

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

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

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JAMES F. PETERS, CSR, RPR
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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. Jeremiah Akin
Ms. Kim Alexander, California Voter Foundation
Dr. Armando Ayala, LULAC
Mr. Brian Barry
Dr. David Bayer, LULAC
Ms. Caryolyn Crnich, Humboldt County Registrar of Voters
Mr. M. Stephen Jones, Merced County

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Gregory Luke, Strumwasser & Woocher, LLP

Mr. Darrell Nolta

Ms. Jocelyn Whitney, Consultant, R&G Associates

Ms. Natalie Wormeli

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INDEX

	PAGE
Opening remarks by Chairperson Kyle	548
Continuation of Agenda Items 2 & 3	548
Steven Jones	551
Carolyn Crnich	556
Darrell Nolta	558
David Bayer	561
Armando Ayala	567
Jeremiah Akin	568
Brian Barry	573
Natalie Wormeli	576
Gregory Luke	582
Kim Alexander	585
Afternoon Session	592
Board Discussion	592
Motion	611
Vote	630
Adjournment	631
Reporter's Certificate	632

1 PROCEEDINGS

2 CHAIRPERSON KYLE: Good morning. Let's get
3 started.

4 First of all, welcome. Second of all, my
5 apologies for starting late. I want to welcome any
6 elected officials, Registrars of Voters, county clerks,
7 general public at large, the media.

8 For those of you who are here for the first time,
9 My name is Mark Kyle. I'm the Chair of the Voting Systems
10 and Procedures Panel, and the Undersecretary of State. We
11 have a couple of agenda items that were continued from
12 last week. I don't believe I have an updated agenda. I
13 suppose it looks the same except that agenda items
14 number -- lots of additional public comment so thank you
15 very much for those folks who've turned in the additional
16 public comment.

17 All right. Thank you.

18 So let me just say for those of you who are new,
19 I'll repeat the ground rules. We will take testimony this
20 morning. I'm going to keep testimony open. Folks can
21 come up and speak for three minutes. We will adhere to a
22 time limit, and we will ask questions. If there aren't
23 any questions, we'll move on to the next person. If you
24 have something in writing, please submit that. We welcome
25 anything in writing.

1 If it's going to be longer than three minutes,
2 why don't you just hit the highlights and then we'll take
3 it in writing, and ask questions.

4 No applauding, no clapping, no jeering, no
5 heckling. We want to treat everyone with respect. We
6 have a good number of folks in the crowd. I don't how
7 many want to testify, so we do want to have a chance for
8 everyone to get a chance to say something so that -- with
9 respect will make sure that we can move along efficiently.

10 And I think that's it. We closed the Agenda Item
11 1 last week. We had Agenda Item number 2 that remained
12 open. Though the testimony shifted to Agenda Item number
13 3. And that's where I want to pick up. Procedurally what
14 I want to do first is I'm going to move the March 2nd
15 Primary Election Report in its totality into the record
16 formally, unless there are any objections from any panel
17 members?

18 And it will now become part of the record, and we
19 will adopt the report, findings of facts and the
20 recommendations. And I'm going to close that agenda item.

21 If anyone came here to speak to Agenda Item
22 number 2, though really the gist for the bulk of the day
23 on Thursday and today was Agenda Item number 3, Voting
24 Systems for use in November and for a good part of
25 Wednesday the bulk of the testimony was to that item as

1 well.

2 We can continue on that, but if you have any
3 comments that you want to make about March 2nd Report
4 please feel free to do so when you comment on Agenda Item
5 number 3. However, it will be included as part of your
6 three minutes.

7 So having said that, we will now go into Agenda
8 Item number 3. And I believe there's no further staff
9 report on Agenda Item number 3, and we're just going to go
10 into remaining public comment. I'll close the public
11 comment. We'll then have some discussion and
12 recommendations, if there are any from the panel.

13 I know there is some discussion. I have a couple
14 comments I'd like to make. And just so folks know, we
15 have, I think, about a half a dozen folks who have not
16 testified previously and then a number of folks who have
17 testified previously. So I'm going to start with the
18 folks who haven't had a chance to say anything.

19 Mr. Carrel.

20 VICE CHAIRPERSON CARREL: I would ask -- since
21 this is a continuation of the item from last week, I would
22 ask that those who have testified previously not be
23 allowed to testify again on the same item, because then
24 we're giving a person an opportunity to testify twice on
25 the same item. So if they have testified last week on

1 this item, we should only allow today people who haven't
2 had the opportunity.

3 CHAIRPERSON KYLE: There were -- that's a good
4 point actually, Mr. Carrel. There was a number of people
5 who testified last week or submitted cards who did not get
6 a chance to testify, even though I may have called their
7 name. So on those folks who commented on this, I probably
8 will not allow second comment. I'm recognizing three or
9 four names right off the bat. I'll look these over in
10 more detail. But let's start with the folks who have not
11 had a chance to say anything.

12 So I'd like to call Steven Jones, Registrar of
13 Voters for Merced County.

14 MR. JONES: I assume we use this?

15 CHAIRPERSON KYLE: Yes, please. And everyone
16 speak into the microphone and state and spell your name so
17 we have a good record.

18 MR. JONES: My name is M. Stephen Jones M.
19 S-t-e-p-h-e-n, Jones J-o-n-e-s. I'm the Registrar of
20 Merced County. I'm also the auditor, controller and clerk
21 and recorder. Merced County, to let you know first of
22 all, is a preclearance county, which means that we have to
23 go to the federal government to preclear everything we do.
24 We have to preclear our poll workers. We have to preclear
25 our equipment and our ballots. We preclear our election

1 sites, our precincts and any changes in our lines.

2 Merced County utilized ES&S after going out with
3 an RFP. Put together a group that -- to evaluate the
4 system, consisting of internal auditors, election
5 officials, and internal -- and IS, Information Services,
6 professionals.

7 We chose ES&S equipment. We've had two elections
8 on that, including the last March election. During that
9 March election and before the March election, we believe
10 that we needed to train not only training our people but
11 we trained the voters. We went out to the public and
12 spent a great deal of effort, actually an award-winning
13 effort. We've been to fairs. We've been to all kinds of
14 groups, all the rotaries Kiwanis, Lions. Every group that
15 would less us talk, we spoke to them. We're on
16 television, radio. Again, we trained the voters so they
17 knew the equipment like our poll workers did.

18 We then trained our poll workers and trained our
19 inspectors and trained them and restrained them with the
20 intent of trying to get them all in three times. I don't
21 know that we accomplished that, but we trained them
22 several times.

23 At the poll, our equipment goes out with the
24 inspector. It is put out at the polling place on election
25 day. It does not go out there prior to that. At that

1 time, it is opened up. It is opened up with two or more
2 people present at all times. It's brought up. A zero
3 tape is created by zeroing out each of its three memories
4 to each of the machines. Those zero tapes are posted in
5 each polling place prior to the election or shortly after
6 the beginning of the election.

7 The equipment is used at the polling site,
8 obviously all day. At the end of the election, they close
9 out the votes. Again, each of the memories are tabulated.
10 Those tabulations are printed out on a paper printout and
11 are posted at the sites. In addition, those posted
12 results, as well as the zero tapes are returned to our
13 office for review and audited at a later period.

14 In the last election, we had all of our equipment
15 back with us and locked up by 9:30. Our equipment is
16 secure. And is that three minutes?

17 CHAIRPERSON KYLE: That is three minutes. If you
18 could wrap it up, and then I think we have a few
19 questions.

20 MR. JONES: Our equipment is secure. And we,
21 again, have been approved by the -- for preclearance. The
22 concern we have is they precleared it because they felt
23 that this equipment would allow minorities, including
24 those who speak in a foreign language would be able to
25 vote easier and not be heckled by possibly other voters in

1 the area.

2 CHAIRPERSON KYLE: Okay. Thank you very much,
3 Mr. Jones.

4 VICE CHAIRPERSON CARREL: I have two questions.

5 CHAIRPERSON KYLE: Mr. Carrel.

6 VICE CHAIRPERSON CARREL: First, do you use
7 electronic or paper provisional ballots?

8 MR. JONES: We use electronic.

9 VICE CHAIRPERSON CARREL: You use electronic.
10 And this is a question that I was asking registrars who
11 were testifying last week. If we were to decertify all
12 electronic voting systems, what would you need to do to be
13 ready for the election this November? What systems would
14 you have to purchase or what do you have currently and how
15 would you do that?

16 MR. JONES: We currently have -- the equipment we
17 use for our absentee balloting would be the equipment that
18 would be used. We have less equipment, but we still have
19 enough for an election.

20 We would have to buy ballot boxes, which we sold
21 after going to the equipment, and we'd have to have
22 sleeves, as well as buying -- ours is a five-year contract
23 with ES&S, so we're going to be buying this equipment --
24 so we'd have to buy ballots. In addition to that, we'd
25 have to hire additional tabulation staff, as well as the

1 attorney's fees that would be required to go to get
2 preclearance. That is pretty expensive.

3 VICE CHAIRPERSON CARREL: I was afraid those
4 attorney's fees were going to be for something else.

5 (Laughter.)

6 MR. JONES: No, I expect a lawsuit, as we saw in
7 October every -- all four of us -- or three of the four us
8 were sued.

9 VICE CHAIRPERSON CARREL: Okay. The last
10 question is in terms of your Optical scan counting, so you
11 count current absentee ballots at the precinct level or do
12 you a central count?

13 MR. JONES: We count at the precinct level.

14 VICE CHAIRPERSON CARREL: Thank you.

15 CHAIRPERSON KYLE:

16 PANEL MEMBER DANIELS-MEADE: I just have one
17 question. My recollection is that preclearance for the
18 DRE takes like 120 days or something. Is that accurate or
19 am I not recalling that correctly? It's a pretty lengthy
20 process, is it not?

21 MR. JONES: It can be extremely lengthy. It can
22 be short. We've been both ways. It depends on how many
23 people they want to contact. They will contact a -- they
24 have a group that they contact of hispanics in Merced
25 County -- and to get their opinions. They've done that

1 extensively in some cases. In other cases they've not.

2 CHAIRPERSON KYLE: Does that answer your
3 question, Ms. Daniels-Meade. Any other questions from the
4 panel, comments?

5 Thank you very much for traveling here from
6 Merced, Mr. Jones.

7 MR. JONES: Thank you.

8 CHAIRPERSON KYLE: The Registrar of Voters from
9 Humboldt County, Carolyn Crnich.

10 Am I pronouncing that correctly?

11 MS. CRNICH: Not quite.

12 CHAIRPERSON KYLE: Please accept my apologies and
13 say so we can all hear it.

14 MS. CRNICH: Thank you for allowing me to address
15 you. My name is Carolyn Wilson Crnich. Carolyn is
16 C-a-r-o-l-y-n. Common spelling of Wilson and common
17 spelling of Crnich, C-r-n-i-c-h.

18 (Laughter.)

19 MS. CRNICH: That's as common as it gets.

20 As the county clerk, recorder and registrar of
21 voters of Humboldt County, information technology is not
22 my area of expertise. So I have made every effort
23 reasonable to surround myself with people who are experts
24 in that field.

25 But we seem to have a divergence of the

1 perception here. You have heard testimony from experts in
2 the area of technology who were concerned about the
3 presence of vendors' representatives in the election
4 department on election day.

5 May I assure you that as the elections official,
6 it is my hope that I will have all the resources necessary
7 available to me on election day in order to conduct an
8 election that is run smoothly, effectively, efficiently,
9 honestly and securely.

10 While others would find concern in the presence
11 of a vendor's representative, I would find reassurance.
12 My only suggestion for the mitigation of this diverse
13 difference of perception might be the requirement of some
14 further bond by each vendor rep on-site on election day.

15 My second concern is both time and money. I fear
16 that additional requirements might make it difficult for
17 certified printers to deliver ballots in a timely manner
18 to all of the counties now required to use them.

19 I'm sure you will use caution in pitching that
20 schedule anymore than absolutely necessary, and money. It
21 often comes down to money.

22 With many counties still contemplating new
23 systems in order to meet the HAVA requirements, I would
24 ask that you please don't thrust us any further into a
25 seller's market that we have now by imposing a further one

1 on the number of vendors available to us.

2 I appreciate your vigilance and that of Secretary
3 Shelley in attempting to assure good elections for
4 California.

5 CHAIRPERSON KYLE: Thank you very much, Ms.
6 Crnich.

7 Any questions from the panel?

8 Mr. Carrel.

9 VICE CHAIRPERSON CARREL: Hi. You're using an
10 optical scan system in Humboldt?

11 MS. CRNICH: Yes, we are.

12 VICE CHAIRPERSON CARREL: And were you on track
13 to move to a DRE system or are you planning on moving to a
14 DRE system?

15 MS. CRNICH: We had an RFP ready to go and have
16 held off on it.

17 VICE CHAIRPERSON CARREL: Okay, thanks.

18 CHAIRPERSON KYLE: Darrell Notla.

19 MR. NOLTA: Darrell, D-a-r-r-e two Ls. Nolta,
20 N-o-l-t-a. I'm a resident of Orange County. Machines too
21 can lie in Orange County. Should the Hart InterCivic
22 Eslate system be used in the November 2004 election in the
23 County of Orange?

24 In the March 2004 election, the right to vote and
25 have it counted in the correct office for every vote in

1 Orange County was violated. The had Orange County Board
2 of Supervisors have a vested interest in convincing voters
3 that the Eslate equipment work as advertised because the
4 County wants to justify its \$26 million purchase and to
5 avoid legal liability for the vote corruption.

6 The current myth is that the inadequate
7 poll-worker training is the sole cause of this corruption.
8 There are many causes of the vote corruption that can be
9 traced directly to Hart's flawed Eslate system, the
10 Registrar of Voters, the poll workers and the voters.

11 Note that only 16 percent of Orange County's
12 polling places had the opportunity to experience the voter
13 ballot mismatch problem. These polling places contain
14 precincts that exist at adjacent district's boundaries.
15 Both tampering and/or corruption can exist given the
16 system flaws and the Registrar's configured Eslate system,
17 such as one a flawed JVC exists that can create a voter
18 ballot mismatch.

19 Two, no meaningful regulation of Hart's
20 InterCivic proprietary trade secret equipment.

21 And three, no voter verified paper audit trail of
22 a voter selection.

23 Hart InterCivic created flawed JVC user interface
24 for the add-voter function that used in the March
25 election. Hart in its design violated the first and

1 second interface design laws, do no harm and do not waste
2 time or require more work. Its user interface mixes
3 ill-defined input and output features on a single screen.
4 Hart implemented a flawed precinct on their autoadvance
5 feature, where the user must know exactly the format of
6 the stored precinct number that made include any leading
7 zeros.

8 This non-robust function contributed directly to
9 the voter ballot mismatches that occurred in my polling
10 place. A robust JVC function should constructed so that
11 its performance is not dependent on the registrar's
12 decision of when to include those extraneous leading
13 zeros.

14 It is difficult to prove that a computerized,
15 electronic voting machine is reliable. It is well
16 established that software based voting machines are
17 discontinuous complex systems that can exhibit unexpected
18 emergent behaviors. The sacredness of the vote for every
19 voter is the foundation of our democracy. The Eslate
20 systems's execution of this right is based on proprietary
21 trade secret software. This is wrong.

22 Paper ballots provided a concrete tangible bond
23 between the voter and the registrar. They were the paper
24 audit trail. Today we have lost our physical bond to our
25 vote to a collection of images of electrons stored in a PC

1 memory card. Hanging electrons are now possible.

2 The Orange County Registrar of Voters appears to
3 be taking the following actions for the November election:

4 Modifying the poll-worker training; constructing
5 a set of polling places where a polling place consists of
6 multiple precincts and one ballot style; three, masking
7 the flawed JVC user-interface by automating the add-voter
8 function to achieve the correct voter ballot match.

9 For the November 2004 election, the question is
10 will the Secretary of State allow Orange County to use a
11 reconfigured Eslate system or to use absentee paper
12 ballots and optically scanning for the non-absentee
13 voting. I hope that whatever voting system is chosen will
14 achieve minimum corruption of the people's vote.

15 Thank you very much for letting me speak.

16 CHAIRPERSON KYLE: Any questions from the panel?
17 Comments?

18 Thank you very much.

19 MR. NOLTA: Thank you very much.

20 CHAIRPERSON KYLE: Dr. David Bayer.

21 DR. BAYER: Good morning. I'm here representing
22 LULAC. Before the letter I'm going to read I'm going to
23 make some preliminary comments. And Dr. Ayala from LULAC
24 is also accompanying me Armando Ayala.

25 PANEL MEMBER DANIELS-MEADE: Can you identify

1 yourself please.

2 DR. BAYER: I'm David Bayer.

3 PANEL MEMBER DANIELS-MEADE: Spelled?

4 DR. BAYER: Excuse me?

5 PANEL MEMBER DANIELS-MEADE: Spelling?

6 DR. BAYER: B-a-y-e-r like the aspirin.

7 CHAIRPERSON KYLE: The issue here is not training
8 voters. The issue here is security of the machines. The
9 programming of the machines. I worked -- and you can ask
10 me questions after I read the letter. I worked in
11 computer security in Peru as a deputy executive officer.
12 If you want to ask me questions about that, we'll go over
13 what the problem with the security is.

14 The other issue is that the programs for these
15 computers cannot be in private hands. The programs must
16 be in the public domain in the hands of the election
17 officials. That means that any private machine, and I'm
18 talking about electronic voting machines, that has
19 programs put up by private enterprise should not be
20 allowed in any public voting contest.

21 Now, today you -- and I want to thank you all of
22 you for your hard work, and I want to thank Secretary of
23 State Shelley for holding these panel hearings. What is
24 at issue here is nothing less than our democracy. What
25 this decision that you make and the Secretary of State

1 makes is going to affect the rest of the nation.

2 So what is at issue is our democracy. This is
3 far beyond just this meeting here. Let me read the LULAC
4 letter and then you can ask questions about voting
5 security.

6 "Dear Secretary of State Shelley, at
7 the League of United Latin American
8 Citizens, LULAC, annual district 13th
9 convention held on Saturday, April 24th,
10 it was approved unanimously that the
11 seven councils representing District 13
12 stands opposed to the use of direct
13 recording electronic voting machines
14 without a voter verified auditable paper
15 trail in federal and State elections.

16 "With the recent disclosure that not
17 one of the Diebold DREs in the county
18 elections' departments in California met
19 certification standards, due to
20 unapproved or undisclosed software when
21 tested, this only reinforces LULAC's
22 opposition.

23 "Since we cannot be certain that
24 electronic voting machines from other
25 vendors meet these standards, LULAC asks

1 that you expand the recommendation of
2 the Voting Systems and Procedures Panel
3 which voted 8 to 0 on April 21st, 2004
4 to decertify 15,000 Diebold machines,
5 and order all DRE, direct recording
6 electronic, voting machines in
7 California without a voter verified
8 auditable paper trail be decertified
9 prior to the November second 2004
10 general election."

11 CHAIRPERSON KYLE: Dr. Bayer, can you please
12 summarize?

13 DR. BAYER: Then we make reference to the support
14 letter from none-partisan Senator Don Peralta and Ross
15 Johnson, the March 11th letter which they sent to the
16 Commission.

17 CHAIRPERSON KYLE: Which has been entered into
18 the record.

19 DR. BAYER: Yeah. So basically I also am going
20 to hand over to the panel, I think this was Emailed and
21 sent into Mr. Wagaman and the Secretary. I'm going to
22 hand in a preliminary analysis which shows the following
23 related to the --

24 CHAIRPERSON KYLE: Please wrap it up though.

25 DR. BAYER: The Diebold machines produced four

1 times as many votes for Schwarzenegger as for Bustamante,
2 relative to the non-Diebold machines in the recall
3 election and this document at the end has the two sheets
4 which draw data from the Secretary of State's database on
5 the recall election.

6 I ask each one of you to review this highly
7 unusual situation.

8 CHAIRPERSON KYLE: We'll have copies made and
9 distributed to the panel members and your submissions will
10 be entered into the record.

11 Thank you.

12 Any questions?

13 Mr. Carrel.

14 VICE CHAIRPERSON CARREL: I'm intrigued because
15 LULAC is the first organization who's testified before us
16 representing an ethnic community that is opposing DREs.
17 And the argument has been made that DREs can enhance the
18 ability for non-English speakers to read a ballot in a
19 foreign language if the individual can't read, and very
20 well prefers to read in another language.

21 And by supporting the voter verified paper trail,
22 an issue that has arisen, which is something in our draft
23 standards, it's an issue that we're, I think, going around
24 with, which is in terms of printing out the ballot, if an
25 individual votes on a DRE machine with a voter verified

1 paper audit trail, and votes in a foreign language in
2 Spanish or in Chinese or Korean, does your organization
3 have a preference on what the VVPAT audit trail should
4 show? Should it show their choices in English or should it
5 show their choices in Spanish?

6 Because it presents obviously the issue of
7 readability for the elections officials when doing the
8 recount versus readability for the voter in doing the
9 confirmation. But it also presents the issue of, if
10 you're only a Spanish speaker and it's printed only in one
11 ballot in Spanish at that whole polling place, there's a
12 question of secrecy and privacy. So has your
13 organization taken a position on that issue?

14 DR. BAYER: We haven't looked at that
15 specifically. I don't think that's the major issue,
16 however. I think the major issue that I've talked to that
17 we've talked that LULAC's letter talks to is the security
18 of the machines.

19 VICE CHAIRPERSON CARREL: I'm aware of that issue,
20 but this is an aside issue.

21 DR. BAYER: This is about the security of being
22 able to break in and to reprogram the machines while the
23 vote is going on. And that can be done in a decentralized
24 fashion. I don't really -- I hope the people understand
25 the gravity of -- I know you do, but I'm not sure the

1 public understands that you can break into computer
2 systems.

3 When we were in Lima, we were the test mission,
4 U.S.A. ID mission. They brought down a team of experts
5 and they broke into our system in ten minutes. They
6 called me in, and they called me our systems manager.

7 VICE CHAIRPERSON CARREL: I don't want to --

8 DR. BAYER: I just want to make sure the public
9 understands that these are not secure machines.

10 VICE CHAIRPERSON CARREL: I think reading the
11 reports that we have here explain some of those issues.

12 DR. BAYER: Thank you for your time.

13 CHAIRPERSON KYLE: Any other questions or
14 comments?

15 Thank you very much, Doctor.

16 DR. BAYER: Thank you.

17 CHAIRPERSON KYLE: Dr. Armando Ayala. Doctor,
18 and we have a mic.

19 DR. AYALA: Thank you for recognizing me. I'm a
20 cultural anthropologist and linguist.

21 First of all, we're referring only to the
22 Hispanic population. But as you know and it was
23 acknowledged by Time Magazine, February 2nd of last year,
24 that Sacramento itself is the most diverse city in all of
25 the United States.

1 Culturally, you're going from an agricultural
2 citizenship into cyber space, which is very, very
3 difficult to make the people understand and approve of
4 this system that we're breaking into.

5 So if you have any questions on that, please ask.

6 Thank you.

7 CHAIRPERSON KYLE: Thank you, Doctor.

8 Are there questions from the panel?

9 Thank you very much.

10 Jeremiah Akin.

11 MR. AKIN: I have CD to submit.

12 CHAIRPERSON KYLE: Great. Would you mind turning
13 the mic up so that you can talk right into it.

14 MR. AKIN: My name is Jeremiah Akin, and I'm a
15 concerned voter from Riverside County.

16 I want to tell you a few reasons why all touch
17 screen voting machines should be banned from the November
18 election.

19 The first reason is that the security procedures
20 needed to ensure that uncertified code is not used simply
21 do not exist. The fact that Diebold was able to install
22 uncertified software in 17 counties exposes more than the
23 fact that Diebold broke our election laws. If the
24 federal, state and county security procedures were
25 sufficient, Diebold would not have been able to break

1 election laws by installing uncertified software.

2 The inadequacy of federal, state and county
3 security policies and procedures is made obvious by the
4 fact that they have been violated in such a blatant
5 manner, not only by Diebold, not only in our State.

6 The fact that ES&S has recently been caught using
7 uncertified software in Indiana reminds us that this
8 problem extends past Diebold's willingness to break
9 election laws. It is the combination of the propensity of
10 the part of multiple companies towards unlawful and
11 shamefully irresponsible practices, and the gross
12 inadequacy of the current security policies and procedures
13 to catch such practices in time that poses a great and
14 unprecedented threat to the U.S. democratic process.

15 Until it can be proven that there are methods
16 that prevent uncertified, untested software from being
17 used in an election, it is reckless to allow the use of
18 machines that do not produce the voter verified paper
19 trail.

20 Another reason to ban all DRE touch screen
21 machines from the November election is the fact that the
22 testing process for election's software lacks public
23 oversight.

24 Currently, software security and quality is
25 monitored by for-profit testing agencies rather than by

1 the public. The public is told that they can't examine
2 the code that runs their elections and counts their votes
3 because the Government-approved testing labs provide
4 audits on the software.

5 This lack of public oversight invites abuse.
6 Without public oversight, a voting machine vendor and an
7 auditing firm can work together to deceive the public
8 without the security of election's software.

9 Surely everybody remembers how Arthur Andersen
10 and Enron cooperated to defraud Americans. It was Arthur
11 Andersen's responsibility to report problems with Enron's
12 books instead, Andersen helped conceal them from the
13 public.

14 Have any of the testing companies colluded with
15 voting machine vendors? Without public oversight of the
16 testing process it is impossible to know.

17 However, recently leaked documents from Wyle
18 bring up some serious questions. The CDs that have been
19 passed around the auditorium today contain, among other
20 things, several images of a testing report by Wyle that
21 was done on Sequoia's firmware for the Edge Voting
22 Machines. Allow me to read a few highlights.

23 This is from Image, "Wyle Underscore 2001-88."

24 "These differences were almost
25 immediately apparent to the reviewer as

1 the functions reported were small. It
2 is left to the vendor to confirm that
3 other changes in more involved elections
4 had no effect on the behavior.

5 "The fact that any part of the audit
6 was left to the vendor completely
7 undermines the purpose of the audit.

8 One can only hope that no serious flaws
9 or malicious code were in the portion of
10 the system that was left to the vendor
11 to confirm."

12 CHAIRPERSON KYLE: Mr. Akin, can you please
13 summarize.

14 MR. AKIN: Okay. Let me just read one more
15 statement from the Wyle reports.

16 "Some of the issues above were
17 passed in previous reviews, and as such
18 will not prevent certification of the
19 current release. They are expected,
20 however, to be addressed as a matter of
21 compliance in releases in the reasonable
22 future."

23 This shows us that Wyle pass code has issues not
24 once but multiple times, but it's hope that these issues
25 were actually fixed and not just passed over again.

1 CHAIRPERSON KYLE: Thank you very much, and that
2 CD -- is anything written, does that include your written
3 comments?

4 MR. AKIN: Yeah, it has some notes and images and
5 some images that I gave you too.

6 CHAIRPERSON KYLE: Okay. Hold on a second,
7 please.

8 Any questions from the panel?

9 VICE CHAIRPERSON CARREL: I'm just wondering --
10 you said they were off the Internet and they're Wyle
11 documents analyzing Sequoia's system --

12 MR. AKIN: They were available on the Internet.
13 I believe the web site is down right now. I think it was
14 posted on somebody's personal computer, and -- but there
15 are FTP sites and I believe you can get them from some
16 peer to peer software, too.

17 VICE CHAIRPERSON CARREL: I'm just wondering how
18 they were --

19 MR. AKIN: I know that they are authentic and I
20 can prove that in court.

21 VICE CHAIRPERSON CARREL: Okay.

22 (Laughter.)

23 CHAIRPERSON KYLE: Any other questions or
24 comments from the panel?

25 Thank you very much.

1 Brian Barry.

2 MR. BARRY: Good morning. My name is Brian
3 Barry. It's B-r-i-a-n, B-a-r-r-y. And I live in Santa
4 Clara, California. I have a bachelor's degree and a
5 master's degree in computer science, and I've been
6 building very complex firmware based systems for decades.

7 On March 2nd, 2004, I voted in Santa Clara on AVC
8 Edge touch screen voting system built by Sequoia Voting
9 Systems.

10 I was so scared about my experience that I wrote
11 an article about my experience for commondreams.org.
12 You'll read -- you can see it on March 4th up on the web
13 site.

14 Why was I a scared?

15 Because I know the freedom a system designer has
16 to manipulate the data and even change the running program
17 inside such a system without detection. On election
18 night, there it was, right there in front of me. I'd like
19 to make seven points about this.

20 One, the system generated no ballot. The system
21 supposedly recorded my vote on what? A modifiable flash
22 card. Anyone possessing this flash card can rewrite
23 history and modify any or all the votes. If the system
24 modified or deleted my vote, no one would ever know.

25 Two, you are asking the voters of California to

1 trust a private for-profit corporation to take good care
2 of our votes from start to finish. One seamless flow of
3 electronic data from the touch screen all the way to the
4 final counts. All under the control of a private
5 corporation, which may not even be a U.S. corporation.

6 Three, it's not possible to prove that a
7 particular version of a program that's running on a voting
8 system was actually built from a particular set of source
9 code. Therefore, examination of any source code to
10 establish confidence in a voting system's executable
11 program won't give you the assurance you're looking for.

12 You won't be able to track a program back to its
13 source. Even if you could, any program can replace part
14 or all of itself while it is running. THIS is standard
15 stuff.

16 Four, the banking industry successfully uses
17 double entry bookkeeping. We should do no less. But in
18 order to make the comparison you have to have two things
19 to compare. If you have A, the paper ballots and B, the
20 vote totals, you can cross check them.

21 Five, we need reliable systems that produce paper
22 ballots that the voter must verify and then submit to be
23 counted. These ballots must be kept and used later for
24 recounts.

25 Six, if you remove the ability to detect or prove

1 fraud in an election, then you can claim that an election
2 is free of fraud. How can anyone ever prove you wrong?

3 Seven, on Secretary of State Kevin Shelley's web
4 site, the Statewide Primary Election Report describes an
5 election as an opportunity to express the consent of the
6 governed. Yes. And I'd like to remind everyone that the
7 legitimacy of the government comes from the consent of the
8 governed as well.

9 Our ability to even express our consent has been
10 threatened creating a gap between legitimacy and consent.
11 Please, honorable people of this board, close this gap.
12 Uphold and protect our precious right to vote. American's
13 will cheer you with joy if you do. I know I will.

14 Thank you.

15 CHAIRPERSON KYLE: Thank you, Mr. Barry.

16 Any questions or comments?

17 Mr. Jefferson.

18 PANEL MEMBER JEFFERSON: I'm sorry. I didn't
19 catch the beginning. You said you worked for Sequoia?

20 MR. BARRY: No, I don't.

21 PANEL MEMBER JEFFERSON: I'm sorry. What did you
22 say?

23 (Laughter.)

24 MR. BARRY: My name is Brian Barry, and I live in
25 Santa Clara, California. And I have a BS and an MS in

1 computer science. I've been building these kinds of
2 systems, not voting systems.

3 PANEL MEMBER JEFFERSON: Oh, these kind of
4 systems. Okay, so I understand.

5 MR. BARRY: These kinds of firmware based, small
6 systems dedicated to some purpose for decades. I worked
7 in the telecommunications industry, you know, the
8 hand-held industry, process control, engineering. All
9 kinds, you name it.

10 PANEL MEMBER JEFFERSON: Thank you.

11 CHAIRPERSON KYLE: Thank you very much. If you
12 have anything written, you want to submit it, please feel
13 free.

14 MR. BARRY: My public statement.

15 CHAIRPERSON KYLE: Natalie Wormeli. And we have
16 a microphone coming your way.

17 MS. WORMELI: Hi. My name is Natalie Wormeli,
18 N-a-t-a-l-i-e, W-o-r-m-e-l-i.

19 I'm a California voter with multiple
20 disabilities. I'm both completely blind at this point,
21 have manual dexterity issues, as well as use a wheelchair.
22 I graduated of King Hall School of Law Class of '93,
23 california attorney and civil rights activist as well as
24 an advocate.

25 But I'm not here speaking on anybody's behalf

1 other than my own. I have gotten an award for civil
2 rights activism work and as an advocate in the City of
3 Davis. I work for Stanislaus county, running a hotline
4 giving free advice to people who are working their way
5 through the system. Again, I'm only here representing
6 myself though.

7 I wasn't going to get involved in this debate at
8 all. And then I turned on this Thursday night evening
9 news last week and heard some people being interviewed on
10 their way after testifying here. And what caught my
11 attention was a visually impaired man speaking about his
12 experience voting on a DRE for the first time, voting
13 independently. And as he described it, he said he was
14 getting choked up even talking about it. And what a
15 wonderful independent moment that was for him, first time
16 he was able to vote quote "independently and privately."

17 That's all well and good, and I understand the
18 concept. I understand the wonderful moment of doing
19 things independently. I've had those. I've had wonderful
20 times with technology, wonderful times working with a
21 guide dog. Those are all about independence.

22 But for this, it just made no sense to me at all.
23 He had this wonderful moment, and that's all well and
24 good. And I look forward to that moment, where I get to
25 vote independently. But that's worthless if that vote is

1 not properly counted. That's worthless if that vote is
2 not secure. It makes no sense to have these DREs without
3 any sort of paper verification.

4 And there is technology out there to make the
5 paper verification accessible to visually impaired people.
6 I don't know if you've heard of testimony about these
7 systems, but they are out there. They're not the systems
8 that were used in the 14 counties, but they're available
9 and it's worth waiting for.

10 I know that HAVA has written into the federal law
11 that by 2006 there must be accessible voting so that
12 people can vote privately and independently. 2006 makes
13 sense. That deadline is worth the wait. And I know we're
14 going to get there some day and I do look forward to it.

15 There's a lot of rhetoric going around. I've
16 heard that, you know, well meaning advocates as well as
17 people with disabilities are talking about issues of
18 disenfranchisement. Using that word is a heated word and
19 it's disingenuous, quite honestly.

20 Being enfranchised means you have the right to
21 vote. I have the right to vote. I've had the right to
22 vote since I turned 18. Whether or not someone votes or
23 not has -- there's all sorts of factors involved. I don't
24 know if there's data out there. I don't if there have
25 been polls or surveys done about whether or not people

1 with disabilities don't vote as often as the regular
2 public.

3 I heard of a poll, but I've never been surveyed.
4 I don't know if that information is out there. I'd love
5 to know. But I do know, I just heard the other day, that
6 the women of the United States in 2000, 50 million women
7 who could have voted, didn't vote. That was their choice.
8 I don't know why they didn't vote. I voted. I voted with
9 the assistance of an individual. That's how I've had to
10 vote in the past. I relied on my husband. I've gone with
11 family members.

12 California allows two assistants to help a person
13 who needs access to the machinery or needs stuff read to
14 them, whatever the issue is. They can have two
15 assistants. So if people are worried about, you know,
16 some sort of tampering, they can bring two assistants.

17 CHAIRPERSON KYLE: Mr. Wormeli, could you please
18 summarize.

19 MS. WORMELI: Yeah. I would like to share with
20 you my experience with technology though. Is that all
21 right?

22 CHAIRPERSON KYLE: Yes. If you could keep it --
23 wrap it up here.

24 MS. WORMELI: I will. So my experiences with
25 technology come from the fact that I lost my sight, wow,

1 28 years ago. And I got a computer during law school, so
2 that was 12 years ago. And at that point, I still had
3 good manual dexterity, so I could use a keyboard.

4 And so I needed just a system that would read to
5 me what was appearing on the screen, what I was typing.
6 And the system worked well for me for a few years. I
7 could do my own Lexis searches all that stuff. It was
8 great.

9 But it was a DOS system. The software was just
10 working for DOS, and it was quickly -- you know, after I
11 used it for a few years, it was passe. And I had to wait
12 for the technology to catch up. And then eventually there
13 was a Windows based system that made more sense. Again, I
14 was back in business. It was great.

15 And that was all well. But what I'm learning now
16 that since that's such a small market, that it does take
17 awhile for the software to catch up. So now because of my
18 manual dexterity issues, I need a system that works --
19 that's a speech to text system, and I bought that.

20 Well, speech to text working with a voice to
21 text, they don't work together. So again, I'm in a
22 situation where the software hasn't yet come up -- caught
23 up with what I need.

24 And that's because people with disabilities tend
25 to be a quote "small market." Well, when we're talking

1 about voting machines, that's a huge market. And those
2 who are designing the systems have to keep disability in
3 mind, and they are.

4 So the technology will catch up with us some day,
5 but I refuse to be an impatient passenger in the back seat
6 saying, "When are we going to going there? When are we
7 going to get there?"

8 I know we're going to get there, but we need to
9 get there safely and with everybody on board.

10 Thanks so much.

11 CHAIRPERSON KYLE: Thank you very much.

12 Any questions or comments from the panel?

13 PANEL MEMBER DANIELS-MEADE: It should be noted
14 that she did also submit a letter to us containing most of
15 that information, which I assume will be in the record.

16 CHAIRPERSON KYLE: Yes, you did.

17 PANEL MEMBER DANIELS-MEADE: We all have that.

18 CHAIRPERSON KYLE: Okay, great.

19 Thank you.

20 And that record -- it is duly entered into the
21 record. Thank you very much, Ms. Wormeli. We appreciate
22 it.

23 Also, we got -- I need to just take a break.

24 We have a copy of a letter from Assemblymember
25 the Wong, the Wong Bill. Did we receive one last week?

1 ELECTIONS ANALYST WAGAMAN: I didn't receive one,
2 no.

3 CHAIRPERSON KYLE: We'll have to look for that in
4 a minute. We'll do it in a second, Ms. Daniels-Meade.
5 Let's finish the testimony.

6 Okay. I'm going to go to a couple people who
7 were called on last week, and did not get a chance to
8 testify on this issue.

9 Gregory Luke.

10 MR. LUKE: Good morning. Thank you for letting
11 me speak to you. My name is Gregory Luke, L-u-k-e. I'm
12 an attorney with Strumwasser & Woocher in Santa Monica,
13 California, a firm that specializes in election law.

14 I should also just mention I spent five months
15 working on the Joint Taskforce of the ACLU affiliates of
16 California looking into DRE issues and VVPAT interviewing
17 a wide range of groups and stakeholders on this issue. So
18 I've gained at least some basic footing in this material
19 I've read and studied and detail the reports submitted by
20 the Ohio Secretary of State and Maryland. I've tried to
21 do as much background as I possibly could.

22 I should note that when we were recently retained
23 to represent a candidate in Riverside County to request a
24 recount of elections, I was, at the time, a cautious
25 supporter of DRE technologies.

1 And I am here today to inform you that after our
2 experience of over the past six weeks, quite sadly, I am
3 here to tell you there's -- we've got a problem, Houston,
4 a very serious problem.

5 And this problem goes to the heart of what has to
6 be done over the next few months in preparations for
7 November's elections. Whatever theoretical capabilities
8 these machines have to create a record means nothing if
9 Registrars of Voters do not, in fact, implement those
10 capabilities when requested to do so.

11 In early March my client requested a recount of
12 the election in Riverside County. And she asked, as is
13 her right under California Elections Code, for all
14 relevant materials to be produced during the course of
15 that recount.

16 Most prominently what we requested were things
17 like audit logs. We also requested that the redundant
18 data stored in the machines be compared with the data that
19 came out through the PCMCIA cards. And we also requested,
20 of course, some indication, some evidence of the chain of
21 custody of all forms of stored data.

22 The recount was declared over without the
23 production of any of these materials. In fact, what we
24 were subjected to was a reprint not a recount. And I urge
25 this panel please, please, please in your consideration of

1 what you're going to tell Secretary Shelley to take
2 account of the fact that the law has not caught up with
3 these machines.

4 Unlike some of the good public servants who have
5 been here this morning, the Registrar in Riverside County
6 does not use machines that produce zero tape printouts.
7 They do not printout end-of-the-day results. We requested
8 a wide range of materials, none of which were produced.

9 The only thing we treated to, with respect to
10 these machines, was the comparison of -- a reprint of the
11 data that was stored in the EMS tally system to materials
12 that were drawn from the PCMCIA cards. As you well know
13 this is not -- all the data essentially shows is that,
14 yes, 60 years ago IBM figured out to make a computer that
15 counts. There are so many other issues that go to the
16 authenticity And the integrity of this data, such that
17 what happened to us in Riverside was not in fact a
18 meaningful recount. It was a sham. It was a show.

19 And I urge you in the strongest possible terms to
20 make sure that whenever this type of technology is used
21 our elections, laws must be in place to compel local
22 elections officials to provide for a meaningful recount,
23 not a dog and pony show.

24 I'm happy to answer any questions. I've also
25 submitted some materials and I'm also happy to submit, you

1 know, documentation of materials we requested, anything
2 that would help you --

3 CHAIRPERSON KYLE: Thank you very much.

4 MR. LUKE: -- in your consideration.

5 CHAIRPERSON KYLE: Any questions from the panel?

6 And you submitted a letter?

7 MR. LUKE: I have submitted, yes.

8 CHAIRPERSON KYLE: Okay. So we'll enter that
9 into the record.

10 CHAIRPERSON KYLE: Thank you very much, Mr. Luke.

11 MR. LUKE: Thank you very much for your work.

12 CHAIRPERSON KYLE: Kim Alexander.

13 MS. ALEXANDER: Mr. Luke was your contact
14 information on your -- the question you raised, was it on
15 your letter submitted?

16 MR. LUKE: Yes, sir. It's on letterhead.

17 CHAIRPERSON KYLE: Thank you.

18 MS. ALEXANDER: Good morning. I'm Kim Alexander,
19 president of the California Voter Foundation. That's
20 K-i-m, A-l-e-x-a-n-d-e-r.

21 And I had the pleasure of addressing this panel
22 last week and shared some thoughts with you, submitted
23 testimony. I won't repeat what I said last week. I want
24 to thank you for your decision last week. It took a lot
25 of courage to turn the tide on this issue, but we are

1 turning it. And that's thanks to this panel.

2 I want to -- I've been doing a couple things over
3 the last few days. I've been reading your report from
4 March 2nd. And I have to congratulate you on the
5 thoroughness and specificity of that report, and remind
6 you why I believe we should decertify all paperless
7 electronic voting systems, not just the Diebold TSx
8 machine, but all the machines used in all 14 counties in
9 California, until they can produce results that can be
10 verified.

11 First of all, we need to decertify because we
12 know federal and State testing and certification is
13 inadequate. The TSx revealed this. All of our systems
14 have gone through this rickety system, not just the TSx.
15 All of our systems are only certified to 1995 federal
16 voting system standards.

17 And these standards speak only to limited use of
18 software in the voting process. They do not speak to the
19 risks inherent in a 100 percent computerized voting
20 system. And it's 2004. It is unacceptable that we would
21 allow voting equipment that is tested to ancient standards
22 and is inauditable to be used to transact our ballots
23 today.

24 And we also know from your report that all the
25 vendors sought last minute changes, not just Diebold. And

1 you said in the 60 days prior to the election, every
2 manufacturer of DRE equipment used in the primary sought
3 approval of last minute changes to software, firmware and
4 hardware.

5 And given that vendors continue to request
6 changes to voting systems, after the March Primary to
7 address problems with touch screen used in that election,
8 there's every indication that this disturbing pattern of
9 last minute requests to approve and modify-type
10 modifications to touch screen systems will continue during
11 the preparation of the November 2004 election.

12 So your report said that you anticipate that we
13 will continue to see these last minute changes all the way
14 through the next six months, based on what we've
15 experienced in the recent past. Your report also
16 plainly states that historically most of the testing of
17 election equipment has been focused on functional testing
18 of the mechanical aspects of the voting systems to
19 determine whether the equipment functions as needed in
20 reporting and tabulating votes.

21 The advent of computerized equipment has required
22 a fundamental change in testing procedures because
23 software must be analyzed for bugs, malicious code, back
24 doors and similar security problems that could result in
25 errors and could create the potential for tampering.

1 Often these problems will not be detected by
2 functional testing. That's in your report. And this is
3 not any problem. We know, this is an old problem that has
4 not been solved yet. Any security expert will tell you
5 that performing a threat analysis is essential.

6 I'll never forget the day when Paul Coacher, a
7 cryptographer, showed up for the Ad Hoc Touch Screen
8 Taskforce and asked is there a threat analysis? No,
9 there's no threat analysis.

10 At least in California we've been verifying the
11 small amount of software that we have. We do this through
12 the manual count law. We've done it through since 1965.
13 But we can't view this verification anymore with the DREs.
14 If DREs violate the California manual count law, if you're
15 worried about lawsuits, there could be lawsuits brought on
16 anyside of this issue.

17 It is very clear that the DRE machines cannot
18 satisfy the requirements of the California Manual Count
19 Law, which clearly sets that we must verify software
20 counted tools. That's the purpose of the law.

21 Study after study --

22 CHAIRPERSON KYLE: Could you please summarize.

23 MS. ALEXANDER: Yes, I will.

24 There have been studies that were done,
25 primarily, the Compuware study found that problems with

1 the systems aren't limited to Diebold. All of the vendors
2 have some degree of significant security issues inherent
3 in their systems. HAVA is a broken promise. This bill
4 required transfer of federal oversight to NIST.

5 That has not happened. This SOS audit of the 41
6 other counties shows that the equipment and software being
7 used across the State doesn't appear on the State's
8 official certified list. So I would really urge you to
9 decertify, because we cannot put this 21st century
10 equipment into our 19th century polling places. We cannot
11 rely on federal and State testing and oversight of these
12 systems.

13 And even if everything appears to go perfectly,
14 we still can't verify the results.

15 CHAIRPERSON KYLE: Thank you.

16 Any questions from the panel?

17 Comments?

18 Thank you very much.

19 Anything in writing you want to submit?

20 MS. ALEXANDER: I'll Email it later.

21 CHAIRPERSON KYLE: Thank you very much.

22 VICE CHAIRPERSON CARREL: She has our Email
23 address.

24 (Laughter.)

25 CHAIRPERSON KYLE: I'm going to close public

1 testimony at this time.

2 MS. SMITH: Thirty seconds?

3 CHAIRPERSON KYLE: No, I'm sorry. Everyone else
4 who's made a request, ma'am, has spoken at least several
5 times before, including yourself.

6 MS. SMITH: These are letter from other people.

7 CHAIRPERSON KYLE: If you submit them ma'am will
8 add those into the record. I'm not going to take other
9 public testimony, at this point in time.

10 I do want to have the Assembly Member Wong Bill's
11 letter entered into the record. So we're going to take a
12 break in a minute. And if Ms. Daniels-Meade if you could
13 get a copy that I'd appreciate it.

14 PANEL MEMBER DANIELS-MEADE: I'll do it.

15 CHAIRPERSON KYLE: All right. We have it now.
16 So it's going to be entered into the record. And, in
17 essence, let me quote the punchline. "I urge you not to
18 decertify touch screen systems." And I summarized it as I
19 had on -- if you could pass these out too, the other two
20 letters that were submitted. If those could be entered
21 into the record, please.

22 And anyone else who wants to submit something
23 could be entered into the record. And having closed
24 public testimony, I'm going to take a ten minute break.

25 I have 11:25.

1 We'll reconvene at 11:35.

2 (Thereupon a recess was taken.)

3 (Thereupon a lunch break was taken.)

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1 AFTERNOON SESSION

2 CHAIRPERSON KYLE: I would just ask folks to turn
3 their cell phones and pagers to vibrate or silent. We had
4 a lot of beeping going on in the morning.

5 Thank you.

6 Let's commence with the second afternoon part of
7 the agenda. Public testimony is closed on Item number 3.
8 And we read into the record a portion, but entered in
9 totality Assemblymen Long Bill's letter. I believe
10 everything has been entered into the record.

11 I now want to open the -- and let me just
12 apologize also for the delay earlier. I'll explain that
13 in part later when it's my turn to comment. And I'll
14 reserve my right to speak till later. I want to open the
15 meeting now to panel discussion of what their thoughts are
16 about the Item number 3. And then I'd like to talk as
17 well. But I'm going to start to my left.

18 Ms. Riley, do you have any comments that you'd
19 like to make?

20 PANEL MEMBER RILEY: No, I do not.

21 CHAIRPERSON KYLE: Mr. Mott-Smith.

22 PANEL MEMBER MOTT-SMITH: Well, I do, but I'm not
23 sure that I want to be the first to start.

24 CHAIRPERSON KYLE: Okay.

25 (Laughter.)

1 CHAIRPERSON KYLE: Well, we'll hold off for you.
2 And Ms. Riley we'll come back to you if you want to.

3 Mr. Jefferson, never shy for words, would you
4 have any comments?

5 PANEL MEMBER JEFFERSON: Well, so just a little
6 bit of procedure here. We're commenting without a motion
7 on the table, is that right?

8 CHAIRPERSON KYLE: Yeah, just about -- if you
9 have anything you want to elucidate on. I do have a
10 motion that I was working on earlier. I had worked on
11 something over the past week, based on all the testimony
12 and what has been submitted and the reports. I had
13 thought I might rough that out a little bit in five
14 minutes or less, and it took much longer than I thought.

15 So if people -- but I would encourage people
16 to -- panel members to speak now, and then I'm willing to
17 entertain a motion from any other panel member or I have
18 one as well.

19 PANEL MEMBER JEFFERSON: So the procedure we'll
20 be that we make the bulk of our comments now and then
21 there will be a motion and then short comment?

22 CHAIRPERSON KYLE: Yes.

23 PANEL MEMBER MOTT-SMITH: I changed my mind.

24 (Laughter.)

25 CHAIRPERSON KYLE: Mr. Jefferson, would you like

1 to --

2 PANEL MEMBER JEFFERSON: I yield the floor.

3 CHAIRPERSON KYLE: Okay, you yield.

4 Mr. Mott-Smith.

5 PANEL MEMBER MOTT-SMITH: I guess, in very
6 general terms, because we don't have a motion to discuss,
7 it is my feeling and perception that there is no one line
8 of facts that leads straight to a single conclusion in
9 terms of what the value is for DREs in November or paper
10 trails in November. And at some point in overlaying
11 whatever facts are on the table, whatever view points you
12 come from, because there is not one arrow, in my view,
13 leading to a conclusion, policy has to overlay.

14 And the truth of the matter is is that the
15 Secretary gets to set the policy in terms of voting
16 equipment in California by statute. And it is my very
17 strong impression that -- more than an impression, that
18 paper is coming to California. It's not a question of if,
19 it's a question of when.

20 And that reality is something that I think
21 everybody has to get their minds around at some point.
22 And to a certain extent it confuses me the reaction that I
23 feel from some against the notion of paper. This isn't a
24 singularly different issue, in the sense that we've had
25 requirements on the election process before. We've had

1 requirements for languages. We have had requirements for
2 disability access. We've had requirements for half open
3 primaries.

4 And all of those things have been accepted
5 because they are the law of the land and the lay of the
6 land. And all of those things have been accomplished.

7 Paper, in my view, is one of those things. And I
8 think I mentioned, and it needs -- and it will be
9 accomplished in California, if I read the Secretary's
10 direction correctly.

11 One of the things that we see here that I wish I
12 could share with everybody, but can't, is that we have an
13 extraordinarily proficient clipping service for news
14 articles from all over the country. And whereas a few
15 years ago I think it would be fair to say that this issue
16 was not on the public radar and that it might have been in
17 the minds of a few people, important. It is now on the
18 public radar, and it is not going off the radar. It is
19 just starting in terms of the focus on voting equipment.

20 But the truth of what we see here is that about,
21 and I'd say conservatively, 20 to 1 the news articles from
22 around the country and in California are basically pushing
23 for a paper trail.

24 So I guess I'm stating an opinion, but I'm also
25 basically asking those who resist the notion that paper is

1 coming to open your minds to this, because I think what
2 we're looking at at this point is implementation, not
3 whether or not to do it.

4 However, my feeling is that this is not something
5 that is likely for November. It's not something that is
6 impossible, and I wouldn't want to close the door or
7 foreclose that possibility. In fact, I'd like to
8 encourage that possibility, but I don't -- just for the
9 information, I don't happen to fundamentally see it as
10 something that's likely to happen for this November.

11 So that leaves us with two potential options.
12 One is to not use the DREs at all or to use the DREs with
13 protections and securities. And I'm interested in hearing
14 from the rest of the panel.

15 But my initial belief is that the value of these
16 machines used in conjunction with the security measures
17 that we talked about and implemented for the March
18 election outweighs the potential of not using them, or the
19 downside of not using them in November.

20 So that's my starting point for this discussion.

21 CHAIRPERSON KYLE: Thank you, Mr. Mott-Smith.

22 Mr. Jefferson, do you want to go now?

23 PANEL MEMBER JEFFERSON: So I'll make some
24 comments before and then some comments for a motion.

25 CHAIRPERSON KYLE: Yes.

1 PANEL MEMBER JEFFERSON: So three or four years
2 ago when DREs were first certified and first used in
3 California, I don't think we knew what we know now. The
4 security community had not paid attention to these issues.
5 No one had articulated what the vulnerabilities were and I
6 actually knew about the machines, and I did not enter
7 objections. I had not thought out the issues at that
8 time, three or four years ago.

9 So when Riverside County became the first county
10 in California to adopt DRE machines, I didn't object. In
11 fact, I thought it was a progressive idea.

12 But over the last three years, we have learned a
13 great deal more about these machines and the types of
14 vulnerabilities that they have. In my judgement, their
15 vulnerabilities are extremely severe, both because of the
16 amount of damage that can be done, if one of these
17 vulnerabilities actually is taken advantage of, and also
18 because the vulnerabilities are very difficult for people
19 to understand.

20 I think it is still the case that the majority of
21 registrars do not have enough understanding of the
22 vulnerability to appreciate them the way I do or with some
23 of the other engineers or people with software expertise
24 who have testified here today and previously do. And so
25 there's this great difference of opinion over whether they

1 are secure or not.

2 That puts us in a bad situation, because now that
3 the world is different, now that we know more and we know
4 more both in general, because we've thought out -- we the
5 security community I'm speaking of now -- have thought out
6 a lot of the security issues. We also know a lot in
7 particular. We've actually now seen the code from at
8 least one of the four DRE companies whose equipment is
9 used in California or certified for use in California, and
10 that's not -- that was not an encouraging example, quite
11 the contrary.

12 So, you know, we learn -- I think now in
13 hindsight, not at the time, but looking back, we can say
14 now that it would have been much better had we never
15 certified these systems in the first place, that they were
16 not ready then.

17 And so the question is what do we do now? And I
18 guess I'll have more to say about that when a motion comes
19 on the table.

20 CHAIRPERSON KYLE: Thank you, Mr. Jefferson.

21 Mr. Carrel, do you want to speak now?

22 VICE CHAIRPERSON CARREL: Or forever hold my
23 peace?

24 (Laughter.)

25 VICE CHAIRPERSON CARREL: No, I'll speak now.

1 PANEL MEMBER MILLER: Yeah, right.

2 (Laughter.)

3 VICE CHAIRPERSON CARREL: Can't shut me up.

4 I think everyone is aware elections are changing.
5 This is not just here in California. It's here
6 nationally. We're in a new world after Florida 200 with a
7 greater attention to how elections work, greater focus on
8 whether elections work and a greater questioning of what
9 does it mean when you ask, "Did the election work?"

10 So the systems we use, the people who run those
11 systems, the volunteers who assist on election day,
12 there's a lot that goes into running an election, a lot
13 more than that. A lot of procedures. A lot of processes.
14 A lot of training. A lot of money spent. A lot of time
15 and effort and energy to make sure that everything comes
16 out smoothly, so that people don't ask any questions and
17 think that oh, it magically happened.

18 That's the way it was before, and it's not the
19 way it is anymore, and that's why people now show up at
20 these hearings, because they're interested in these
21 issues. And they're interested in expressing their views.
22 And I have to say we heard a lot of those views from both
23 sides last week and today.

24 A lot has happened not only in elections in
25 general, but in this agency over the last year. I've been

1 here since January of last year, and I had the opportunity
2 to serve with the Chairman and with Mr. Jefferson on the
3 Touch Screen Task Force that the Secretary set up. And I
4 think I learned a lot more about these issues than I ever
5 thought I would.

6 And now we're at the point where the information
7 keeps changing, the bulk of knowledge keeps growing and
8 there's new things every day.

9 A year ago, a year and a half ago, I think I
10 brushed off a lot of the concerns about security as
11 paranoia. That's not the way I feel anymore. It's no
12 longer the sky is falling in my view. It's actually that
13 the roof may cave in, and we have to do something about
14 it.

15 But my concern realistically -- because we have
16 this opportunity as an advisory panel to make a
17 recommendation to the Secretary, to do something extremely
18 dramatic, but the question is at what expense. And at
19 what expense not only in terms of dollars, but in terms of
20 what has already been invested in terms of time and
21 training, in terms of equipment that has been prepared and
22 used, logistical expense.

23 And I'm concerned that a lot of that will be lost
24 and shouldn't be lost. I'm concerned that the logistics
25 of a moratorium and a ban on all DREs statewide creates

1 the problem that we don't move forward, we move backward.
2 And it creates the problem for those counties that
3 currently use the system of establishing a tremendous
4 burden on them, in the short time before the November
5 general election, a burden in terms of acquiring new
6 equipment, acquiring more people to do training, to
7 untrain people on the systems they did just learn and
8 retrain them on new systems, to some of them who are going
9 to have to go out to bid again. And that's a time
10 consuming process in itself.

11 So we can do something dramatic, but, in my mind,
12 not necessarily pragmatic or we can take a more pragmatic
13 approach to that.

14 And instead of the sky is falling, as I said, I
15 think it's now the roof may be caving in, but we have to
16 take an examination of the foundation, have to take an
17 examination of the roof and maybe decide that it's not as
18 bad as it might be, and phase in it in over some time,
19 patch things up that we can patch up with security
20 provisions, that we add things that we've done previously,
21 things that we can add this time, things that are in the
22 March 2nd Report, things that are in the Secretary's
23 directives, and keep things on an even kiel.

24 I'm mixing all my metaphors and cliches, as you
25 noticed, roofs and votes -- until the next -- until the

1 Secretary's directive on VVPAT comes into play in 2005.

2 Now, I have a very serious concern for the
3 accessibility of the disabled voters. I have -- anyone
4 who was on the Touch Screen Task Force will tell you that
5 was a big issue of mine. It has been and continuing to be
6 a big issue, to ensure accessibility for all voters
7 statewide, and to make sure not only that they have
8 machines that are accessible, but accessible and private,
9 so that voters not only can vote alone, but can vote
10 without anybody looking over their shoulder. That's
11 important, because they haven't been able to do that
12 previously.

13 But it has to be weighed against security,
14 obviously. And so accessibility versus security. And
15 then when I weigh those two things, they're both very
16 important issues. However, when you add the logistics to
17 it, the expensive training, the infrastructure that's been
18 already developed, I lean towards not moving forward and
19 abandoning, outright, DREs, but to implement a whole host
20 of security measures that will give us comfort and
21 hopefully give the public comfort that the machines used
22 are as secure as they can be, until a paper trail is put
23 in place.

24 CHAIRPERSON KYLE: Thank you, Mr. Carrel.

25 Ms. Daniels-Meade.

1 PANEL MEMBER DANIELS-MEADE: Thank you, Mr.
2 Chair.

3 I think that we've heard in the last couple of
4 weeks, not to mention all of the things that we've been
5 reading, that there are -- absolutely, there are pros and
6 cons on both sides of this issue. There are things that
7 are very good about a DRE, not the least of which is
8 they're easy to use, they're accessible for both language
9 and disabled populations, they are very usable with
10 respect to preventing misvotes, both the overvote and the
11 undervote that are frequently talked about.

12 They can accommodate any size of ballot, which
13 comes an issue sometimes, when we have a number of
14 candidates and measures that we do sometimes have. You
15 get fast election night returns. And there haven't been
16 any proof that there's been real life tampering, but there
17 are definitely the negative sides of that issue as well.

18 Not the least of which is that there is no paper
19 record of how the voter voted. It is very difficult. You
20 can't technically conduct a recount election, at least not
21 recounting actual ballots. Certainly, security and
22 integrity are major issues, major concerns. You see Power
23 fails and those sorts of things that need to be addresses.
24 There's the potential for the hackers.

25 We have, you know, high tech maintenance. We

1 have some counties who have difficulty because of the size
2 of their staffs conducting elections without the
3 assistance of the vendor personnel. There are a number --
4 there are things on both sides.

5 And I am leaning, I think, the same way that Mr.
6 Carrel and Mr. John Mott-Smith are leaning in that I don't
7 see that we want to necessarily outright ban the DREs. I
8 think there should be a number of conditions put on their
9 continued use, while we work together to try and improve
10 the systems overall.

11 I think, you know, that the training of poll
12 workers, the availability of paper ballots at the polls,
13 the stand-alone no linking kind of provisions that have
14 been discussed, the parallel monitoring that we did in the
15 primary, you know, restrictions on the physical access to
16 these machines.

17 I think these are all conditions that we
18 legitimately should be putting on the continued use of the
19 DREs. But that's basically -- I think, we've heard a lot
20 of really valuable testimony. I very much appreciate the
21 people that have made the effort to come and talk to us
22 for the last three days now on this issue.

23 CHAIRPERSON KYLE: Thank you.

24 Mr. Miller.

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

1 want to join with Karen Daniels-Meade and the Chair and
2 others in thanking all of you for participating in these
3 proceedings. Incredibly productive, the oral testimony,
4 the written submissions, the 15,000 Emails I received --

5 (Laughter.)

6 PANEL MEMBER MILLER: Very, very productive. And
7 we've heard, you know, points of view from various
8 perspectives. Very, very valuable.

9 I should probably recuse myself from proceeding.
10 I do have issues with computers at the moment. My
11 Internet service provider failed me the other night.

12 (Laughter.)

13 PANEL MEMBER MILLER: My PC then crashed. And
14 then this morning I went to my ATM, and it reported and
15 incredibly low balance, which is probably correct.

16 (Laughter.)

17 PANEL MEMBER MILLER: It's very distressing.

18 CHAIRPERSON KYLE: It has a paper trail?

19 PANEL MEMBER MILLER: It is a paper trail, and
20 this one tells the truth.

21 VICE CHAIRPERSON CARREL: You don't want to spoil
22 that.

23 PANEL MEMBER MILLER: Not that we should be
24 taking ballots or any parts thereof from the polling
25 places with us, because that's a security issue. But I do

1 appreciate having the paper, even though it shows a low
2 balance.

3 Now, I've been around this business a long time.
4 And in terms of computer technology, I go back to the time
5 when the earth was still warm, about 10 years ago, when I
6 had the privilege of serving as Acting Secretary of State
7 of California, and vendors brought by prototypes of DREs.
8 And I didn't even know what a DRE was. It had to be
9 explained to me.

10 But my first issue was where's the paper backup?
11 Where's the paper trail? Where, as a voter, can I see
12 what the machine, theoretically anyway, has recorded for
13 me?

14 And in those days there were actually prototypes
15 with voter verified paper audit trails. They were just
16 prototypes. But I said as Secretary of State, I'm never
17 going to certify a DRE, without a paper trail.

18 A lots happened since then. Obviously, the
19 technology has improved considerably. The testing has
20 improved considerably. And it is a different era, and yet
21 I still have real personal problems with DREs, if they
22 don't have an accessible, very important, accessible voter
23 verified paper audit trail.

24 And that is a bias. And I bring that bias to
25 this panel even though I have heard the alternative points

1 of view. And I understand those alternative points of
2 view. And there were some very good points that have been
3 made, and some compromises, hard and fast, there has to be
4 a paper trail.

5 Because I was very impressed this morning with
6 Ms. Wormeli's testimony about maybe we're not quite ready
7 for a paper trail. Maybe we're not. Maybe we're not
8 ready for DREs. I don't know. Maybe this is back to the
9 future. Maybe we are turning to the clock back to paper.
10 I don't know.

11 So I will be very interested in hearing the
12 motion apparently that the Chair or some other members may
13 make in discussing it in the context of an actual motion.

14 CHAIRPERSON KYLE: Thank you, Mr. Miller.

15 Ms. Jones.

16 PANEL MEMBER JONES: As I'm sitting I'm thinking
17 Tony and I are sitting by each other and he's reading my
18 mind, because like him I too was impressed with Ms.
19 Wormeli's testimony after two and a half days of
20 testimony. She eloquently said it the best of anybody.
21 The thoughts and feelings on this issue are so diverse as,
22 diverse as the population of this grate state.

23 But I can remember when ATM machines first came
24 out, and my reluctance to go to one of those and deposit
25 my paycheck. I was okay with taking money out, but

1 depositing my paycheck was a big issue for me.

2 (Laughter.)

3 PANEL MEMBER JONES: And I finally was able to
4 get past that, because I realized I got a receipt to tell
5 me what bank, told me what machine, told me what time, the
6 date, even had a record number, I could tell somebody.
7 This is the transaction. And I actually had the check
8 that was issued by somebody. So I had all this paper
9 backup of what I did.

10 Still won't put cash in there, but I will put a
11 check in there easily.

12 And I think we're at the same point with these
13 DREs. I like paper. I think, like John, I prefer paper.
14 But I am not one who wants to dismiss technology. I think
15 technology makes our life so much easier in a lot of ways.
16 And I can't imagine being disabled, not having to face
17 some of these things some of these people have to deal
18 with and not have that option.

19 So it's not something I want to close the door
20 on, but, you know, I embraced technology as it came out.
21 I embraced ATM's. I love my mother. It took me till two
22 years ago to get her to go to an ATM machine. And her
23 fear was the same one I had, but I got over it much
24 quicker.

25 And I think in order for us to feel safe and

1 secure about DREs, we need the paper trail. And I'm so
2 glad that Ms. Wormeli had the opportunity to testify
3 today, because she said so eloquently what I had been
4 thinking over the last two days as I listened to
5 testimony.

6 And that's really all I had to say.

7 CHAIRPERSON KYLE: Thank you, Ms. Jones.

8 VICE CHAIRPERSON CARREL: You want to make the
9 motion now?

10 CHAIRPERSON KYLE: No, I want to make a few
11 comments like everybody else. And then I want to read a
12 proposed motion, because, as the chair, technically I
13 can't make a motion.

14 But I put a lot of thinking into this, like I
15 know everyone else has on the panel, and a lot of reading.

16 First of all, I want to, likewise, thank all the
17 current audience members and everyone who was here last
18 Thursday and Wednesday, very articulate, well reasoned,
19 impassioned points of view were presented, and we
20 appreciate those, and took them to heart and read the
21 written testimony, listened to the oral testimony.

22 Obviously a lot of concerns, many of them
23 overlapping, many of them redundant, but obviously a big
24 diversity of opinion as well. In trying to weigh the
25 various different angles that this kind of splits into,

1 and trying to find a balance on that and in conversation
2 with myself and staff and other folks, taking into
3 consideration the March 2nd Report, the findings of the
4 Diebold Study that we did, the agency's experience that
5 I've been in the middle of over the last 14 months, so I'd
6 say the March 2nd Report, but in a more living totality of
7 living through that election as many of you did, and what
8 isn't on the written page, and again the testimony, it
9 really became clear to me that we have to articulate and
10 rearticulate some standards that the vendors can use, that
11 the counties can use, that our agencies can use, that the
12 voters can rely on.

13 And as I said, I had had been working on a draft,
14 and I thought I would rough it out in a few minutes. It
15 turned out to be much more challenging than I thought, but
16 I'll take a crack at it, and I will read it. And I
17 believe this addresses the concerns of those advocating
18 for every side more or less.

19 And it goes in the direction that's consistent
20 with where the agency's been headed with the touch screen
21 directives issued and last November by the Secretary, with
22 the security directives issued by the Secretary and this
23 agency, with regards to the March 2nd election, and takes
24 those and extrapolates those directives.

25 So I'm going to make the following proposal as a

1 motion. And I know also in conversations with Mr. Carrel
2 that he had a much better and more comprehensive security
3 list than I had started. So I'm going to refer to a
4 security list. Mr. Carrel, I know that you have a better
5 version than what I had written, so I'm going to refer to
6 that and then I would ask that you articulate what you
7 had.

8 But it would read as follows: And I actually
9 have these copies made kind up and marked up. So let me
10 give it to the panel, and to you, Dawn.

11 So this would be a recommendation to the
12 Secretary.

13 Number one would be that no digital recording
14 equipment or touch screen machines or systems can be used
15 in the November election unless they include an accessible
16 voter verified paper audit trail, and implement specified
17 security measures.

18 PANEL MEMBER MOTT-SMITH: Mark?

19 CHAIRPERSON KYLE: Yes.

20 PANEL MEMBER MOTT-SMITH: You left out the word
21 "new".

22 CHAIRPERSON KYLE: Okay. No new -- no new.
23 Number 1 is very important, no new. So if a county
24 doesn't have one and they went out and bought one, that
25 would be new, right? If they didn't have one today, if

1 they didn't have one for March 2nd.

2 VICE CHAIRPERSON CARREL: So you're suggesting a
3 freeze on all DREs that are in place.

4 CHAIRPERSON KYLE: Correct. So no new DREs. I'm
5 going use DREs, digital recording equipment, touch screen,
6 can be used -- no new DREs can be use in the November
7 election unless they include an accessible voter verified
8 paper audit trail and implement specified security
9 measures, which Mr. Carrel, thank you, will articulate in
10 a minute.

11 Number 2, existing electronic voting machines in
12 Non-TSx counties cannot be used in California at the
13 November 2004 presidential election, unless the following
14 steps are taken.

15 A, implement a fully tested, fully qualified --
16 rather fully tested, federally qualified and state
17 certified accessible voter verified paper audit trail, and
18 implement specified security measures.

19 In other words, those folks who think they might
20 be on the brink, may want to go for voter verified paper
21 audit trail, that's the direction we want you to go.

22 In the ways, 2005 and 2006, you mentioned, Mr.
23 Mott-Smith.

24 Failing that, B. -- so 2B would read or utilize
25 current electronic voting machines in non-TSx counties, as

1 long as specified conditions are met including:

2 1, providing the option of voting on paper
3 ballots at all polling places.

4 2, printing out as soon as possible, after the
5 closing of the polls, all ballot images recorded on the
6 machines.

7 3, engage in parallel monitoring for at the
8 Secretary of State's office.

9 4, submit a technical security plan to the
10 Secretary of State's office. That plan would detail
11 compliance with RABA Report plus others.

12 And 5, implement other security provisions of
13 which Mr. Carrel will speak in a minute.

14 The third major point that I would have, number
15 3, is the funding for complying with the conditions should
16 come from vendors in state and federal sources.

17 So before I ask whether there's a motion or
18 discussion on that, Why don't you go ahead and read the
19 security provisions that would be applicable to either 2A
20 or 2B.

21 VICE CHAIRPERSON CARREL: I was going to
22 introduce this as a separation, but I guess it's an
23 amendment to the motion, and these are the security
24 provisions that are referenced in this. So I would add
25 this as 4.

1 And it would be 4, all electronic voting systems
2 can only be implemented if they comply with the following
3 security provisions:

4 So I guess that means on both all those whether
5 they have an AVVPAT or not.

6 Certification testing provisions would be:

7 1, full federal testing and qualification and
8 document review.

9 2, full state testing and certification.

10 3, documentation regarding processes and tools
11 for the development of system software and firmware.

12 4, a working version of the machine provided to
13 the Secretary of State.

14 5, no last minute changes.

15 And that refers to the issues with last-minute
16 software changes.

17 6 -- the next are security -- no wireless
18 connection.

19 7, no internet connection.

20 CHAIRPERSON KYLE: Slow down, just a minute.

21 VICE CHAIRPERSON CARREL: 8 --

22 CHAIRPERSON KYLE: People are writing.

23 VICE CHAIRPERSON CARREL: -- must submit a
24 physical security plan to the Secretary of State.

25 9, must comply with the all Secretary of State

1 directives.

2 10 and 11 are related to poll workers.

3 10, is poll-worker training materials for each
4 jurisdiction using the system must be submitted to the
5 Secretary. And the training must include adequate
6 hands-on training for each poll worker for the DRE and any
7 other device used.

8 11, must submit a communications plan to the
9 Secretary of State of how elections officials will
10 communicate with workers at each polling place. This
11 relates to the issue in San Diego and other things that I
12 observed while I was down there, where when the issues
13 arose, it was difficult sometimes to reach polling places.
14 They didn't all have cell phones. They weren't all in
15 places that had a convenient phone, and so communications
16 planning should detail that.

17 12 through 15 are related to the polling place.

18 12, provisional voting must be on paper.

19 13, audio access or any accessibility devices to
20 allow the DRE to be used by people with need for those
21 devices must be connected prior to the polls opening.

22 14, The results must be posted at the polls.

23 15, And notice about the implications of
24 tampering with the devices must be posted at the polls as
25 well.

1 CHAIRPERSON KYLE: Okay, I'll open -- I'll
2 entertain whether there's a motion to go forward with my
3 proposal, and the, what I'll term, friendly amendment or
4 the specifics of the security.

5 PANEL MEMBER DANIELS-MEADE: Mr. Chairman, may I
6 ask a question first?

7 CHAIRPERSON KYLE: Sure.

8 PANEL MEMBER DANIELS-MEADE: I would just like
9 clarification as to whether point 3 under certification
10 and testing, where it says documentation regarding process
11 and tools for development of system software and firmware,
12 does that include the deposit of the source code with the
13 Secretary of State?

14 VICE CHAIRPERSON CARREL: It does not. And it
15 does not because -- well, I didn't include it. However,
16 what it means, it relates to all the processes and the
17 equipment used during the development and process. I
18 think Mr. Jefferson can give a better explanation of it.
19 But it didn't include the source code. It was the
20 processes so that the source code and access code could be
21 compared and --

22 PANEL MEMBER JEFFERSON: Right, but you need the
23 source code. May I make a friendly suggestion that you
24 add the full source code for all parts of the voting
25 system for that bullet.

1 VICE CHAIRPERSON CARREL: Let me ask, though, if
2 a system has a VVPAT, is it necessary for us to require a
3 source code for AVVPAT systems?

4 PANEL MEMBER JEFFERSON: In my opinion now, yes.
5 I wouldn't have said that a year ago. I would say that I
6 would say so now.

7 VICE CHAIRPERSON CARREL: Okay. So change 3 on
8 documentation regarding processes and tools for
9 development of system software and firmware to
10 documentation regarding processes and tools for
11 development of system software and firmware as well as
12 source code, systems source code?

13 PANEL MEMBER JEFFERSON: All source code --

14 VICE CHAIRPERSON CARREL: All source code.

15 PANEL MEMBER JEFFERSON: -- for all components of
16 the voting system.

17 VICE CHAIRPERSON CARREL: Okay, that's fine.

18 MR. JEFFERSON: I have question of clarification
19 about the motion, regarding --

20 CHAIRPERSON KYLE: It's not a motion yet. A
21 propose from me, until I hear --

22 PANEL MEMBER JEFFERSON: Question about your
23 proposal then. The term, "No new DREs may be used in the
24 November election unless..." Does that mean no new kinds
25 of DREs or no more instances of the same DREs?

1 CHAIRPERSON KYLE: I'm sorry, would you repeat
2 that?

3 PANEL MEMBER JEFFERSON: In point 1, where it
4 says no new DREs can be used in the November election.
5 Does that mean no new kinds of DREs? No new -- or the
6 counties cannot procure more instances of already
7 certified DREs?

8 CHAIRPERSON KYLE: If it has a -- it means no new
9 DREs, unless it has a voter verified paper audit trail.

10 PANEL MEMBER JEFFERSON: Okay. So if they're
11 already using Sequoia DREs, and they buy more of them --

12 CHAIRPERSON KYLE: That's an existing system.

13 PANEL MEMBER JEFFERSON: Right. They cannot buy
14 more of those?

15 CHAIRPERSON KYLE: More of the same system?

16 PANEL MEMBER JEFFERSON: That's what I'm trying
17 to get at?

18 CHAIRPERSON KYLE: No, this would be new.

19 VICE CHAIRPERSON CARREL: My interpretation, and
20 correct me if I'm wrong, was that counties not using DREs,
21 would only use DREs for November if they had an AVVPAT.
22 Counties using DREs in the past could use those same DREs
23 as long as they comply with your list under 2 -- or
24 under --

25 PANEL MEMBER JEFFERSON: But they can buy 50

1 more, if they want?

2 PANEL MEMBER MILLER: Of the same kind.

3 PANEL MEMBER JEFFERSON: Of the same kind.

4 That's what I'm trying to get at.

5 CHAIRPERSON KYLE: That would fall under number

6 2. That would not fall under number 1, because they're

7 already using an existing system.

8 PANEL MEMBER JEFFERSON: All right. So number 1

9 does mean no new kinds of DREs?

10 CHAIRPERSON KYLE: Correct.

11 PANEL MEMBER JEFFERSON: Okay, thank you.

12 CHAIRPERSON KYLE: New kinds or just new. If you

13 don't have an optical scan system now and you were to go

14 to a DRE, then that would be a new DRE for that county.

15 PANEL MEMBER JEFFERSON: For that county okay.

16 PANEL MEMBER MILLER: Mr. Chairman, so moved.

17 VICE CHAIRPERSON CARREL: Second.

18 CHAIRPERSON KYLE: Thank you. Okay, then we'll

19 continue discussion or clarification.

20 PANEL MEMBER MOTT-SMITH: I have a quick

21 question.

22 CHAIRPERSON KYLE: Go ahead, Mr. Mott-Smith.

23 PANEL MEMBER MOTT-SMITH: I think most

24 generically Mark Carrel, it seems that your list of

25 security measures is a shorthand of what was provided in

1 more detail in a memo for the March election. So when you
2 make a statement --

3 CHAIRPERSON KYLE: Excuse me, John, is this going
4 to be on the security, this list?

5 PANEL MEMBER MOTT-SMITH: Yeah.

6 CHAIRPERSON KYLE: I'll be back.

7 PANEL MEMBER MOTT-SMITH: This list is meant to
8 incorporate the precision that was in the March memo in
9 terms of full a description of what you're looking for.

10 VICE CHAIRPERSON CARREL: Right. This is just a
11 sort of shorthand, I think -- our recommendation, I guess,
12 is only in shorthand. Clearly, the specifics of this
13 would have to be fleshed out by the Secretary in any
14 directive to the counties. I took some of these from the
15 March 2nd report. I took some of these from the previous
16 directive issued for March 2nd that the Secretary issued
17 in February. And I took some of these from other things
18 that I have learned or we've learned.

19 PANEL MEMBER MOTT-SMITH: Okay. Well, in that
20 sense, then I would read B3, parallel monitoring, as being
21 in consonant with the manner in which it was implemented
22 in the March election.

23 VICE CHAIRPERSON CARREL: Well, I don't have a
24 problem with that. However, if your parallel monitoring
25 included under B3, of Mark's part of the motion and thus

1 it's required for current DRE systems without a VVPAT --

2 PANEL MEMBER MOTT-SMITH: I'm getting. It did
3 flip from a question to you to really a question to Mark
4 Kyle. And what you said is that this would need to be
5 fleshed out in whatever mechanism the Secretary uses if he
6 agrees with this.

7 But parallel monitoring was implemented not in
8 every county in March. It was implemented in every
9 system. And this doesn't specify, and there's some
10 details like that in some of these things that would make
11 a difference in terms of how we were to put that together.
12 So I'm just raising that as a question.

13 VICE CHAIRPERSON CARREL: Well, the point that I
14 was making was he's requiring parallel monitoring for
15 current DRE counties. He's not requiring to have a VVPAT.
16 The intent of parallel monitoring as devised was to assure
17 the accuracy of the machines -- the software in that
18 machine in lieu of VVPAT.

19 So I don't know if it's necessary for all or just
20 for those VVPATs, not to --

21 PANEL MEMBER MOTT-SMITH: All right. I'm just --

22 VICE CHAIRPERSON CARREL: I understand what
23 you're saying.

24 PANEL MEMBER MOTT-SMITH: We can -- I'm looking
25 at a difference between last time we had 8 out of 14

1 counties. This time I don't know what we would. But the
2 wording here is that every county would have to use it.
3 And logistically that's a fairly significant step to take,
4 in terms of putting that into operation, which we could
5 do, but we need to recognize that when they do.

6 VICE CHAIRPERSON CARREL: So you're speaking to
7 the fact that parallel monitoring in his -- which was
8 included in his for all non-VVPATs count under B3.

9 PANEL MEMBER MOTT-SMITH: Yes, it relates to the
10 county not to the system, which is -- so that's one
11 question.

12 The second is on your list, no last minute
13 changes. I like that a lot, but I also think that it's
14 possible that we're going to put ourselves in a box. And
15 so I'd like some entertainment of the notion that if there
16 is a -- if there is a request for a modification past a
17 certain date, that there's a substantial penalty
18 associated with that request, because we don't necessarily
19 foreclose being able to solve something that needs to be
20 solved, but we give good notice to people that it's going
21 to cost dearly if they don't think ahead of time, and so
22 forth.

23 VICE CHAIRPERSON CARREL: Cost dearly in what
24 way?

25 Are you suggesting a fine?

1 PANEL MEMBER MOTT-SMITH: Some kind of a penalty.
2 I don't know what it would be.

3 VICE CHAIRPERSON CARREL: It would be the vendor
4 or the. County I'm asking too many questions, aren't I?

5 PANEL MEMBER MOTT-SMITH: No, I think I would put
6 the onus on the vendor myself.

7 VICE CHAIRPERSON CARREL: I don't have a problem
8 with that. I thought you were going to go and I -- I
9 mean, I recognize that there may be last minute changes
10 that are necessary or else the system only shows up with
11 the error message on the whole election.

12 So we do have to accommodate emergency, if
13 necessary, changes. So maybe the word no last minute
14 changes is too complete. But I'd be happy to say no last
15 minute changes, unless certain extreme conditions are met
16 with severe consequences.

17 PANEL MEMBER JEFFERSON: Vital last minute
18 changes.

19 VICE CHAIRPERSON CARREL: Vital. Only vital Last
20 minute changes. I just think --

21 PANEL MEMBER MOTT-SMITH: Well, why don't you
22 think about what the wording would be.

23 My only last comment on these is that under poll
24 workers your suggestion number 11, a communications plan.
25 I think that's a great idea. I think actually everybody,

1 particularly those that use electronic systems, should
2 look at a single points of failure and figure it out.
3 There's a new world in the sense that you can have
4 complete system failure, as opposed to polling place
5 failure.

6 So I like that one a lot.

7 CHAIRPERSON KYLE: Thank you. And obviously on
8 the last minute changes, we have to develop.

9 VICE CHAIRPERSON CARREL: Without extreme
10 hardship.

11 CHAIRPERSON KYLE: Just with some kind of -- well
12 also timeline. And so we can make it reasonable and
13 articulate it to the counties and the vendors. And also
14 that would be -- this is applicable to the DRE counties
15 not to the non-DRE counties that says in there.

16 Other comments from this side?

17 PANEL MEMBER JEFFERSON: I certainly have.
18 Comments.

19 CHAIRPERSON KYLE: Yeah, okay.

20 Would you like to make a couple comments then,
21 Mr. Jefferson.

22 PANEL MEMBER JEFFERSON: So it's my understanding
23 of this motion that counties that already have DRE systems
24 in place, if they comply with a number of other important
25 procedural improvements, can use them in the November

1 election?

2 And I guess I wish this motion had gone farther.

3 And so let me explain my concerns.

4 I'm really concerned about having another
5 election, especially a presidential general election,
6 where 40 percent of the voters in California, as many as
7 40 percent, might use the DRE systems that I feel are not
8 acceptable in their current configuration as far as the
9 security is concerned.

10 I'm concerned about the following points, all of
11 which have been excavated before, but I want to get them
12 on the record today.

13 When a voter goes to one of these voting
14 machines, and at the end presses that final or touches
15 that final button that says cast my ballot. A screen
16 comes up that says thank you for your vote. But the voter
17 has no idea what happened between those two screens. You
18 would like to think, and in most cases I'm sure it's true,
19 that the vote as displayed on the screen is in fact what
20 was stored on the voting cartridge.

21 But the voter doesn't have any proof of that.

22 And key to my concern is nobody else does either, nobody
23 knows what the software does. And there's a lot of
24 software between that touch and the recording on that
25 cartridge, tens of thousands of line of software are

1 active in that time.

2 A lot of people have confidence that their votes
3 are accurately recorded. But the confidence is based on
4 trust in computer programmers, brand name vendors,
5 election officials, not based on actual understand of the
6 software that's in the machines, the election officials,
7 who trust the software have never seen it, their staffs
8 have never seen it. In effect, almost nobody in
9 California has ever seen it.

10 Very few people in the United States of seen.
11 Beside the developers, maybe a handful, maybe a dozen
12 people in the United States have ever looked at this code.

13 This bothers severely, because as others have
14 testified here today, there are a vast number of ways to
15 create the impression that the machines are working
16 properly, whereas in fact they are not.

17 And I don't know how to describe all of this to
18 an audience not intimately familiar with software, but
19 unfortunately it is true. So I'm concerned about that.

20 No individual voter note can verify that his vote
21 was correctly recorded. Nobody else can do so either. If
22 it's not recorded correctly, for some reason, there's
23 nothing you can do about it. You could never prove it.
24 Nobody else can ever prove it. No amount of recounts, no
25 procedural safeguards after the failure to record that

1 vote correctly, can compensate for it.

2 (Applause.)

3 PANEL MEMBER JEFFERSON: Please. So I'm
4 disturbed about that. I'm disturbed also about the fact
5 that there isn't in anyway to publicly count votes. There
6 are all kinds of ways to count votes with software, but
7 there's no way that 20 people sitting around a table who
8 are either interested citizens or who are candidates
9 looking for a recount can, in some sense, meaningfully
10 watch. There isn't any notion of a meaningful recount
11 with these systems.

12 I'm concerned about the argument that I hear a
13 lot that nobody has ever proved any case of tampering with
14 these systems. There's never been a documented case of
15 vote fraud with these systems. And that's true.

16 And unfortunately the problem is there cannot be,
17 because there is no -- there's not sufficient record to be
18 able to have an independent verification to determine
19 whether there's vote fraud or not.

20 And by the way, I do not believe that there is
21 any vote fraud going on in any California system now. I
22 don't believe it. And the parallel testing that we
23 conducted in the March 2nd election, which as far as I'm
24 concerned, is unique in the history of the United States
25 for actually looking for particular kinds of fraud that

1 the security community worries about, gave these systems a
2 clean slate, at least this time for the March election,
3 with high probability. So I'm happy to report that.

4 Still, that doesn't mean that it won't happen in
5 the future and that doesn't cover all of the concerns.

6 So from my point of view -- I should also say
7 that we have looked at the Diebold code and found it
8 wanting, all four reports have found it wanting. Nobody
9 has made a comparable look at the other three
10 manufacturer's code. There is no reason to suppose that
11 it's any better, no reason to suppose that it's any worse.
12 The fact is we just simply don't know.

13 And I am unhappy about somehow separating them
14 from the Diebold's -- from consideration of Diebold,
15 simply because Diebold's code escaped and the other
16 companies didn't.

17 I would like to have that source code that we
18 just called for in this motion to be delivered to
19 California. I would like to have it reviewed by competent
20 security authorities before we use it.

21 And even when that happens, we have serious
22 problems, because a lot of the code will not be delivered,
23 a lot of it's common off-the-shelf code, MicroSoft, code
24 from other software vendors. We will not get a chance to
25 look at that -- the cost code -- the exemption will apply

1 here and I'm concerned about that.

2 As I said in my previous remarks, I think from --
3 in hindsight, if we knew then, when we certified these
4 machines initially, what we know now, we would not certify
5 them. Because of that, I think that it is -- it's not
6 right. It does not serve the voters of California to
7 continue the certification or continue -- or conditional
8 certification of these machines for use in November until
9 such time as there's a voter verified paper trail with
10 them.

11 So, Mr. Chairman, I am going to support this
12 motion, because I consider it a strong improvement over
13 what we have now. But I am not happy that it does not go
14 much farther.

15 Thank you, sir.

16 CHAIRPERSON KYLE: Thank you, Mr. Jefferson. I'm
17 going to call the question now for the motion that
18 stands -- the one that I read, plus the security measures
19 that were articulated by Mr. Carrel --

20 VICE CHAIRPERSON CARREL: Can I just clarify one
21 thing. Were we adding any changes to Number 5 or not?

22 CHAIRPERSON KYLE: I would say that I would take
23 that -- we should develop a time line and some kind of
24 a. --

25 VICE CHAIRPERSON CARREL: So just keep as a last

1 minute changes.

2 CHAIRPERSON KYLE: No last minute changes. We
3 would develop a time line --

4 VICE CHAIRPERSON CARREL: And what are last
5 minute changes.

6 CHAIRPERSON KYLE: Right. And that that
7 recommendation goes to the secretary that way.

8 So those members in favor of the motion say aye?

9 (Ayes.)

10 CHAIRPERSON KYLE: Those opposed?

11 Those abstaining?

12 PANEL MEMBER RILEY: I abstain.

13 CHAIRPERSON KYLE: The ayes have it, and this
14 motion is closed, and this agenda item is closed.

15 VICE CHAIRPERSON CARREL: We have --

16 CHAIRPERSON KYLE: Right. We have -- I'm
17 deleting public comment, because we've had three days of
18 public comment. There is no other business.

19 So I'm --

20 VICE CHAIRPERSON CARREL: Motion to adjourn.

21 PANEL MEMBER DANIELS-MEADE: Second.

22 CHAIRPERSON KYLE: Motion to adjourn and second.

23 All in favor?

24 (Ayes.)

25 CHAIRPERSON KYLE: Any opposed?

1 All right.

2 Thank you all for coming.

3 This hearing is closed.

4 (Thereupon the California Secretary of State's

5 Voting Systems and Procedures Panel adjourned

6 at 2:20 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
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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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