.

9 The other thing I would like to mention is, when
10 we look at what might happen, if we were to lose the
11 capacity to use a system that has been serving our voters
12 and serving them well, we really have to look at the whole
13 HAVA issue. I don't think we can take this away from the
14 HAVA issue. We are under legal requirements to be moving
15 towards HAVA requirements.

16 And we're not going to be able to get there,
17 frankly, to jeopardize our capability and undermining our
18 capability in Los Angeles County, to the point where my
19 CAO yesterday, David Janssen, did allude to the fact that
20 a memo he and I cosigned -- and I'd like to also get into
21 the record, I didn't bring a copy, it's on my website -- a
22 February 17th, 2004 memo that the two of us sent to our
23 Board of Supervisors talking about the consequences of a
24 derailment that occurred with our plans for procuring into
25 the future our touch screen system. We had planned and it

1 was on record to go out for a touch screen system in
2 March, because we are looking, at best -- at very best, a
3 two year -- we're hoping we can get it done in a two-year
4 timeframe.

5 And because the voter verified receipt rule came
6 out -- ruling came out with the Secretary on November 21st
7 without the type of consequence request that this panel is
8 now asking, I really wish we'd had that opportunity. I
9 mean there was a task force that did not recommend voter
10 verified receipt, of recommended -- as my Mischelle
11 Townsend mentioned that she was on that task force. So
12 the recommendation of that task force was not brought --
13 was not followed.

14 And in addition to it not being followed, we
15 didn't have an opportunity to explain the consequences.
16 Well, the consequences in L.A. County was a memo we just
17 sent to our board that we had to revoke our RFP process.
18 We didn't see, as my CAO mentioned yesterday, how we could
19 fill out for a hundred million plus procurement for
20 something that is at this point a concept and totally
21 theoretical and hasn't been through the federal testing
22 process.

23 CHAIRPERSON KYLE: Ms. McCormack, do you want to
24 send that to us in the next day or two?

25 MS. McCORMACK: I will. I will be glad to do

1 that. It's on my website. I'll get it printed out today.

2 CHAIRPERSON KYLE: And we've given your county,
3 because of its geographic size and population, more time
4 than others. So if you could summarize.

5 MS. McCORMACK: I appreciate that and I'll do
6 that. I think I covered my main points.

7 I would like to address just one on the Diebold
8 audits since we were a subject of the audit. And I think
9 it's in one of the reports, again, that speak on that
10 other item.

11 When the Diebold audit occurred there was some
12 sort of revelation in reports that we had different
13 software on our hardware, on our TS devices. Indeed we
14 did and we admitted that. But, you know, it just seems
15 strange to me that no one asked us. I mean they had to
16 have people come down with consultants to look at this.

17 And, frankly, there's been a lot of consultants
18 hired to do parallel monitoring that came out at a hundred
19 percent, as you said, and to do these tests. And we don't
20 know where the HAVA money is going. We haven't had any
21 breakdown of where the HAVA money -- I'm assuming some of
22 it might be going to that. I don't know.

23 But it is curious to some of us that the Diebold
24 counties, including myself, that have applied for our
25 punch card buyout pass through formula-based money have

1 not seen any of it yet, where Sequoia counties have. Napa
2 has gotten theirs. Santa Clara. My application was
3 approved three months ago. And as John knows, I've sent
4 several E-mails requesting where it is. But I'm not
5 alone. There's other Diebold counties who haven't gotten
6 it and I don't think it's a coincidence, and I'm concerned
7 about that.

8 So there's something about where the HAVA money
9 is going that we haven't had an accounting of that and I
10 think it needs to happen.

11 Another comment that's been made from the podium
12 about our software and the certification of our software I
13 would like to make now. In the recall election we asked
14 our vendor -- our vendor responded to us, which is what we
15 want from vendors, we want response -- to do something
16 about the fact that 135 candidates were on the recall
17 ballot. And we had a punch card system with numbers by
18 their names. There was no alphabetizing of the names of
19 the candidates.

20 So for someone to find that on the touch screen,
21 it's going to be pretty difficult. Well, there is a
22 sequential numbering on the punch cards. So we asked the
23 vendor to put those punch numbers onto the touch screen,
24 which they did, and the voters loved it.

25 We had touch screens for three years at that

1 point and voters had been complaining, "Why don't you put
2 the punch number so we can find it easier." We did that.
3 The voters loved it. It was 1.18.18.102. And then we had
4 to remove it. So it was a service. So we had it
5 delivered and weren't able to deliver back.

6 Should we have made sure everything came up here?
7 We probably should have. We were a little bit rushed.
8 We're certainly going to be more careful in the future.
9 But at E minus 7 every county sends up their software, as
10 we did then, as we always have with our own software to
11 the Secretary of State. We're not trying to hide anything
12 that we've used.

13 And if some changes have been made to the
14 software in the past to fix things, we've done that in
15 order counting with our own software. We do sent it up.
16 We may have been a little remiss in the past. I hope that
17 isn't something that's -- I have to worry about the
18 handcuffs. But we are going to do a better job in the
19 future. But it was never nefarious. It was never done
20 for any reason but to make sure our voters were better
21 served.

22 Unless you have questions, I think I could end on
23 that point.

24 CHAIRPERSON KYLE: Mr. Jefferson.

25 PANEL MEMBER JEFFERSON: Something went by very

1 quickly while I was thinking of something else. And if
2 you wouldn't mind repeating. I think you said at one
3 point -- you said something about the uniqueness of your
4 system, the Diebold part of your system. I thought you
5 said it was like different from any others. Something
6 about certification or qualification status which was
7 different. And you said also something about 10 million
8 lines of code.

9 MS. McCORMACK: I said a million lines --

10 PANEL MEMBER JEFFERSON: One million?

11 MS. McCORMACK: I think I said one million.

12 PANEL MEMBER JEFFERSON: Okay. Sorry.

13 MS. McCORMACK: No, it was probably if I talked
14 too fast or -- my understanding is it was close to a
15 million lines of code over the last two years have been
16 developed.

17 Are you asking --

18 PANEL MEMBER JEFFERSON: Additional lines?

19 MS. McCORMACK: Well, new. It's all new. It's a
20 new version that will -- when it gets approved will be a
21 new version of GEMS.

22 PANEL MEMBER JEFFERSON: Oh, just of GEMS?

23 MS. McCORMACK: GEMS. Ballot tallying. Our
24 contract is for ballot layout and ballot tallying. And
25 integrated that with our Inka-Vote -- our Inka-Vote

1 absentee system. It's a huge integration issue because we
2 have a different system. And the ballot layout we've done
3 it a different way. So it's been a complete two-year
4 project, and we're close to wrapping it and we're --

5 PANEL MEMBER JEFFERSON: But when it's
6 complete -- along the path it's on when complete, it will
7 be like unique in the United States?

8 MS. McCORMACK: You know, I'm not a technical
9 person. I think it's going to be offered to other
10 counties. I don't know. I'm unfamiliar with that. I
11 can't answer that question. I just know that we have to
12 get it through certification obviously. But we're excited
13 about its possibilities for us to replace our dumb
14 terminal approach.

15 CHAIRPERSON KYLE: Would that be a joint venture
16 with the county and Diebold, or is that a proprietary deed
17 to the vendor?

18 MS. McCORMACK: It's a GEMS. So it would be
19 proprietary.

20 PANEL MEMBER MILLER: One quick question, Mr.
21 Chairman.

22 Does your one percent count include absentee
23 ballots, do you know, or --

24 MS. McCORMACK: Our one percent for the manual,
25 do we take --

1 PANEL MEMBER MILLER: Your one percent manual
2 count and the 15 --

3 MS. McCORMACK: The --

4 PANEL MEMBER MILLER: Does it include --

5 MS. McCORMACK: -- some absentee ballots?

6 PANEL MEMBER MILLER: -- absentee ballots --

7 MS. McCORMACK: I don't think I'm -- I'm not that
8 familiar with specifically how a one percent works. But I
9 believe it does. I don't know that we go through one
10 whole percent of -- I know we do that with a precinct. We
11 have 45 precincts. But I think there are 45 precincts,
12 and I think we pick some absentees.

13 PANEL MEMBER MILLER: Okay. But do you
14 allocate -- with respect to a precinct chosen or selected
15 randomly if you do a one percent count, do you include in
16 that precinct --

17 MS. McCORMACK: We don't count our absentees by
18 precinct. It's not required by law. It's by ballot
19 style. So if we'd pick a ballot style -- again, I'm not a
20 person who actually does the random component of it. But
21 I can find out and get back to you.

22 PANEL MEMBER MILLER: Thank you. I appreciate
23 it.

24 CHAIRPERSON KYLE: Any other questions?

25 Thank you very much.

1 MS. McCORMACK: Thank you.

2 John Ahman.

3 MR. AHMAN: Mr. Chairman, members of the Panel.

4 I'm John Ahman. You may have seen me before. Four years
5 ago I was out of Tallahassee. I was the expert who got
6 down there and testified on punch card voting because most
7 of the equipment in Florida had my name on the patent.

8 Since that time I've had the opportunity -- the
9 third time in my life that I've had the opportunity to
10 assist Los Angeles County in developing their voting
11 system for them. And I'm referring to the Inka-Vote
12 System.

13 I was there in '68 when they installed them on
14 the punch card with IBM. We saved them a couple million
15 dollars by getting rid of the IBM equipment in '71. And I
16 had to personally guarantee that it would be the same
17 equipment or equivalent to the IBM equipment. And it was
18 and they've used it for 32 years successfully.

19 One note I'd like to make about the Inka-Vote
20 System and, that is, that in the election in March,
21 instead of having a five percent undervote, it was
22 averaging around two and a half percent. And I think
23 that's somewhat better than what one of the touch screen
24 machine companies said they had done here. I think it
25 Sequoia. And those figures that I got were from their

1 printout.

2 I won't say it was at two and a half percent
3 throughout the entire ballot. I'm not sure. I'am quoting
4 actually when I was there around two or three weeks ago.

5 One of the features of the Inka-Vote System is
6 that of course it is incomplete the way it is because it
7 does not have the HAVA component. And, that is, a
8 precinct ballot counter. An intelligent ballot counter,
9 which indicates to the voter whether he's overvoted or
10 undervoted, that type of precinct ballot has been in use
11 in Chicago since 2000.

12 They were prevented from using it in 2000 because
13 nobody else in Illinois had it, so the court wouldn't let
14 them use it because it gave their voters an unfair
15 advantage. But since then they have been able to
16 implement this smart ballot counter on punch card in
17 Chicago, and their undervote/overvote count is down around
18 1 percent or less.

19 So we're expecting that if a HAVA-compliant
20 smart-type precinct ballot counter were to be used in Los
21 Angeles -- and we are working on one of those at this
22 time -- in fact, we've demonstrated it to Los Angeles.
23 And we hope to have that certified -- we're looking to
24 have it certified with the right programming and
25 everything, in probably not by November, but possibly.

1 But we're working on it. That would get the
2 undervote/overvote down below or at 1 percent. We think
3 that is a very good level to be at considering some of the
4 other equipment that's in use is not anywhere near that.

5 One of the main advantages of the Inka-Vote type
6 system is you'd have one computer in a precinct. Like the
7 County of Los Angeles size, you have only 5,000 or 6,000
8 computers as opposed to 42,000 computers being in use.
9 And that's a lot less computers that you have to inspect
10 and certify every single election.

11 Thank you very much.

12 CHAIRPERSON KYLE: Thank you.

13 Any questions from the panel?

14 Thank you very much.

15 Julie Bustamante, Nancy Fenton, and Jim Hamilton.

16 MS. BUSTAMANTE: My name is Julie Bustamante
17 B-u-s-t-a-m-a-n-t-e, and I am the Assistant Registrar of
18 Lassen County. Thank you very much for giving me the
19 opportunity to come up here and speak.

20 Lassen County is an optical scan Diebold county.
21 We have been since November of 2000. We've run five very
22 successful elections with the Diebold system. We've even
23 run what you call the pony race, being the first to get
24 our votes into the state final votes on election night
25 twice. We're very proud of that. We worked very hard for

1 that.

2 We are very small though. Smaller than like L.A.
3 County --

4 (Laughter.)

5 MS. BUSTAMANTE: But I can echo a lot of what
6 Conny says. There's a critical component here that I
7 think really needs to be looked at; and, that is, the
8 registrars and their office, their staff. Not just the
9 companies.

10 Our job is to run an honest and efficient
11 election. We take security as a very serious matter. And
12 we take our jobs very seriously.

13 We try to do the best job we have. We try to
14 check out any errors ahead of time because nobody wants to
15 have an election fail on election day or have scrutiny
16 come up later. We just want to do the best job we can,
17 and it's very, very important to us.

18 And I think every registrar in California is
19 pretty much on that same line.

20 We do -- you do the testing at your level. It's
21 done on state level. We also do testing on our level,
22 local level. We test our hardware, our software,
23 everything. We test our phone lines.

24 I even did, as an example, one small test where I
25 created a memory card in GEMS on the same computer system

1 that our elections are on. And I uploaded that card to
2 the wrong election, just because I wanted to see what
3 happened. Immediately, instantly GEMS cut off that phone
4 connection. It just boom and it said invalid. It just
5 happened like that. And I was very happy with that. It
6 wasn't a test that anybody told me to do. I just wanted
7 to play around with it.

8 But we do a lot of testing. We canvass our votes
9 afterwards. We count things over and over. We make sure
10 things are right. If we have an election, because we're a
11 smaller county, that is very close, our registrar has to
12 canvass hand-count every vote in that election.

13 As you know, the laws of California are very
14 complex. They're constantly changing. And therefore when
15 we're doing things and we find something that doesn't
16 work, we want to fix it. So, yes, we're going to have
17 patches, yes, we're going to have things change. Yes, we
18 want to improve our product. We want to improve what
19 we're doing. So we have Diebold fix it.

20 What do we do then? We test again and again and
21 again. I even had a situation where a poll worker dropped
22 a unit, one of our optic scans, and she called me up. I
23 said, "Bring it in." This was before the election. All
24 she did was drop it. It was in a padded box. She brought
25 it back in. I retested everything, the mode of

1 transmission, everything from top to bottom, because I
2 wanted to make sure we didn't have a problem that night.

3 You might ask, do we trust Diebold?

4 I have to say we're not just going to take what
5 they say, a vendor, any vendor says as gospel. We want it
6 proven to us. We want it proven that those systems work.
7 I can say for a fact, yes, we trust them because I've
8 tested over and over, I've tried to make things go wrong
9 to see what's right, what's in here, what the results are.
10 So with confidence I can say I trust Diebold.

11 They have been there with an excellent product.
12 They have backed us up with excellent support. If it's
13 not support in our office, it's available to us. If we
14 don't, we don't have to have it. But they're there 24-7
15 for us. And I just want you to look at all the aspects
16 and consider what us, as the people who work in the
17 elections office, do also.

18 Thank you.

19 CHAIRPERSON KYLE: Thank you very much.

20 Any questions from the panel?

21 PANEL MEMBER MILLER: I'd like to say I was born
22 in that county.

23 MS. BUSTAMANTE: Lassen?

24 PANEL MEMBER MILLER: Yes, In Westwood.

25 Thanks for coming.

1 MS. BUSTAMANTE: Thank you.

2 CHAIRPERSON KYLE: Thank you.

3 Nancy Fenton.

4 MS. FENTON: I'm with the County Counsel's Office
5 in Alameda County. And not knowing whether Elaine Ginnold
6 would be available to speak because of the recount, she is
7 here today, although she has of course stepped out right
8 now.

9 So I'll withdraw my name and -- Elaine is now
10 here, so will --

11 MS. GINNOLD: Okay. My name is Elaine Ginnold
12 G-i-n-n-o-l-d. I'm the Assistant Registrar in Alameda
13 County.

14 I'm going to tell you what system we use and what
15 the consequences would be if the system was decertified
16 for the November election or if we had to change for some
17 reason.

18 We use the Diebold AccuVote TS. We feel that it
19 is a machine that is very accurate, it's accessible, and
20 it produces the ballot in three languages that we need.
21 Your own system of parallel monitoring on election day
22 proved that the votes were recorded with 100 percent
23 accuracy on those touch screens.

24 As we've gone through five elections now, each
25 election gets better and better. The touch screens in the

1 March primary performed very well. I think there were
2 only 36 out of 4,000 that had problems on election day and
3 had to be taken out of service.

4 The problem that we had on March 2nd was with the
5 PCM 500. We do not intend to use that in November if
6 we're going to be using the Diebold AccuVote TS System.
7 We will go back and use the SPYRUS smart cards that we
8 have used successfully in our previous elections.

9 Most of the voters love voting on this. It's
10 very accessible to blind voters. And it meets HAVA
11 requirements.

12 Now, if we had to change voter systems, say, you
13 mandated a paper receipt at the polls or paper ballot at
14 the polls or the legislation went through that required
15 that, we would probably have to convert then to paper
16 ballots because of the mechanical problems that could
17 occur with a paper receipt, you know, some contraption
18 that was attached to the touch screen. We fear that. And
19 we would not want that to happen, because that would stop
20 voting and really disenfranchise voters on election day.
21 They'd have to be -- there's not enough time to install
22 and test that kind of a device to make sure that it really
23 works well.

24 So that would be our plan. We'd convert to
25 optical scan ballots. We would want to do it with the

1 same vendor, because with the timing of this it would be
2 impossible to do it with a new vendor. There are all
3 kinds of requirements for RFPs and contracts and
4 negotiations. And there just simply isn't enough time.
5 Wouldn't be enough time to convert to a new vendor.

6 So do you have any other questions? Any
7 questions?

8 CHAIRPERSON KYLE: Didn't Alameda County have
9 paper provisional ballots in this last election?

10 MS. GINNOLD: We do.

11 CHAIRPERSON KYLE: And you produced about how
12 many as a percentage of the total eligible voters?

13 MS. GINNOLD: Well, we had from 50 to 100 in
14 each -- for the major parties in each of the polling
15 places and fewer numbers for the minor parties. Quite a
16 few ballots.

17 CHAIRPERSON KYLE: And I remember how many
18 counties there are in San Diego, but Alameda escapes me.

19 MS. GINNOLD: How many what?

20 CHAIRPERSON KYLE: Precincts rather.

21 MS. GINNOLD: Seven hundred fifty-three polling
22 places.

23 CHAIRPERSON KYLE: So if you had to revert to
24 paper ballots, it would be an expansion of that system
25 probably?

1 MS. GINNOLD: Right.

2 CHAIRPERSON KYLE: Okay. Any other questions?

3 Mr. Mott-Smith.

4 PANEL MEMBER MOTT-SMITH: How many high speed
5 scanners do you use?

6 MS. GINNOLD: We don't use any high speed
7 scanners.

8 PANEL MEMBER MOTT-SMITH: What do you use for
9 your absentee --

10 MS. GINNOLD: We use regular scanners that --
11 they're not high speed. They're kind of slow speed.

12 (Laughter.)

13 MS. GINNOLD: I think they're called OS -- you
14 know, the AccuVote OS scanners. I'm not sure of the
15 technical name of them.

16 PANEL MEMBER MOTT-SMITH: How many do you use?

17 MS. GINNOLD: We use four. We have eight, but we
18 limit it to four.

19 PANEL MEMBER MOTT-SMITH: Okay. If you were to
20 have to count your ballots as a 100 percent absenteeism,
21 you would just need four times four?

22 MS. GINNOLD: No, we would not want to do it
23 centrally because it would probably take us a week to
24 count all the ballots from the polls. That would be
25 absurd. But what we would hope to do would be to convert

1 to precinct-based optical scanners like they use in
2 Fresno.

3 PANEL MEMBER MOTT-SMITH: Why would it take you a
4 week to do -- if you currently had 33 percent of your
5 ballots counted -- well, I guess it's a little bit longer
6 period of time with four machines. If you had 12 machines
7 or you had 20 machines, why would it take you so much
8 longer?

9 MS. GINNOLD: It just would. The process -- I
10 don't think it would be -- well, first of all, our vote
11 counting room doesn't have the capacity for that many
12 scanners. We have the capacity to run 8. But it's a slow
13 process. For example, in the primary, to process a
14 hundred thousand before the election -- I think we
15 processed ninety to a hundred thousand before the
16 election -- it took seven days to do that.

17 PANEL MEMBER MOTT-SMITH: What if you rented one
18 high speed scanner?

19 MS. GINNOLD: I don't think they're certified.

20 (Laughter.)

21 MS. GINNOLD: Now, I too want to make one
22 additional comment about the certification process. You
23 know, in a perfect world election systems would come and
24 appear and they would be fully operational and all the
25 bugs would be out of them and they would just run

1 wonderfully and there wouldn't have to be any patches
2 made. But the reality of elections is that within the 40
3 days before the election you find situations that have to
4 be corrected. So in the certification process it would be
5 very helpful to have a streamlined way to do this that was
6 acceptable.

7 PANEL MEMBER MOTT-SMITH: I guess I wondered,
8 that one point that you made, that -- assuming that this
9 was a -- assuming it happened in the first place, that
10 there was a requirement for no paperless DREs in the
11 November election, but that the market provided one after
12 that that you would then be able to use. You'd be looking
13 at a one-time cost in November. And you would choose to
14 do precinct-based counters for a one-time use?

15 MS. GINNOLD: That decision of course ultimately
16 has to be made by our board of supervisors. But because
17 the Secretary of State has mandated that every touch
18 screen have a paper receipt by 2005 or 6, we've discussed
19 the perils of putting those out in the polling places.

20 And, you know, based on what happened with the
21 mechanical device that we added in the primary, we don't
22 think that it's going to be good at all for the voters.
23 You know, it's like putting a paper system out with an
24 electronic system. Why not just have -- if both are
25 required -- you know, if both are needed, then we would

1 just go with paper. And we would have one -- at least one
2 touch screen at the polls for voters who need that.

3 CHAIRPERSON KYLE: Thank you very much.
4 Jim Hamilton.

5 MS. SCHUCHMAN: Mr. Hamilton has had to leave.
6 I'm wondering if I could speak?

7 CHAIRPERSON KYLE: Your name is?

8 MS. SCHUCHMAN: Brina-Rae Schuchman.

9 CHAIRPERSON KYLE: Certainly. Representing
10 Save-Democracy?

11 MS. SCHUCHMAN: Yes.

12 CHAIRPERSON KYLE: And do you have a card?
13 Just go ahead. That's okay.

14 MS. SCHUCHMAN: Thank you very much. My name is
15 Brina-Rae Schuchman. I am from San Diego.

16 I guess San Diego is going to be the poster child
17 from hell for this election. All of the glowing reports
18 about everything everybody's been doing right. And we had
19 nothing but hell in San Diego. Almost 40 percent of the
20 precincts not opening, sometimes up to three hours.

21 We have no confidence in Diebold. We know the
22 scientific studies that have been done, and our registrar
23 of voters simply did not want to respect them. She told
24 me she felt sorry for Diebold and she thought they were
25 being picked on.

1 We were very worried because we thought the
2 scientists, who had nothing to gain, they were not making
3 any money from having done that study, were trying to tell
4 us something very important. Whenever anybody questioned
5 the registrar saying that the Diebold machines she was
6 showing, TSx's, were safe, accurate, and couldn't be
7 hacked, even the public began to groan at some of those
8 meetings.

9 But actually she resented our asking questions
10 and she resented people in the audience who were
11 scientists saying things like "Wait a minute. I've been
12 working with computers and software for 45 years and we
13 know that isn't true about computers. And these are
14 computers and they can be interfered with."

15 So we have suffered from the fact that our
16 registrar of voters does not want to accept the fact that
17 these computers are not holy machines, that they can be
18 hacked or they can be fooled with inside where scientists
19 have said you can't see it. And we simply don't trust
20 them without the paper trail. There's been a lot of talk
21 about trust and use. But a lot of those people have been
22 using those machines over TS's that Diebold's had around
23 for many years.

24 We also know that the GEMS switch as a Diebold
25 product didn't count their absentee ballots properly

1 either. So how can you possibly have any trust in this?

2 I mean we need a whole revamping in San Diego.

3 And our best bet is to have the registrar respect the
4 Secretary's order to give everybody absentee ballots and
5 make it possible for everybody to vote, and then give us
6 trustworthy counters, whether by hand or with some other
7 scan machine than Diebold. And maybe we can start to
8 trust voting again. But many people in San Diego feel,
9 some people in their eighties and nineties, that this was
10 the worst election they'd ever experienced in their lives.
11 We feel disenfranchised, not just inconvenienced as many
12 people like to say. These are terrible things that are
13 happening, not just little glitches. And we're being
14 disenfranchised out of our country and out of America and
15 out of democracy here.

16 And we're really upset and worried for our
17 country.

18 Thank you.

19 CHAIRPERSON KYLE: Thank you.

20 Comments?

21 Jim Dickson, then Ann Barnett, then Jolena
22 Vorrhis.

23 MR. DICKSON: I have some materials to hand in.

24 CHAIRPERSON KYLE: Thank you.

25 MR. DICKSON: Mr. Chairman, I'd like permission

1 to extend my remarks beyond three minutes. I did not
2 attempt to speak yesterday or earlier today.

3 CHAIRPERSON KYLE: Certainly, Mr. Dickson, we'd
4 like to hear what you have to say, as long as you keep it
5 brief.

6 MR. DICKSON: I'll be brief.

7 CHAIRPERSON KYLE: All right. Appreciate that.

8 MR. DICKSON: Thank you, sir.

9 My name is Jim Dickson D-i-c-k-s-o-n. I'm Vice
10 President of the American Association of People with
11 Disabilities, the nation's largest disability membership
12 organization. We have several thousand members in
13 California. I myself have voted in California for five
14 years when I was a resident of San Francisco.

15 I'm also Co-chair for the Leadership Conference
16 on Civil Rights as election reform task force. LCCR is
17 the nation's largest, oldest civil rights organization,
18 with more than 185 member organizations.

19 I want to first make an observation about
20 something this morning. I want to commend the member of
21 the Committee who prior, to your vote, acknowledged that
22 your vote could have an adverse impact on people with
23 disabilities and on some counties. And I also was
24 astonished that not another member of the Committee echoed
25 those remarks.

1 I have worked in elections for 22 years in 43
2 states. All of it's been nonpartisan. I spent my career
3 working to expand the franchise and to see that every vote
4 gets counted.

5 I want to put on the record experiences that I
6 have had using third party voting systems, and to assure
7 you that this is emblematic of what happens to blind,
8 disabled, and language minority citizens all the time.

9 I once had a poll worker say to me, in a
10 presidential primary, "You want to vote for who?"

11 I had a poll worker in San Francisco say to me,
12 "Well, you voted for the top of the ticket. Nobody knows
13 who these people are down the ticket. You don't want to
14 vote for them, do you?"

15 In another election I had a poll worker say to
16 me, "Nobody understands these referenda, and I'm really
17 busy. You don't want me to read them, do you?"

18 In yet another election I had a poll worker say
19 to me, "I can't see to read the small print here on the
20 referendum. So you don't want me to read them?" Well,
21 that did not get much sympathy from me, let me tell you.

22 (Laughter.)

23 MR. DICKSON: There are two serious problems with
24 elections in this country. And it is dismaying that these
25 have not been mentioned in two days of hearings.

1 The first problem that we have is that when it is
2 a close election, we cannot accurately with certitude
3 count the ballots. It doesn't matter whether it's a punch
4 card, whether it's a DRE or whether it's a piece of paper.
5 Some experts will say there's a lack of certitude when
6 it's one percent margin, some will say two.

7 But to be discussing DREs as if they were the
8 only source of the problem and not be informing the public
9 of what the reality of our system is is irresponsible and
10 damages the fabric of our society.

11 The second problem that we have is a lack of
12 political participation. And the process that has been
13 used to discuss these very important issues has fanned
14 that lack of participation. It is providing people with
15 an excuse to stay home and not vote because "my vote's not
16 going to be counted anyway because the computer ate my
17 vote."

18 AAPD and the Leadership Conference on Civil
19 Rights believes that DREs are the best system we have
20 available today. They count more votes. They count them
21 more accurately. They are accessible to people with
22 disabilities. They are accessible to people with limited
23 English proficiency.

24 And we urge you not to decertify DREs.

25 I just have a few more points to make.

1 CHAIRPERSON KYLE: Okay.

2 MR. DICKSON: I lost my train of thought. Just
3 give me a minute.

4 I want to call the Committee's attention to a
5 letter that our attorney John McDermott of Holly & Simon
6 sent to the Committee, which notes that the Office of the
7 Secretary of State has failed to follow -- you have
8 certification processes which have never been put into
9 regulation. Action that you would take is arguably
10 illegal and unenforceable because you -- because the
11 Office of the Secretary of State has never followed the
12 California laws and procedures to develop the proper
13 regulations.

14 I have in my hand a draft brief. If you
15 decertify DREs, we will be in court the next day. I want
16 to call the Committee's attention to a document that I
17 submitted from Professor Ted Selker of the Cal Tech/MIT
18 project on voting. It addresses many of the practical
19 problems with the voter verified paper trail. This voter
20 verified paper trail I want to draw a simple analogy.

21 Professors -- if a professor of bioscience stood
22 up and said, "People are dying of cancer and I have a pill
23 that will prevent it. My pill has never been tested in
24 the laboratory. My pill has never been tested in animals.
25 My pill has never been tested in human beings. But I want

1 you to require my pill to be used by every voter," would
2 you take that pill? You'd be crazy if you do that.

3 And to be discussing a requirement for a
4 theoretical device to address a theoretical problem when
5 there are two million Californians who are disenfranchised
6 because they do not -- because DREs are the only mechanism
7 available today that allows them to vote independently is
8 irresponsible, it is illegal, and we will not tolerate it.
9 Excuse my anger.

10 This year after 36 years I voted secretly for the
11 first time in my life. And this Secretary of State and
12 this process is saying it's going to take it away from
13 millions of us. What is going through your minds?

14 The last point I want to make is that I am aware
15 that Secretary Shelley has said we want to be accessible,
16 we're going to be accessible. Actions are what matter,
17 not words. Justice delayed is justice denied. Every
18 election that passes where we cannot vote secretly and
19 independently is wrong.

20 Thank you. I'd be glad to answer any questions.

21 CHAIRPERSON KYLE: Thank you, Mr. Dickson.

22 Any questions?

23 PANEL MEMBER MILLER: Mr. Chairman, actually not
24 a question. But I do want to thank Mr. Dickson for being
25 here and presenting his views. Very compelling. And I

1 also apologize for not joining with Caren Daniels-Meade
2 this morning, a member of this panel who's the member who
3 expressed concern about the accessibility issue. I think
4 every member of this panel agrees with her and I believe
5 the Secretary of State does.

6 But, again, thank you for those very compelling
7 arguments.

8 MR. DICKSON: Thank you very much.

9 CHAIRPERSON KYLE: Thank you, Mr. Dickson.

10 Ms. Barnett, why don't we go with you. And then
11 I think we're going to call for a break.

12 I'm seeing nods of approval around the room.

13 Go ahead, Ms. Barnett.

14 MS. BARNETT: I'm Ann Barnett,
15 Auditor-Controller, County Clerk of Kern County.

16 CHAIRPERSON KYLE: Would you move the microphone
17 up.

18 Thank you.

19 MS. BARNETT: The State of California and
20 counties throughout the state are facing an unprecedented
21 financial crisis. As much as we would like to, we cannot
22 say that price is no object in elections. As registrars
23 of voters, we're responsible to conduct fair and accurate
24 elections. As representatives of the citizens of the
25 counties throughout the State of California, we need to be

1 financially responsible. These two responsibilities are
2 not mutually exclusive.

3 The recommendations by this panel and the
4 decisions made by the Secretary of State regarding
5 decertification cannot be made in a vacuum. Election
6 funding comes out of county general funds.

7 When counties have cut as far as they can cut in
8 discretionary services, the last to cut is health and
9 safety. Most counties are already there. And they are
10 still facing a revenue shortfall of millions of dollars in
11 state funding.

12 Is it fiscally responsible to replace a voting
13 system that works, that provides more accuracy than any
14 we've used in the past with a system that gives you less,
15 costs you more to operate? Which is what going back to
16 paper ballots would do.

17 The voters of Kern County expect more of their
18 elected officials. That's why Kern County's Board of
19 Supervisors has taken a position supporting the use of
20 touch screen voting machines in November. And I'll give
21 you the paper for that.

22 If TSx machines alone are decertified, which is
23 your recommendation, it will cost our county an additional
24 minimum of \$200,000, and that is only using central counts
25 and science boards for secrecy screens.

1 In addition, I would ask you to address how we
2 would meet HAVA requirements if we are not to use our
3 touch screen machines? That is an issue for me, because
4 my voters were the first -- this was the first time they
5 were able to use -- voter secrecy use of touch screen, and
6 it's a big issue.

7 Thank you.

8 CHAIRPERSON KYLE: Thank you, Ms. Barnett.

9 Any questions from the panel?

10 Mr. Miller.

11 PANEL MEMBER MILLER: What would be the cost --
12 if you didn't do central counts, if you did precinct
13 count, what would it be if you costed that out?

14 MS. BARNETT: We think it would be closer to
15 three quarter of a million.

16 PANEL MEMBER MILLER: Thank you.

17 CHAIRPERSON KYLE: Okay. I have almost 10 of
18 4:00. Why don't we take a 15 minute break to 4:05.

19 (Thereupon a recess was taken.)

20 CHAIRPERSON KYLE: All right. I'm going to get
21 started. Prior to the break, I counted all the people
22 pending to speak. It is 30 plus.

23 (Laughter.)

24 CHAIRPERSON KYLE: Since I've come back from the
25 break at least a half a dozen more cards have been

1 submitted -- at least a half a dozen more.

2 One gentleman from Yolo County had the good sense
3 to withdraw his name.

4 (Applause.)

5 CHAIRPERSON KYLE: I laud him.

6 There are at least a half a dozen folks who want
7 to speak -- more than that, maybe as many as eight or
8 ten -- who have already spoken today at least once. And
9 some folks who've spoken a couple times yesterday and
10 today. I'm going to put you on the bottom of the pile.

11 My goal is to power through this as best as
12 possible. I'm anticipating it's going to take about two
13 hours. I'm going to try to give speaking time to those
14 who have not spoken, to the remaining vendors, and to the
15 remaining registrar of voters. And then to everyone else
16 who's -- might fall into the category of having spoken
17 once before.

18 As you know, many people spoke yesterday and
19 earlier today about subject matter 3 anyways, so we've got
20 it on the record. We don't need to hear it a second time.

21 So with further adieu -- and, quite honestly,
22 from my perception, it's very likely, and we'll take a
23 sock at this another hour plus, that we may have to roll
24 this over, continue it to the next possible date for
25 deliberation and closure, because I'm just not sure it's

1 going to happen today. I'm not sure we're even going to
2 get through the testimony today.

3 So I believe I said that Jolena Vorrhis was the
4 next to speak.

5 Ms. Vorrhis, would you please come up.

6 MS. VORRHIS: Thank you.

7 I submitted a letter to the record. I'm Jolena
8 Vorrhis. And because I have two tough names, I'll spell
9 them. J-o-l-e-n-a Vorrhis V for Victor o-o-r-h-i-s. I'm
10 here representing the California State Association of
11 Counties. We represent all 58 counties in California.
12 And the record is a letter from my Executive, Dr. Steve
13 Szalay.

14 I think a couple of you know that we have been in
15 close communication with Mr. Shelley, and we have been
16 making comments on the VPAD security directive. And then
17 with the March 2nd primary we felt it was imperative that
18 we work through these issues, so we created our CSAC
19 collections working group, which is made up of three CAOs,
20 three registrars, and CSAC staff.

21 At the direction of that working group, we
22 started to do a survey in April. This is on a lot of
23 issues, but there was focus on the 27 counties potentially
24 impacted by decisions today, electronic counties and
25 Diebold counties.

1 And it won't come as a surprise to you that we
2 are opposed -- CSAC is opposed to any blanket
3 decertification of electronic voting systems. While a
4 couple counties have experienced problems, they've
5 invested significant dollars in those systems, and the
6 majority of those counties didn't have any problems.

7 As noted in our letter, no county received any
8 complaints or experienced instances of tampering or other
9 security issues in the March 2nd primary. And our survey
10 responses noted -- and we specifically asked on the
11 security directive which of those policies were existing
12 county policies and which was new. In almost every case,
13 those security directives are already being conducted at
14 the county level. The only hundred percent new
15 requirement was on the parallel monitoring.

16 Of course we just received the report today, so I
17 won't get into the various monitoring reports.

18 The backup system has been a question that you've
19 asked of previous registrars, and that is a serious issue
20 for our counties.

21 Our surveys that we conducted noted a cost of 27
22 million for counties to go to the backup system. That
23 goes to a lot of issues that have previously been raised,
24 whether it's high speed scanners, whether it's available
25 with state printers, which for Diebold is only two. And

1 if you have all electronic and you go to the backup
2 Diebold system, you'd have a significant problem getting
3 enough ballots in time.

4 In addition, we know that board inspection
5 remains -- try not to repeat.

6 There are two major suggestions that our
7 elections working group wanted me to forward to you today.
8 The first is that improved communication between the
9 Secretary of State and counties needs to happen. In the
10 past months -- and I was very educated yesterday by the
11 discussions of Diebold and various communications of the
12 counties and the counties to the Secretary of State. I
13 think we need to work on those issues, and we're committed
14 to doing that.

15 The second one was improvement to the current
16 certification process. As noted in many of the testimony
17 yesterday, there seems to be different rules or people are
18 under the impression of different rules.

19 I'm sorry. I'll try and finish up as soon as I
20 can.

21 But you need to address the issue of a vendor
22 goes to a county and they say, "Oh, this is okay. We've
23 gone to the Secretary of State." And that gets the county
24 in a bad position when they go to the Secretary of State.
25 So this process needs to be improved. And I agree with

1 what Mr. Mott-Smith said as far as we need a clean slate.
2 We need to start over, have everybody on the same plane,
3 make the rules known so we all are under -- with the same
4 rules and regulations.

5 On page 34 of your staff report, I wanted to say
6 that I was very encouraged by some of the recommendations
7 on those 2 pages -- the 3 pages on security and
8 certification and testing. And we are also concerned
9 about those issues. And I wanted to get a chance for our
10 elections working group to look through those and provide
11 comments back.

12 But on security I wanted to say that counties are
13 at the forefront now of security. We do homeland defense.
14 We're first response in any emergency. We're in the first
15 response for bioterrorism. We're very experienced in
16 these issues. And we believe that we can work through
17 those without the rash decision of decertification.

18 I also want to mention one thing about our costs
19 and our budget. Counties have been hit hard in the past
20 three years. We continue to be hit. There's another
21 direct shift -- a 1.3 billion. The majority of that is
22 the counties, 9 hundred million. Counties are
23 experiencing write-offs. We just don't have any money to
24 pursue any additional systems.

25 Last thing I wanted to say was that we're looking

1 to the Secretary of State -- if any decertification
2 happens, including this morning's, we're looking to the
3 Secretary of State for leadership on this issue to help us
4 work through this process, to tell us what vote systems we
5 are allowed to use, and what we're going to do to backup
6 and who's going to pay for it.

7 So I appreciate your time.

8 CHAIRPERSON KYLE: Thank you.

9 Any questions from the Panel?

10 Thank you very much.

11 Professor Tokaji.

12 PROFESSOR TOKAJI: Thank you very much for giving
13 me the opportunity to speak before you today.

14 I have submitted to the panel a letter dated
15 April 6.

16 CHAIRPERSON KYLE: Please say your full name and
17 spell your last name. And thanks for coming from Ohio.

18 PROFESSOR TOKAJI: My pleasure. The weather
19 you've had out here has been especially -- made it not
20 much of a burden at all. And it's good to be back in
21 California.

22 My name is Dan Tokaji. Last name is spelled
23 T-o-k-a-j-i. I'm a law professor at Ohio State currently.
24 And before that was an attorney with the ACLU of Southern
25 California, in which capacity I was among the legal team

1 that litigated the Common Cause versus Jones case, the
2 case that I'm sure you're all familiar with; resulted in
3 the decertification of punch card voting machines.

4 I'm currently working, as Conny McCormack, the
5 Registrar of Los Angeles, mentioned, with a coalition of
6 civil rights advocates, election officials, and voting
7 systems specialists, a coalition that is SAAFE, secure,
8 accurate, accessible, and fair electronic voting.

9 My goal here today is -- you've heard a lot about
10 the details of the problems that have occurred in various
11 counties. And I think it's a wonderful thing that we're
12 having this hearing, we're having this frank discussion.
13 And I actually wish that we had this kind of discussion
14 four or five years ago when Secretary Shelley's
15 predecessor was in office about the paper-based systems.

16 You talk about disenfranchisement. But if you
17 look at the systems that were used four or five years ago,
18 you would have found massive disenfranchisement going on
19 in every election with the Votematic and Poll Star punch
20 card system. As many as 170,000 votes were lost due to
21 the use of that system in the California recall election
22 in October 2003.

23 My goal is to put in perspective the problems
24 that we've been discussing today, both a comparative
25 perspective, and in a few minutes I have a national

1 perspective.

2 There are three dimensions to the debate over
3 electronic voting that's currently going on. One of them
4 has been receiving a lot of attention. That's the
5 technical aspect. The second is the election
6 administration aspect. And I mean both by that the
7 security checks that are in place or could be put in place
8 to make electronic voting more secure and the practical
9 problems with some of the solutions that have been
10 proposed such as the voter verified paper audit trail.

11 The third dimension, and one that I want to focus
12 on, is voting rights, from a voting rights perspective.
13 And I'm a voting rights litigator as well as scholar.
14 Electronic voting machines provide significant advantages
15 over other forms of technology. That's true in terms of
16 accuracy in a recall election, which I mentioned a few
17 moments ago. A study by Henry Brady at UC Berkeley showed
18 that it had a -- the electronic voting machines had
19 significantly lower on category rates and others.

20 I'll wrap up in just a moment.

21 It's also in terms of race. A study by Michael
22 Toms and Robert Van Hallon, which I believe is the one
23 that Ms. Fong referred to you yesterday, found that
24 electronic machines significantly lower the racial gap on
25 county ballots. It's, of course, true in terms of

1 disability access as well as in multilingual access.

2 My simple plea to this panel -- the entire
3 country is of course watching what goes on here. And I
4 hope that it will not throw the baby out with the bath
5 water here by decertifying electronic voting entirely.

6 Thank you for your attention.

7 CHAIRPERSON KYLE: Thank you for coming from
8 Ohio.

9 And are there any questions from the Panel?

10 Thank you very much.

11 Carolyn Young.

12 MS. YOUNG: Thank you. Thank you very much. As
13 you can see, I've limited my remarks greatly while I've
14 been waiting.

15 CHAIRPERSON KYLE: Good.

16 MS. YOUNG: But I have an unredacted copy that
17 I'll give to you.

18 CHAIRPERSON KYLE: Say your name for the record.

19 MS. YOUNG: My name is Carolyn Young. I'm an
20 attorney with the Western Law Center for Disability
21 Rights. We are a nonprofit organization that defends the
22 civil rights of individuals with disabilities. And we
23 oppose -- I'm going to say that my remarks are pretty much
24 directed at the VPAD issue, which we oppose because
25 mandating them dooms the prospect of finally making voting

1 accessible to nearly two million voters with disabilities
2 in California. And that's required -- I'm sorry -- as
3 required by the Americans with Disabilities Act.

4 We have an historic opportunity and obligation to
5 replace unreliable and inaccessible paper ballots with
6 secure and accessible technology. But the added expense
7 of VPAD would bring the move away from paper ballots to a
8 halt. DRE units cost approximately \$3,000 apiece. I read
9 on the Secretary of State's website that the -- from the
10 ad hoc touch screen task force that adding VPAD could
11 easily increase that cost by 25 percent or more. And
12 that's not factoring in additional ongoing operational
13 costs.

14 And I believe that is not factoring in the
15 significant expense of making the VPAD itself accessible.
16 It needs a built-in text reader for the visually impaired.
17 And if the VPAD is not made accessible, the ADA prohibits
18 its use.

19 With the VPAD so inflating the price of DREs many
20 of the 44 counties that don't use DREs currently will
21 simply keep their paper ballot systems. And I don't need
22 to tell you that paper ballots are inaccessible to people
23 with manual dexterity impairments and visual impairments.

24 We've heard from Mr. Dickson who gave you his
25 experiences as someone with a vision impairment. I can

1 tell you one of my clients is quadriplegic. And he said
2 to me in frustration after the last election that he can
3 play a video slot machine in Las Vegas with his mouth but
4 he can't vote by himself.

5 The ADA mandates that people with disabilities be
6 allowed to vote without assistance. And DRE touch screens
7 with their audio components and devices allow just that.

8 All counties under the ADA are required to have
9 at least one at every polling location. But with VPAD
10 inflating the price, counties may complain, and we've
11 heard this today, they can't afford even that, especially
12 larger counties with hundreds and even thousands of
13 polling places.

14 There's a particular concern that I don't think
15 has been addressed, which is the problem of having two
16 systems. If counties are forced to stay with the paper
17 system but then have a few accessible machines for people
18 with disabilities, poll worker error is going to strike.
19 There will be two systems to use. Voter error will also
20 increase because of confusion of voting systems.

21 Another issue is that if machines are reserved
22 exclusively for people with disabilities, they could be
23 missing parts, out of service, or even misplaced. This is
24 a routine occurrence with other accessible devices we
25 already have like tech telephones and text readers.

1 They're neglected until someone with a disability needs
2 them.

3 Importantly, no matter how many DREs with
4 accessible VPAD a county may or may not buy, we will have
5 to wait a long time for such a system to be designed,
6 produced, federally approved and state certified. In the
7 meantime, the places that use accessible DREs may have to
8 shut them down as we're taught here and today. But the
9 ADA applies now, and voters with disabilities are entitled
10 to vote in secret and without third party assistance
11 today.

12 Thank you.

13 CHAIRPERSON KYLE: Thank you.

14 Any comments or questions from the panel?

15 Thank you very much.

16 Martha Mahony, University of Miami.

17 Another long-distance travel.

18 PROFESSOR MAHONEY: And I'm walking a long way
19 around the room.

20 Hi. I'm Martha Mahoney M-a-h-o-n-e-y, and I'm a
21 law professor at the University of Miami Law School and an
22 expert on civil rights. And I'll skip my credentials for
23 the sake of the substance.

24 I'm here with a very limited message compared to
25 most of those that you have heard. I am here because one

1 county in California uses a machine that is causing
2 enormous trouble with certain aspects in Miami Dade,
3 Florida. And I want to tell you what that is and urge you
4 to look at it when you are considering certification. And
5 bring your investigatory power and expertise to solve it.
6 I don't think it would take you forever and I think it's
7 extremely important.

8 It's the iVotronic made by ES&S and it's used in
9 Merced County. We are having tremendous problems with the
10 audit logs and vote image reports on this machine. And
11 that's a very serious thing to tell you.

12 I have faxed to you, but don't know if it made it
13 into your comment, a short letter and a two-page study
14 done by a division director in the Information Technology
15 Section in Miami Dade County government, who found that
16 the audit logs had enormous problems when he audited them.
17 He found that compared with opening and closing precincts
18 take print outs, in the audit logs numbers -- serial
19 numbers of machines disappeared. And in one case one
20 machine with a total cumulative number of the votes that
21 disappeared appeared all attributed to one machine. In
22 another one, they were attributed to two different
23 machines with two different serial numbers. That's not an
24 audit log we can audit from.

25 They also found that in one study 38 ballot

1 events disappeared from the auto log and were not
2 replaced. So that was out of synch with the vote image
3 report. We're talking, in my opinion, extremely serious
4 problems about the integrity of the machine.

5 The county supervisor told the Subcommittee on
6 Elections on Monday that this is still going on. It is
7 going on and it's still going on. It happened on the
8 March 9th election.

9 This is how Miami Dade is dealing with it. They
10 are reading the audit logs before the election is
11 certified. And if they find an aberration because the
12 serial number's different and they see it, they are
13 downloading again from the PED. They think it is cause --
14 and there's no explanation for why. They say it's only
15 serial numbers and they say it's caused by sorting the
16 data on flash cards. We have flash cards in every machine
17 because we have a triangle ballot and you need that for
18 that technology.

19 Okay. That's the short overview. I am here
20 because I am very worried. I am not yet convinced it's
21 all flash cards and I'm not convinced because this is so
22 preliminary and I haven't gotten my public records
23 requests yet. And I bring you questions, not answers,
24 with apologies. But then you're probably not in the mood
25 for more questions. But these are substantive.

1 Here are the questions.

2 CHAIRPERSON KYLE: Now, I'm assuming you'll get
3 these done in some writing.

4 PROFESSOR MAHONEY: I'll give it to you in
5 writing. I could if you give me another day supply an
6 entire list of my suggested questions for you instead of a
7 short overview. I would write up my suggested -- I will
8 do that. And I'll give you these little reports. Okay.

9 Here are the basic things. The audit review --
10 here is why I don't think it's necessarily the flash cards
11 that are the problem. If it's not our particular use of
12 the flashcards, it might also be in your Avotronics. We
13 use 75 instead of 574, which I think you use if you've got
14 special needs in Miami Dade.

15 Basically the audit review that was conducted you
16 will see used the PED device to process some of the votes,
17 and still found aberrational results. So I am not
18 convinced yet that it's also in the flash cards. The
19 flash cards are supposed to be redundant memory, they're
20 supposed to be identical. One of the things I'm going to
21 suggest you look into is are the redundant memory systems
22 actually identical. There's no question we're supposed to
23 be asking. It's a question posed by our findings.

24 It is -- if I want to ask you a few of these
25 questions, and then I'll stop for the sake of time and

1 write up the list for you.

2 Would your certification processes catch this if
3 they didn't get caught in Florida? Would your county
4 audit procedures catch this? It wasn't caught until this
5 gentleman did a study. It wasn't caught routinely. Can
6 you be sure that it will not be happening to your
7 machines? Can anybody be sure if the serial numbers
8 change that the votes haven't changed? Because there's
9 supposed to be a security in the integrity of the audit
10 logs when you come to this question.

11 And, finally, here's my last reason I'm worried
12 about whether it's really the flash cards. The program
13 that collected audit data on flash cards wasn't certified
14 until after this study was done. I actually think it's
15 not the flash cards causing it. I think there is another
16 systemic problem, but I'm not sure. This hasn't been
17 studied enough yet in depth in Miami. I will write up the
18 most complete report for you that I can.

19 The audit log is required by HAVA. And let me
20 just say one thing. But I don't run your program.
21 Because I really mean it. I congratulate you on the depth
22 of these hearings. I urge you to take a very serious look
23 at the iVotronic and I'll look into the documents. So
24 that you can use your powers to do that. Florida is
25 taking, in my opinion, a don't ask/don't tell approach to

1 the electronic voting problems that are turning out. And
2 you are looking into them. And take a look at the
3 iVotronic, and that's my request.

4 Thank you very much.

5 CHAIRPERSON KYLE: Thank you.

6 Mr. Jefferson.

7 PANEL MEMBER JEFFERSON: Yes. Does ES&S
8 acknowledge this problem? And if so, was it they who
9 suggested flash cards might be the problem?

10 PROFESSOR MAHONEY: No. Here's the thing. I
11 believe that the first thing I heard from Kathryn was that
12 it was the flash cards -- that it only happened when you
13 used the flash cards. Now to say it's a cause is a little
14 odd because it's a correlation --

15 PANEL MEMBER JEFFERSON: But ES&S didn't
16 acknowledge it?

17 PROFESSOR MAHONEY: I believe they do. She said
18 the vendor was looking at it, and then she had a more
19 complete version. But she didn't say what ES&S said. She
20 said what she was doing about it when she spoke. And I
21 spoke also at the Subcommittee on Elections on Monday in
22 Miami Dade County. I'm sure ES&S knows. I believe this
23 is their explanation, but I haven't talked to them.
24 That's one of the things I am urging you to do with your
25 greater power to make that communication.

1 However, the reason I want to write you a list of
2 questions is if they do say it's just the flash cards,
3 then it's only that Miami triangle ballot, which has had
4 its own problems. I am not sure that that can explain the
5 total set of facts here. And that's why I would prefer to
6 write you a really detailed list. Is it okay if that's
7 done by tomorrow or Monday when -- it's not going to take
8 a long time, but my preference is to give you an inquiry
9 list.

10 CHAIRPERSON KYLE: The sooner the better.

11 PROFESSOR MAHONEY: All right. Then I'll try for
12 tomorrow.

13 Any other questions?

14 Thank you.

15 CHAIRPERSON KYLE: Thank you.

16 Judy Bertelsen.

17 MS. BERTELSEN: I was going to not say anything.
18 But because of what a couple other people said, I want to
19 just say two or three sentences of mine -- remarks.

20 I'm from Alameda County and I actually served as
21 a poll worker in the March election. And I won't go into
22 the details of what I noted. But suffice it to say that
23 we've heard various people say that their experience with
24 Diebold was just flawless and wonderful. And, you know,
25 then for many others it hasn't been. And we all know

1 that, and I won't go into details of it.

2 But in this context it seems to me that although
3 many people are saying it's going to cost millions or
4 whatever to make any changes, we all know that we all have
5 absentee ballots cast in every county and we have a way of
6 managing those. So we have some paper ballots. And I
7 certainly vote absentee these days.

8 I would suggest that, although somebody said we
9 shouldn't go into those because those aren't perfect
10 either, that -- to paraphrase that person, we shouldn't
11 eliminate the good by pretending the awful is acceptable.
12 And we should go ahead, I would suggest, and put emphasis
13 on paper ballots and using opti-scan or whatever we use to
14 count them and possibly consider expedited certification
15 process for Avante or some other vendor that says they
16 have something that would work and meet all our needs.

17 CHAIRPERSON KYLE: Thank you.

18 Gretchen Godfrey, then Dwight Beattie, then Laura
19 Oftedahl.

20 MS. GODFREY: Good afternoon. My name is
21 Gretchen Godfrey. That's spelled G-o-d-f-r-e-y. And I'm
22 here today to present a statement on behalf of the
23 Disability Rights for Education and Defense Fund in
24 Berkeley.

25 The shift to touch screen voting systems, or DREs

1 is the most dramatic change California has seen in voting
2 technology. Unfortunately while this transition is still
3 taking place, DREs have come under increasing attack and
4 criticism despite their numerous benefits and advantages.

5 Touch screen machines have features that make
6 them accessible to people with various types of
7 disabilities, including those with vision impairments and
8 manual dexterity limitations. These components permit
9 voters with disabilities to exercise a constitutional
10 right to vote independently and privately.

11 If DREs are not available in November, many
12 people with disabilities as well as people with limited
13 English proficiencies will again be treated as
14 second-class citizens and be forced to rely on friends,
15 family members, or poll workers to act as intermediaries
16 to mark their ballots accurately and without influence.

17 We need to focus on problems experienced by
18 minorities that come to use the touch screens. These
19 problems occur for a variety of reasons that can be
20 repressed by local election officials. Instead of
21 decertifying touch screen machines, the underlying causes
22 of the problem must be examined and appropriate remedies
23 must be identified and put in place. Increased
24 infrastructural support must be available. Poll workers
25 need more training concerning troubleshooting. And paper

1 backup ballots should be provided so voters are not turned
2 away from their polling places.

3 We urge you to consult with county registrars who
4 have experienced using DREs in previous elections to
5 facilitate collaboration among them with others who will
6 be using such systems for the first time so the knowledge
7 gained from previous elections can be utilized.

8 Although we think DREs should remain in service,
9 and we urge you not to consider either a decertification
10 or suspension of certification, we are not advocating for
11 the status quo to be frozen. Security enactments are not
12 mutually exclusive. People with disabilities understand
13 concerns for security because so many have never had
14 insurance in the past, but their votes were being counted
15 accurately without influence.

16 The benefits of DREs are clear, while the
17 suspected dangers have been overstated. We simply ask
18 that security concerns be properly investigated and
19 proposed solutions tested and implemented to the state's
20 usual certification process.

21 The change is complex as shifting to electronic
22 voting will inevitably involve problems. These problems
23 can be fixed, however, and the negative experiences with
24 DREs of some counties must not drive California to abandon
25 its commitment to democracy that seems accurate, secure

1 voting for all. This means refusing to be reactionary and
2 working to refine systems that have proven their worth.

3 Decertifying touch screen systems would only
4 cause more confusion to a county who have to change voting
5 systems once again. Moreover, it would effectively
6 disenfranchise nearly two million California voters with
7 disabilities and many more from minority language
8 communities. For these voters DREs are not only a secure
9 and accurate choice. They're the only choice. DREs are
10 the only type of system that's currently certified and
11 accessible. They must be available for the November
12 presidential election.

13 Thank you.

14 CHAIRPERSON KYLE: Thank you, and good timing.

15 Any questions from the panel?

16 Thank you very much.

17 Dwight Beattie.

18 MR. BEATTIE: I'm Dwight Beattie B-e-a-t-t-i-e.

19 I'm a retired election official for the registrar in Santa
20 Clara and assisted in Sacramento.

21 Frankly, it's a very hard time for registrars,
22 election officials, this panel and vendors. And I'm not
23 envious of the opportunity, and I'm glad to be retired.

24 (Laughter.)

25 MR. BEATTIE: I think there's been a rush to --

1 after HAVA and after the Florida election there's been a
2 rush to touch screens by Legislatures and Congress as a
3 panacea. And any new election system is going to have
4 problems. You've got to have a shakedown. And even if
5 you do that, by the time you've got it worked out, there
6 are new laws that change the ground rules. And that's a
7 real workout for vendors.

8 My concern has been along the way that in trying
9 to rush things along, the systems are not necessarily
10 ready for prime time. And that's a problem that's just
11 brought on by trying to rush it.

12 This panel, I think, needs to face up to its own
13 contributions to the problems in the sense that as vendors
14 have come to get things approved and as counties have come
15 and said, "We need to get something approved," this panel
16 has cancelled a variety of meetings and things -- people
17 have felt left hanging, as I've talked to them. And I've
18 been attending this panel and its predecessor since 1976,
19 and I've attended a majority of the meetings since then.

20 The Secretary of State needs to also understand
21 that last-minute directives on election security or
22 posting signs or doing some side-by-side testing that are
23 not out early enough, really cause havoc in the counties.
24 It really does. You send out a sign that says, "I want
25 this up in every polling place," and it arrives a week

1 after you've sent out everything to every polling place.

2 I have made a recommendation to some members of
3 this panel and predecessors, and I've recommended this for
4 the past 20 years and it's gotten polite nods, that
5 Secretary of State staff should hire someone who has
6 county election experience, with a local elections
7 experience, so they know what goes on.

8 So when you say, "Well, let's do this," that
9 person can say, "Whoa. This means A, B and C." And
10 granted the Secretary of State's job is different from the
11 counties and they have a different role to play, but it
12 would be tremendously helpful to have someone with county
13 experience on the staff. And it has not been true for
14 over 20 years.

15 I would say I support a paper audit trail that a
16 voter can review. But as Mr. Dickson made a very cogent
17 point, it needs to be tested before we rush to say this is
18 the answer to the problem. I think it can work, but it
19 needs to be tested.

20 And the last thing I would say is, listening to
21 the people here, the various people who have concerns,
22 especially those who feel on the outside of the election
23 process or outside of the registrars' offices and don't
24 feel they're getting heard, is that it's important for the
25 registrars to sit down and listen to these people. And

1 they may not understand everything that they go through
2 for an election. Most people don't. Ninety-nine percent
3 of the people don't understand what goes into an election.
4 It's a very complicated process. A lot of simple things
5 put together, but it becomes very complicated.

6 But the people who have raised their concerns
7 have fears that are real for them. And my experience is
8 to sit down with people makes a big difference. I go back
9 to the example of when Ross Perot is running. And they
10 felt that they were being maltreated by everyone, and came
11 into my office and -- roaring, and I sat down with them
12 during the canvass of the -- must have been the 1992
13 election -- and went through at least four hours with the
14 people through the whole canvass process. And afterwards
15 they said they were very grateful.

16 And the next time the Ross Perot thing came up,
17 they came roaring in again and said we don't trust the
18 Secretary of State because of some issue, we don't trust
19 the federal government, but we trust you. And we have a
20 relationship. And some of the people that took me
21 through -- you know, took me to the woodshed early became
22 parts of my election observation panel and became very
23 helpful. And that's just part of the democratic process
24 that we need to live up to.

25 Thank you.

1 CHAIRPERSON KYLE: Thank you, Mr. Beattie.

2 Questions?

3 Mr. Carrel.

4 VICE CHAIRPERSON CARREL: I do have a question.

5 I do appreciate your comment and -- your
6 comments. And I recognize that this panel and this agency
7 has to understand some of the issues at the local level a
8 little better than we do, appreciate them a little better
9 than we do sometimes.

10 But I think the flip side is also relevant, that
11 sometimes the -- as you said, we have a different job than
12 the registrars. But sometimes I don't think the
13 registrars appreciate the job that we have to do. And
14 when a vendor gets something to us a week before the
15 election, two weeks before the election, it's the same
16 situation.

17 Expecting us to do a complete test on something
18 with limited time, it puts us in an awkward position. And
19 we can't do what we need to do without adequate time. And
20 the response we get often from the local officials is "You
21 have to certify it so we can do an election. If not, you
22 have to test it to see if it's certified so we can do an
23 election." And that's what I get frustrated about.

24 MR. BEATTIE: I think the -- there are always
25 problems that come up in an election. It is not a smooth

1 process. And there's always problems that come up late.
2 And that's a constant tension. I recognize what you're
3 saying. It is a tension for everyone involved, and the
4 registrars do need to recognize that, just as they call
5 for help from you.

6 CHAIRPERSON KYLE: Thank you.

7 PANEL MEMBER MILLER: Just a comment, Mr.
8 Chairman.

9 We've gone through a lot of elections together,
10 Mr. Beattie. And I really appreciate your insights that
11 you brought to us today. Thank you so much.

12 CHAIRPERSON KYLE: Thank you.

13 John Tuteur.

14 Is John around? Mr. Tuteur from Napa.

15 All right. We'll call him later.

16 Austin Erdman.

17 MR. ERDMAN: My name is Austin Erdman

18 E-r-d-m-a-n. I'm assistant registrar of San Joaquin
19 County.

20 I think this panel has heard a lot of testimony.
21 However, a lot of people have admitted there is some --
22 has been some disenfranchised voters. But, in fact, if
23 you decertify electronic touch screens, you're going to
24 disenfranchise a whole lot more.

25 It is important in this nation to be able to come

1 to the voting booth and cast your opinion. And I think
2 that it is an actual obligation of this panel to allow
3 those people with disabilities to vote. If you take away
4 electronic touch screen voting from those people, they
5 cannot vote.

6 You've heard testimony from different people
7 here. You've heard over two million voters that will be
8 disenfranchised by eliminating touch screen voting. I
9 don't think that this panel would want to do that. Nor do
10 I think this great State of California would want to go
11 there. It's important that we complete the democracy
12 cycle, through whatever means it takes. We need to look
13 at what we do and how we do it.

14 We all know that human interaction of voting
15 creates a situation where we set up a system, give it to
16 the public, they give us something back, and then we count
17 it. We know that there's going to be inherent problems
18 with that, whether it be paper or electronic. We need to
19 consider the rights of those that are here today
20 testifying and those that need to testify in the future,
21 and preserve those rights for the people that are
22 disabled.

23 Thank you.

24 CHAIRPERSON KYLE: Thank you very much.

25 Any questions?

1 PANEL MEMBER MILLER: Yeah, just one quick
2 question.

3 Three times I've heard two million. And that may
4 indeed be the correct number. Is there a source for that
5 two million would be disenfranchised in California?

6 MR. ERDMAN: I'm using the source that the ADA
7 people gave earlier in testimony.

8 PANEL MEMBER MILLER: Mr. Dickson has his hand
9 up. So --

10 MR. ERDMAN: Yes.

11 MR. DICKSON: Those numbers come from the United
12 States census from the State of California. We're talking
13 about -- and we're not talking about all people with
14 disabilities. Those include people who are blind,
15 visually impaired, have manual dexterities, have learning
16 and cognitive disabilities, who are unable to vote
17 secretly and independently. The learning and cognitively
18 disabled populations are actually larger than the blind
19 and manually limited population.

20 PANEL MEMBER MILLER: Thank you, Mr. Dickson.
21 That's very helpful.

22 CHAIRPERSON KYLE: Thank you for that
23 clarification.

24 Thank you, Mr. Erdman.

25 MR. ERDMAN: Thank you.

1 CHAIRPERSON KYLE: Laura Oftedahl.

2 MS. OFTEDAHL: Thank you very much I'll spell it.
3 It's O-f as in frank t-e-d-a-h-l. My name is Laura
4 Oftedahl. I'm the Chairperson of the Alameda County
5 Registrar of Voters Voting Accessibility Advisory
6 Committee.

7 And one of the most empowering experiences of my
8 life happened four years ago when I moved to California
9 and moved to Alameda County, to Berkeley, and for the very
10 first time in 30 years voted by myself and didn't have
11 someone helping me.

12 In the past when I lived in Massachusetts, I had
13 to use a poll worker. And inevitably every time I went to
14 my poll, I got a woman who was hard of hearing.

15 (Laughter.)

16 MS. OFTEDAHL: And I tell you, it was like a
17 Saturday Night Live. She's like, "Who'd you say?" And
18 then I'd tell her. And then I didn't know if she was
19 writing it down right. And I tried -- got somebody else
20 to me. And it was just an incredible experience. And I
21 don't want to go through that anymore. I don't think I
22 should have to go through that anymore.

23 I've read and listened to all of this
24 information. And I'm convinced that DREs are more
25 accurate than punch cards and manual lever machines; and

1 that they certainly are more empowering for all of us who
2 can't read the standard print.

3 The way they work, by the way, is that you have a
4 headphone and a headset and you have a little keypad. And
5 you get good instructions. And if you want to vote for a
6 certain candidate, why you push number 5. And if you want
7 to go back, you push 4; and if you want to go forward, 6.
8 It's great. It works well. I've not heard other blind
9 people who had problems with it, so I was very interested
10 to hear that study this morning.

11 So I urge you not to decertify DREs. I as a
12 working Californian am a taxpayer, I pay taxes like a
13 first-class citizen, and I deserve to vote secretly as a
14 first-class citizen.

15 Thank you.

16 CHAIRPERSON KYLE: Thank you for your comments.

17 Any questions, comments from the panel?

18 Thank you very much.

19 Gregory Luke.

20 Gregory Luke L-u-k-e?

21 All right. You may submit it in writing.

22 Ann West.

23 Ann West is gone.

24 CHAIRPERSON KYLE: Thank you.

25 Deborah Hench.

1 MS. HENCH: Deborah Hench, San Joaquin County
2 Registrar of Voters. I think you guys are getting sick
3 and tired of seeing me today.

4 The only thing I am here to say now is how fast
5 you can implement a new system and what is it going to
6 cost to run a paper ballot? And do have your pocketbooks
7 out? We're going to take a collection here so we can
8 start.

9 (Laughter.)

10 MS. HENCH: Because it's going to be expensive.

11 It took me one year to implement the system we
12 have, the TSx. That means you can't just say, "Oh we're
13 going to do something." We had to have a new warehouse.
14 We had to make sure it supplied the right power to the
15 units. We had to have it so we could track everything.
16 And in the process you have to get your servers up, you
17 have to implement all of those key-in components. And it
18 takes manpower. I mean 1600 units arrive and you've got
19 to be able to test them, put them someplace, and power
20 them up election day. It's not an easy thing to do.

21 Now, when you say, "Okay. Well, now you go back
22 to paper. Let us do like we did in the recall. We have
23 the optical scan ballots. And you did that then. But why
24 can't you do it now?" Well, here's the thing. We
25 borrowed 40 units from other counties to have some optical

1 scan units at the polling place. Those units are not
2 going to be available in the next election because every
3 county needs every unit.

4 We've borrowed some from Diebold to help move our
5 process along. Otherwise we would probably still be
6 feeding through the unit, you know, the card through
7 ballot, because of the fact that it takes more time to run
8 paper through the card readers than -- well, we don't have
9 the certified high speed card reader. It just -- you feed
10 it in or it manually feeds, one way or the other. And
11 it's got to go through the proper procedures.

12 It will take more time. Election night we have
13 six readers. And if we can beg, borrow a couple more
14 readers, we will. But still you've got to have a place to
15 put them. And you've got to be able to staff somebody
16 standing there and feeding those things through, like we
17 used to do on the card readers with DFM.

18 And then there's the cost of the paper. And how
19 long is that ballot going to be and how many ballot types
20 are we going to have? Because right now my understanding
21 is we are looking at a very real possibility of having the
22 largest ballot in our history with the way these measures
23 are going through.

24 And in 1990 with the DFM system we had a ten-card
25 ballot in San Joaquin County. And that was before this

1 levee reapportionment went through. And I can guaranty
2 you that it looks like there's a possibility, even with
3 the optical scan, we might have a two-page ballot. And if
4 you go to DFM, they're looking at a possibility of 12
5 cards per ballot.

6 Now, that's money. I mean now you're using twice
7 as much money to print one ballot. And, you know, one of
8 the reasons we went to DRE was not only language ability
9 and accessibility for ADA, but our cost of printing
10 officially certified paper ballots was escalating at an
11 extraordinary rate. In fact it doubled for it. And we
12 knew that as things go along with this primary we had 1001
13 ballot types, and we used -- on the paper we had
14 bilingual, which was the first time we've ever been able
15 to do that. However, if we had to have a separate ballot
16 for English and Spanish, we would have had 2002 different
17 ballot types for a medium-sized county with 250,000
18 voters. And the cost was exorbitant. And it also gave me
19 a great big headache trying to order those. But instead
20 we combined them and managed to do it bilingual at 1001
21 different ballot types.

22 The recall election we only had four different
23 ballot types in our county. We've had two different --
24 were separated English from Spanish. And yet that
25 election alone cost \$800,000.

1 Now, I estimated with the DRE the cost for the
2 November election at 1.2 million. So with paper I'm now
3 thinking it's going to go to a \$2 million, a \$2 1/2
4 million election. And I do not know if I can get enough
5 readers to put one in every precinct. In fact I doubt it.
6 I don't think there's anyone here that thinks a vendor can
7 actually manufacture that many before big counties, you
8 know, and have it actually run the way everyone seems to
9 think it is going to happen.

10 I'm not saying, oh, we're not going to have an
11 election. I'm just going to say that it will a very long
12 night and I will be unhappy because we'll be so tired.
13 And the precinct workers will be unhappy because they love
14 the touch screens. They closed their polling place and
15 then they were done in a half an hour and they were out of
16 there. Paper, they are going to have to sit there and
17 hand count those ballots again before they could leave.
18 And that's what this means -- it means to us, to every
19 electronic-based system if you change it.

20 That's all.

21 CHAIRPERSON KYLE: Thank you.

22 Any further questions or comments?

23 Thank you very much.

24 MS. HENCH: You won't see me anymore today.

25 CHAIRPERSON KYLE: Kim Alexander.

1 Diana Honig.

2 She has stepped out, okay.

3 Nathan Wardrip-Fruin.

4 I'll let you spell it and pronounce it correctly.

5 MR. WARDRIP-FRUIN: Nathan an Wardrip-Fruin

6 W-a-r-d-r-i-p - F-r-u-i-n.

7 As you see, I'm not a big fan of paper.

8 As our Governor and then President Ronald Reagan
9 said, "Trust, but verify." When I go to the polling place
10 to cast my ballot I don't cast it just into a void. The
11 act of voting isn't the important act. It's knowing that
12 you will be counted, that people are actually interested.

13 Yesterday I left with my head swimming with the
14 software version numbers for various machines. My head
15 was also swimming from the constant strain of Diebold's
16 excuses based on the lengthy certification process.

17 Perhaps the technology is too complicated to
18 expect that changes can be examined for a reasonable
19 amount of time. With a voter verified paper trail and if
20 ballots were counted, the machine would not need the same
21 level of trust and certification scrutiny and time could
22 be cut drastically. At this point the machines would be
23 reduced to the product that we should have bought in the
24 first place, a computer that helps you mark your ballot
25 clearly and correctly.

1 Yesterday one of the speakers said that we should
2 not stand in the path of progress. And they likened the
3 switch from paper voting to touch screen voting to the
4 switch from lamplight to the electric light bulb. What he
5 failed to mention was that light bulbs burned people who
6 installed the technology too early.

7 Bulbs used to burn out constantly, and the wiring
8 they required caused tragic fires. That's the paper
9 insulation age.

10 Most reasonable people would agree that we should
11 go to a more modern voting system, but would object to the
12 unchecked use of imagery technology in such a critical
13 area.

14 Now, Diebold. I worked at a number of software
15 development situations. And what I hear from and about
16 Diebold screams of poor engineering. From hard codes
17 limits to easy-to-guess pass codes to poor cryptographic
18 practices, the project sounds like a rush job, a demo or a
19 homework assignment.

20 They say a stitch in time saves nine. It may be
21 a cliché, but it's true. Creating a well built but
22 flexible core to a program will pay off in time. Building
23 a shoddy core will cost a fortune in bugs, debugging and
24 patching.

25 The constant excuses and deceptions are not out

1 of laziness or malice, but appear to be out of desperation
2 and possibly the initial incompetence of their software
3 people.

4 The reassurance that we have heard -- the
5 reassurances that we have heard have all been from
6 self-interested parties, whether they're trying to keep
7 their profits up or trying to dodge the embarrassment of
8 unwittingly mispending the public's money.

9 Diebold sold a defective product by trying to
10 modify or reassemble it before our eyes. I think
11 California had the foresight to pass a lemon law for
12 situations just like this.

13 The last line.

14 Per November. I'd much rather get an accurate
15 and verifiable result work or more after the election than
16 get a set of questionable results the night of the
17 election.

18 Thank you.

19 CHAIRPERSON KYLE: Thank you.

20 Any questions or comments?

21 Thank you very much.

22 I think Ms. Diana Honig is back in.

23 Ms. Honig.

24 MS. HONIG: Yes. I knew the minute I stepped out
25 you'd call my name. But I didn't want to be the first

1 person to faint at the podium today.

2 My name is Diana Honig. And that's spelled
3 D-i-a-n-a H-o-n-i-g. I am a staff attorney with
4 Protection & Advocacy Incorporated. We are a statewide
5 federally mandated nonprofit agency, and we advocate for
6 the rights of people with disabilities.

7 I was more than a little disconcerted today to
8 hear some of the comments that have -- that were shared
9 with the audience, comments like people with disabilities
10 should just, you know, wait until we have all the problems
11 fixed with the machines, that the public begs our
12 indulgence.

13 And with all due respect, you know, every system
14 has its glitches and, frankly, we've waited long enough.
15 Existing state and federal law is clear that voting
16 systems must be accessible and they must provide people
17 with disabilities with the same right to vote
18 independently and privately as other people.

19 Touch screen voting systems have finally made
20 this right a reality for people with disabilities. They
21 are accessible to people with visual and manual dexterity
22 disabilities. They're easy to use. And they do not
23 require assistance from poll workers or another third
24 parties.

25 Now, this morning you decided to make a

1 recommendation to decertify Diebold TSx machines. And
2 we're also faced with a possibility of the Secretary of
3 State decertifying all touch screen machines in response
4 to some discrete problems experienced in a few counties
5 that used electronic voting machines for the first time.

6 This response is an overreaction to specific
7 problems that have been identified now and which
8 absolutely should be remedied to prevent those problems
9 from occurring in the future. We need to ensure, however,
10 that any proposed solution addresses those identified
11 problems.

12 In addition, problems with certain vendors do not
13 justify entirely eliminating the technology or punishing
14 other vendors. The great majority of touch screen systems
15 operated properly and without any reported problems in the
16 recent primary. Any proposed solutions should deal with
17 the specifics systems that experience problems and not
18 eliminate systems that perform without incident.

19 It's important to remember too that optical scan
20 voting systems are not accessible. They have a higher
21 error rate than touch screen systems. And as we have
22 heard about in the report regarding the March election,
23 they also had performance issues in certain counties in
24 the recent primary. But we're not hearing anything about
25 decertifying those voting systems.

1 Now, we recognize the importance of security and
2 the need for voters to feel confident that the vote they
3 cast is accurate. But security and accessibility do not
4 need to be mutually exclusive.

5 Let me just point out a couple of points.

6 Decertifying all touch screen systems statewide
7 will do the following:

8 It will turn back the clock and create once again
9 a lesser class of citizens who do not enjoy the right to
10 vote privately and independently like other citizens in
11 the state. It sends a clear message to people with
12 disabilities, to limited English proficiency communities
13 that their vote is not important.

14 It will open the door for litigation that will
15 surely follow any decision which contravenes existing
16 federal and state law.

17 And it requires already financially strapped
18 counties to spend millions, to spend an estimated \$30
19 million on inaccessible and error-prone alternate voting
20 systems. And it puts them -- you know, they have to put
21 them into place quickly, they have to learn the new
22 systems, they have to train their poll workers before
23 being able to go forward with a very important election.

24 We, therefore, urge a very reasoned response to
25 the issues coming out of the primary election and the

1 adoption measures that are designed to address those
2 particular problems. Removing touch screen machines now
3 would be an unwarranted and unprecedented step backwards.

4 Thank you.

5 CHAIRPERSON KYLE: Thank you.

6 Any questions from the Panel.

7 Thank you.

8 MS. HONIG: Thank you.

9 CHAIRPERSON KYLE: Ralph Hogen, then Tara
10 Treasurefield, then Neil Hudson.

11 MR. HOGEN: Well, I don't if I can -- these are
12 rather disjointed. I took stuff out that's -- you know.
13 So connect the dots, you can look pretty well at it.

14 Some voters regret the paperless systems because
15 they do not understand the technology. Some voters reject
16 paperless systems because they do understand the
17 technology. The fear is real in both cases.

18 During break I heard yet another way of
19 invalidating paperless precincts without a high tech
20 hacker. I'm not going to tell you how because I think
21 this might be a public record, and that just doesn't make
22 any sense.

23 I'll take it off line.

24 (Laughter.)

25 MR. HOGEN: I am very sensitive to the needs of

1 the visually impaired and other special needs. I won't go
2 into reasons why, I'm so sensitive to that.

3 Some feel that the paperless -- the electronic
4 solution is akin to putting blindfolds on everyone else.
5 They can't -- if they can't see where -- you know, that
6 vote is being -- you know, able to be retraced visually.
7 That would equalize everything. But that would be
8 backwards.

9 I heard an objection to paper trail requirements
10 as bringing it back to unequal access because visually
11 impaired could not read the paper. I think the ACLU had
12 some sort of possible lawsuit to that. I'm not sure of
13 that.

14 And then there was -- the solution to that was we
15 get a separate reader that can read the paper that can
16 audibly tell it back.

17 Comparing -- these are all disjointed. I'm
18 sorry.

19 Comparing optical scan Diebold with paperless
20 Diebold is apples and oranges. You know, when you have
21 paper, you don't. So generally back at -- you know, you
22 don't need as quite a high security on something that you
23 can audit.

24 Of course the majority of registered voters are
25 happy and content with the systems. They are easier and

1 quicker. And those which they have used and validated and
2 signed off that they're accurate.

3 Just because someone doesn't understand --
4 doesn't know what's missing from a validation requirement,
5 it can make it seem to someone to be -- you know, have
6 gone through the proper checks.

7 Okay. I definitely want to see technology help
8 the people who are impaired in some way.

9 Why not a hybrid solution? I know the
10 litigation, the legal problems with this, you know, might
11 be insurmountable. But allow use of paperless DREs for
12 use -- and restricted to the use by people who need them.
13 And the volume -- the number of these that you need is
14 less, have counties share, you know, state funding help
15 fund these monetary concerns.

16 That's it, even though I didn't speak before.

17 CHAIRPERSON KYLE: Thank you.

18 Any comments or questions?

19 Tare Treasurefield.

20 Neil Hudson.

21 Dan Kysor.

22 MR. KYSOR: Well, I guess I'm still awake.

23 (Laughter.)

24 MR. KYSOR: I was going to say good morning in my
25 notes.

1 Good evening. Dan Kysor with the California
2 Council of the Blind.

3 We've long advocated for the rights of everyone
4 to vote equally, independently, privately. The California
5 Council of the Blind in the sixties fought for the right
6 to have people come in the booth help and us vote. Before
7 that we did not have the right to vote. We couldn't bring
8 people into the polling booth. During most of the history
9 of voting in this country we weren't able to vote. I
10 think that point needs to be brought out.

11 We understand the concerns about security. And
12 the California Council of the Blind is in strong support
13 of voting security. I testified in favor of a security
14 bill yesterday in the Senate. And I've been part of the
15 voting process since Kevin Shelley's AB 55. I talked to
16 Kevin Shelley at a convention a few years ago when he was
17 then Senator Shelley. And I said, "Hey, you know, it
18 would be really simple just to work at the speech part of
19 this whole thing. It's little speech chip. They're
20 cheap. No, it's not going to be a big deal."

21 And it really is not a big deal. The hysterical
22 craze that started out with the security issue, I find it
23 very interesting that now in the last few elections,
24 where's the security? Show me a case of a hacker. Show
25 me a case where a code has been violated in these

1 machines.

2 I've heard theories. I've heard a lot of
3 speculation. But I have not heard any arrests that have
4 occurred. I have not heard any federal or state arrests.
5 So we're speculating here.

6 So you as a Committee should find it easy to do
7 what other state agencies do. When you build an overpass,
8 the overpass collapses, do you shut down the state highway
9 or do you shut down that intersection? And do you
10 determine that the concrete contractor screwed up, "I'm
11 going to go after that contractor as a state agency. And
12 find that contractor or do whatever I have to." But you
13 do not shut down the entire state highway. Why is driving
14 more important than the right for me to vote? I'd like to
15 know that.

16 Also, I find it interesting that this panel,
17 although they voted down the TSx software, that same
18 software is being used for optical scan machines. And
19 that's not being addressed and I feel like you're
20 flimflamming the public.

21 Thank you very much.

22 CHAIRPERSON KYLE: Mr. Kysor, would you please
23 spell your name for the record.

24 MR. KYSOR: Yeah, it's not -- it's different than
25 Permanente. It's K-y-s-o-r.

1 CHAIRPERSON KYLE: Okay. Thank you.

2 MR. KYSOR: You're welcome.

3 CHAIRPERSON KYLE: Just for clarification. On
4 the point of decertification, our recommendation was to
5 decertify the TSx voting system and those components of
6 it. The GEMS 1.18.18 is independently certified, and
7 we're not recommending that that be decertified in
8 conjunction with optical scan.

9 So that's for the clarification.

10 Now, as a separate NASED number, it was --

11 MR. KYSOR: But it's the same software.

12 CHAIRPERSON KYLE: We're talking about the
13 totality of the system, the TSx. And when the GEMS
14 1.18.18 used with optical scan is not with the TSx.

15 Dennis it looks like Paull.

16 MR. PAULL: Thank you, chair Kyle. I'm Dennis
17 Paull P-a-u-l-l. And I'm representing the Commonweal
18 Institute. And I have a statement from I'll give you at
19 the end.

20 To paraphrase very quickly the Commonweal
21 position. They would agree that issues of security are
22 exceptionally important and particularly in this year.
23 And they agree that the needs of the handicapped are
24 important, and if there's some possible way to include
25 accessible systems for them, in addition to reducing the

1 use of regular DREs for the general public, that would be
2 advisable. And exactly how you do that is going to be a
3 problem, and I recognize the difficulty. But I would
4 suggest that.

5 I'd like to add a couple more comments of my own.
6 Since DREs currently in use in California are unable to
7 allow a meaningful random manual recount as required by
8 our state election code, they should never have been
9 certified in the first place. This was done in years past
10 under a different administration. I think it was wrong to
11 have them certified at all.

12 They failed the test of being suitable for the
13 purpose intended. Thus decertification merely asserts the
14 oversight of the voting equipment that the Secretary of
15 State is bound to undertake.

16 I do feel sorry for San Joaquin County and other
17 TSx counties, and I would only ask them, "Why did you buy
18 uncertified voting machines in the first place? You knew
19 when you bought them that they weren't either federally or
20 state certified. I don't understand your problem."

21 There's a big difference between accuracy and
22 security. I believe the people that are against the
23 paperless voting machines, it's not a question for them of
24 accuracy. A lot of people talk about accuracy. That's
25 not the issue. The issue is security. The fact that

1 parallel monitors that were -- the monitoring program that
2 was done by the panel -- or by the agency here produced no
3 errors only indicate that no one successfully hacked the
4 machines. It does not say that no one could hack the
5 machines. The conclusion that there is no potential for
6 fraud is unreasonable. It does not apply.

7 Because the inability to detect fraud is being
8 attempted and because the incentives are very high and the
9 money available to buy access to programmers or election
10 officials is there makes it very, very scary. This is the
11 thing that we're concerned about. There are millions of
12 dollars at stake, probably billions of dollars at stake.
13 And the incentive for somebody to try to affect the
14 election is very great and is -- it's almost a given that
15 if the opportunity is there, someone somewhere, not
16 necessarily in your county, but somewhere there's going to
17 be a problem.

18 Note that the paper trail is not a cure-all. We
19 also need procedures to make sure that the paper ballots
20 are used in ways that there is a high likelihood that
21 voting machine hacking will be detected. And this is the
22 thing I'm most concerned with and would like to speak with
23 the panel further on.

24 CHAIRPERSON KYLE: Do you have anything in
25 writing, Mr. Paull? We'd be glad to take it.

1 MR. PAULL: Okay. I don't have my handwritten --
2 well, I can write them up later for you. But I do have
3 this.

4 CHAIRPERSON KYLE: Perfect. Thank you very much.
5 And we'd be glad to accept other later comments.

6 I'm now into the pile of who spoke yesterday but
7 not spoken today. So if I call your name and you think
8 we've already registered your interest and your concerns
9 and you want to pass, that would be fine. If not, a
10 second choice is to keep it very brief. And then we'll
11 plow through them. We have at least another dozen
12 speakers -- I think closer to 15.

13 Pamela Smith.

14 MS. SMITH: Hi. I'm Pamela Smith. It's spelled
15 S-m-i-t-h, the usual way. Thank you for this opportunity.

16 The Help America Vote Act requires an audit
17 trail. The IRS requires an audit trail. Generally
18 accepted accounting practices require an audit trail. It
19 means having an independently verifiable way of ensuring
20 your information is accurately recorded.

21 If you're audited by the IRS and show up to
22 discuss it with them and say, "This had a spreadsheet with
23 all my expenses on it," they'll look at you and say,
24 "That's nice. Now, can we see your actual documentation."
25 And so if you say, "Well, but this electronic record is

1 accurate, and it's all added up correctly. Just trust
2 me," it's not going to fly with the IRS.

3 If your diskette somehow had a glitch on your way
4 over there, maybe it got lost or you had a corrupted file,
5 then if you don't have your receipts, you're in deep
6 trouble. You can't recreate it.

7 Any reasonable interpretation of how to make
8 clear that -- remains reliable, it has to show voter
9 intent. And you can't assume voter intent from something
10 voters have not had a chance to confirm that is
11 independent from the electronic record.

12 That has to happen at the time that the
13 independent audit trail was created. It can't happen at
14 the end of the day.

15 California touch screen counties the way they're
16 currently configured, therefore, don't comply with HAVA.
17 And until such time as the counties bring their electronic
18 equipment into compliance, they should provide voters with
19 the means of casting ballots that don't allow for a
20 meaningful manual audit and meaningful recounts.

21 What disturbs me the most is that in my
22 particular county and some other counties there have been
23 security directives from the state's chief election
24 officer that were ignored and even denounced. And it
25 bothers me because one of the reasons we're told, "Oh,

1 don't worry about the touch screens" is because, you know,
2 there are security provisions in place.

3 I know it's a difficult job. I'm glad that I
4 happen to not be a registrar of voters for a living. But
5 if somebody says, "Look, here's a way to make your
6 election more safe and accurate," I would leap at the
7 chance and say, "Good, another way to make it more safe."
8 I wouldn't say, "Would you please make yours to Mr.
9 Shelley."

10 There's procedures, there's laws, there's
11 standards, they're supposed to be followed.
12 Unfortunately, in many cases they're not. So all of these
13 safeguards that are supposed to make touch screen voting
14 okay just don't get followed. And then afterwards it's
15 "oh, sorry."

16 There's a commission that's supposed to provide
17 new standards, the EAC, but that hasn't happened yet.
18 They just had their first meeting March. People who are
19 going to buy new touch screen equipment for quite some
20 time now.

21 The other concern I have is that the -- the
22 remedy issue. Before March election when the registrar of
23 voters from out county was demonstrating the machines, one
24 of the things she said to us was, "What'll happen is that
25 we'll check the total of the people who came in to vote

1 and we'll check the total on the machines and they'll
2 match." And I said, "What if they don't?" And she didn't
3 have an answer. And there's never an answer, there's
4 never a remedy.

5 I know other people who have what you might call
6 a voting systems stress syndrome. It's sleepless nights,
7 it's floor pacing, how are you going to fix this. There's
8 only one known cure: We need a legitimate transparent
9 legal secure system on which to vote.

10 Thank you.

11 CHAIRPERSON KYLE: Thank you very much.

12 Bill Barnes?

13 MR. BARNES: My name is Bill Barnes B-a-r-n-e-s.

14 I know it's getting late in the day. I'll keep
15 it brief.

16 Just wanted to address a couple of issues. I
17 know everybody's busy tallying up how much it's going to
18 be to switch from touch screen to paper. Let me tell you,
19 there's a lot of hidden costs in here nobody's talking
20 about. A lot of it, as Debbie Hench had alluded to
21 earlier, we have a huge amount invested in infrastructure,
22 security, inventory control systems. And I kind of bring
23 this up to allay some of the fears about -- people that
24 say there is no auditing, no security. We have read it in
25 all of the major reports. We have taken the security

1 recommendations, implemented them where we could, gone
2 beyond that.

3 We have complied fully with the Secretary of
4 State's requests for all security mandates, printing of
5 the ballots, submitting electronic records of all the
6 ballot images. And I think if anybody has any questions
7 about these systems, their implementations, they can do
8 one of two things: Go to the registrar. I know Debbie
9 Austin are open. I am constantly amazed at the amount of
10 time that they will spend with one individual, even though
11 I know they both have lots of other work they could be
12 doing. They take the time. And, believe me, any
13 registrar will do this.

14 If you don't like electronic machines, vote on
15 paper. It's there. Ask for it.

16 Another thing, just to touch on the report issue.
17 I read it. Well, skimmed it. I don't think any of us
18 have of had the time to fully analyze it. Yet I think
19 there's some really missing things in here. One of them
20 is it doesn't really indicate the cooperation that the
21 counties have given to this whole audit, compliance, all
22 of those things. I know we've been trying in San Joaquin
23 County to open transparency, willing to go the extra mile
24 to do things we weren't even asked to do so that we could
25 move this process along.

1 To touch on that Diebold issue, just very
2 briefly. I think Jim March is a little mistaken.
3 Unfortunately he needs to come down and actually ask the
4 right questions. He claims Diebold was running the
5 upload. He couldn't be more mistaken. The gentleman he
6 saw in the back room was assisting our staff in the
7 procedure of how to upload those cards. I don't think
8 anyone, even with an IT background -- I know it was a
9 mystery to me. You take 2,000 machines. You spend a
10 week, two weeks trying to deploy them, get them all up to
11 speed, same software rev, same everything. You spend
12 three days deploying these things. You use them for one.
13 And you bring them back on the same night you've used
14 them. This is a -- such a huge, huge, huge job. Not only
15 did we do this in San Joaquin, successfully, flawlessly;
16 we were able to account for every single piece of
17 equipment election night.

18 To sum it up what I'm going to say is, I don't
19 know what more we can do. If you have any suggestions,
20 I'd certainly be willing to look at those, implement those
21 things. I think to decertify Diebold at this point is
22 ludicrous, and it is really a huge waste of investment of
23 time and effort, not only for our counties, but for the
24 other counties.

25 CHAIRPERSON KYLE: Please wrap it up, Mr. March.

1 MR. MARCH: Yeah, that's it.

2 Thank you very much.

3 CHAIRPERSON KYLE: Thank you very much.

4 Scott Konopasek.

5 Mr. Konopasek, please come up.

6 MR. KONOPASEK: Thank you again for the
7 opportunity to address this panel. I'll be respectful of
8 the time limits. I appreciate the time that I was given
9 earlier to make my comments.

10 I submitted for the record in advance a
11 discussion of our position in San Bernardino County on the
12 voter verified paper audit trail and decertification and
13 the relationship between the two.

14 Secretary Shelley has said a number of times to
15 the media in press releases, particularly in November when
16 he issued the directive for the VPAD and again in February
17 when he issued the additional security directives that he
18 had confidence in the security of the electronic voting
19 systems; however, he wanted to increase the level of
20 security and auditability of those systems. With that I
21 agree with the Secretary. Our systems are secure.

22 But I am interested, as I think all of our
23 registrars are, in improving our processes, in enhancing
24 our auditability and having additional tools to make sure
25 that our voters are confident that their votes are being

1 recorded and recorded correctly.

2 The point has been made earlier that auditability
3 and accessibility are not exclusive of each other. That
4 is very, very much the case. A single paper audit trail
5 does not solve all of the security issues and concerns
6 that have been identified. However, if done thoughtfully
7 and appropriately, would give us as registrars an
8 additional tool to verify the accuracy of our systems.

9 It would give the voters another tool to have
10 confidence in their systems if it's done correctly. It
11 would give losing candidates another opportunity to have
12 confidence in the accuracy of election returns.

13 I've outlined in what I previously submitted what
14 I believe to be a workable paper audit trail. It's
15 distinctly different from a DRE-generated paper ballot,
16 which I believe would add ambiguity to the outcome of an
17 election, would disenfranchise our language minorities and
18 our disabled populations, whereas a paper audit trail
19 would not.

20 My recommendation to this panel is that they take
21 into consideration all the testimony that's been offered
22 and recognize that the concerns and risks that have been
23 identified with electronic voting systems do not justify
24 the dramatic step of decertifying voting systems.

25 I would also ask this panel to recognize that the

1 development deployment of any type of paper audit trail,
2 whether it be the flavor I propose or the flavor that's
3 currently in the draft standards, must go through a
4 regular product development cycle.

5 The last two days have been spent taking a vendor
6 to task for not doing that exact thing, for not adequately
7 developing, testing, prototyping, piloting a voting
8 system. Ironically the sense of urgency around this --
9 adding this enhancement seems to be a direct contradiction
10 to the accusations and findings of this panel with Diebold
11 with its TSx system.

12 I would propose that this panel recommend that a
13 pilot program be developed in the State of California with
14 vendors who are developing prototypes of this product. I
15 would offer my county as a testing ground for a pilot
16 project as early as this November, provided that our
17 vendor is able to have a solution available for us. I
18 would offer my county to work with the Secretary of State
19 to refine and define the standards for additional auditing
20 tools for electronic voting.

21 Thank you.

22 CHAIRPERSON KYLE: Thank you. And thank you for
23 your offer.

24 Any other comments or questions?

25 Thank you very much for the interesting proposal.

1 Thank you.

2 Jim Hamilton?

3 Moise Berger.

4 We might make it, folks.

5 Eve Roberson.

6 MS. ROBERSON: I'm sorry. I have nothing to add.

7 CHAIRPERSON KYLE: Thank you, ma'am.

8 VICE CHAIRPERSON CARREL: Two points.

9 CHAIRPERSON KYLE: Maureen Smith.

10 MS. SMITH: Thank you. My name's Maureen Smith.

11 And I'd wish to not start the clock until I have a chance

12 to respond to comments that were made by one of the

13 registrars of voters -- about me by one of the registrars

14 of voters.

15 CHAIRPERSON KYLE: Maureen, I have to start the
16 clock now, ma'am.

17 MS. SMITH: You give time to all the
18 registrars --

19 CHAIRPERSON KYLE: You can get started or we can
20 spend the time arguing about it.

21 I'll give you the same additional time I gave the
22 last two speakers. So we'll start now.

23 MS. SMITH: I had the opportunity to view the
24 election in Santa Clara County somewhat and I have
25 feedback from Riverside County. I also have statements

1 from two different people from one of those -- each of
2 those counties.

3 First of all, I only accompanied my sister and --
4 to her precinct and where she asked for a paper ballot and
5 was told they didn't have any. She went ahead and went
6 through the voting process on the Sequoia system there.

7 Her husband, however, when he went to vote, his
8 screen froze up and he had to be helped and his vote was
9 not secret.

10 In Riverside County, published on the Internet
11 you can find photos of the unsecured Sequoia equipment,
12 both before and after the election in buildings that were
13 unlocked and unstaffed. That I don't have with me, but it
14 is on the Internet under I believe Election Guardians.

15 There's other information from Riverside
16 County -- and I'll try to be brief. The voting systems in
17 Riverside and San Bernardino Counties use an encryption --
18 a logarithm called DES that was proven practical in 1998.
19 You can buy a book on Amazon.com called Cracking DES for
20 about \$5. It gives you step-by-step instructions, so on
21 and so forth.

22 Anyway, this is from someone I will else that
23 county.

24 I also recently saw -- not saw, but heard about
25 and know that they're floating around internal memos from

1 Wylie Labs that say that they don't really understand
2 parts of the Sequoia equipment. So they simply ask
3 Sequoia to fill in the blanks and that -- they accept
4 whatever Sequoia says. I think that you should look at
5 those internal memos. And they are out there. They're to
6 news media and different sources. I don't have it with me
7 today. I never downloaded it.

8 I also would like to say that the Democratic
9 National Committee has gone on record in favor of the
10 voter verified paper audit trail even though a former
11 person said that he was against it when he was on that
12 committee.

13 Also the Central Committee of the Democratic
14 Party, the Libertarian Party, and the Peace & Freedom
15 Party have gone on record on that.

16 My letter asks for decertification of all Diebold
17 systems and decertification of all systems without a voter
18 verified paper audit trail, except for one unit in each
19 precinct so that handicapped and other, you know, voters
20 who would normally use that and are pleased with it would
21 be able to vote.

22 And, finally, a random count should be at least
23 three percent. One percent will not catch the problems.

24 Thank you.

25 CHAIRPERSON KYLE: Thank you.

1 Robert Kibrick.

2 MR. KIBRICK: Yes. Robert Kibrick K-i-b-r-i-c-k.
3 I represent VerifiedVoting.Org.

4 One of the previous speakers said that
5 accessibility and security are not mutually exclusively.
6 Well, I would like to think that accessibility and
7 verifiability are not mutually exclusive.

8 Gentlemen and ladies of the Panel, you have a
9 difficult decision to make. You've had a lot of talk here
10 today that has cast us as either/or and us against them
11 sort of situation. I don't think that's constructive. In
12 fact, although I'm an advocate of verifiability, I'm also
13 a very strong advocate of accessibility. I think the case
14 for accessibility has been very compelling to me by Mr.
15 Dickson, Mr. Kysor, many of the other speakers here today,
16 and is one that we need to take to heart. We need to make
17 sure that vendors promising accessible systems actually
18 make good on that promise.

19 So what to do? We have long-term solutions. We
20 have short-term solutions. People have asserted that
21 optical scan is not accessible. There are some options
22 for that, some which are used in Great Britain, Canada,
23 Rhode Island, do provide some accessibility at least to
24 blind voters using tactile ballots, templates. A lot of
25 information is available on that from ITFS and other

1 election organizations.

2 There's also a device now under development,
3 ballot marking devices, that would provide a touch screen
4 and an audio interface to a standard optical scan ballot.
5 That product is now going through certification testing.
6 I think it's an option that a lot of you counties who have
7 not yet taken the plunge to electronic systems should
8 seriously consider. A ballot marking device solution
9 combined with a precinct count optical solution, provides
10 you a voter verifiable solution that is very cost
11 effective. It's a less expensive solution, deploying DREs
12 and VB pads at every voting station.

13 What to do about November? Some have called to
14 throw, you know, all DRE's out. I think that would create
15 a significant problem for the disabled community. I think
16 there's a compromise solution that we should look at here.
17 And, that is, a partial decertification or at least a
18 limitation of the use of these electronic machines to
19 those who legitimately would benefit from them and require
20 their use, people who cannot vote on paper for whatever
21 reason, be it blindness, visual impairment, mechanical
22 dexterity issues, language issues. Those people who can
23 use a DRE should have the option of using them.

24 For people who do not require that, an optical
25 scan paper ballot does provide a voter verifiable

1 alternative.

2 Now, I would also point out that those in the
3 disabled community do not all speak with one voice. I
4 know a number of blind voters who, given a choice between
5 voting on a DRE or casting a paper ballot, having a friend
6 or a family member vote out for them, will choose the
7 latter.

8 And let me just wrap up.

9 The compromise I propose is that those in the
10 disabled community should be given a choice to cast
11 without assistance an unverifiable electronic vote or to
12 cast with assistance voter verifiable paper vote. They
13 should get that option. And those voters who want the
14 paper vote should have that option. Paper machines in New
15 York, every one of them has an envelope with paper ballots
16 in the back. We should be able to provide paper ballots,
17 not just at one location in the registrars' of voters
18 office, as was done in San Diego. We should have paper
19 ballots for those who choose to use them in the polling
20 places as well.

21 Thank you.

22 CHAIRPERSON KYLE: Thank you.

23 I'm going to read -- enter two letters into the
24 record. The first letter is from Senator Don Perata,
25 Senator Ross Johnson. I will not read it in full, but

1 will summarize it, that they respectfully request that the
2 Secretary of State decertify these touch screen voting
3 systems for the upcoming November 2004 general election.

4 The second letter from California State Senator
5 Denise Moreno Ducheny. Summary, urging the Secretary of
6 State not to decertify any touch screen system.

7 (Laughter.)

8 CHAIRPERSON KYLE: And I to apologize. I asked
9 Mr. Marvin Singleton if he would want to testify. I
10 thought you'd left, Mr. Singleton. But if you want to
11 take one minute so we can ask you a question or two, we'd
12 appreciate it. If you don't, that's fine.

13 MR. SINGLETON: Thank you, Mr. Chairman.

14 Yes, for Diebold Election Systems, comments about
15 the voter verified paper audit trail. I think it's
16 beneficial for everyone to understand where we are.

17 As a vendor we realize this policy decision made
18 by the governing body to administer elections is our goal,
19 to meet those guidelines.

20 Diebold Election Systems has made our position
21 known through two separate submissions to the Secretary's
22 draft standards, the recent one and then one previously I
23 believe in January.

24 To monitor what's going on in federal
25 standards-wise one of the product managers of Diebold

1 Election Systems is co-chairing an I-trip assessability
2 phase. It's made up of academics, computer scientists and
3 others. So we're firmly aware of what's going on
4 elsewhere, not only in California but with the other
5 states because they're developing their guidelines.

6 As you know, the AccuVote touch screens intend to
7 install a coded printer. When the standards are finalized
8 we will modify these printers and we'll make other
9 arrangements to meet regulations.

10 We welcome the opportunity to demonstrate to you
11 or to any group one -- demonstrate one of our prototypes
12 as it's been retrofitted to be able to produce a
13 verifiable auditable paper receipt.

14 In conclusion, we urge you and the Secretary
15 consider guidelines that balance the flexibility, cost,
16 and usability when developing these standards.

17 Thank you.

18 CHAIRPERSON KYLE: Thank you very much.

19 Any questions on that?

20 Okay. We'll look forward to look into that, that
21 prototype.

22 I understand there's a representative from ES&S.
23 I don't want to put anybody on the spot. But if -- thank
24 you.

25 Any other vendors that might be able to comment

1 on that development?

2 Okay. Then I want to go back to the remaining
3 handful of folks. I have Kevin Chung.

4 Is that a new request?

5 MR. CHUNG: Yes.

6 CHAIRPERSON KYLE: Okay.

7 MR. CHUNG: Thank you, Chairman Kyle.

8 I'd like to talk about two points I think that's
9 important, and I haven't had a chance to really talk about
10 it. One was there's a lot of talk about no standards
11 available.

12 I want to bring into the record is that in the
13 1990 FEC had a standard. One was called Voter
14 Confirmation in DRE Systems. It clearly states out that
15 if you're going to print a paper record, you must be --
16 make the machine readable and keep it stored inside a box
17 so they can be used for recount. And that's what it's
18 designed for.

19 But of course, for whatever reason, in the year
20 2002 standards somebody took it out. So you certified it
21 on the year 1990. You could have followed that standard.
22 And you could still arguably say you have a standard, you
23 have to have a standard.

24 I'd like to submit that as part of the record.

25 CHAIRPERSON KYLE: Thank you.

1 MR. CHUNG: The second thing I want to make sure
2 that I at least have a chance to talk about is a paper
3 record. Indeed, putting a paper record is not as simple
4 task as one would know. And I want to mention this in
5 particular, is I'm seeing a lot of proposals that are on a
6 paper records system, that eventually potentially could
7 subvert the system. So I'm going to put it the record, is
8 that in order for paper record to be used you really need
9 to absolutely maintain the voter's privacy. That means
10 you shouldn't have any system that have time stamp on it.
11 You shouldn't have any system that has serial number on
12 it. And you shouldn't have any system that is not
13 individualized or on a continuous roll. And that's
14 because -- I want to mention that because its not in our
15 current proposal from the state. I want to make sure that
16 I mention that as well.

17 Number 2 is that I want to also mention is that
18 paper record you have to also guard it against tampering.
19 Meaning you have to make sure that what is print, somebody
20 else cannot print it again somewhere else. So, therefore,
21 you must somehow -- somehow or another encrypt the paper
22 record against a certain electronic tracking. And that's
23 of course now questionably called the 20 verifications.
24 And then of course in our system, even in day 1 in 2001 we
25 already have it in the system. It's always in the system,

1 besides the voter verified paper record as well.

2 And so that's just a few things I would like to
3 mention for the paper record.

4 Third things, I know we have disagreement on
5 this, is that paper record to print a foreign language I
6 think is a very bad idea. And we -- while we do it to
7 meet your current standard. The reason why I think it's a
8 bad idea is potentially you lose the privacy of the voter
9 or at least a group of voters. And that I have very big
10 concern. I certainly don't want to see all the Chinese
11 Americans' vote to be tallied together and say, "Oh,
12 here's what they are." So that -- I have a strong
13 objection to that. I know it's against your rules. And
14 that I want to submit it as well.

15 CHAIRPERSON KYLE: Thank you.

16 Okay. Michael J. Smith.

17 MR. SMITH: Thank you, Mr. Chairman. Michael J.
18 Smith, Santa Cruz County.

19 I come here today to present five letters that
20 were E-mailed to us by members of Santa Cruz County to
21 Secretary of State Shelley, all of which do not want any
22 kind of equipment used in the November election that does
23 not have a voter verifiable auditable paper trail.

24 I'll submit these.

25 CHAIRPERSON KYLE: Thank you.

1 MR. SMITH: There is also a written letter to
2 Secretary Shelley asking for the same conditions.

3 I'm an elected member of the Santa Cruz City --
4 or Peace & Freedom Party City Central Committee.

5 And I'd like to read -- I've been asked to read
6 the resolution from the State Central Committee of the
7 Peace & Freedom Party. It will take just a minute.

8 "Peace & Freedom Party State Central
9 Committee meeting in Fresno on April
10 27th, 2004, strongly urges the
11 California Secretary of State and Voting
12 Systems and Procedures Panel to take
13 immediate action to prevent the use of
14 electronic voting machines that lack a
15 voter verifiable ballot printout.

16 "If the people are going to trust
17 those who count the votes, we need to
18 know that an actual physical paper
19 ballot exists that they've been able to
20 verify and it can be recounted if
21 necessary. Please decertify all
22 machines with a lack of voter verifiable
23 paper ballot for use in November."

24 As my own personal comments, I would like to
25 thank the registrars of voters who have extolled the

1 particular attributes of Diebold. Because I think time
2 and time again ever -- and I believe this in the record --
3 we have hoard them say that over the other vendors Diebold
4 came out ahead.

5 And I think this is very telling, because of what
6 has been portrayed today and yesterday about the Diebold
7 system. And having them extol those over other systems
8 that were presented to them, we can only judge that those
9 systems did not even meet the requirements of Diebold.
10 And So I would like the Committee to take that into
11 account. And certainly I am sure that's part of the
12 record.

13 Thank you very much.

14 CHAIRPERSON KYLE: Thank you.

15 Art Cassel.

16 Gen Katz.

17 MS. KATZ: I pass.

18 CHAIRPERSON KYLE: Thank you.

19 Alexandra Allman-VanZee.

20 I know she testified earlier, but I have her card
21 a second time.

22 All right. And Joe Holder. I know he's
23 testified earlier.

24 MR. HOLDER: I'm here.

25 VICE CHAIRPERSON CARREL: I'm sorry. Your time's

1 up.

2 (Laughter.)

3 CHAIRPERSON KYLE: You have time, Mr. Holder.

4 MR. HOLDER: It's been a long two days. And I
5 think it's all been educational for all of us. And
6 there's been a lot of good exchange of ideas and
7 frustrations and everything.

8 I cannot remember what the date was. It was
9 either December 16th or January 15th. But Avante was on
10 the agenda. And I was here for that meeting. And they
11 were put off -- even though they were here for
12 certification, they were put off because you thought it
13 was more important to deal with those issues dealing with
14 the March 2nd election because that was coming up so fast.
15 So they were put off.

16 And some of us at that time were bothered by
17 that. I still cannot look at their systems seriously or
18 closely. I do know they have an NASED number. I don't --
19 I do know that they supply the ability to address the
20 accessibility issues. I know that they do also address
21 the issue of -- that we are concerned about it too. It's
22 like it's some kind of verifiability where we can
23 something on paper to confirm that our vote was recorded
24 accurately.

25 I also know that they've been before this panel

1 or before the Elections Division for certification for a
2 long time, much longer than I've seen -- that I know of,
3 of any other major vendor. And I do not know why that's
4 occurred. And I am bothered by it. I don't know if they
5 have a good system. But I know that they have been
6 subjected to much more stringent standards than what I see
7 that ES&S or Diebold or Sequoia have been subjected to. I
8 do not know why that is.

9 But I do know that they have an answer that could
10 be -- if they would have been put on the agenda and dealt
11 with, it could have been answered for this November's
12 election. That would have adjusted everybody's problems.

13 So I do raise that as a point and as an open
14 question.

15 And I think I've said enough. Thank you.

16 CHAIRPERSON KYLE: Thank you very much.

17 Mr. Carrel.

18 VICE CHAIRPERSON CARREL: It's been a long day.
19 I think we can all agree with that. But I want to thank
20 everyone who's come today and making comments. Yes, it
21 has educational. And the goal here was to get information
22 from you to understand the issues, to understand your
23 thoughts. And not only members of the public, Panel
24 members, but, say, the community not only of registrars
25 but others who, you know, may have their views about these

1 issues.

2 And I think it was educational for other people
3 in the audience to hear from the different sides to
4 understand the context of what we're dealing with, that if
5 we do one thing, one party feels aggrieved, if we do
6 something else, the other party feels aggrieved. So we're
7 sort of trying to assess all this information. And I just
8 want to thank everyone for contributing.

9 (Laughter.)

10 CHAIRPERSON KYLE: Your time is up, Mr. Carrel.

11 (Laughter.)

12 CHAIRPERSON KYLE: I'm closing testimony for the
13 day.

14 I'm going to continue this hearing until next
15 Wednesday at 10 a.m. Does that work? I've managed to ask
16 a few folks. Because we are not going to be able to
17 deliberate tonight and come up with any kind of a
18 recommendation. And so we will spend time Wednesday in
19 public deliberations and recommendations on the remaining
20 open items: 2, 3 and 4 are open.

21 If anyone new shows up on Wednesday, we'll
22 consider taking their testimony. I'm keeping these cards,
23 so don't try to slip in again.

24 (Laughter.)

25 But thank you all for showing up and sharing your

1 thoughts.

2 Good night.

3 (Thereupon the California Secretary of State

4 Voting Systems and Procedures Panel recessed

5 at 6:05 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, 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 1st day of May, 2004.

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JAMES F. PETERS, CSR, RPR

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