

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

SECRETARY OF STATE
1500 11th STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 20, 2005

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TIFFANY C. KRAFT, CSR, RPR
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APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrell

Ms. Caren Daniels-Meade

Mr. David Jefferson

Mr. Lee Kercher

Mr. Tony Miller

Mr. John Mott-Smith

STAFF

Ms. Lisa Niegel, Staff Counsel

Mr. Stephen Stuart, Staff Counsel

Mr. Michael Wagaman, Elections Analyst

ALSO PRESENT

Ms. Kim Alexander, California Voter Foundation

Ms. Janice Atkinson, Assistant Registrar of Voters, County
of Sonoma

Mr. Dale Axelrod, Verifygra

Mr. Alfie Charles, Sequoia Voting Systems

Mr. Brad Clark, Alameda County

Mr. Kevin Chung, Avante

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APPEARANCES CONTINUED

ALSO PRESENT

Ms. Cathy Darling, Shasta County

Mr. Lou Dedier, Election Systems and Software

Ms. Barbara Dunmore, Riverside Registrar of Voters

Ms. Terry Hansen, Registrar of Voters, Yuba County

Ms. Debby Hench, San Joaquin County ROV

Mr. Terry Kouba, Interim Chief Deputy, San Bernardino
County

Mr. Bruce Krockman, DFM Associates

Ms. Elain Larson, Santa Clara Registrar of Voters

Mr. Jim March, Block Box Voting

Ms. Conny McCormack, L.A. County Registrar

Ms. Gail Pellerin, Santa Cruz County

Mr. Steve Rodermund, ROV Orange County

Mr. Marvin Singleton, Diebold Election Systems

Mr. Scott Slom, Hart InterCivic

Ms. Maureen Smith, Peace and Freedom Party

Mr. John Tuteur, Napa County

Mr. Dennis Vadura, Accupoli

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INDEX

	Page
1. Accessible Voter Verified Paper Audit Trail (AVVPAT) Standards	
a. Sequoia Voting Systems	
i. San Bernardino Pilot Program Report	82
ii. VeriVote Printer	117
b. Proposed Modifications to the Standards	
2. Election Systems & Software (Rescheduled to February 17, 2005)	
a. Ranked Choice Voting Report	
3. "Grandfathered" Voting Systems Report (Discussion Item Only)	153
a. Datavote	
b. InkaVote	
c. Mark-A-Vote	
d. Optech Eagle	
e. Optech IV-C/400C	
4. Residual Vote Report	
5. Other Business	
6. Adjourn	177
7. Reporter's Certificate	178

1 PROCEEDINGS

2 CHAIRPERSON KYLE: Good morning, ladies and
3 gentlemen. My name is Mark Kyle. I'm Chair of the Panel.
4 Welcome. This is January 20th. We'll be starting the
5 Voting Systems and Procedures Panel Meeting, starting now.

6 I'd like to welcome the public. I'd like to
7 welcome county election officials, and staff, anyone else,
8 any elected who might be here.

9 Do we have -- I think we have a quorum. I think
10 we have everyone. The Panel is comprised of minus one
11 person from last year, and that is Debra Jones, who has
12 moved on and is no longer with the agency. So this is the
13 current composition.

14 And we will proceed with the agenda item. I want
15 to just ask staff, and I want to raise this issue with the
16 panel regarding agenda items, and to reiterate what Marc
17 Carrell said. If folks want to make comments, there are
18 yellow cards in the back. Please fill those out and bring
19 them forward. We will allow time for folks to have a
20 couple of minutes to have input on agenda items.

21 I have two agendas, Mr. Wagaman. And one has
22 Sequoia Voting Systems as Number 1, and one has it as 1.b.

23 ELECTIONS ANALYST WAGAMAN: The one agenda which
24 is on the outside is the publicly noticed agenda. The
25 internal agenda in the inside of your binder is just the

1 index of all the things in your binder.

2 CHAIRPERSON KYLE: The issue I have is -- I'd
3 like to propose, and I want to just raise this with the
4 panel members, that we actually address 1.b and talk about
5 standards prior to the Sequoia Voting Systems.

6 Other than the rescheduling of the rank choice
7 voting due to the request of John Arch of San Francisco,
8 is everything else remaining on the schedule?

9 ELECTIONS ANALYST WAGAMAN: The only other item o
10 of note, the residual vote report, we're still waiting on
11 several counties to reply back to that. I've given Panel
12 members the preliminary results, but the final results
13 won't be ready until we get those last counties in.

14 CHAIRPERSON KYLE: Chances are we'll roll that
15 over until February.

16 ELECTIONS ANALYST WAGAMAN: That would be at your
17 discretion.

18 PANEL MEMBER MILLER: Mr. Chairman, I would
19 suggest that we do take 1.b before 1.a in light of SB
20 1438. I think we should address the standards, because
21 they do implicate decisions with respect to 1.a. So I
22 think it would be appropriate to take 1.b first. That
23 would be my suggestion.

24 CHAIRPERSON KYLE: Any other thoughts on that,
25 Panel members?

1 Marc.

2 PANEL MEMBER CARRELL: I recognize that it makes
3 sense to talk about proposed modifications before
4 reviewing 1.a.ii, the printer item, but 1.a.i, the San
5 Bernardino Pilot Project Report, may be useful to
6 understand some of the results before we talk about
7 potential modifications.

8 PANEL MEMBER MILLER: I would defer to the Chair.

9 CHAIRPERSON KYLE: All right. Let's go ahead and
10 talk about proposed modifications to the AVVPAT standards
11 and work in 1.a.i, the San Bernardino Pilot Project, if
12 you would, please.

13 ELECTIONS ANALYST WAGAMAN: Okay. Just take me
14 one second to figure out how to do that.

15 CHAIRPERSON KYLE: Just add it to the end.

16 ELECTIONS ANALYST WAGAMAN: As the Panel and I'm
17 sure most of the public is aware, in June of last year
18 this office issued standards for the accessible voter
19 verified paper trail, AVVPAT. Again, those were in June.

20 Subsequently, as part of your hearing in October,
21 to evaluate the Sequoia VeriVote System, there were
22 several points in those standards where that particular
23 vendor raised concerns about certain portions of those
24 standards.

25 Subsequent to the November election, as part of

1 the HAVA Section 301 Task Force, a survey was sent out to
2 all the vendors asking them if there were any -- among
3 other things, if there are any parts of the standards in
4 which they had concerns. Those results were then
5 compiled, and now staff is bringing the concerns that have
6 been raised by the vendor community forward to the Panel
7 for consideration. Again, these are all coming from the
8 feedback from that vendor community from both the initial
9 VeriVote application and from the subsequent survey, so
10 these are not staff concerns. These are coming from the
11 vendor.

12 The options are presented from staff to derive a
13 list of possibilities. They are not recommendations.
14 They're options for the Panel to then make a decision as
15 to what might be the appropriate action.

16 There are five particular issues that were of
17 note from the vendor community. The first is relating to
18 the audio stream. This is the audio stream that's
19 primarily used by non-sighted voters or limited vision
20 voters. The way the standards are currently written, it
21 requires a hardware solution towards delivering that data
22 stream where either the data comes directly from the paper
23 itself, so some kind of bar code reader or some kind of
24 visual scanning of that paper ballot, that paper record
25 that is created to see to then translate that into audio.

1 The second option would be a splitting of the
2 data stream that is going to the printers, where the same
3 data that's going to the printer is going to the audio
4 stream. So those would be the two options that are out
5 that were presented by the initial standards.

6 The issue that several vendors raised concern
7 about was how to deliver that, in particular, for
8 character-based languages. For languages like English and
9 Spanish where there's a more direct correlation between,
10 you know, an "A" equals a particular sound, the
11 character-based languages they're having a harder time
12 figuring out a way to directly translate that into an
13 audio feature. This concern was raised by four vendors:
14 Advanced Voting Solution, Diebold, Hart, and Sequoia.

15 Options for modifications for this portion of the
16 standard would include:

17 Leaving the current language and requiring
18 vendors to find a solution to meet the current standards;

19 Removing the current language entirely, which
20 would mean that the audio stream could then just be
21 delivered straight from the existing code;

22 Replacing the current language in the requirement
23 that the code be delivered from -- that the portion of the
24 code that's delivering the audio stream be open sourced.
25 That was the recommendation back from the Ad Hoc Touch

1 Screen Task Force from a year, year and a half ago.

2 Option 4 would be to add, again, that open source
3 language, but put it forward to some future date. Some
4 vendors have indicated that open sourcing a portion of
5 their code they could not do at this point, because that
6 code has been integrated in throughout their code. And
7 pulling that back out and making a stand alone module in a
8 sense would require a software change, which would then
9 trigger the federal and state qualification process. So
10 the Option 4 would be, in essence, a hybrid that would
11 allow certification to move forward now while eventually
12 requiring that open source option. So those are the four
13 options on the audio stream.

14 The second issue that was raised is the bilingual
15 paper record. The issue here is during the drafting of
16 the standards, at the request of the counties, a standard
17 was put in place that required the paper record to be
18 printed both in English and in the language in which the
19 voter voted on the machine. So if they're voting in
20 Spanish, it would have to be printed in both English and
21 Spanish. That language was added to aid potentially a
22 recount, so they would be able to always have that English
23 language available.

24 Several vendors have raised concerns that that
25 would create a disconnect where the ballots -- or the

1 paper records for voters who are voting in a language
2 other than English would, in essence, be longer than the
3 paper records for voters voting in just English, because
4 one would be printed in one language, while the others
5 would be printed in two.

6 The options before the Panel would be:

7 Either leave the current language in place, which
8 would require them to design them that way;

9 Replace the language that would limit it
10 specifically to only printing in the language in which the
11 voter is voting in, so just in Spanish and that you
12 couldn't print English on there;

13 Or Option 3 would be to remove that language
14 entirely and, in essence, make it a vendor and county
15 option about whether they want to print it bilingually or
16 in just the language in which the voter cast their ballot.
17 There is existing language that would require it to be
18 printed in the language in which the voter cast their
19 ballot on the DRE. So this would not remove that
20 requirement.

21 The third issue is the sequential storage of
22 votes. Some of the designs that have come forward,
23 including the VeriVote design you looked at previously,
24 use a reel-to-reel system, where the votes are stored
25 sequentially one after another. They are not cut.

1 Staff has previously determined that the standard
2 requiring both privacy and the secrecy of the vote be
3 preserved, that these designs could meet that standard if
4 procedural solutions were put in place. The example being
5 from the pilot program, the rotation of printers.

6 During the discussion of the VeriVote items,
7 several Panel members raised concerns about that
8 interpretation from staff. Vendors have requested
9 clarification as to whether the staff interpretation is,
10 in fact, correct, that a procedural solution would be
11 valid, or whether, in fact, those records cannot be
12 stored -- those paper records cannot be stored
13 sequentially and would have to be cut and randomized in
14 some way beyond the procedural solution discussed
15 previously.

16 Options here would be:

17 To leave the current language, in which case the
18 Panel would just continue to consider the procedural
19 solutions and the design solutions on a case-by-case basis
20 to see if they meet the standard;

21 Second option would be to, in essence, make it
22 clear from the Panel -- leave the current language, but
23 make it clear that a procedural solution would be
24 acceptable;

25 Another option would be to actually add that

1 language into the standard saying a procedural solution
2 would be acceptable explicitly;

3 Flip side of that coin would be to leave the
4 current language, but say that a procedural solution is
5 not acceptable;

6 Or a fifth option would be to actually put that
7 language that it's not acceptable directly into the
8 standards.

9 The fourth issue was raised by one vendor, ES&S.
10 It's the real time audit log. The way the current
11 standards read, the paper record is printed after the
12 voter has finished making their selections on the DRE. So
13 it is an end of a process. The ES&S proposal is to make
14 that process contemporaneous with the selection making.
15 So when you would select a particular candidate, that's
16 when that portion of that paper record would be printed.
17 And you print it throughout the voting process rather than
18 at the very end of the voting process. So that's for your
19 consideration, whether that is a desirable design feature.

20 Options would be:

21 To leave the current language which would not
22 allow for that design option;

23 Or to remove that current language, which would
24 allow either design of either the paper record being
25 printed while the voter is making their selections or at

1 the end of the process.

2 The fifth option is the under glass issue. The
3 current standards basically require that the paper record
4 cannot be handled by the voter. The reason for that is to
5 present a disconnect between the electronic records of the
6 ballot and the paper record. If the voter were able to
7 take that paper record and leave with it, you would end up
8 with a situation where you would have fewer paper records
9 than electronic records.

10 One vendor, Accupoll, has suggested a technical
11 solution to that other than the under glass, where the
12 system would, in essence, be networked similar to the Hart
13 system the Panel has seen previously where the person
14 would vote on the machine. They would print that paper
15 record, which then they would take with them. It would
16 not be under glass.

17 That electronic record would be stored but not
18 counted until that paper record was taken over to a
19 separate device, a bar code reader type device, reads that
20 tape record before it's dropped into a box to make sure
21 that you don't have that disconnect between the number of
22 paper records and the number of electronic records.

23 Options again here would be:

24 To either leave the current language, which would
25 not allow the design options, which would continue to

1 require the paper records not be handled by the voter;

2 Or to remove that language, which would allow for
3 either design option to come before the Panel.

4 The sixth change is a minor one. It's driven by
5 state law. It's previously referenced by Mr. Miller.

6 Changes some of the time triggers for when the AVVPAT is
7 required for all DRE systems and also when it's required
8 for just newly purchased DRE systems. So that just would
9 bring the standards in parallel with state law.

10 Public comment. There were three correspondences
11 that were received timely on this item. Several of them
12 related to the nature of the item and when the proposed
13 standards would be made available to the public. The
14 third correspondence advocated making sure that the AVVPAT
15 was available to voters as soon as possible. In addition,
16 there were several public comments that were received
17 after the seven-day deadline. Those were distributed to
18 the Panel upon their receipt and should have been added to
19 your packets.

20 Moving back now towards the pilot program --

21 CHAIRPERSON KYLE: Let's wait on that,
22 Mr. Wagaman. I think what I'd prefer to do is take each
23 of these suggestions in sequence and have a discussion on
24 it and allow Panel members to ask questions and, if
25 necessary, questions of vendors or counties so that we

1 could try to understand them and the options in front of
2 us.

3 ELECTIONS ANALYST WAGAMAN: For the Chair's
4 discretion, I would suggest when you reach the sequential
5 storage of vote, that would be an appropriate place to
6 take up the pilot program, since that's one of the issues
7 they identified.

8 CHAIRPERSON KYLE: Okay. Good.

9 Let's go back to audio stream. You articulated
10 four options, and I'm wondering if there are questions
11 from the Panel regarding any of the four options for
12 Mr. Wagaman or others.

13 PANEL MEMBER JEFFERSON: One quick one. A fifth
14 option of all votes rendered in English was not
15 considered; is that correct?

16 ELECTIONS ANALYST WAGAMAN: On the audio stream.

17 PANEL MEMBER JEFFERSON: I'm sorry. I was
18 thinking of the second -- another issue. Pardon me.
19 Nevermind.

20 CHAIRPERSON KYLE: Hold that one for b.

21 Mr. Miller, you look like you have a comment.

22 PANEL MEMBER MILLER: Yes. I'm suggesting maybe
23 there should be an Option 5, which would be to remove,
24 essentially, paragraph 2 of the standards with respect to
25 the accessibility issue, paragraph 2.4.3.1.2, which is the

1 hardware solution, to remove that and simply rather than
2 deal with the options that you've suggested, have the
3 source code for that portion of it, simply allow the
4 Secretary of State access to that portion of the source
5 code to make sure that the audio and the paper are the
6 same.

7 You would accomplish that through an open source
8 code vice in terms of one of the options. Rather than
9 making it open just simply as part of the certification
10 process for the system, provide access so that as part of
11 the testing you could verify that the audio stream is the
12 same information as contained on the paper. So the only
13 difference would be, rather than open source code, it
14 would be SOS accessible during the testing process as an
15 Option 5.

16 ELECTIONS ANALYST WAGAMAN: So SOS shall reveal
17 the source code that delivers the audio stream or the
18 certification.

19 PANEL MEMBER MILLER: As part of the testing
20 process.

21 And I raise that in the context of SB 1438, which
22 seems to change the criteria for accessibility. And it's
23 my view that the Legislature has spoken in this regard.
24 We should listen and follow through and modify the
25 standards accordingly. But we'll pursue that as part of

1 the discussion.

2 CHAIRPERSON KYLE: You think your suggestion
3 addresses that?

4 PANEL MEMBER MILLER: I believe that my
5 suggestion is consistent with 1438 in terms of
6 accessibility issues. But we do need to verify that the
7 audio stream and the paper reflect the same information.
8 We don't have to have a hardware solution for that. I
9 think that can simply be part of the testing process. But
10 we'll need the source code to ensure that, indeed, there's
11 consistency between the printed version and the audio
12 stream.

13 CHAIRPERSON KYLE: Mr. Carrell.

14 PANEL MEMBER CARRELL: Can you as succinctly as
15 possible reiterate what you were suggesting as Option 5?

16 CHAIRPERSON KYLE: I wrote something --

17 PANEL MEMBER MILLER: Strike paragraph of the
18 standards 2.4.3.1.1, which says, "the data related to the
19 audio device must come either directly from the data
20 center, the printer, or directly from the paper record
21 copy." Strike that paragraph.

22 I would add to the one above which says, "the
23 audio component must accurately relay the information
24 printed on the paper record copy to the voter." I would
25 add the language, "as determined by state testing." I'm

1 not sure that's necessary, but I would add that.

2 And then as part of the certification of a
3 system, I would ensure that one of the conditions is, of
4 certification, that the Secretary of State have source
5 code review, access to source code and to review it, and
6 through that review ensure that the audio is the same as
7 the printed version.

8 PANEL MEMBER CARRELL: Thank you.

9 PANEL MEMBER MILLER: It wasn't succinct, but
10 whatever.

11 PANEL MEMBER CARRELL: I understand. Thank you.

12 ELECTIONS ANALYST WAGAMAN: Just so staff is
13 clear, your recommendation is to add the language as
14 verified through state testing, and the requirement as far
15 as the source code would not be in the standards. So it
16 would be added to the state testing procedures; is that
17 correct?

18 PANEL MEMBER MILLER: That is my suggestion.

19 CHAIRPERSON KYLE: Are there any other questions
20 or comments from the Panel?

21 PANEL MEMBER MOTT-SMITH: I have a question for
22 Tony. The effect of that would be that the state would
23 have -- in this particular application would have to
24 retest?

25 PANEL MEMBER MILLER: What I'm saying is that the

1 Secretary of State would have to as -- insert as a
2 condition of the certification the access to the source
3 code. I'm not requiring that the source code be actually
4 reviewed. Just the right to review it. And that would be
5 dependant upon whether the Secretary of State wanted to
6 review it or not.

7 CHAIRPERSON KYLE: Is that your question,
8 Mr. Mott?

9 PANEL MEMBER MOTT-SMITH: I believe he answered
10 my question.

11 PANEL MEMBER MILLER: I hope so.

12 PANEL MEMBER JEFFERSON: So I guess I'd like to
13 make a comment.

14 I was first involved in the original drafting, as
15 many of us were, of that particular language. And the
16 concern was that the blind be able to get exactly the same
17 degree of verification that the sighted are able to get
18 through this audio stream. So what would we be trying to
19 endeavor to verify?

20 My concern with your language, Tony, is that you
21 are dependant now on a source code review of part of the
22 source code and, in fact, not even requiring the source
23 code review, only that it be available for review. So
24 your suggestion to me is bound up with the whole source
25 code review question anyway, which I think we will come to

1 later.

2 And I'm concerned about anyone's ability to
3 verify from a part of the source code as opposed to the
4 entire code base anything about the source code. It could
5 always be possible that a different part of the code that
6 is proprietary interferes with the operation of the part
7 that's visible, and you just don't want to be in that
8 position.

9 I do recognize the difficulty of engineering the
10 hardware solutions that are called for in the current --
11 in the standard as currently drafted. I'd prefer that
12 language nonetheless. And I just want to say that there
13 is a -- it's a huge task to verify the property from the
14 source code that you're talking about, even if you attempt
15 it.

16 CHAIRPERSON KYLE: Mr. Carrell.

17 PANEL MEMBER CARRELL: Thank you.

18 Yeah. I think what you're offering, Tony, has
19 some benefits. But I'm concerned about the goal of this
20 language and the reason it was in there initially, which
21 Mr. Jefferson explained, which was to ensure those who are
22 blind the guarantee that another voter is going to see
23 something -- their vote is reflected accurately on a paper
24 record copy. They can know that the information that's
25 being read to them in their ear piece is what's coming

1 from their paper record copy and not from their inputted
2 ballot.

3 I would like to ask the vendors, sort of, the
4 question, because as Mr. Wagaman explained in the staff
5 report, this is specifically related to character-based
6 languages, and I'm curious as to why it affects
7 character-based languages and not others. And if
8 Mr. Wagaman understands that, he can explain it. But
9 otherwise --

10 ELECTIONS ANALYST WAGAMAN: There are two parts
11 to that answer. One is the current systems that I'm aware
12 of that are in development do not have this hardware
13 design, because they couldn't do it for all the languages
14 they have done. So, A, even if they knew how to do it for
15 the other languages, it would require redesign just to
16 implement that. It's not built into the current system.

17 Two, the reason is with the non-character-based
18 languages, there is, in essence, text to audio software
19 available that would translate those combinations of
20 letters into sounds. With the character-based languages,
21 that process becomes much more muddled and much more
22 complicated, and the ability to deliver that translation
23 of that data, which is not a letter, it is an image, in
24 essence, that there is a problem there in translating that
25 into a sound that would be audible to the voter.

1 PANEL MEMBER CARRELL: Okay. Is there any -- I'm
2 just curious, and this doesn't really have a lot of
3 bearing on it. But are there -- you know, we have
4 text-based readers, which is what you're talking about
5 them using.

6 I assume that companies in foreign countries
7 using character-based languages have text-based readers,
8 too, in some manner and some form. I'm wondering if
9 discussions have occurred with those people or it's been,
10 "We give up. We can't do it. It's too expensive. So we
11 want you to change the standards so we don't have to work
12 too hard, and we can move forward making money by selling
13 these products." Or maybe I'm being too cynical. But I'm
14 wondering whether it exists in other countries that
15 actually use character-based languages.

16 ELECTIONS ANALYST WAGAMAN: I'll try to answer in
17 part, but I'll defer to the vendors who actually designed
18 their own systems.

19 Part of the issue is their systems are
20 currently -- the way they deliver these character-based
21 languages is the basis of where that language even comes
22 from. It's not based on a format that is translatable in
23 that way. So it's not reading the letter for that
24 character that you would have potentially in another
25 country. It's reading a symbol. It's an image of that

1 symbol, in essence. So that is non-translatable over. It
2 would require a redesign, not just of the audio stream,
3 but the underlying way in which they deal with those --

4 PANEL MEMBER CARRELL: A graphic letter which
5 changes the dynamic.

6 ELECTIONS ANALYST WAGAMAN: Correct. That's
7 where the issue comes into place is where they deliver
8 those letters -- deliver it for the character-based
9 languages. And I know we have several vendors here. So
10 if any of them would like to speak to that point.

11 CHAIRPERSON KYLE: I'd like to call up the
12 representative from Sequoia. State your name.

13 MR. CHARLES: Good morning. Alfie Charles with
14 Sequoia Voting Systems.

15 PANEL MEMBER CARRELL: I'm sorry to put you on
16 the spot. I understand there are four vendors who have
17 the issues here, AVS, Diebold, Hart, Sequoia. So if you
18 can answer, they can answer. There may be different
19 reasons why you can't do it or why it's creating problems.

20 MR. CHARLES: There are a number of issues, and I
21 think Mr. Wagaman explained part of it. One of them is
22 where there is a graphic file being sent, or text, we use
23 a proprietary operating system rather than a Windows-based
24 system. So different technologies that may be in use,
25 where they're suited to operated on other platforms may

1 not readily apply.

2 There's also the hardware component and the
3 usability portion for the disabled voters. It would be
4 difficult not only to add in a scanning device that then
5 converts and integrated and reads that back, but to train
6 those voters how to use it I think begins to violate the
7 independence those voters expect. When we designed the
8 system, we designed it to make sure it was as seamless a
9 transition from the audio voting experience they've had
10 previously. So we've tried to simplify that.

11 And I think Mr. Miller's suggestion on the source
12 code review, while we could do that, Mr. Jefferson is also
13 correct that the entirety of the source code is important,
14 and that source code review has taken place at the federal
15 ITA level. So I don't know that the state needs to
16 duplicate that effort necessarily at the federal level.
17 They've tested that. They've also tested it functionally,
18 and the state has tested it functionally.

19 So there are ample safeguards to ensure that
20 content on the paper is identical to the content that the
21 audio voters hear through their ear piece. And we believe
22 the design of it is such that it simplifies the voting
23 process to the greatest extent possible so you're not
24 creating added barriers for those voters.

25 PANEL MEMBER JEFFERSON: Would it be a

1 substantial improvement if we framed some kind of
2 exception for character-based languages that is -- but
3 that the print stream be tapped for non-character based --
4 Latin alphabet languages.

5 PANEL MEMBER CARRELL: Create different deadline.

6 PANEL MEMBER JEFFERSON: Because we're talking
7 about now a subset of blind Chinese voters --
8 Chinese-speaking voting voters.

9 MR. CHARLES: It would require several additional
10 revisions to the manner in which audio is called and
11 displayed. It may also require some -- we'll have to
12 accommodate that at some point. I don't think you can
13 create a different class of voters for Chinese speaking
14 audio voters versus English speaking. I think that runs
15 into legal risks and further delays.

16 What we've already been able to demonstrate
17 functionally through the federal and the state
18 certification process is the identical content. So I
19 think it meets the letter of California's laws, especially
20 the definition of accessibility that was included in the
21 recent legislation that mandated the paper trail. So I
22 think that language gave clarity to provide this Panel
23 with the comfort that the federal certification and the
24 state certification and the functional testing and the
25 source code review that takes place throughout that

1 process meets that state requirement and definition of
2 accessibility.

3 PANEL MEMBER CARRELL: Of the seven voting
4 languages that you and the other vendors have to ensure
5 are provided for, at least in one county in California,
6 what are the character-based languages of those seven?

7 MR. CHARLES: Can I defer to Mr. Mott-Smith? I
8 could wing it. Do you want me to try?

9 PANEL MEMBER MOTT-SMITH: Yeah, go ahead.

10 MR. CHARLES: English, Spanish, Vietnamese,
11 Tagalong, Chinese, Korean, and Japanese.

12 PANEL MEMBER CARRELL: So Korean, Japanese, and
13 Chinese are the character-based languages and the others
14 use --

15 MR. CHARLES: Vietnamese as well.

16 PANEL MEMBER CARRELL: Vietnamese uses Latin.
17 All right.

18 PANEL MEMBER MOTT-SMITH: Mr. Wagaman, can you
19 respond to Mr. Charles's statement that the source code
20 that governs this particular discussion topic has already
21 been reviewed at the federal level, and they have
22 essentially in the qualification testing indicated that it
23 meets the requirement of our standard?

24 ELECTIONS ANALYST WAGAMAN: Well, there is source
25 code review that is part of the federal qualification

1 process done by an independent testing authority. And
2 that is required before federal qualification is issued,
3 and that would include this portion of the code that's
4 delivering the audio stream. And in addition to the
5 statewide, we do an additional functional testing.
6 Whether it would meet the particular standards here would
7 depend on exactly how you crafted that language. But,
8 yes, there is source code review, including that language
9 on the federal level prior to qualification.

10 PANEL MEMBER MOTT-SMITH: Do you want to expand
11 on that anymore? I think it's an interesting statement.

12 MR. CHARLES: I think it summarizes it fairly
13 well. The source code reviewed through the federal ITAs
14 is reviewed on a line-by-line basis. Every line of that
15 code has been reviewed. We do not use a COTS operating.
16 We use a proprietary operating system. All aspects of
17 that code from the operating system through the entire
18 firmware has been reviewed.

19 And it also has gone through the same functional
20 testing that the state has done. So when they test the
21 audio ballot function, they confirm that that paper
22 receipt reflects what is included in the audio ballots
23 selections and in the audio review. The audio voters not
24 only have the audio selection and the confirmation that
25 their ballot is being counted because of the certification

1 process, but they have an audio review that they listen to
2 that's also tested and code reviewed in functional
3 testing.

4 I think it's also important to add, the audio
5 voter is not just -- they don't lose the benefit that
6 other voters have of having that permanent paper record of
7 their ballot stored in the event of a recount. They gain
8 the benefit of having a paper record hard copy generated
9 at the polls on the same machine that everyone else is
10 using that's been certified through federal testing. They
11 have that same protection in a manual recount scenario
12 that sighted voters will have. And all of that has been
13 tested through code review and functional testing at the
14 federal level and functional testing at the state level.

15 PANEL MEMBER CARRELL: But the feds -- while
16 that's all true, and I recognize that, the feds don't have
17 any standards for voter verified paper trail printers.
18 They simply look at it from a functional perspective. And
19 when you tell them it's supposed to do this, they test it
20 to what parameters you're telling them it's supposed to
21 work to; correct?

22 MR. CHARLES: They test -- they don't have a
23 specific standard for this component, but they do have
24 broad standards that address ensuring that voting systems
25 do what they're required to do, and that they meet the

1 accessibility requirements of the 2002 standards. So
2 there are a number of test items that they go through.
3 And included in that is creating election, going through
4 the audio, making sure that every feature, every function
5 is tested. And this is included in that process.

6 ELECTIONS ANALYST WAGAMAN: To provide
7 clarification, as far as the printers itself, you are
8 correct. It's testing against what the vendor is
9 reporting, that printers work. The audio function is part
10 of the existing federal standards. So that part, that
11 code review, that is tested against the federal standard.
12 It's not tested against, the vendor says it will do this.

13 PANEL MEMBER CARRELL: And the reason I ask this
14 is because of the Federal DOJ opinion which occurred last
15 year which basically said that information coming from --
16 an audio coming from the machine is adequate. You don't
17 have to ensure that it's text based from the printer,
18 which is what we're requiring. So I don't know what the
19 feds are testing it against and ITA is testing it against,
20 because I don't know the specifics of that. Are they
21 looking at the specific audio aspect to assure it's the
22 same audio from the printer? Or are they simply repeating
23 the same audio the voter has heard after they input their
24 vote?

25 MR. CHARLES: That's correct. They're testing

1 the audio function against the electronic record of the
2 date.

3 PANEL MEMBER CARRELL: Against the electronic
4 record of the vote, not the paper copy.

5 ELECTIONS ANALYST WAGAMAN: Correct.

6 You can jump in, if you need that.

7 The paper record is compared as part of -- again,
8 since there are no federal AVVPAT standards at this point,
9 the paper record is compared -- that is, tested against
10 whatever the vendor says. In this particular case, the
11 vendor would say the paper record accurately reflects the
12 electronic record. So it's not a paper record to audio
13 record. It's audio record to electronic record and paper
14 record to electronic record. So they would test those two
15 separate tracks, but they connect together.

16 PANEL MEMBER CARRELL: And, yet, our requirement
17 is audio record to electronic record, audio record to
18 paper record and --

19 ELECTIONS ANALYST WAGAMAN: They would not be
20 testing against the current California standards. That is
21 correct.

22 PANEL MEMBER CARRELL: We're basically adding a
23 third component for testing, which my sense is they're not
24 even considering, because you're saying they're testing
25 for audio to electronic, which we require, and paper to

1 electronic. But we're also adding second audio to paper,
2 which there's no guidelines for them to test against that,
3 unless the vendor is saying, this is what it's going to
4 reflect.

5 MR. CHARLES: Well, when they test audio and when
6 they vote ballots, they generate the paper records. All
7 of those paper records generated during the testing
8 process, whether they were generated through audio ballots
9 or through vote simulation or through manual voting or
10 through the several day continual voting process, all of
11 those paper records were verified against the electronic
12 totals.

13 So you can confirm that the audio ballots, which
14 you confirm again the electronic totals, paper ballots,
15 they all have to match before you can pass the functional
16 testing. So they reviewed it in a line-by-line code
17 review. They incorporated it into all of the reviews they
18 conducted on the functional testing and the environmental
19 testing. So they had a very large sample of tens of
20 thousands of paper records that they compared.

21 CHAIRPERSON KYLE: Mr. Jefferson.

22 PANEL MEMBER JEFFERSON: So the federal ITAs
23 confined themselves extremely closely to the actual
24 wording of the federal standard. They really don't go
25 beyond that. So where we have a standard that is not

1 mentioned in the federal standards, they simply don't look
2 at it. They do at least a cursory look at all of the
3 code. To call it a line-by-line code review I think is an
4 exaggeration, and certainly they don't have standards for
5 that code review. I would give no weight to the ITAs code
6 review. I think we have to -- I think whatever code
7 review is done has to be done at the state level.

8 I would ask Mr. Miller if he would be interested
9 in tying this issue to the overall issue of code review in
10 California anyway. We're going to discuss source code
11 later and the entire code base source code, not just that
12 confined to the audio stream. I mean, do you see these
13 tied as I do?

14 PANEL MEMBER MILLER: Indeed, they may be tied,
15 especially given the representations by vendors that they
16 may be integrated.

17 What I'm suggesting is, that with respect to the
18 conditions of certification of a particular voting system,
19 that one of those conditions be access to the source code
20 or any part thereof, including the entire source code.

21 PANEL MEMBER JEFFERSON: If we could just say the
22 whole source code base, I would be much happier.

23 PANEL MEMBER MILLER: I just want to keep the
24 option open, and the condition that I would suggest as
25 part of certification would include the entire system, if

1 that's what is desired.

2 ELECTIONS ANALYST WAGAMAN: On a staff level, and
3 this is at the Chair's discretion, I might recommend that
4 you make sure and go and get the public comment before you
5 get too far into the deliberative process as far as the
6 question process for staff and the vendors.

7 CHAIRPERSON KYLE: Thank you. Why? Because of
8 the time? Or because we're still on Item 1.a.?

9 ELECTIONS ANALYST WAGAMAN: So you would have the
10 full weight of not only the staff opinion but the public
11 opinion as well before you get too far into your
12 deliberative process.

13 CHAIRPERSON KYLE: I was just culling through
14 these trying to ascertain who wants to speak about audio
15 stream.

16 Mr. Carrell, did you have any interest in
17 directing similar questions to other vendors?

18 PANEL MEMBER CARRELL: I'd be happy to.

19 CHAIRPERSON KYLE: Thank you, Mr. Charles.

20 PANEL MEMBER CARRELL: I'm interested in hearing
21 from any of the vendors who might have a different reason
22 than Mr. Charles suggested for Sequoia's reason,
23 proprietary code and the graphic versus text. If there's
24 another vendor that has another reason for that, I'd be
25 interested in hearing that.

1 CHAIRPERSON KYLE: Specifically, the three other
2 vendors raised -- and I don't know if there's
3 representatives here -- I can't quite see -- Diebold,
4 Hart, and AVS. I see somebody from Diebold. Please come
5 forward. Are there representatives from Hart or AVS?
6 Okay. Thank you. And then we're still in the
7 deliberative process. We'll get to the public comment.

8 MR. SINGLETON: Good morning. For the record,
9 Marvin Singleton representative of Diebold Election
10 Systems.

11 Mr. Chairman, I was not prepared to speak on
12 this. But the reasons articulated by Mr. Charles do
13 have -- similar to Diebold AccuVote touch screen TSx VVPAT
14 printer as we've demonstrated to you. We do have the
15 ability to print the character-based recognition. But as
16 you talked about earlier, having a bar code reader would
17 require a separate hardware configuration, which would
18 require a total hardware solution, not just software
19 solution. The way in which the system and the motherboard
20 produce an audio stream, there's discussions of having a
21 separate audio jack, where a visually impaired and blind
22 person might have to put their headphone in a different
23 one in order to meet a cost effective solution.

24 But going to Mr. Miller's comment, I think
25 Diebold Election Systems would make available any software

1 code for review as part of the process.

2 PANEL MEMBER CARRELL: Thank you.

3 CHAIRPERSON KYLE: Hart.

4 MR. SLOM: Good morning. Scott Slom with Hart
5 InterCivic.

6 Just to reiterate some of the points brought by
7 Mr. Charles and Mr. Singleton, we have in looking at a
8 text to speech converter run into a number of issues.
9 Probably from my standpoint and operational side of things
10 is the fact the voter will not hear what they heard when
11 they were voting the ballot, meaning locally-recorded
12 speech, text interaudio with the local pronunciations of
13 both offices and candidate names. Now we're taking it
14 back and going to something more mechanical, which may or
15 may not be easy -- I don't know -- for them to understand
16 and interpret.

17 Probably the other big thing is, you know, just
18 the processing power that some of these applications
19 required to convert that text. That wasn't part of the
20 original design of this equipment and would have to be
21 taken into account. And it gets back to, you know, just
22 the cost of producing these systems and keeping them
23 affordable for our customer base.

24 PANEL MEMBER CARRELL: Thank you.

25 MR. SLOM: Okay.

1 CHAIRPERSON KYLE: Other questions?

2 Anyone from AVS here?

3 Are there any county election officials who feel
4 that they should weigh in on this point? Because I know
5 on a few of these there was a few who said 1.b, but they
6 didn't say -- the representative from Orange County please
7 come forward.

8 MR. RODERMUND: Good morning. Steve Rodermund,
9 Registrar of Voters, Orange County. I think what the
10 representative from Hart brought up is the central point
11 to the desire by members of this Board to actually have a
12 text to speech scenario is that, especially when you're
13 talking about languages other than English, is the
14 translation.

15 With the system that we currently use, the Hart
16 system, we actually do audio streams where, when we do the
17 text, a person comes and actually says those audio
18 streams. So you have a human voice that is saying the
19 audio stream, and it is very understandable to the
20 individual listening to this.

21 You start going with a synthesizer of some sort,
22 you're going to have some real issues with people trying
23 to understand what's going on and trying to -- especially
24 when you start getting into the character-based
25 languages -- where the character is and exactly what

1 little tiny line is put on the character completely
2 changes the phonetics of that word.

3 And also then you start getting into the problems
4 of translations versus transliterations. So it's -- I
5 mean, I know this is not the intent. But if you're trying
6 to really delay this, this is one of the best ways to go
7 about doing it.

8 We need to have some level of confidence in the
9 Secretary of State's Office and the various panels that do
10 the certification and the vendors that the information
11 coming from the system going to the paper stream is the
12 same thing that's going to be going to the audio stream.
13 And we need your support on this so that we can get these
14 systems out, because we're required by the state law to
15 have these in place in January.

16 PANEL MEMBER CARRELL: Thank you.

17 Let me ask if I might, is there anyone in the
18 audience representing -- oh, Ms. McCormack from
19 Los Angeles wants to speak.

20 MS. MC CORMACK: Good morning. Conny McCormick,
21 Los Angeles County.

22 I just wanted to mention that we've been doing
23 our touch screen voting on early voting for four years
24 now. And in November, we had 65,000 voters and quite a
25 few blind voters, and because one of our sites is the

1 Braille Institute. We have never done any language but
2 English in our audio. We have never attempted to do all
3 the ballot styles and all that language. We've never had
4 a single complaint or a single individual who is blind say
5 they want to do another language.

6 So the amount of work and effort that's being
7 discussed here for a concept and a theory that hasn't even
8 in our county been needed or used is rather of major
9 concern to me, because this is a huge endeavor to try to
10 do this.

11 As Steve Rodermund pointed out, when we looked at
12 the text conversions, it doesn't do well. For our audio
13 in English, we do it all with humans. We do the whole
14 thing. We do not use any kind of synthesized voice. We
15 have found there are real problems with that,
16 understanding occupations, and different types of words
17 that aren't familiar necessarily to those synthesizers.
18 So we use a human process to do that in English. We've
19 never done it. I just wanted to mention it. I'm not on
20 the agenda for any of this. I just want to mention this
21 is probably a tiny, even ever, need and yet it's
22 apparently causing a huge issue here.

23 PANEL MEMBER CARRELL: If I may ask a question.
24 Approximately -- and you said you worked with the Braille
25 Institute. Approximately how many voters in Los Angeles

1 County, no matter what language they speak, are blind, do
2 you know?

3 MS. MC CORMACK: Well, we don't really know, and
4 we don't have any way of really capturing. We just know
5 that with Braille being one of our sites, and we know
6 quite a few people go there -- out of the 65,000, was it
7 100? Was it 150? Was it 500? I would think it's under
8 500. Probably under 100. But probably somewhere around
9 there. I don't know specifically. But we've only done
10 English for four years, and they've all been very happy
11 with having the English.

12 PANEL MEMBER CARRELL: And this is probably just
13 anecdotal. Do most blind voters vote using the DRE in
14 your county, or do some of them use absentees?

15 MS. MC CORMACK: It's hard to know. But the ones
16 that have used the DRE's have been very happy with the
17 English translation of it. But I can't tell you how many
18 are using absentee or just going with an assistant on
19 election day. I don't know.

20 CHAIRPERSON KYLE: Thank you.

21 You were going to ask, Mr. Carrell, if there are
22 any representatives from disability rights groups in the
23 audience.

24 MS. LARSON: I'm from Santa Clara County. I did
25 meet with them this week.

1 CHAIRPERSON KYLE: Ms. Larson, Santa Clara
2 County, Registrar of Voters.

3 MS. LARSON: Good morning. I'm Elain Larson,
4 Assistant Registrar of Voters at Santa Clara County.

5 We have been using the Sequoia Voting System, and
6 we translate into five different languages: Chinese,
7 Vietnamese, Tagalong and English -- Spanish, English. You
8 forget about the other languages. We've had to record all
9 the languages. It's a very tedious -- ballot layout
10 process for touch screen voting is long and lengthy. It's
11 one of the most stressful parts of the election, to make
12 sure everything is accurate. To add another requirement
13 on to it is just going to disable our department in terms
14 of the accuracy.

15 We have teams of all those five languages to
16 ensure that everything is the same. To add another stream
17 and the capability of making it even more complicated -- I
18 met with our Commission for the Disabled this week, as
19 well as we have the Voter Accessibility Advisory
20 Committee. And I spoke to the members about this topic,
21 and one thing you have to be aware of is that we had three
22 people out of that meeting that voted touch screen and
23 reports from a couple of other individuals.

24 The gentleman who is very quick at electronic
25 devices -- he has aptitude and a good ear for it, because

1 he's been visually impaired for all his life, took him a
2 half an hour to vote on audio voting. He reviewed -- the
3 review process took an additional 30 minutes. And to add
4 this on to this requirement -- you know, we have to keep
5 it as simple as possible.

6 So what I'm advocating is that I'm hearing from
7 my constituents with the visually impaired community that
8 they want simplified audio voting. We have to make some
9 improvements obviously in the navigating of it. But to
10 add more complexity is going to be very difficult for
11 them.

12 CHAIRPERSON KYLE: Thank you for your help.

13 Are there more comments or discussion from the
14 Panel? I'd like to sort of facilitate this and move it
15 on. And there are a few folks who indicated wanting to
16 speak on this, but not everyone is on audio and we have a
17 few other ones. So I'm going to close testimony on this
18 and try to move it.

19 I'll entertain a motion on the audio stream and
20 also entertain that we should move, unless we do
21 everything in its totality. I think from a process point
22 of view, if we can knock these down one at a time it would
23 be a lot better.

24 PANEL MEMBER CARRELL: You want a motion for this
25 item individually?

1 CHAIRPERSON KYLE: Yes.

2 PANEL MEMBER CARRELL: I'm working on that.

3 PANEL MEMBER MOTT-SMITH: I'll make one in the
4 meantime. Essentially, move Tony's recommendation.

5 CHAIRPERSON KYLE: Pardon?

6 PANEL MEMBER MOTT-SMITH: I'd like to move Tony's
7 recommendation.

8 CHAIRPERSON KYLE: Can I summarize that as
9 replace current language with requirement that any and all
10 source code be available to SOS for certification testing,
11 then additionally modified AVVPAT standards Section
12 2.4.3.1.2.

13 PANEL MEMBER MILLER: That does capture the
14 essence, but I'm not talking about putting the source code
15 review accessibility within the standards themselves.
16 That would be part of certification process of systems.

17 CHAIRPERSON KYLE: In terms of the summary of
18 what we're attempting to accomplish.

19 PANEL MEMBER MILLER: Yes. The testing solutions
20 rather than a so-called hardware solution.

21 ELECTIONS ANALYST WAGAMAN: The original language
22 was to add at 2.4.3.1.1 as determined by state testing,
23 strike 2.4.3.1.2, and in addition to direct staff to
24 modify state testing procedures to include the capability
25 of reviewing the source code review specific to this item.

1 PANEL MEMBER MILLER: I second the motion.

2 PANEL MEMBER JEFFERSON: Mr. Chairman, did I hear
3 you say any and all source codes?

4 CHAIRPERSON KYLE: I did say any and all source
5 codes.

6 PANEL MEMBER JEFFERSON: Not just confined to
7 source code specifically related to this item?

8 CHAIRPERSON KYLE: I said any and all.

9 PANEL MEMBER JEFFERSON: Thank you.

10 PANEL MEMBER CARRELL: Now you have a motion and
11 a second, can we discuss?

12 My view is that we're taking something that was
13 tried to assure an equal standard for all voters no matter
14 what and remove it so that there's no discussion about
15 that issue at all, which I don't know that that achieves
16 what we need to achieve. I like the idea of requiring
17 source code. But if we're not going to guarantee testing
18 of that source code, I don't know what service that
19 provides to anyone.

20 I would say that I think that there may be some
21 other way to modify this, and that is to assure that, as
22 Tony recommended, through testing that we can guarantee
23 that the audio reflects the audio that a voter hears when
24 they're verifying their paper record copy reflects
25 accurately what's on their paper record copy.

1 And I believe that requiring at least all
2 text-based languages to do what we're currently
3 requiring -- and I don't know if this would stand up
4 actually legally under the Voting Rights Act -- to change
5 the date to 2008-2009, whathaveyou, to assure that even
6 graphic-based languages at that point are reflecting the
7 audio of what's on the paper. But if we can craft it in
8 such a way that through testing we're assuring that the
9 audio that an individual voter hears when they are
10 reviewing their ballot reflects what's on their paper
11 record copy, I'm satisfied as long as we are actually
12 doing that.

13 Now, I'm not comfortable that the feds are
14 actually doing that, and I don't know that our consultants
15 who test to the state standards, and if we include in the
16 state standards that it must be tested, have that
17 expertise. But if you want to change it to a testing
18 based -- you know, to assuring it through state testing,
19 you're putting the onus back on us instead of the vendors.
20 That's okay, as long as we can guarantee we're going to do
21 that and not just ask for source codes and stick it in the
22 lock box and never look at it.

23 CHAIRPERSON KYLE: Other comments?

24 PANEL MEMBER MILLER: Mr. Carrell, I'm not even
25 sure -- and I'm admitting my technological deficiency

1 here -- that this so-called hardware solution guarantees
2 that the audio is the same as the printed ballot. I know
3 it comes from the -- supposed to come from the printer,
4 the feed to the printer. One channel goes to the audio
5 and one channel goes to the printer. It's all the same
6 feed from the machine or whatever. But I'm not even sure
7 that that hardware solution is a guarantee, because I
8 assume through creative software devices something could
9 change that as well so that there's no guarantee the
10 hardware solution accomplishes what needs to be
11 accomplished.

12 I think through testing, state testing, the feds
13 have tested -- but state testing, including, if deemed
14 appropriate, review of the source code, all of the source
15 code, if necessary, not just a piece of it, that would
16 accomplish what we need to accomplish, and that is to make
17 sure that the paper and the audio are the same. And we
18 could accomplish that, I think, within the time frames
19 necessary, as Mr. Rodermund and Ms. McCormick have
20 indicated.

21 Time is short for compliance here, and we do need
22 to be assured that the system is reliable, accurate. But
23 we cannot prolong this process so that there cannot be
24 compliance with the state and federal law.

25 CHAIRPERSON KYLE: Rather than go back and forth,

1 Mr. Carrell, if you have anything new to add, if it's just
2 to re-emphasize your point.

3 PANEL MEMBER CARRELL: No. I just want to hear
4 what the specific motion is.

5 CHAIRPERSON KYLE: Before we do that, any other
6 comments from the Panel?

7 PANEL MEMBER JEFFERSON: Just one, that the term
8 testing here does include any source code review we want.
9 It doesn't mean just running the system. It means any
10 study we want.

11 PANEL MEMBER MILLER: Correct, Mr. Jefferson.

12 ELECTIONS ANALYST WAGAMAN: Sorry. Yes. What is
13 the question? Restate the motion.

14 PANEL MEMBER CARRELL: Read the motion.

15 ELECTIONS ANALYST WAGAMAN: The motion consists
16 of three parts.

17 Part 1 is to modify Section 2.4.3.1.1 of the
18 standards to read, "the audio component must accurately
19 relay the information printed on the paper record copy to
20 the voter as determined by state testing."

21 Part 2 is to strike in its entirety Section
22 2.4.3.1.2.

23 Part 3 is, in addition, to direct staff to build
24 source code -- the ability to source code review of any
25 and all portions of the source code in the state testing

1 procedures.

2 CHAIRPERSON KYLE: I think we need to add a
3 fourth component, for certification purposes, the vendor
4 would be required to provide any and all source code for
5 that certification testing.

6 PANEL MEMBER MILLER: That would be fine. I
7 assumed it was included in Part 3, but if you want to make
8 that clear.

9 CHAIRPERSON KYLE: All those in favor?
10 (Ayes)

11 CHAIRPERSON KYLE: All those opposed?
12 Those abstaining?
13 (Abstentions)

14 CHAIRPERSON KYLE: The ayes have it.
15 Bilingual ballots, currently three options were
16 presented: Leaving current language; replacing language
17 required that paper record be printed only in language
18 used by voter on DRE; or removing the current language
19 entirely.

20 Are there questions or comments by the Panel
21 regarding those options or this issue they need
22 clarification on?

23 Mr. Jefferson.

24 PANEL MEMBER JEFFERSON: The question I asked out
25 of place earlier, the option of printing all the votes in

1 English, even if the voter votes in a different language,
2 is not on your list?

3 ELECTIONS ANALYST WAGAMAN: That was not included
4 in the list, because of concerns that were raised during
5 the drafting of the standards about whether that
6 requirement would potentially put us in violation of the
7 Voting Rights Act.

8 PANEL MEMBER CARRELL: If I could just explain
9 why this is in the standards to begin with. You know, we
10 wanted to put something in the standards that achieved
11 ease of use votes for the voter as well as for the
12 election officials in counting these ballots. And we
13 sought guidance from a working group of election officials
14 and we ran these by the vendors. We were told at the time
15 this seemed okay and would be workable and made sense.

16 If it doesn't, I don't personally have a problem
17 just changing it to one language, as long as that's the
18 language of the voter, if that is still acceptable for the
19 elections officials who are going to have to count these
20 ballots in a language other than English.

21 I know that there's the philosophical discussion
22 about how some ballots will look different than others,
23 but that's true currently even on absentee ballots or in
24 the polling place when someone requests an alternative
25 language ballot. So I don't think it's any different from

1 the current situation.

2 But if the elections officials themselves have no
3 problem counting English ballots and ballots without any
4 English in it but just the language the voter votes in,
5 then I don't think it matters to me.

6 CHAIRPERSON KYLE: Okay. Thank you for your
7 point.

8 I'm going to call a couple election officials up
9 here in a moment.

10 Mr. Jefferson, do you want to --

11 PANEL MEMBER JEFFERSON: Just to note later, one
12 of the things I'm concerned about in printing the ballot
13 in the language of the voter as opposed to all of them in
14 English -- by the way, I certainly understand the
15 philosophical point of wishing to -- printing the ballot
16 of the voter. If you are a minority language voter and
17 then, of course, your vote stands out from the background
18 sea of English. This is going to come up later in our
19 discussion when we get into discussing the privacy issue,
20 and I will refer to this as another element of the later
21 discussion.

22 CHAIRPERSON KYLE: Representative from Orange
23 County, Mr. Rodermund, indicated you would like to speak
24 on this point.

25 MR. RODERMUND: Thank you, again. Steve

1 Rodermund, Registrar of Voters, Orange County.

2 I feel strongly we need to go with just one
3 language, be it all English or be it the language of the
4 voter. Primarily, you start to really run into issues if
5 you print bilingual out there. The intent of the paper
6 audit trail is to allow the individual to see what is on
7 the summary screen, and then be able to compare it to what
8 is on the paper.

9 The way these systems are set up, basically,
10 that's what you've got initially, because the screens as
11 they come up -- like in Orange County's case, the November
12 election we had three to four summary screens just showing
13 all the different things that people voted on. It wasn't
14 just one big screen where you could go down and have a
15 one-to-one relationship. So you need to have the ability
16 to go with a one-to-one relationship. You start talking
17 about having a two-to-one relationship, then what are you
18 going to do? Are you going to change the fonts? You're
19 going to have half of it here. The mechanics just get
20 mind-boggling when you try to tell this printer that it
21 brings up half the time and then brings it up the other
22 time.

23 As far as the issue of how do we count these, I
24 would respectfully submit that, one, we will have the bar
25 code on there. And the bar code doesn't care what

1 language it's in. When we do machine counts, it's not a
2 problem. And, two, we have language specialists anyway.
3 Most of the time when you look at this, you know what
4 they're voting on. And if there was an issue, we could
5 bring in one of our bilingual language specialists and
6 take care of it. That's not an issue.

7 The other issue that's been raised is that
8 somehow this might stigmatize or highlight this person
9 is -- therefore, that they voted in an alternate language
10 or a language other than English and they could then be
11 identified, as was brought up by Mr. Carrell or -- I
12 forget which one of you two gentlemen brought it up. That
13 happens now anyway. We have that issue when you only have
14 one or two or three people that request an alternate
15 language ballot in paper. I mean, if you can go into --
16 if someone has access and can see who's requesting
17 materials, you've got a really good idea.

18 So you've got to rely on procedures that you put
19 in place to ensure these things do not occur. Everything
20 is procedure driven. Because what you're talking about
21 here is secrecy of the ballot. And if you don't trust the
22 Secretary of State's Office to write good procedures, the
23 counties that follow these procedures, we have no secrecy
24 of anybody's ballot. So, you know, this all boils back
25 to, give us something we can work with. Make sure we have

1 the procedures in place so we can do this. And please
2 keep it one language, whatever it be, so that we make it
3 as simplistic as possible.

4 CHAIRPERSON KYLE: Thank you.

5 We have a few other county representatives. Any
6 feel -- San Joaquin.

7 MS. HENCH: Debby Hench, Registrar of Voters, San
8 Joaquin County. And I've done bilingual ballots, and I've
9 done separate Spanish-English ballots. The trick is with
10 two different ballots whether paper or electronic, if
11 you're going to have a paper record, they're going to look
12 in the same format. You're going to see -- for measures,
13 you're going to see a number on there in order for us to
14 count. So we've done everything to make ours match. When
15 we put them, they look the same, except there's just 10
16 percent or more words on there.

17 Now, on these VVPAT, I'm sure that we'll have
18 some questions, and we'll have to have our bilingual
19 person there to answer a question if we can't determine
20 that that name is the same name in the English, but we
21 have to do that now when we're translating these things.
22 We have to have our bilingual person actually do the
23 translations and proof our ballots whether they're
24 electronic or paper. They're all proofed a million times
25 before they're ever even put out there.

1 So this is going to be the same thing. Is it
2 going to be more time, more staff time, because we have to
3 add someone to translate a ballot. That will be, you
4 know, a possibility. But at this time we only have in our
5 county about 300 people that even request Spanish. But
6 that's because they thought they had a bilingual ballot
7 one time and then they had a separated one the next time.

8 CHAIRPERSON KYLE: Thank you.

9 Brad Clark.

10 MR. CLARK: Good morning. I'm Brad Clark,
11 Registrar of Voters, Alameda County.

12 I'd like to reiterate what Mr. Rodermund said. I
13 think it should be just in one language if you're printing
14 it out. I think it should be in the language the voter
15 speaks so the voter can independently verify that.

16 In terms of identifying the voter on our system,
17 the voter goes to the voting machine and picks their
18 language themselves. The poll worker doesn't know which
19 voter is voting in which language. So I don't know that's
20 a real problem.

21 And also if the ballots come out or if the paper
22 record comes out and you need verification, I would hope
23 that any county that has multiple languages for their
24 ballots have multiple multi-lingual staff, and certainly
25 we do, who would be able to look at those and help us if

1 there was any problem. So my preference would be one
2 language in the language the voter votes.

3 CHAIRPERSON KYLE: Thank you.

4 Any other counties that want to address this
5 issue?

6 There were two other vendors referenced in the
7 staff record -- I'm sorry. We have one over here.

8 MS. DUNMORE: Barbara Dunmore, Registrar of
9 Voters for the County of Riverside.

10 I'd like to bring up a point that I think is
11 specific to Riverside County. We're under a federal
12 mandate to provide our ballots in Kaweah, which is a form
13 of Native American language that doesn't have a written
14 component to it. So we have used audio in this case. So
15 I'm not sure how we are to implement the VeriVote for this
16 language in Riverside County.

17 PANEL MEMBER CARRELL: Clearly, neither are we.

18 ELECTIONS ANALYST WAGAMAN: The issue did come up
19 previously with someone from that office, and I can't
20 remember who it was. And on a staff level, the way we
21 said we'd deal with that is it would default back to the
22 English if there wasn't a written language available, in
23 essence.

24 PANEL MEMBER CARRELL: If I can ask Ms. Dunmore a
25 question. Does that mean currently when voters vote in

1 Kaweah use the VeriVote printer that you have --

2 MS. DUNMORE: We don't have a printer.

3 PANEL MEMBER CARRELL: Not a printer, but the
4 current voting system that you use, that they don't see
5 anything on the viewer? They're just listening to the
6 audio and then voting and then hearing the stuff processed
7 as a blind individual would vote?

8 MS. DUNMORE: Yes.

9 PANEL MEMBER MILLER: Excuse me. How do you deal
10 with vote by mail with respect to these voters?

11 MS. DUNMORE: If they request an absentee ballot,
12 we assume that they are being assisted.

13 PANEL MEMBER MILLER: Thank you.

14 CHAIRPERSON KYLE: Does any Panel member wish to
15 ask a question of the vendors? I had a number of
16 public --

17 PANEL MEMBER DANIELS-MEADE: Mr. Chair, I don't
18 have a question for the vendors, but it might be important
19 just to point out what we're talking about, these things
20 are only going to be looked at in a recount. It's not
21 like every ballot is going to be read to begin with.

22 CHAIRPERSON KYLE: Thank you for pointing that
23 out.

24 Mr. Miller.

25 PANEL MEMBER MILLER: I just had a question of

1 staff. Staff indicates that some vendors may have issues
2 with non-English doing it in the language that's presented
3 to DRE. Some vendors may have a problem changing these
4 systems or -- what is the extent of that problem?

5 ELECTIONS ANALYST WAGAMAN: This is a different
6 problem to a certain degree than the problem discussed
7 earlier on the audio system, in that it is a software
8 issue. It is not a hardware issue.

9 And, secondly, that there are vendors who have
10 designed their systems to print the ballots bilingually.
11 Some vendors have basically by choice designed it
12 differently, because they thought they either had concerns
13 about the standard to begin with, or because the
14 particular issue that comes up on a design issue that I'm
15 aware of is if you have that view screen and the ballot is
16 a certain length, they can fit a certain number of races
17 onto that review screen. That's how many they can fit on
18 that view screen on DRE, while for -- if you had a ballot
19 that was printed in both languages, that ballot would be
20 longer and that voter would, in essence, have to tab
21 through the process more times because that ballot was
22 longer. And they felt that wasn't equitable. So they did
23 not design that way.

24 It is something that -- unlike the audio stream
25 where I can't say x vendor -- I haven't got any vendors

1 who are able to do this. This is a situation where
2 vendors have been able to do it. Some have done it. Some
3 haven't. And that's why that Option 3 exists, which would
4 allow for either. It's the county purchasing decision
5 basically.

6 PANEL MEMBER MILLER: Thank you.

7 PANEL MEMBER CARRELL: I'm make a motion, if it's
8 in order. But, otherwise, I don't know if you have more
9 public comment.

10 CHAIRPERSON KYLE: I don't believe so. I'll
11 entertain a motion.

12 PANEL MEMBER CARRELL: That we replace the
13 current language with the requirement that the paper
14 record be printed only in the language used by the voter
15 on the DRE or English if there is no written component to
16 the language.

17 ELECTIONS ANALYST WAGAMAN: The one issue, just
18 so you're aware, there are some vendors who have built
19 towards the current standards. And you would, in essence,
20 be putting them back into a redesign on that. If they are
21 printing it bilingually right now, trying to meet the
22 previous standards they would be --

23 PANEL MEMBER CARRELL: How about paper record at
24 least be printed in the language used by the voter on the
25 DRE.

1 ELECTIONS ANALYST WAGAMAN: That already, I
2 believe, exists under a different standard. It would be
3 2.3.4 --

4 PANEL MEMBER CARRELL: I'm trying to help. Maybe
5 you should make the motion.

6 ELECTIONS ANALYST WAGAMAN: No. Thank you.
7 Actually, you would be correct that that would need to be
8 inserted.

9 PANEL MEMBER CARRELL: Why don't we say replace
10 the current language with a requirement that the paper
11 record at least be printed in the language used by the
12 voter on the DRE or English if there is no written
13 component to the language.

14 ELECTIONS ANALYST WAGAMAN: I hate to do this to
15 you, but if you look at Section 2.1.6, "The AVVPAT system
16 shall be designed to allow each voter to verify their vote
17 on the paper record copy in the same language they voted
18 in on the DRE and shall comply with federal and state
19 requirements." So that portion is already in there, the
20 requirement that it has to at least be in the language in
21 which they cast their vote.

22 So if you simply struck 2.3.4.2, that would do
23 the same thing. If you want to repeat it a second time,
24 that's your discretion.

25 PANEL MEMBER CARRELL: That brings up the issue

1 about the current language that you're referencing, which
2 may be impacted by the previous motion and the previous
3 vote regarding audio accessibility. Because if someone is
4 using audio in one language, they're going to have to be
5 able to verify it in that language. So I don't know how
6 that's implicated. I don't know if it is, but it might
7 be.

8 ELECTIONS ANALYST WAGAMAN: I don't know that I
9 exactly follow that, but --

10 PANEL MEMBER MILLER: Don't go there.

11 ELECTIONS ANALYST WAGAMAN: I'd be happy to
12 answer your question, if that was a question.

13 PANEL MEMBER MOTT-SMITH: Marc, wouldn't Option 3
14 work?

15 CHAIRPERSON KYLE: Explain how it would, John.

16 PANEL MEMBER MOTT-SMITH: If we just remove the
17 current language, then what's left in there is the section
18 that Michael read, which seems to allow for the
19 flexibility for whichever system the county wants to use.

20 PANEL MEMBER CARRELL: It would, as long as we
21 can accommodate that issue with Riverside County.

22 PANEL MEMBER MOTT-SMITH: Why don't we address
23 the Riverside County issue singularly then.

24 PANEL MEMBER CARRELL: Why don't we look at --
25 what was the issue here?

1 CHAIRPERSON KYLE: Striking --

2 PANEL MEMBER DANIELS-MEADE: 2.3.4.3.

3 ELECTIONS ANALYST WAGAMAN: Modifying 2.1.6.

4 PANEL MEMBER CARRELL: You might want to do
5 2.1.6.1, which is in languages that are only audio or
6 paper copy should be printed in English.

7 PANEL MEMBER MILLER: Who designed these
8 paragraphs?

9 PANEL MEMBER CARRELL: The motion then is remove
10 the current language entirely and modify 2.1.6 to provide
11 for English ballots if no written component of the
12 language exists. Does that work? Do I have a second?

13 PANEL MEMBER JEFFERSON: Second.

14 CHAIRPERSON KYLE: Is there a second?

15 PANEL MEMBER JEFFERSON: Yes.

16 CHAIRPERSON KYLE: Any discussion?

17 All those in favor.

18 (Ayes)

19 CHAIRPERSON KYLE: Those opposed?

20 Those abstaining?

21 The ayes have it.

22 You got that, Mr. Wagaman?

23 Sequential storage of votes. If you want to do a
24 short one, we'll do --

25 PANEL MEMBER CARRELL: I think D, E, and F will

1 be much shorter than the sequential storage of votes.

2 CHAIRPERSON KYLE: Well, we need to go through
3 them regardless of our sequence. So I'd like to tackle
4 it.

5 Let's take a seven-minute break in anticipation
6 of this going a little bit longer.

7 (Thereupon a recess was taken.)

8 CHAIRPERSON KYLE: After reviewing the remaining
9 agenda items in this section, I'm going to try to go
10 through some of the anticipated shorter agenda items in a
11 more rapid pace, then maybe take a very brief lunch break
12 before we jump into the two next largest issues. I'm
13 going to skip over sequential storage of votes, come back
14 to that. I want to go to real time, and then under glass,
15 and then state law. So let's go to real time audit log.
16 This is specific to one vendor, ES&S, and I believe we
17 have an ES&S representative here today.

18 ELECTIONS ANALYST WAGAMAN: Also just for your
19 note, there is a comment from another vendor on Diebold on
20 this item that is a contradictory opinion. So just want
21 to point that out. Since you're looking at the vendor
22 comment in particular, I want to make sure you're looking
23 at that.

24 PANEL MEMBER CARRELL: Where is this?

25 ELECTIONS ANALYST WAGAMAN: This was in the late

1 comments that I gave to you in their item.

2 CHAIRPERSON KYLE: Staff has presented us with a
3 proposal of either removing the current language print
4 after the selection process is complete. In other words,
5 allowing the real time audit log.

6 PANEL MEMBER JEFFERSON: I have a technical
7 question.

8 CHAIRPERSON KYLE: Go ahead.

9 PANEL MEMBER JEFFERSON: Maybe you can tell me,
10 Michael, or maybe ES&S can. If a voter is making
11 tentative decisions and then changing them and does so
12 several times -- he makes a choice for President and then
13 a line is printed for President and then he changes his
14 mind and makes a different choice for President, How do
15 you void that first line that was printed?

16 ELECTIONS ANALYST WAGAMAN: I would defer to the
17 vendor. My belief is they would print in the same way
18 that these ones print a void for an entire ballot, it
19 would print a void for a particular race.

20 PANEL MEMBER JEFFERSON: So if you change your
21 mind several times, you would have a mixture of lines
22 that -- you have a line that says Candidate A for
23 President. Ten lines below, when you go back and change,
24 you've got a line that says, void what I said up at the
25 top, and I really want to vote this person for President.

1 That's the way the paper trail would read?

2 ELECTIONS ANALYST WAGAMAN: I would refer to your
3 vendor on this. If your question is if paper records
4 would be varying lengths, yes, they would.

5 PANEL MEMBER JEFFERSON: Not just varying
6 lengths, but easy to interpret. You have to read them
7 from the back forward. Because if you read them from the
8 top down, you may miss the void notation, or that's my
9 question.

10 Is ES&S here?

11 ELECTIONS ANALYST WAGAMAN: Yes. There's a
12 representative.

13 CHAIRPERSON KYLE: There was earlier. Maybe
14 later somebody will answer that question for me.

15 CHAIRPERSON KYLE: Is the representative from
16 ES&S present?

17 PANEL MEMBER CARRELL: Do you want to table this
18 item?

19 CHAIRPERSON KYLE: Yes. Thank you.

20 Let's go to E.

21 Oh, wait a minute. There's Lou. We're dealing
22 with real time audit log. If you wouldn't mind stepping
23 up to the podium, we have a couple questions for you.

24 MR. DEDIER: Lou Dedier, Vice President, General
25 Manager for ES&S.

1 PANEL MEMBER JEFFERSON: Should I repeat my
2 question?

3 CHAIRPERSON KYLE: Go ahead.

4 PANEL MEMBER JEFFERSON: Just a question, how it
5 works. As a voter is making choices, every time he makes
6 a tentative choice on a line that's printed, a different
7 choice, different office, a line is printed. Then if the
8 voter goes back and changes his mind several times, how do
9 you note that the previous choices are voided?

10 MR. DEDIER: Basically, if it's a strikeout and
11 change, it would put a cast mark across that saying there
12 was a change. It's to catch voters' actions as they go.

13 PANEL MEMBER JEFFERSON: The printer can go
14 backwards?

15 MR. DEDIER: Not backwards. But what it does is
16 goes forward in the audit log. If you do a cancel as
17 basically each -- it's a real time audit log, with the
18 idea that every motion of the DRE would be captured,
19 including opening of the polls, to the time the program
20 was submitted on to the system, it would log that.
21 Because pollworkers -- the idea is to track the system
22 throughout. This was brought up by some of our customers.

23 PANEL MEMBER JEFFERSON: Are you talking about
24 the audit log or the voter verified paper trail?

25 MR. DEDIER: It would be one and the same.

1 PANEL MEMBER JEFFERSON: It is the case if I vote
2 for Candidate A for President and then for a Senator and a
3 Congressman, and decided to go back and change my vote for
4 President, would at that point, say, cancel Candidate A,
5 vote for President for B. If he changes it again, that
6 starts another one. What I'm saying is when you read this
7 paper trail ballot, you have to look from the end first
8 and go backwards to find the actual recorded vote.

9 MR. DEDIER: Yes. From start to finish of each
10 ballot cast. But it would include a full audit trail of
11 the entire DRE unit from start to finish. From the time
12 the ballot image was loaded on the machine, that audit
13 trail starts at that point, to the time the machine comes
14 back to the county.

15 PANEL MEMBER JEFFERSON: I agree it's certainly a
16 better audit, but it's harder for voter verification,
17 don't you think?

18 MR. DEDIER: Well, the idea is when a voter casts
19 their mark for a specific individual or specific item,
20 they would touch, and they're verifying the machine is
21 accurate to what they're touching.

22 PANEL MEMBER JEFFERSON: Verified line by line?

23 MR. DEDIER: Line by line as they go. They're
24 verifying the accuracy of the DRE in process, not the full
25 image that is recorded as slated as a ballot image.

1 They're treating each one as a recorded item. So if I
2 touch Bush or Gore or whoever, basically that item is
3 touched and printed across to show that that is what I
4 marked.

5 PANEL MEMBER JEFFERSON: Okay. Thank you.

6 CHAIRPERSON KYLE: Other questions from the
7 Panel?

8 Thank you.

9 Other discussion on this issue?

10 PANEL MEMBER JEFFERSON: I guess I would like to
11 hear other people's discussion on that point.

12 CHAIRPERSON KYLE: Any discussion from the Panel?

13 PANEL MEMBER MOTT-SMITH: This is all right with
14 me. It's essentially a marketplace-driven flexibility
15 issue. It seems to me that it could be as friendly to the
16 voter as another way. And so I would be willing to look
17 at just removing the words "upon completion of selecting
18 his or her contest choices on the DRE." So it just reads,
19 "in all such devices, the voter shall have the ability to
20 verify his or her selections," et cetera.

21 PANEL MEMBER MILLER: I concur with Mr.
22 Mott-Smith.

23 PANEL MEMBER CARRELL: I'm torn. I mean, I agree
24 with Mr. Mott-Smith that the marketplace should drive the
25 design.

1 But the other issue we deal with, and it was
2 clearly an issue in San Francisco this year, was voter
3 confusion. And seeing a paper record copy that might have
4 ten choices for President on there and not say right after
5 that choice that it's cancelled, but say further down the
6 previous choice ten choices up is canceled -- first of
7 all, I wouldn't know how any voter would know that they're
8 supposed to look down to read what they've canceled
9 earlier. I just think it's totally confusing. I'll just
10 leave it at that.

11 PANEL MEMBER MOTT-SMITH: And I guess I don't see
12 it as totally confusing. I see it potentially as
13 something someone would use.

14 One of the criticisms of the Nevada experience
15 was that people after they were done voting would glance
16 over at it but not look at it. But a line-by-line review,
17 you know, contemporaneous to making their choices, doesn't
18 seem to me that we should foreclose that as an option that
19 voters would find just as friendly as a complete review at
20 one time.

21 CHAIRPERSON KYLE: Mr. Jefferson.

22 PANEL MEMBER JEFFERSON: Well, so we're going to
23 discuss shortly the whole subject of privacy. And,
24 unfortunately, this particular issue has privacy
25 implications as well. We have a law in the state, and

1 it's common around the country, that voters not be allowed
2 to mark their vote in any way. If you, in fact, record
3 every gesture, every mistake that a voter makes on the
4 paper trail, then a voter can easily mark his ballot by
5 making a peculiar combination of votes and then canceling
6 them all out and vote the way he wants. But the peculiar
7 combination of canceled votes is the mark of the ballot.

8 As you will hear later today, I'm excruciatingly
9 concerned about the erosion of privacy regarding voting
10 systems, and especially the concern that the voter
11 verified paper trail we've been fighting for for so long
12 might be an agent of that erosion of privacy, that this is
13 another concern I have. I honestly don't feel this is a
14 good idea.

15 I appreciate the additional logging that is
16 involved here. I appreciate the additional diagnostic
17 value. I just think it records too much information about
18 the voter's behavior.

19 PANEL MEMBER CARRELL: I'm looking at the
20 standards, and it creates a problem for me when talking
21 about spoiled ballots. The standards themselves say the
22 image created by the printer should be clearly definable
23 in the case of spoiled paper record copy. And the spoiled
24 paper record copy should be shown and the paper record
25 displayed -- the voter shall have the opportunity to

1 affirmly spoil their paper record copy no more than two
2 times.

3 So what this is doing is it creates even more
4 confusion, because -- and then it talks about how the
5 voter has to see the image at the time that -- I don't
6 remember where that was. The paper record display shall
7 provide adequate visual display to allow the voter to
8 privately -- no. That's not it.

9 I don't know that it -- I think it may create a
10 problem in terms of the legal -- how we've defined the
11 paper record copy and spoiling of the ballot. And while
12 they can change their choices many times, as we've created
13 in the standards, once a printout comes out of a paper
14 record copy, they can look at it and spoil that twice, per
15 state law, which allows the voter to spoil a ballot twice.

16 But if they've been changing it, and the ballot
17 paper record copy has been marking their changes the whole
18 time, are they, in fact, seeing everything at the end? Or
19 will it scroll over and they won't be able to read it
20 anymore? I'm confused by that. Because if they're
21 allowed the opportunity to only confirm their choice each
22 time they make that choice, you could have potentially a
23 ballot that's four times as long if they change their mind
24 on several different selections, and they couldn't go back
25 and see what they chose originally if they changed it. So

1 I don't know that it actually complies with the idea they
2 have to see the whole paper record copy and thus the whole
3 ballot.

4 And the spoiling issue is totally confusing to
5 me, because it would have to start over and print out all
6 their final selections. Because that's how we perceived
7 it will do it, and that's how other vendors are doing it,
8 is if you spoil a ballot, it marks it spoiled and then
9 prints out all your -- you then get to change your votes
10 and then it prints it out again. So will it then spoil
11 everything and then you get to start fresh?

12 I agree with Mr. Jefferson. There's just too
13 much information. And sometimes when too much information
14 is put before a voter, they don't know what they're
15 supposed to be looking at and how to read it. And
16 training the voter in this, in my view, is going to take
17 too much time and create too much complexity.

18 ELECTIONS ANALYST WAGAMAN: To provide
19 information to the Panel, if Mr. Mott-Smith's motion were
20 to pass, two points he raised, one about the spoiling of
21 the ballots. You're looking at 2.3.3.4.1. The standard
22 we would apply is the same standard we currently apply to
23 DRE. The spoiling is something that applies to the
24 entirety of the ballot, rather than a specific selection.
25 Right now on DRE you can change your selection a thousand

1 times if you wanted to, as long as you don't go over your
2 five minutes. The spoiling two times would only apply if
3 they canceled the entire ballot.

4 The second point I believe you're referring to
5 refers to 2.4.2, which says that they shall have the
6 ability to view the entire paper record and the review
7 screen simultaneously. However, the next sentence has a
8 caveat that if the paper record copy cannot be viewed in
9 its entirety at the same time, the voter shall have the
10 opportunity to verify the entire paper record copy prior
11 to having either the electronic record or paper record
12 copy being stored. That would be -- that second sentence
13 would be where in all likelihood the real time audit log
14 would come into play, especially if there are a
15 significant number of changes made by the voter.

16 PANEL MEMBER CARRELL: I think basically what I'm
17 suggesting is the way this is designed, there is no such
18 thing as a spoiled ballot.

19 ELECTIONS ANALYST WAGAMAN: There was no comment
20 on desirability. It was just a comment on staff --

21 PANEL MEMBER CARRELL: I understand that. What
22 I'm saying is the way ES&S is proposing this, there's no
23 such thing as a spoiled ballot. You're creating a
24 situation where they're going to just keep changing their
25 selections here, and it creates two problems.

1 They're going to keep changing the selection. If
2 they do want to spoil the ballot because they don't agree
3 with what's on there, they spoil the ballot. It clearly
4 isn't contemporaneous with what they've done.

5 It says upon spoiling their paper record copy,
6 the voter shall be able to modify and verify selections on
7 the DRE without having to reselect all their choices. But
8 how will that happen? If it's only reflecting what
9 they're choosing and they're spoiling the entire ballot
10 and they make the one change at the end, how will it know
11 what to print for all their other selections? It will
12 refer them to the previously spoiled paper record copy. I
13 just think it creates a lot more problems than it solves.

14 PANEL MEMBER JEFFERSON: I have another question
15 about compatibility with rank choice voting. If you voted
16 for numbers 1, 2 and 3 and 4, and then you decide to
17 unvote for 1, it prints a cancellation for 1, but does it
18 also tell you that 2 has moved up to 1 and 3 is moved up
19 to 2? There's a lot of complexity here that bothers me,
20 and I don't know how that would work.

21 I wouldn't feel comfortable voting for it now,
22 certainly not without a lot more information and some
23 study, some voter usability studies. And the whole point
24 is be -- to support voter verification, not diagnosis or
25 logging of events on the system.

1 CHAIRPERSON KYLE: Could ES&S respond to the rank
2 choice voting issue, please?

3 MR. DEDIER: The idea behind the rank choice
4 voting module -- what we proposed here was a device that
5 records each action made by the voter to make sure of the
6 action cast on the DRE, or pressed on the DRE, we weren't
7 treating it basically as a necessary image. On rank chose
8 voting, each race is treated as a separate issue. Your
9 first selection is 1. Your second selection -- it doesn't
10 automatically move up. You basically have to go back. By
11 deselecting, then you would make a second choice. And
12 rank choice ballots, it's basically an issue. It's 1, 2,
13 and 3. You would make your first selection, your second
14 selection, your third. But it's treated almost like a
15 separate contest.

16 PANEL MEMBER CARRELL: I can see a ballot being
17 yards long, particularly on a rank choice voting
18 situation, where they're going to choose 1 and change the
19 1, 2, 3 and change it to 2, 3, 1 and 4, 3, 2. So how do
20 you accommodate the amount of paper that's in the printer?

21 MR. DEDIER: I think what you're seeing now is
22 you're thinking of it as an image. We're thinking of it
23 as a recorder. That was the idea behind the real time
24 recorder is recording the actions of the DRE. We'd like
25 to pick up what happens at a DRE when they go out. What

1 happens with the voter. If they walk up and leave, they
2 have to cancel. Where was that image canceled? There
3 wouldn't be a produced image.

4 PANEL MEMBER CARRELL: And I totally understand
5 why you're proposing what you're proposing. I understand
6 the benefits. But I believe the negatives, which the goal
7 here is for voter verification, I think that they're much
8 greater than the benefits. Because from the voter's
9 perspective, and even from the election officials'
10 perspective, who may benefit by that audit log, they're
11 also going to have -- I can't imagine how much paper to go
12 through, because you're not just printing the same amount
13 for every voter. You're printing an unknown amount for
14 every voter.

15 MR. DEDIER: It's a full audit of the system.
16 That system, at the same time, we can apply a bar code to
17 it that's automated, that goes through and reads the
18 strikes or the marks with a third-party device that's not
19 associated with the system. So there you have an
20 independent verification to run those rolls through.

21 But the idea was to capture -- give you guys
22 something else to think about, so to speak, within the
23 verification that we have, the idea of the voter verified.
24 We have two different versions of it. But we want to
25 throw this version up for review and discussion as the

1 idea that this might be another better mousetrap, so to
2 speak, that captures everything that goes on within the
3 election process and gives election officials a tool to
4 record the device while it's in use.

5 PANEL MEMBER CARRELL: If you were to do that and
6 then at the end allow, as the other vendors or other
7 prototypes do, summarize all the choices they've made so
8 they can see all their choices right there and then spoil
9 that and choose again and spoil that, it seems to me that
10 that may be a possibility so that they are actually seeing
11 all their selections in one place, which achieves the
12 voter verification and ease of use for the voter. The
13 auditability, if you want to contain that, I think you're
14 allowed to do that under this, unless that is not the
15 paper record copy at the end. That would be my
16 understanding.

17 PANEL MEMBER MOTT-SMITH: I think I understood
18 Mr. Dedier to say they have both versions, and that this
19 is potentially speculative and maybe we could --

20 MR. DEDIER: This is actually a third version of
21 the system that we have. We have basically a cut sheet, a
22 roll feed version, and real time audit. Being out here
23 with different jurisdictions, we had specific people
24 request a real time audit log be connected to the system.

25 PANEL MEMBER MOTT-SMITH: In the interest of

1 time, maybe we could table this item and consider it on a
2 future agenda.

3 MR. DEDIER: That's fine.

4 CHAIRPERSON KYLE: I'll entertain that.

5 PANEL MEMBER MOTT-SMITH: So moved.

6 PANEL MEMBER JEFFERSON: Second.

7 CHAIRPERSON KYLE: Is there any objection?

8 PANEL MEMBER MILLER: There's no objection.

9 I would state at this point, in my view we should
10 not be micromanaging what the counties want, as long as it
11 does not implicate accuracy or reliability or security --

12 PANEL MEMBER JEFFERSON: Or privacy.

13 PANEL MEMBER MILLER: Or privacy. Thank you, Mr.
14 Chairman -- Mr. Jefferson. I'm sorry. I'm not sorry
15 you're Mr. Jefferson. I'm sorry to misrepresent his
16 utterance.

17 But tabling is fine. We can defer this until
18 later.

19 CHAIRPERSON KYLE: Okay. Let's go to E, under
20 glass.

21 My understanding is this issue has been raised by
22 one vendor, Accupoll. We have a representative here from
23 Accupoll, and it would be -- their proposal is to remove
24 the requirement that the ballot be viewed under glass.

25 ELECTIONS ANALYST WAGAMAN: Correct.

1 PANEL MEMBER CARRELL: The ballot or paper
2 record?

3 ELECTIONS ANALYST WAGAMAN: Paper record. I'm
4 sorry.

5 CHAIRPERSON KYLE: First of all, any questions of
6 staff from the Panel for clarification?

7 Any questions of the vendor of the Panel?

8 I understand -- would the vendor like to make a
9 comment or --

10 MR. VADURA: Dennis Vadura for Accupoll, Chairman
11 and CEO.

12 Our viewpoint was, we understand the need to
13 match the electronic record with the paper record that's
14 maintained. Under glass is one solution. The other
15 solution employed by Optical Scan Systems, for example, is
16 to take the piece of paper, scan it into the polling place
17 and it matches the count exactly. Once scanned, the piece
18 of paper is retained in the lock and sealed ballot box.

19 Our proposal is to do exactly that. The paper
20 record be cast, take your record, and on the way out the
21 door it's scanned as you put it in the ballot box. And
22 only electronic records contribute to count only for
23 pieces of -- for the contemporaneous paper records that
24 have actually been scanned. Very simple.

25 PANEL MEMBER CARRELL: I would just say that the

1 way we've drafted the standards, if you were to create
2 that system and the paper itself was the ballot, then that
3 probably would be acceptable, as long as you didn't have
4 an electronic record kept. But if you're keeping an
5 electronic record of the vote and this is a paper record
6 copy and not the actual ballot, then it doesn't comply,
7 because there is the potential, at least from my view, of
8 creating not only confusion for the voter, but create the
9 potential of losing the ballot.

10 What you're saying is the ballot won't -- the
11 vote won't count unless it's marked in. You know, I think
12 that ensuring that no one can handle the paper means no
13 one can manipulate the paper, and I think that's important
14 as well.

15 MR. VADURA: Right. I understand your issue
16 regarding electronic records. They disappear once you
17 close the polling place, unless there's a scanned record
18 for it that has gone into the -- you still need to produce
19 a count report at the close in the polling place. That's
20 all they're used for.

21 CHAIRPERSON KYLE: Any further questions from the
22 Panel?

23 Thank you very much.

24 Any questions or comments from the Panel?

25 I have no public comment request on this issue.

1 Ms. Smith, I'm sorry. I stand corrected. Please
2 come on up.

3 MS. SMITH: Thank you. Maureen Smith, Peace and
4 Freedom Party.

5 I wanted to speak on this and also C, and
6 basically it's the same reason on both.

7 CHAIRPERSON KYLE: Ms. Smith, we're going to go
8 to C in a minute so --

9 MS. SMITH: I'm only speaking on this. I'm just
10 giving you the reasoning.

11 On this one, I want to recommend Option 2,
12 removing the requirement. And that's because there are
13 many organizations forming on voter rights, formed
14 recently and still forming, and there is becoming a
15 division of people between not wanting any electronic
16 voting and only paper ballots, and those that want to
17 utilize the electronic voting as a means for voting and
18 then have scanning as a means for counting and also have
19 the paper ballots as the final check on the system. So
20 they want to employ three different systems at the same
21 time.

22 The value of removing this leaves the option of
23 having the under glass, having it cut off and going into
24 the ballot box right under the voting machine, or being
25 taken by the voter and deposited as ballots and are now in

1 a secure voting box, secure -- yeah.

2 So because of that, because of a lot of opinions
3 forming even though there's two groups, I think that
4 removing this would allow for two different options under
5 the use of electronic voting machines. Thank you.

6 CHAIRPERSON KYLE: Thank you.

7 Any others I missed? Okay. Then I'll entertain
8 a motion.

9 PANEL MEMBER CARRELL: I would make a motion we
10 leave the language as it is.

11 CHAIRPERSON KYLE: Do I hear a second?

12 PANEL MEMBER MILLER: Second.

13 CHAIRPERSON KYLE: Any discussion?

14 PANEL MEMBER MOTT-SMITH: I'm sorry, Mark.

15 I did want to say I confess to not having a fixed
16 view on this. I'm just not sure. It's very similar to
17 like a ballot on demand system, which also has
18 opportunities and positives associated with it. So I
19 guess I'm just expressing that my own thinking is not
20 fully formed on this opportunity. So I'll probably
21 abstain on the vote.

22 PANEL MEMBER JEFFERSON: I feel the same as John.
23 I basically feel the same way, John. I don't have a fully
24 formed opinion about it either. And I would probably
25 abstain.

1 PANEL MEMBER CARRELL: Well, if I can just
2 explain one thing. The reason I'm suggesting this is
3 because these standards do not prohibit a system from --
4 DRE type system from creating a paper ballot that is then
5 taken by the voter and cast in a ballot box, as long as
6 the machine itself does not collect electronic votes of
7 that.

8 But what we're working under is a system -- DRE
9 system that collects electronic vote, and that is the
10 actual vote, not the paper version. The paper version is
11 the actual ballot, then this doesn't apply. And it does
12 not have to be under glass as long as there's no
13 electronic vote.

14 PANEL MEMBER JEFFERSON: But if I understood it,
15 he was trying to consider the system in which the
16 electronic copy was the ballot. That is the intent;
17 right? That's not the intent. You consider it as an
18 optical scan system, not as a DRE system?

19 MR. VADURA: Exactly.

20 PANEL MEMBER JEFFERSON: Then it already
21 complies, and these standards don't even apply; is that
22 right?

23 PANEL MEMBER CARRELL: Correct. This was drafted
24 initially so the definition of DRE provided only that it
25 applies if the DRE itself kept the electronic records of

1 the vote and those were the actual vote and then we needed
2 a paper backup of electronic.

3 PANEL MEMBER JEFFERSON: If we need no change,
4 this system is in compliance already with state law and
5 our --

6 PANEL MEMBER CARRELL: As long as it meets our
7 other standards, yes.

8 PANEL MEMBER JEFFERSON: In which case, I guess I
9 would support your motion.

10 CHAIRPERSON KYLE: Any comments from this end of
11 the table?

12 Okay. Call the question. All those in favor?

13 (Ayes)

14 CHAIRPERSON KYLE: All those opposed?

15 Any abstentions?

16 PANEL MEMBER MOTT-SMITH: I'll still abstain.
17 I'm not certain.

18 CHAIRPERSON KYLE: One abstention.

19 The ayes have it. We leave the current language.

20 PANEL MEMBER CARRELL: I would move on Item F as
21 recommended by the staff report.

22 PANEL MEMBER MILLER: Second.

23 CHAIRPERSON KYLE: Any discussion on that?

24 Any counties or advocates feel strongly about
25 that, the public feel strongly?

1 All those in favor of adopting the proposed
2 modifications, please say aye.

3 (Ayes)

4 CHAIRPERSON KYLE: All those opposed?

5 Any abstentions?

6 Ayes have it.

7 All right. How are folks holding up?

8 Good. We'll take a quick break after sequential
9 storage of votes. Let's go to C.

10 PANEL MEMBER CARRELL: Could staff go through the
11 San Bernardino County Report since this is applicable?

12 PANEL MEMBER DANIELS-MEADE: Mr. Chair, I also,
13 during the break, heard some comments some people would
14 have appreciated having this document in front of them so
15 they could have participated. And we didn't have it --
16 while it may have been on the website, we did not have
17 copies and still don't have copies up there. And under
18 those circumstances, we might want to break and then come
19 back and discuss this one.

20 CHAIRPERSON KYLE: On the sequential votes?

21 PANEL MEMBER DANIELS-MEADE: On any of this
22 actually, the rest of the packet. It seems to me the
23 sequential is the one everyone anticipated that's going to
24 have a lot of comment.

25 ELECTIONS ANALYST WAGAMAN: Staff did put 25

1 copies of every report back there that they went through.

2 I underestimated the crowd.

3 PANEL MEMBER DANIELS-MEADE: Must have

4 underestimated, because several county people said they

5 had not gotten copies.

6 CHAIRPERSON KYLE: Let's see a show of hands who

7 needs copies, who would like copies. Just keep them up

8 for a second we can get an idea what the count would be.

9 Why don't we do this. Let's do make a copy of
10 that. Make it available. Let's take a 45-minute break.

11 We'll come back and jump into this and move into the rest
12 of the agenda as well. We'll have those copies available
13 within the next 45 minutes, and reconvene at 1:00 so
14 people can grab a bite to eat.

15 (Thereupon a lunch recess was taken.)

16 CHAIRPERSON KYLE: Just as a point of procedure,
17 a couple of folks approached me and asked me if they'd
18 have an opportunity to speak. I have a handful, three or
19 four folks, who indicated they'd like to address the
20 general topic of proposed modifications on the standards.
21 They weren't specific as to bilingual languages or some
22 other specific issue. And so the answer is yes, you will
23 have an opportunity.

24 If you didn't mark it on here and you want to
25 speak, you've been raising your hands and good about that.

1 But there's a couple folks that want to make a couple
2 general comments. And after we're done with this next one
3 on sequential storage of votes, I'll allow that testimony
4 so we can have that in the record. And then we'll go on
5 to the next agenda item after that.

6 PANEL MEMBER MILLER: Mr. Chair, if I could make
7 a point of personal privilege, there's a HAVA Section Task
8 Force meeting scheduled for 2:00 in this building. It is
9 unlikely this meeting will have adjourned by then. So the
10 commencement of the Task Force meeting will be delayed
11 until this meeting has concluded.

12 PANEL MEMBER CARRELL: But our goal is 2:00.

13 CHAIRPERSON KYLE: I promised Caren I would wait.

14 So there's been a request, Mr. Wagaman, that you
15 go ahead and give us the San Bernardino trial run report.

16 ELECTIONS ANALYST WAGAMAN: I know we have a
17 representative from both, obviously, the vendor and also
18 the county here so --

19 CHAIRPERSON KYLE: Great. Welcome their comments
20 as well.

21 ELECTIONS ANALYST WAGAMAN: The primary item from
22 their report I want to point out at this point is there is
23 a discussion towards the end about the canvass of the
24 vote. And in their reporting back, they said that was a
25 very lengthy process and took a lot of time for them,

1 which is obviously potentially an issue of concern for
2 some of the counties.

3 They do at one point tie that into some of the
4 things that weren't required by us, but were required by
5 the feds as part of their qualification process to try to
6 address some of these privacy issues, specifically
7 requiring that the machine number ID be removed from that
8 paper record. But that was one of the reasons that the
9 canvass process took longer.

10 So one question that staff would recommend be
11 asked of the county is, how much of the canvass period
12 issue was related to that trade off between the efficiency
13 of the recount and the privacy issues? And how much of it
14 was just due to first-time issues in running a canvass
15 with that kind of a paper record, to help inform your
16 debate.

17 PANEL MEMBER CARRELL: Thank you.

18 CHAIRPERSON KYLE: Could we have the
19 representatives of San Bernardino -- great. Welcome.
20 Mind coming forward? Maybe we can engage in that dialogue
21 for a minute.

22 MR. KOUBA: Terry Kouba, Interim Chief Deputy.

23 I think most of the issues related to the manual
24 recount process had to do with some of the procedural
25 things and it mostly being new. It was considerably more

1 cumbersome handling the paper roll and the reel-to-reel
2 sequence as opposed to traditionally having just a flat
3 sheet of paper, you know, individual ballots that you
4 could go through. They seemed to struggle with keeping in
5 place more, considerably more so than anything we've
6 experienced before. And that was really the main issue.

7 Other than that, it's pretty much
8 straightforward, same as the manual 1 percent that we do.

9 CHAIRPERSON KYLE: So it was cumbersome in
10 general because reel-to-reel was more cumbersome, or they
11 just weren't used to it?

12 MR. KOUBA: Weren't used to it. But even being
13 more used to it, it will be a little more cumbersome than
14 dealing with the individual sheets or ballots. I think
15 over time and through refining the process, it's going to
16 get better. But I do still think it's going to be a
17 little bit more time consuming.

18 PANEL MEMBER CARRELL: Was there consideration,
19 or is it something that may be useful to actually split
20 the ballots yourself while you're in that process so
21 they're actually separating the ballots?

22 MR. KOUBA: That's one of the things we've
23 considered after the fact in our own review as a
24 possibility to try to speed it up.

25 CHAIRPERSON KYLE: Any questions or comments from

1 the Panel?

2 Go ahead.

3 PANEL MEMBER CARRELL: The swapping of the
4 printers, it says here that -- I just wondered how that --
5 we requested that a process take place to swap the printer
6 reel-to-reel during the voting day so we can understand
7 how much delay there was and how difficult it was to do.
8 Did you experience any problems with that?

9 MR. KOUBA: It wasn't very difficult. Took about
10 ten minutes to do three machines. But we had a lot of
11 technical -- we had both our technical staff and Sequoia
12 staff on hand, which I imagine, that made it a little bit
13 easier, too.

14 PANEL MEMBER CARRELL: Can you do all three at
15 the same time? Or did you do one, turn it back on, and
16 the second one, so there's always machines in use?

17 MR. KOUBA: There were always machines in use,
18 because in this case we had previously assigned twelve
19 machines to the polling place and then added on the
20 additional three. So at the time that we were swapping,
21 they were just voting on the other machines. So it didn't
22 affect that at all. And they did do them all one right
23 after another, but all at the same time, if that makes
24 sense.

25 PANEL MEMBER CARRELL: It makes sense. I don't

1 know if it was what we were looking for but.

2 CHAIRPERSON KYLE: Mr. Jefferson.

3 PANEL MEMBER JEFFERSON: I have a question. I
4 believe I read in the staff report that you powered down
5 the machines, then switched printers, then powered them
6 back up; is that correct?

7 MR. KOUBA: Correct.

8 PANEL MEMBER JEFFERSON: So they rebooted?

9 MR. KOUBA: Technically, when you turn them off,
10 it's not exactly the same as rebooting. You just turn the
11 power off and they come right back on. We didn't close
12 out the machine.

13 PANEL MEMBER JEFFERSON: I know you didn't go
14 through the shut down procedure, but that's sort of what
15 I'm getting at. When you power it off, how do you avoid
16 rebooting it?

17 MR. KOUBA: Well, the machines come right back
18 up.

19 ELECTIONS ANALYST WAGAMAN: The machine doesn't
20 have to be brought back into election mode. It remains in
21 the election mode, so you don't have to go through the
22 same process, all the same steps. Once it comes on, it
23 comes on to a different place in the process than if you
24 were to turn it on and not already have been logged into
25 election mode. That answers your question?

1 PANEL MEMBER JEFFERSON: Sort of. I didn't
2 realize the software had been designed with shutting down
3 and restarting in midday.

4 MR. KOUBA: Yeah. You can. And we do also
5 under, you know, certain power issue situations. That's
6 one of the features.

7 CHAIRPERSON KYLE: Other questions?

8 Thank you very much.

9 Does the Panel have any questions for the vendor
10 or other vendors?

11 Any additional points you'd like to make?

12 PANEL MEMBER DANIELS-MEADE: Mr. Chair, I'm just
13 curious because of what was mentioned in the staff report,
14 because it was so time consuming to do the manual recount.
15 It would be useful if the machine-specific identification
16 roll on each roll of paper could be included, and has the
17 vendor considered that or is that --

18 ELECTIONS ANALYST WAGAMAN: The machine ID was
19 originally -- and the vendor can step in here. That
20 machine ID was in their original version as part of the
21 federal qualification process. Due to privacy concerns,
22 in part, they asked that that be removed.

23 I believe as they left it, they left it as the
24 State's option whether to have that machine ID on there or
25 not. That's one of the reasons I did highlight in the

1 staff report, because as you go into this discussion about
2 sequential storage issues, the privacy issue, that's one
3 of the issues. The feds have already come in on part of
4 that issue, not to the sequential storage of votes, but as
5 to the machine ID number issue.

6 CHAIRPERSON KYLE: Mr. Charles.

7 MR. CHARLES: Real brief, Mr. Wagaman. We have a
8 configuration option so you can turn that feature on or
9 off. The state of Nevada prefers to have it on so they
10 can do a machine to paper connected. So when they do that
11 recount, if there is any issue, they can go straight back
12 to the machine and figure out where it is, rather than
13 broadly at the precinct or ballot style level.

14 CHAIRPERSON KYLE: Any other questions?

15 We have a few comments on this. Steve Burton,
16 not here.

17 Kim Alexander.

18 MS. ALEXANDER: Good afternoon. I'm Kim
19 Alexander with the California Voter Foundation.

20 I distributed a memo to the Panel before the
21 break -- before the first break outlining a number of
22 topics I wanted to address the Committee on today.

23 On the issue of the sequential storage of the
24 ballots, I'd like to remind the Task Force that the
25 Secretary of State's Ad Hoc Touch Screen Task Force, upon

1 which I served, was unanimous in our view that the voter
2 verified paper records should be randomized. On pages 41
3 and 42 of our report, we stated there are several issues
4 that must be addressed to give greater clarity to vendors,
5 election officials, and the public which is using the
6 voter verified paper audit trail.

7 And among those lists is "assuring random
8 outstacking of the paper ballot copies." This requirement
9 was advocated by the late Robert Naegele, who served as
10 California's voting technology consultant for 40 years and
11 who, as I recall, was quite adamant on the Task Force that
12 the paper records be randomized.

13 The VeriVote, which you're going to consider
14 later today, does not work in this fashion. And storing
15 the records sequentially is significantly different from
16 what the Task Force outlined. It also differs from the
17 standards adopted by the Secretary of State, which says
18 that the AVVPAT system shall be designed to ensure the
19 secrecy of votes so it's not possible to determine which
20 voter cast which paper record copy and shall comply with
21 federal and state secrecy requirements. Article 2,
22 Section 7 of the California Constitution states voting
23 shall be secret.

24 California's actions on the voter verified paper
25 record requirement are likely to have an impact

1 nationwide, since many other states look to California as
2 a trend setter on democracy and technology issues. If
3 California allows a non-random paper record system to go
4 forward, it will send a message to other states that a
5 lack of randomization is acceptable. It would be a shame
6 if secrecy is eroded nationwide because California
7 certified a non-random system.

8 One way you might consider reducing the impact of
9 the non-randomization of the paper records is to consider
10 requiring that those paper records that are used to
11 perform the public manual count be cut and randomized.
12 This would be 1 percent of the county's total precincts,
13 and limiting the cutting requirement to those records that
14 will be required by law to be inspected would help ensure
15 that ballot secrecy is not eroded.

16 I'm happy to answer any questions that you have.

17 CHAIRPERSON KYLE: Thank you.

18 Panel members?

19 Thank you very much.

20 Now I believe Steve is back in the room.

21 Steve, would you like to address the issue of
22 sequential storage?

23 MR. RODERMUND: If I may, thank you. Steve
24 Rodermund, Registrar of Voters, Orange County.

25 Please, forgive me for not being here when you

1 started. I had to take my deputy back to the airport.

2 We're sort of stretched a little bit thin.

3 One of issues that I've been trying to focus
4 everyone on is that there was no piece of equipment that's
5 fool proof. I'm a retired military, worked with nuclear
6 weapons. And the first thing we found out is there was no
7 mechanical device, no thing that you can put in place that
8 would ensure the safety of nuclear weapons. What did
9 ensure the safety was using those in conjunction with
10 people and with procedures.

11 I think that's core here, is that we have
12 individuals that think there are things, mechanisms that
13 we can use that will make ballots secret. That's not what
14 makes ballots secret. What makes ballots secret in this
15 country, and specifically in California, are the
16 procedures that we have in place when we handle ballots.
17 A classic example is the absentee ballot. If you want to
18 see where you have the opportunity to see who actually
19 sent the ballot in and what the ballot says, it's in the
20 absentee ballot.

21 The reason we have secrecy and we have a high
22 level of trust by the voters is because we have procedures
23 in place that we monitor and ensure work, that no one ever
24 sees the name on the ballot at the same time seeing the
25 ballot that's inside and how it was voted.

1 With sequential storing of the paper audit
2 trails, I think we have the same type of an issue. We
3 have to be a little bit realistic in that when you're
4 looking at counties that are entirely DRE counties, you're
5 talking multiple units at multiple locations. So the
6 ability of an individual to try to figure out who voted in
7 what sequence would be very minuscule at best.

8 For those counties that will only have one system
9 there, again, where you would have a higher propensity,
10 probability if you will, that someone could, in fact, sit
11 back there and be jotting down the names in the order they
12 went, that can be handled by a procedure. If you want to
13 randomize on that one, cut them when they're done. But
14 don't have something where it says we have to modify
15 systems that the vendors are putting in place to try to
16 meet concerns of other people with a thing. Use
17 procedures to do that.

18 The other issue is that if this Board feels that
19 strongly that we have to randomize, I believe that we have
20 a better opportunity with the vendors working out an issue
21 doing reel-to-reel than if we go with some sort of a cut
22 sheet at the polling place. We have to remember that the
23 decision has been made to go in this direction. That, in
24 my opinion, should be what is given to the registrar of
25 voters and the vendors is that this is what we want.

1 Let us get the systems out there. And if there
2 are concerns about how we handle paper audit trail
3 ballots, put procedures in place that the voters will be
4 comfortable with to ensure that the secrecy is maintained.

5 If we start adding on all these things that
6 people are talking about, what you're basically doing is
7 that you're essentially starting -- especially with the
8 large counties like myself, that with the last election
9 where we had eleven different ballot types and five
10 languages, is that you're going to make this so onerous on
11 the vendors and/or the counties to implement that you are
12 going to force us to go with paper.

13 And if you think we're going to have problems
14 with voter confidence and getting the voters to work with
15 this new system, wait until I've got a million plus voters
16 out there, and at every polling place they go to they have
17 50 to 60 different pads of papers on the tables that we
18 have to figure out who gets what, when. So please, let us
19 address these issues with procedures, not with trying to
20 make the perfect machine.

21 CHAIRPERSON KYLE: Thank you very much.

22 Maureen Smith.

23 MS. SMITH: Thank you. Maureen Smith, Peace and
24 Freedom Party.

25 As I mentioned earlier, there are a lot of new

1 voter rights groups forming in the last couple of years.
2 There are probably 10 or 20 I could make a list of right
3 now, and some that don't even have names yet. But because
4 of the last several elections, people are very, very
5 concerned in security, and accuracy is the main concern.
6 I'm sure privacy is also a concern. That's why I would
7 recommend Option 4, modifying the current language to
8 explicitly ban reel-to-reel systems.

9 However, having heard the last speaker, what
10 we're trying to avoid is not -- is the reel-to-reel that
11 never cuts up and turns into a ballot. If there's a paper
12 ballot, you know, that is produced and either is cut and
13 goes directly into a box, or is allowed to be taken by
14 hand and put into a box, that definitely would be okay.
15 But some people are looking for checks and balances that
16 would include electronic scanning, the optical scan, and
17 hand counting as a double check and balance system in the
18 future. I don't know how far in the future. But anyway,
19 it seems to be something that pleases the most people
20 without going to just paper ballots and hand counting.
21 Thank you.

22 CHAIRPERSON KYLE: Thank you.

23 Discussion among Panel members?

24 We have another request. I didn't see it here.

25 MR. TUTEUR: That's all right. Thank you for

1 trying to avoid me. I'm John Tuteur --

2 CHAIRPERSON KYLE: I wouldn't avoid you.

3 MR. TUTEUR: I'm John Tuteur, the Registrar of
4 Voters from Napa County.

5 And first I had a question. I want to make sure
6 I understand the procedures. Was it required of San
7 Bernardino County to count from the paper verified trail
8 or as opposed to the ballot image from their Sequoia
9 machines because of this pilot project?

10 ELECTIONS ANALYST WAGAMAN: The condition on the
11 pilot program was they, in essence, treat those machines
12 as part of the 1 percent manual recount. But they do that
13 canvass process to provide information to the Panel and
14 the counties as to what difficulties and challenges the
15 paper trail would represent as that's part of the existing
16 standards.

17 MR. TUTEUR: Thank you very much.

18 And I assume that is not currently a standard
19 that any future 1 percent count would be done from the
20 voter verified paper trail.

21 ELECTIONS ANALYST WAGAMAN: That actually is a
22 requirement in the current standards, is that for the
23 purposes of manual recount the paper trail would be what
24 would be used.

25 MR. TUTEUR: Fine. Thank you.

1 I feel a little like I'm somewhere between George
2 Orwell's 1984 and being Alice in Wonderland. And the
3 prior speaker said far in the future. I think the things
4 she's talking about are far in the past. Everything seems
5 to be turned around here. We have in Napa County 60,000
6 voters who voted on our DRE machines without a paper
7 trail. I went to Nevada. I watched voters vote with the
8 paper trail. They seemed perfectly comfortable with it.
9 I'm perfectly comfortable with it.

10 But I believe you are taking one step beyond what
11 is rational in trying to make the paper trail now subject
12 to the randomness that the electronic machines provide
13 you. And I think Steve hit the nail right on the head
14 that our procedures will take care of that issue.

15 Now, I will tell you, unlike Orange County, I do
16 have some polling places where there's only one DRE
17 machine. That's all we need for that polling place. And
18 the possibility of somebody, an observer, being able to
19 track that number on the machine to the person who walked
20 up to the machine is reasonable, except that the cartridge
21 from that machine stays at the polling place after the
22 election for three or four days until we're able to pick
23 it up. The cartridge comes to our office. The paper
24 trail will come to our office. And from that point on,
25 how anyone could track that ballot and that paper trail to

1 somebody's actual vote, I cannot -- and, of course, I'm
2 not a trained programmer like Mr. Jefferson. But I cannot
3 find out how to do that in my own mind.

4 And I think that we just need to leave the
5 current language as it is. And I'm not sure it's the
6 vendor's job for the procedures. I don't have a problem
7 with the Panel saying election officials, vendors, work up
8 procedures in conjunction with your elections division,
9 which we have a great deal of confidence in, and that
10 would make, I think, the public and us comfortable that
11 what we're doing to give the voter the verified paper
12 trail does not turn into a problem that was meant to be
13 solved instead of a problem that's growing out of
14 proportion. Thanks very much.

15 CHAIRPERSON KYLE: Thank you, Mr. Tuteur.

16 I have a couple others that are a little unclear
17 on the bottom, so in an effort not to avoid anyone else,
18 Elain Larson, Kevin Chung.

19 MS. LARSON: I agree with the previous speakers
20 regarding our intention as election officials. In all
21 respect, the original guidelines that were set, I did not
22 realize that you would be micro-managing how we conduct
23 elections. And I think it was mentioned earlier, in terms
24 of I think we can handle procedurally -- in Santa Clara
25 County, for instance, a voter can go to any machine and

1 vote. We don't designate and know in the precinct exactly
2 where they're voting.

3 Separation of duties. The printers are not
4 opened up. They're delivered -- would be delivered to the
5 election officials, and which, believe me, I do not have
6 time to figure out who voted on what issue. We count the
7 votes. We do our jobs very well. So I think there is
8 randomization without having to go into this much detail
9 and requirement that swapping printers is a big concern
10 for us.

11 I, too, observed Nevada voting and it was
12 successful. There was no feedback in that experience they
13 had to have randomized printers, that they had to swap
14 out. Those requirements were not needed there. And I
15 don't see that requirement in our county as well, as long
16 as we have the separation of duties in the precincts and
17 they're delivered to our office. And I really do not --
18 we wish to proceed. And it would be unfortunate for this
19 issue to delay the implementation of the voter verified
20 paper audit trail in Santa Clara County. We look forward
21 to using the VeriVote printer as soon as possible. Thank
22 you.

23 CHAIRPERSON KYLE: Thank you.

24 Dale Axelrod, I know you're going to do -- it's
25 not directly germane to this point --

1 MR. AXELROD: I can do it now.

2 CHAIRPERSON KYLE: I'd like to stay on this point
3 and come back to you.

4 And Kevin Chung, is it germane to this point
5 or -- you'll wait until after this one.

6 Okay. Thank you. I believe that's everybody who
7 submitted a card.

8 We're on sequential storage of votes. We'll be
9 on Sequoia, and folks will have an opportunity to speak at
10 that time.

11 So I'm going to now go back to the Panel and ask
12 if they have further questions or comments. I know,
13 Mr. Jefferson, you do, and Mr. Miller does.

14 Why don't we start on the left and work our way
15 down.

16 PANEL MEMBER MOTT-SMITH: Why don't we start with
17 David to set the stage.

18 PANEL MEMBER JEFFERSON: Okay. Well, I have very
19 grave concerns about sequential storage of votes, and I'm
20 going to try to explain it. I'm afraid I can't be
21 succinct because there are a lot of issues.

22 There are two aspects to voter privacy. Aspect
23 one is that insiders, for that matter, nobody else is
24 allowed to reveal your vote. And aspect two is that you
25 as a voter are not allowed to reveal your vote. That's to

1 say, you are allowed to tell anybody you want how you
2 vote, but you're not allowed to prove it. And that's
3 expressed in the law by you not being able to mark your
4 vote. If a vote is shown to have an identifying mark on
5 it, by state law it is supposed to be not counted. So
6 voters are not allowed to mark their votes, and neither
7 are people allowed to deduce who voted how.

8 For a century in this country we have voted on
9 paper ballots in ballot boxes. The procedure is the 500
10 voters in this precinct gather and they put their votes in
11 a single box. And all the ballots are identical. At the
12 end of the day, if I wanted to know how one person in that
13 precinct voted, and those ballots are shaken up, I really
14 have only a 1 in 500 chance in guessing correctly how that
15 person voted. That's a century of experience that we have
16 in the country. That's the standard of privacy that we
17 have had.

18 And I'm afraid that in the last few years there
19 has been a tremendous amount of erosion of that standard.
20 And now we -- and the point I'm going to make is that the
21 sequential storage of votes is a further, and I believe,
22 disastrously bad erosion of that privacy standard. So I'm
23 obviously not going to be able to support it.

24 But let me try to explain that. We have lost --
25 so when you cast a ballot now in a DRE precinct, instead

1 of all the ballots going in a single ballot box in that
2 precinct, they're now divided between three or four or
3 five separate ballots boxes, one in each DRE.

4 The question of whether or not to take the voter
5 verified paper trail that contains the DRE serial number
6 is very relevant to this privacy issue, I might add. So
7 that discussion came up earlier, and I didn't even bring
8 it up. So right away, instead of your vote being lost
9 among 500 other ballots, it's lost among, say, 100 other
10 ballots in the precinct by simply having multiple machines
11 in the same precinct.

12 Now another thing that came up earlier today was
13 whether your ballot is recorded in the language that you
14 speak or is all recorded in English. If they're all
15 recorded in English, then, of course, you can't
16 distinguish ballots that way. But because they're
17 recorded in the language in which the voter votes, people
18 who voted in minority languages for that precinct, if I
19 wanted to guess how they voted, I would only have to look
20 at the Spanish ballots or Chinese ballots. I don't have
21 to look at the English ballots, drastically reducing the
22 scope of uncertainty I have as to which ballot that voter
23 has.

24 In a primary election, this is even worse,
25 because voters are divided up into four, five, or six

1 parties. And that's actually twice that many parties,
2 because we distinguish between Republican and decline to
3 state Republican, and Democrat and decline to state
4 Democrat. That indication -- that's indicated on your
5 ballot as to which kind of voter you are.

6 So if I know from public records that you are a
7 registered party X and I want to guess from the ballots
8 which ballot is yours, I don't have to look at the other
9 90 percent in that precinct, especially if you're in a
10 minority party. There might only be one or two Green or
11 Libertarian ballots in the whole box across all the DREs,
12 let alone in any one of them.

13 Further information that can help identify your
14 ballot is if I know something about you. If I know, for
15 example, that you voted in the morning instead of the
16 afternoon, or I know the time that you voted and there's a
17 time in the internal audit trail of the machine.

18 Or if as was discussed earlier today with the
19 ES&S suggestion that every action that the voter takes on
20 the touch screen is recorded on the paper log, not just
21 the final results of that, but every individual action,
22 that, of course, gives a voter a way to mark his own
23 ballot by taking special actions and marking -- by the
24 way, the reason the voters are not allowed to mark their
25 own ballots relates to vote buying and selling or vote

1 coercion and so on.

2 These are not issues that are burning in the
3 hearts of Californians today because we live in relatively
4 well ordered times. But it's not out of the memory of
5 living people like me and in other places in the country,
6 let alone other countries in the world, where the privacy
7 of the ballot is extremely important. An if you do not
8 vote the right way, you're subject so some kind of
9 reprisals.

10 Again, that's not really true today in
11 California. But I don't want to create a precedent in
12 this state, let alone a precedent that would be copied in
13 the marketplace around the country, whereby it becomes
14 more and more possible to guess with higher and higher
15 accuracy how someone voted, which ballot they cast.

16 Maybe I can only -- let me make sure you
17 understand that if there are four DREs in a precinct and I
18 see you're the first voter of the day, then I know at the
19 end of the day your ballot is the first one on one of
20 those four tapes, if they're stored sequentially. So I
21 know right away it's down to one in four votes. If I know
22 something else about you, like your party registration or
23 your brother-in-law is running for sheriff, or I know all
24 four votes have the same person for Governor, I know how
25 you voted.

1 There's no one piece of information that is
2 deposited that allows me to guess how you vote. But the
3 assembly of information that we are keeping now in audit
4 trails on the voter verified paper trail, especially in
5 the order preservation of ballots kept in the day
6 drastically reduces the uncertainty I might have if I were
7 actually trying to involve myself in guessing how you
8 vote.

9 I believe the standard we ought to be striving
10 for is the standard that we have had for the last 100
11 years with the paper ballots in a randomized -- in a
12 single randomized paper ballot box in the precinct. I
13 think that's the standard we should be striving for. And
14 sequential storage of the ballots completely destroys that
15 randomization.

16 Let me note that it is not a big deal to avoid
17 sequential storage of ballots. First of all, let me note
18 that all four of the major vendors in California state,
19 they randomize the order of the ballots that are stored
20 electronically. They did that before the voter verified
21 paper trail was an issue. Why? Because everybody
22 understands that ballots have to be randomized when
23 they're stored.

24 And the first generation of designs for voter
25 verified paper trail equipment that came from Sequoia and

1 Diebold and ES&S had cutters that cut between every
2 ballot. Now the second generation of designs for some
3 reason has eliminated that. A cutter is not a difficult
4 thing. Your gas station printer cuts between receipts.
5 Your ATM printer, made by Diebold, almost certainly, cuts
6 between receipts. Certainly, the cost of those systems is
7 a concern to gas stations and banks what the cost of these
8 systems is. It is not a big deal to put a cutter on a
9 machine.

10 I think that the right design is to cut between
11 every ballot on that paper trail. Let them fall into a
12 box. They are randomized. It's still a problem that you
13 have four boxes instead of one. We don't have perfect
14 privacy then, but we are at least repairing what I
15 consider to be an egregiously poor design decision to keep
16 all of these paper ballots on a single paper trail -- a
17 single paper reel.

18 Now, it's true we do not have perfect privacy
19 when it comes to fax ballots, absentee ballots,
20 provisional ballots. But all of those are intended,
21 historically at least, to be for a small number of voters.
22 The vast majority of voters are intended to vote at the
23 precinct. It's true we have had a surge in growth in
24 popularity of absentee ballots. But the rules for
25 absentee ballots were written a long time ago before we

1 had 30 percent.

2 In any case, voters understand or ought to
3 understand that they are taking a certain risk of privacy
4 when they vote absentee or when they're forced to vote
5 provisionally or they should decide to vote by fax.

6 But what I want to make sure of is for those
7 voters who are very privacy sensitive, who do not trust
8 election officials, who do not trust voting machines, who
9 think -- who feel they are under some pressure to vote
10 properly from whatever environment they live in that
11 they're under coercive pressure, I want to make sure they
12 have some means of voting that is absolutely private.
13 That does not depend on the proper execution of procedures
14 back at the county.

15 I believe all the counties here are capable of
16 executing procedures to try to protect the privacy of
17 people. But I don't want voters to have to depend on
18 that, when a simple cutter is sufficient to make sure that
19 no failure of procedure can reveal my vote.

20 So my bottom line is I think that reel-to-reel
21 designs of the voter verified paper audit trail are
22 fatally flawed. I'm astonished they were ever brought to
23 us in the first place. No one ever thought, those of us
24 who were pushing for voter verified paper trails over the
25 last several years, never dawned on us anybody would

1 suggest a mechanism like this. And I think we have to
2 reject it.

3 If you are now -- so I'm going to actually -- I
4 have to say that I cannot vote to certify any such system
5 like this. I don't know whether I will have the Panel's
6 backing on that. And so I would like to suggest that if I
7 don't, the only reasonable alternative, procedural
8 alternative is to require the cutting of the ballots
9 during any recount process. And not just the 1 percent
10 recount process, all recount process. Any time somebody
11 looks at that paper trail, those ballots should be cut
12 facedown and randomized before anybody looks at them. But
13 my preference is to just say no, tell the vendors to put a
14 cutter on those machines.

15 Thank you, Mr. Chairman.

16 CHAIRPERSON KYLE: Thank you, Mr. Jefferson.

17 Mr. Mott-Smith.

18 PANEL MEMBER MOTT-SMITH: I think I've said
19 before that I'm very fond of my friend David Jefferson.
20 And I've learned to listen to him very carefully, because
21 he does not speak lightly and he thinks very completely
22 about things. But in this case I need to disagree. I
23 don't want to dismiss privacy and secrecy concerns. But
24 at this point, I just find them more theoretical than
25 real, and the risk of the scenarios that have been laid

1 out so far appear to be more farfetched than here at hand.

2 More to the point, I feel at this juncture that
3 what we are doing or would be doing by adding a
4 requirement like this is moving the goal posts. We've
5 traveled a long way in the last year or so. We've had a
6 very hardy discussion about paper trail. It's been
7 decided. It's done. Now we have to implement it.

8 We have security measures at polling places. We
9 have an inventory of voting systems. There is a much
10 tighter process at the state level and I think a much
11 larger appreciation by the counties and vendors that this
12 is a subject that requires a lot of diligence and
13 discipline.

14 But we have a huge task in front of us between
15 now and January 1, 2006. Fifty-eight counties have to
16 meet accessibility and paper trail requirements. And
17 unless there is something demonstrated as a real concern,
18 I feel our role as a body is to move that process forward,
19 to facilitate it as much as possible, and to only draw the
20 line where it is clear that we are compromising the
21 security or the accuracy or the user-friendliness of the
22 system.

23 The standards that we put together that Marc
24 Carrell pretty much shepherded from nothingness to full
25 blown creation were a good effort. But they had no real

1 world experience to measure them against. And I think
2 it's very reasonable that, as we proceed, we make
3 adjustments as we find out more information.

4 But I guess the bottom line for me, I think
5 Mr. Rodermund said it very well, there is no machine that
6 is perfect. But more than that, this community of people
7 in here, not just us, but we have to do our part, needs to
8 keep its eye on the ball for what we have to do for
9 January 1, 2006. And so I do not find any fatal flaw with
10 the reel-to-reel system. I think we can talk about your
11 backup system. But for my point of view, I'm not offended
12 by the reel-to-reel approach.

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

14 Mr. Miller.

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

16 In an ideal world, I would certainly be with
17 David Jefferson on this. No doubt about it. But we don't
18 live in an ideal word. But the reasons why I can't agree
19 with him at the moment anyway is, first of all, SB 1438
20 which requires by January 1, 2006 -- doesn't talk about
21 the issue at all. Doesn't require anything like Dave is
22 suggesting in terms of prohibition or a chop and dump
23 approach as a procedural fix. And I think the silence is
24 deafening. The Legislature did not deem it to be
25 significant and did not think that we could figure out

1 some way to do it. So that's the first point.

2 The second thing is violating a voter's right to
3 privacy is a felony. I think that's, in part, responsive
4 to the concerns. If somebody does, indeed, disclose, if
5 they're able to find out -- and I think it's very tenuous
6 in terms of being able to find out how a voter actually
7 voted. You have to be in the context of a recount, I
8 would imagine. And you'd have to do all sorts of things
9 in order to really even guess as to how a particular voter
10 actually voted. Theoretically, may be possible, but even
11 then, you don't know for sure. You'd just be guessing and
12 the odds would be reduced. But I think the criminal
13 violations that would occur, would be involved, felonies,
14 certainly would deter that kind of egregious misconduct if
15 somebody even attempted to do that.

16 And I think there are procedural fixes to
17 maintain a voter's right to privacy, something beyond,
18 indeed, you know, chopping up the paper and creating
19 millions of pieces of paper that would be impossible to
20 deal with. You know, rotating printers, as was done in
21 San Bernardino, that makes sense. There are procedural
22 fixes that we can rely upon to address that particular
23 problem that is perceived, as John Mott-Smith says, more
24 theoretically than probably in reality. But, you know,
25 I'm willing to look at hypotheticals too and look at the

1 worst case. And David sees the worst case. And I can see
2 where he's going. I just don't think we need to go there.

3 And, finally, as Mr. Rodermund pointed out,
4 there's a real timing issue here. We have to not be the
5 impediment for the counties to comply with state and
6 federal law as of January 1, 2006, at least to the extent
7 that we can address the accuracy and security and, indeed,
8 the privacy issues that are implicated here. So for that
9 reason, I respectfully disagree with Mr. Jefferson.

10 I urge and at the appropriate point will move
11 that we go with Option 1, which is to keep the language as
12 it is, but indicate the procedural fixes are appropriate.
13 And we can include those as part of a certification
14 process of systems.

15 Thank you, Mr. Chairman.

16 CHAIRPERSON KYLE: Before I entertain that
17 motion, Mr. Miller, I want to see if there's any other
18 discussion.

19 Mr. Carrell.

20 PANEL MEMBER CARRELL: I would agree, and I would
21 actually second the motion when the timing is appropriate.

22 I respect the position that Mr. Jefferson is
23 pointing out here, and I do understand it. I do, though,
24 believe that procedural fixes can be adequate. I would
25 urge staff and this Panel to ensure that the procedures

1 adopted or submitted by vendors when their application for
2 certification comes before us are reviewed very closely to
3 ensure the privacy of each vote and the privacy of each
4 paper record copy. And that may include procedures that
5 the counties themselves utilize either currently or
6 develop subsequently. Because it's not just the vendor
7 process. It's also how the staff at the county level
8 implements these voting machines. I would agree with
9 Mr. Miller and Mr. Mott-Smith regarding Option Number 1.

10 CHAIRPERSON KYLE: Mr. Kercher.

11 PANEL MEMBER KERCHER: Specifically to the motion
12 on the table, I find I'm caught between -- I absolutely
13 concur with Mr. Jefferson that there are irreducible risks
14 in the reel-to-reel approach, that it does not ensure in
15 its system design the secrecy of the ballot. At the same
16 time, I'm reasonably comfortable at this point that
17 procedure safeguards a long list of certain system designs
18 can be acceptable.

19 What I suggest is instead of abandoning the
20 requirement that is currently in the standard that systems
21 be designed to ensure secrecy by saying that outside of
22 that standard that we'll consider procedural changes, is
23 to move that into the standard, with a counter motion
24 suggesting that the system shall be designed in
25 conjunction with appropriate procedures to ensure secrecy

1 of votes. And then leave the rest of the language there.
2 Requiring that the combination of procedures and system
3 design must be adequate to maintain secrecy, not a back
4 door allowing of procedural modifications that accept safe
5 logging the system.

6 CHAIRPERSON KYLE: I'm going to hold that in a
7 moment and address it procedurally in a second.

8 Ms. Daniels-Meade.

9 PANEL MEMBER DANIELS-MEADE: I'm clearly coming
10 down on the same side that Tony and John are. I do have
11 the concerns. But in a practical world, I don't see it
12 happening. I just don't see this kind of violation
13 actually happening. I think there are already enough
14 procedures. I think there are enough deterrents in the
15 law to pretty well protect the secrecy of the ballot.

16 CHAIRPERSON KYLE: Thank you.

17 I'm now going to accept your motion, Mr. Miller,
18 and your second, Mr. Carrell, for Option Number 1.
19 There's been an amendment proposed by Lee Kercher, and I
20 want to know whether you accept that as a friendly
21 amendment.

22 PANEL MEMBER MILLER: Absolutely.

23 PANEL MEMBER CARRELL: Second.

24 CHAIRPERSON KYLE: Would you rearticulate,
25 please?

1 PANEL MEMBER KERCHER: I suggested the existing
2 language be modified so it states, "The AVVPAT system
3 shall be designed in conjunction with procedural
4 safeguards to ensure the secrecy of votes," and the rest
5 of the language remains the same.

6 CHAIRPERSON KYLE: I would like to offer an
7 amendment as well. And that's -- first one is
8 agreeable -- that on a process basis we're not only
9 advising vendors that designs and procedures are
10 acceptable, and consider on case by case basis, but
11 applicable county election officials.

12 PANEL MEMBER MILLER: Oh, absolutely not.

13 (Laughter)

14 PANEL MEMBER MILLER: Yes, yes, Mr. Chairman.

15 CHAIRPERSON KYLE: Okay. Everyone clear on the
16 motion? Staff?

17 All those in favor say aye.

18 (Ayes)

19 CHAIRPERSON KYLE: All those opposed.

20 (Nays)

21 CHAIRPERSON KYLE: Any abstentions?

22 The ayes have it.

23 All right. That brings us to the end of 1.b,
24 except for two statements. I would like to call Kevin
25 Chung. Would you like to pass at this point?

1 Okay. And Dale Axelrod.

2 MR. AXELROD: Well, I was hoping to weigh in a
3 little bit on this last discussion, because I think that
4 even though you've passed the motion, one of the important
5 things that you should be more aware of is not whether the
6 voters' privacy is at risk, but what is the perception on
7 the part of the voter of whether their privacy is at risk.

8 My name is Dale Axelrod. I'm here to speak to a
9 new product that we have here called Verifygra. And our
10 mantra is for an election that really stands up.

11 I'm assuming everyone got the e-mail that I sent
12 to you, and basically I think this Panel is on the right
13 track here. We want to get as much of a cross-check as
14 possible to ensure that any election is really verified in
15 the eyes of not only the election officials, but the
16 voters. I want to remind people there's a letter outside
17 in the window from Secretary of State Shelley that says
18 that California has one of the lowest voter participation
19 rates in the nation. He asks if Californians -- we need
20 your help to modernize systems and mobilize Californians
21 to register and vote.

22 And one of the things that -- you've covered
23 pretty much everything. I think that the materials I've
24 just handed to you outline pretty clearly that using a
25 touch screen, coupled with printing out a paper ballot the

1 voter can verify, and then take to a secure ballot box is
2 a very important procedure. That ballot can be optically
3 scanned on an independent system so that if the two
4 electronic tallies, both the DRE and the optical scanning,
5 don't coincide, you can go back to a paper ballot and
6 resolve what's wrong with which system.

7 But one of the things that hasn't been covered,
8 and I think is important to keep in mind is another
9 component, which is a voter -- an encoded voter receipt.
10 And I think that this is something that people are
11 accustomed to. And I've seen video clips on some of the
12 feedback on the last election where people would really
13 appreciate something like they get from an ATM where it's
14 shown they have voted.

15 And I had a conversation with Tom Mereckis from
16 Vote Here, Incorporated. I understand they gave a
17 presentation to this Panel in May about encoding a receipt
18 so that there wouldn't be any chance of selling a vote or
19 being coerced to vote in a certain way. And this would do
20 a lot to restore voter confidence. And that's one of the
21 things Verifygra does. One of our other ultimate goals is
22 to restore voter confidence in the voting booth.

23 So I want you to take a look at the three pages
24 that I submitted to you. One example is the encoded
25 receipt. And the second example is something that was run

1 in Wired Magazine in November, giving out not only a
2 record of the fact that the person voted. And I'm assured
3 by Vote Here now that all these votes can be encoded so
4 only the voter knows how they voted. And they can --
5 through cryptology and masking you can assure -- you can
6 enforce the vote that you made in the voting machine, and
7 then go online or by phone and put in your code and see
8 that your vote was recorded.

9 But one opportunity that you should be aware of,
10 that's another advantage for having a voter receipt, is
11 that further down the line we can have a motivation like a
12 lottery to encourage people to vote, much like we have
13 with the drivers' test, where you have a series of maybe
14 20 questions that you're going to be asked, and in the
15 voting booth you're asked three of them. If you pass that
16 test, your vote is entered into a lottery. And some sort
17 of a pool of monetary funds would be available to winning
18 voters. And I'm sure that would encourage voter turnout.

19 And then the last point that I want to make is
20 this Panel really is honing in on something which I think
21 is going to approach a national standard. And we're
22 looking right now at Congress and legislation being
23 introduced to tackle election standards on a nationwide
24 basis. If California can really get it tweaked to the
25 point I think we can, this might be a model that can be

1 used across the nation. So no matter how much time we
2 spend on it or the expense we foresee, there's a far
3 greater expense that's paid by the voter when the election
4 system is not accurate and fair. So I appreciate your
5 time.

6 CHAIRPERSON KYLE: Thank you, Mr. Alexrod.
7 Thanks for your creative thinking.

8 So that concludes this part of the agenda. I
9 want to move to Agenda Item 1.a, Sequoia Voting Systems.
10 And just for clarification, have you given all of
11 San Bernardino Pilot Program Report that you were planning
12 on giving?

13 ELECTIONS ANALYST WAGAMAN: The report that's
14 attached in there, and I reference some of the key
15 components in the staff report. If you have additional
16 questions about that pilot program, obviously you have
17 both the vendor and the county available.

18 CHAIRPERSON KYLE: Are there any -- before I move
19 into the VeriVote printer, are there additional questions
20 of either staff, the vendor, or the county from the Panel
21 regarding the pilot program?

22 Then, Mr. Wagaman, please go into VeriVote
23 printer.

24 ELECTIONS ANALYST WAGAMAN: The application is
25 from Sequoia Voting Systems. It consists of four

1 components: Sequoia, the WinEDS Central Tabulation System
2 3.0.134; AVC Edge DRE System 4.3.307; and the Card
3 Activator 4.3.307. And the final component is the
4 VeriVote AVVPAT System. As a point of note, all the
5 components with the exception of VeriVote were previously
6 conditionally certified by this Panel back in October.

7 Also, in October, the VeriVote was approved for
8 the aforementioned pilot program. We discussed that
9 previously. If you have questions, as we said, you can go
10 back to those. I've included in your binders the previous
11 staff report on that item. Unless there's a desire from
12 the Panel, I won't go through the typical detail that I do
13 as far as compliance with state law.

14 CHAIRPERSON KYLE: We'll see if issues come up.
15 I don't think so.

16 ELECTIONS ANALYST WAGAMAN: From the previous
17 report one issue that was raised by staff has been
18 resolved, subsequently by working with the vendor, about
19 having to do with the standard of being able to view the
20 paper record and the review screen on the DRE at the same
21 time. That was resolved, and the system was able to
22 demonstrate the capability of doing that. That is no
23 longer an issue.

24 The other unresolved issue, the bilingual paper
25 record issue is tied to whether the Secretary takes up the

1 recommendations from this Panel. If he was, that issue
2 would now be addressed.

3 The other two issues I will touch on when I hit
4 the recommendations.

5 The public comment, there was no timely public
6 comment received on this item. There were several late
7 public comments received on this item, all of which have
8 been distributed to the Panel members.

9 As for the recommendations, now again, this
10 recommendation would be tied to the adoption of the
11 previous recommendations under the last item. But
12 assuming those were adopted, the recommendation would be
13 to certify the system consisting of the components
14 previously described with the following conditions:

15 The first is standard language relating to no
16 languages being made without approval.

17 The second is specific to a component of the
18 system, the report viewer, which is a stand-alone program
19 that is used to generate additional reports. That was not
20 part of the federal qualification package. Thus, based on
21 previous procedures, that part would not be able to be
22 installed along with the certified equipment -- or the
23 qualified and certified equipment unless it also went
24 through that process.

25 The third is relating to California's statewide

1 direct primary election. The current version of WinEDS
2 does not support the primary rules. That is done through
3 that report viewer program I described earlier. Since
4 that's not part of the qualification, it's not part of the
5 recommended certification. So sometime before a primary,
6 assuming the rules still stay the same, they would have to
7 get that report viewer either qualified and certified, or
8 they would have to modify WinEDS to add that capability.

9 The fourth is the write-in resolutions function
10 shall not be used during state testing. A problem was
11 found with the writing resolution function. The write-ins
12 can still be resolved. It has to be done manually by hand
13 through the automatic electronic functions built into the
14 WinEDS.

15 The fifth item is a new item. It's proposed
16 language that would become boilerplate language for future
17 certifications. It resolves the access to the source
18 code, basically making clear from the front that the
19 Secretary of State would have a right to access and view
20 that source code. Long-term, we're going to build that
21 into the application process before we even get to the
22 certification and before the Panel. But since this
23 application pre-dates that, it's included here. But that
24 would be boilerplate language for the future.

25 One thing for the Panel to address is whether

1 that language sufficiently meets the recommendation,
2 previously on the audio function, whether that language
3 covers that or if you think modification is desired or
4 needed there.

5 Item Number 6 is boilerplate language relating to
6 the ability to modify the procedures in the future and
7 enhance the accuracy, reliability, and security of the
8 system.

9 As far as the randomization issue that's come up
10 and the procedural solutions to the secrecy issue, the
11 current procedures basically parrot the standard of
12 requiring the secrecy. They do not prescribe a particular
13 solution for the reason that we did not -- staff did not
14 know what the Panel would desire there.

15 So that would be a mechanism, if you were to
16 adopt this, that staff would go through the process of
17 modifying those or preparing proposed modifications to
18 those procedures to figure out the best way to meet those
19 secrecy concerns and deal with those issues and figure out
20 what other modifications may need to be made to the
21 procedures, or you would have to propose -- if there's
22 specific solutions the Panel wants to put in place, those
23 are currently not in these procedures and would have to be
24 added either now or later.

25 Item Number 7 is boilerplate language relating to

1 an Election Observer Panel Plan.

2 There should be a Number 8, which needs to be
3 added, is that the system is only certified for use in
4 English and Spanish. The current version only supports
5 English and Spanish. The vendor is currently preparing to
6 go through testing for their character-based supporting
7 version of the software and firmware.

8 So that is the staff report and the staff
9 recommendation, and I'm open for questions.

10 CHAIRPERSON KYLE: Thank you, Mr. Wagaman.

11 Any questions for Mr. Wagaman?

12 PANEL MEMBER CARRELL: I'm looking at the old
13 October 28th report and Item Number 6 on page 7. Item
14 Number 8 regarding federal qualification it says, "the
15 system has not yet received federal qualification number
16 and status is pending." Is that --

17 ELECTIONS ANALYST WAGAMAN: Qualification has
18 been issued.

19 PANEL MEMBER CARRELL: And we have a copy of the
20 qualification?

21 ELECTIONS ANALYST WAGAMAN: It's on the website.

22 PANEL MEMBER CARRELL: Next you mentioned the
23 WinEDS and said this system is not compatible with the
24 California Primary. So they could not use this in any
25 primary. This is only for a general election or

1 nonpartisan election until such time as we certify a
2 WinEDS version that is compatible?

3 ELECTIONS ANALYST WAGAMAN: They can generate the
4 primary report, but they have to use the report viewer
5 program which was not federally qualified, and, therefore,
6 not part of the recommended certification package.
7 Without report viewer, they could not meet the primary
8 requirements.

9 PANEL MEMBER CARRELL: So we would not be
10 certifying this in your recommendation for use at a
11 primary?

12 ELECTIONS ANALYST WAGAMAN: Correct. Assuming
13 you adopted Condition Number 3. Correct.

14 PANEL MEMBER CARRELL: Third, in conformance with
15 the previous actions of this Panel, are you -- I don't
16 know what page you're looking at for the recommendation.
17 But you're now requiring source code be provided before
18 certification is provided.

19 ELECTION ANALYST WAGAMAN: We're looking for the
20 best way to build that into the testing process and the
21 best way to require that source code. This is also
22 building in so it's also part of the certification as well
23 as not just during the testing. It's ongoing at any
24 point. If there is a desire to request the source code,
25 that is a condition on the certification.

1 PANEL MEMBER CARRELL: Okay. So that has become,
2 I think, a much more arcane and difficult issue to
3 facilitate because of some of the legal issues that
4 involves. But I would recommend that as part of a motion
5 that certification does not begin -- use of the system
6 couldn't happen until we have -- this agency has
7 possession of source code.

8 I would also recommend that this agency -- and I
9 don't know when we adopted or recommended it, but we have
10 not done it, which is insisting that any system we certify
11 for use, one of those machines is in our possession at all
12 times. So we must have one of the machines so we can look
13 at the machine if there's a problem, and we can understand
14 the machine so that one model is actually either at this
15 office or with our consultant.

16 And I would make that -- I would recommend that
17 we make that a pre-condition or a condition for all
18 certifications from now on, that no county can use it
19 until we have an actual machine in our possession.

20 You answered my question about languages,
21 which means not all counties currently using Sequoia DRE
22 could convert to it, this VeriVote, until we review,
23 because some of them do require more than the capacity for
24 English and Spanish.

25 ELECTIONS ANALYST WAGAMAN: Of their existing

1 clients, I believe it's a specific issue for Santa Clara.

2 PANEL MEMBER CARRELL: Okay. And then I would
3 also recommend as a condition that procedures for assuring
4 the privacy and secrecy of votes be developed in
5 conjunction with all the counties, or at least provided to
6 all counties ahead of time to make sure they're actually
7 able to be done. But that we, at the staff level, that
8 procedures are approved for sharing that secrecy before
9 certification is -- essentially, you could not use the
10 system until the procedures are adopted and approved by
11 this office.

12 I don't know if you've got everything that I
13 recommended, but throw them on the end. Thanks.

14 CHAIRPERSON KYLE: Other comments or questions
15 for the staff?

16 Mr. Miller.

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

18 Question with respect to Condition 5
19 acknowledging the source code, directing my remarks only
20 to the VeriVote application, not the certification
21 process, generally. Could we build in there a requirement
22 that if, indeed, source code is demanded and analyzed,
23 that the cost of the analysis be paid for by the vendor as
24 part of the agreement?

25 ELECTIONS ANALYST WAGAMAN: You can do whatever

1 you want.

2 PANEL MEMBER MILLER: I appreciate that.

3 CHAIRPERSON KYLE: Helpful as usual.

4 PANEL MEMBER MILLER: But I think that would be
5 appropriate. If we're going to build this into the
6 certification process, generally, the right to demand a
7 source code review, that be part of the testing costs, and
8 those are typically borne by vendors. And I think it
9 might be appropriate in the case of this particular
10 application if we were to demand the source code. And if
11 we were to analyze a portion of it with respect to
12 whatever, including the paper trail component, the vendor
13 should pay for that and that should be built into the
14 condition. If you have a problem with that, that makes
15 two of us that agree.

16 ELECTIONS ANALYST WAGAMAN: As far as the
17 testing -- prior to certification, that would be part of
18 that testing process. And there are rules already in
19 state law, I believe, about the vendors paying for that at
20 their cost. Actions subsequent to certification would be
21 determined based on the language of the condition.

22 PANEL MEMBER MILLER: And this is, I think, a
23 unique circumstance where we're looking at for the first
24 time a vendor without that and building conditions into
25 the certification that would be appropriate, it seems to

1 me, to require them to pay for any analysis that
2 ultimately is done for the Panel's consideration.

3 CHAIRPERSON KYLE: Other questions of
4 Mr. Wagaman?

5 Mr. Jefferson.

6 PANEL MEMBER JEFFERSON: In Secretary Shelley's
7 April 30th directive a year ago, he actually mentioned
8 four sets of information, or not just the source code.
9 But as Mr. Miller mentioned, working voting system and had
10 mentioned documentation both of the system and the code
11 and, you know, all documents and the history of the
12 federal qualification process, whatever it may be next
13 year, and in particular, documentation for how to
14 construct the object code from the source code base, make
15 file compiler options and so on. I would just like to
16 suggest that the language in the directive from a year ago
17 be used to describe what we might ask for. All of that
18 stuff, not just the source code.

19 ELECTIONS ANALYST WAGAMAN: Just one note for the
20 staff level for informational purposes. A lot of those
21 items, as I mentioned before, we're working on modifying
22 and updating the application process. And all those items
23 are things we're looking at adding to the application
24 process. So those would be in our hands before we even
25 start the state testing process. Some of those would be

1 helpful --

2 PANEL MEMBER JEFFERSON: That would be fine. I
3 was taking this for a model for future boilerplates. I
4 just want all of that to be in the future boilerplate or
5 somehow be in the process.

6 ELECTIONS ANALYST WAGAMAN: That's what my point
7 was, that would be something that would be in hand before
8 you reached this process. So that's the distinction
9 there.

10 PANEL MEMBER CARRELL: I would recommend that if
11 you're changing the application process, that you do it
12 ASAP before new applications come in so that -- but that's
13 just --

14 CHAIRPERSON KYLE: Other questions of the staff
15 and the Panel? Any questions from the Panel for the
16 vendor?

17 PANEL MEMBER MOTT-SMITH: Can we hear from the
18 vendor?

19 CHAIRPERSON KYLE: Does the vendor have anything
20 to say?

21 MR. CHARLES: I promise to be brief.

22 First, I want to thank you for all the work that
23 you have all put in to get to this point so far. To
24 develop the standard -- to develop standards for something
25 that doesn't exist, for them to come to be as close as

1 they are to the revisions you've made today I think is a
2 remarkable achievement for this Panel. And I know it's
3 been as difficult for us as it has been for the counties.

4 But we're pleased to be able to offer this for
5 certification. We're pleased with the success we've had
6 with this product in the state of Nevada, which in
7 November used this in every precinct in a Presidential
8 election and recorded the lowest residual vote rate in the
9 nation at .23 percent. So the technology has proven
10 itself.

11 I think your standards address a lot of important
12 issues. And I only hope that in the future as other
13 states look at it, we can start looking to the federal
14 government to set the more technical detailed standards,
15 and the state can get back to simply testing
16 functionality. Because I think there is a larger policy
17 risk nationally for a source code review at every state by
18 different people. The costs associated with that, the
19 time associated with that, the delays in getting quick
20 changes to market I think are extraordinary. And I think
21 that is a risk that really warrants consideration.

22 The condition proposed by the Panel or proposed
23 by staff for source code review, I would assume and hope,
24 that that condition addresses the nondisclosure agreement
25 we've already signed with the state. We agreed to provide

1 the state with the source code, provided that the
2 nondisclosure agreement is intact. And it's largely
3 similar to what we've already signed and provided to the
4 state. And with that, we would have no problem with the
5 source code.

6 I also appreciate the discussion that you've had
7 about procedures. And I just want to make sure we provide
8 for the record that the secrecy of the paper trail, those
9 procedures are addressed in the existing procedures before
10 the Panel. It includes a tamper evident seal on each
11 printer, a tamper evident seal that secures the printer to
12 the machine. It makes sure that the election officials
13 who are at the polling place observing who votes and on
14 which machines do not have access to that paper. That
15 paper goes back in a sealed unit back to the county, so
16 only the central county officials will have access to it.

17 We also think that the -- and I know this has
18 been addressed by the Panel. But I want to touch on the
19 sequential storage. I think there are a great many
20 benefits for just the robustness in the polling place,
21 making sure these printers work throughout the day when
22 pollworkers drop them on their way to setting them up and
23 kicked around in a truck on delivery. They have to be
24 robust. They have to be able to do things and not jam.

25 We've been able to design something that does

1 that. And in doing so, we've also added a layer of
2 security. That continuous record assures the public that
3 nobody has lost the ballot record. Nobody has added a new
4 one. It also, in its continuous state, is more compact
5 for storage and more feasible to develop a reader that
6 will assist counties in doing a higher speed recount,
7 which may get us to the point of being able to verify a
8 larger number of the paper records in the future than we
9 can do today with a hand tally process.

10 So I think there are a lot of -- a lot of
11 forethought has gone into this. There is a reason it's
12 been designed the way it has, and we think it's worked
13 extremely well. So I just want to thank the Panel for
14 getting us to this point.

15 One other note, the staff report references the
16 version for firmware as 4.3.307. The correct version,
17 which is reflected in the October staff report, is
18 4.3.330. That reflects the federally qualified version
19 and the small changes that we incorporated to get the
20 federal qualification number completed. So I believe
21 that's just a typo on that page.

22 But with that, I just request certification. I
23 thank the Panel for your work on this. And I thank all
24 the counties for their assistance to help us to find these
25 parameters and for the members of the public who have also

1 weighed in.

2 We think it's a successful product and something
3 that we want to get into the hands of the counties as
4 quickly as we can so that they can meet the deadlines on
5 lower profile elections as quickly as possible. So when
6 we get to a complicated primary election, they'll have
7 some experience with it. Their pollworkers will have
8 experience with it. And we won't be trying something
9 extremely new under extremely complex elections.

10 I so urge the Panel to support the staff
11 recommendation, and thank you for your time.

12 CHAIRPERSON KYLE: Thank you.

13 Any questions?

14 Thank you. A few folks have asked to speak.
15 Barbara Dunmore.

16 MS. DUNMORE: Good afternoon. Barbara Dunmore,
17 Registrar of Voters.

18 I submitted a letter to your honorable Panel
19 before the meeting began, and I'm just going to touch on a
20 few of those points that were in that letter to you. I
21 think Riverside County is in a unique position, again, as
22 we are the only county in the state of California that has
23 the Edge 1's. And to my knowledge, we have not seen the
24 VeriVote demonstrated on an Edge 1. And I wanted to ask
25 staff if you have seen the product demonstrated on an Edge

1 1.

2 ELECTIONS ANALYST WAGAMAN: I have to go back to
3 my notes since this was in October. My recollection is we
4 tested them on Edge 1 and Edge 2. I have to go back to
5 the technical consultants's report on that.

6 MS. DUNMORE: The way the Edge 1 is configured,
7 it is the original model, is we only have one power port
8 within it which we use on our audio units to power our
9 audio units. And we would need some type of retrofitting
10 in order to accommodate both the VeriVote and the audio on
11 one unit in each of our polling places.

12 CHAIRPERSON KYLE: I believe that can be
13 addressed, Ms. Dunmore, on a case-by-case basis according
14 to the new VVPAT standards we're going to recommend to the
15 Secretary.

16 MS. DUNMORE: Just wanted to bring that to your
17 attention, that we are the only county that does have the
18 Edge 1, and we are concerned about the compatibility of
19 this since we haven't seen it demonstrated to our county.

20 ELECTIONS ANALYST WAGAMAN: To provide
21 clarification, it was done during state testing. We did
22 test both Model 1 and Model 2. We only tested the
23 VeriVote as part of Model 2.

24 MS. DUNMORE: So it hasn't been tested on the
25 Edge 1. So I would ask for consideration perhaps of some

1 additional testing to make sure that it's compatible with
2 the Edge 1.

3 Moving on to the requirement for the secrecy of
4 the votes to be maintained so that it is not possible to
5 determine which voter cast a paper copy. You've had an
6 extensive discussion about the sequential storing of votes
7 on the reel-to-reel device. What I'm hearing is that one
8 of the procedures that is proposed is that during the
9 middle of the day, a pollworker would change out the
10 VeriVote and put a new one on so there is this somewhat of
11 a randomization of the votes that are cast.

12 My opinion on this is that here in Riverside
13 County on a general election we have 3,000 poll workers
14 who come to us for one day, less than four hours of
15 training, for minimum wage, usually doing it for their
16 civic duty. And this is, again, putting another procedure
17 on these folks to carry out with their limited training.
18 And I have concerns about that, as we have also been under
19 the guidelines to place paper ballots at the polls. So it
20 just adds one more cumbersome layer I think for our
21 pollworkers to grasp.

22 In addition, if the VeriVotes are sealed and
23 pollworkers don't have access to them, that they are
24 carried back to the elections office until the election
25 officers take custody of them, I don't see where there is

1 an opportunity for the pollworker to get a roster and the
2 tape of the VeriVote and compare and see how a person
3 voted. So I'm not sure what the intent of switching them
4 out is, except to randomize it.

5 In addition, I have a great concern about the
6 additional numbers of printers that would be required for
7 Riverside County. We have 4,250 Edge machines. If we're
8 going to require one additional at least for every one of
9 those machines to swap out during the day, that's going to
10 raise the cost for Riverside County from 400,000 to about
11 800,000.

12 In addition, I'm not sure how we'll handle an
13 early voting environment. In our early voting during the
14 general election, we had five early voting sites with
15 28,000 votes cast. Each one of these VeriVotes, according
16 to the report on a long ballot, can handle about 100
17 ballots. That would have meant that we will have 280
18 VeriVotes that we will need to keep sealed until
19 post-canvass if we're going to continue our early voting
20 sites, which as you can see for Riverside County has been
21 very successful.

22 Another aspect that hasn't been addressed,
23 related to this, is touch screen provisionals. Riverside
24 County was the only county allowed to do touch screen
25 provisionals in the general election. We did them in the

1 primary and in the general election. It's an easy and
2 efficient way to process provisionals and allows the voter
3 to proceed without having this being stigmatized as a
4 provisional voter.

5 Apparently, the VeriVote marks the tape as a
6 provisional. But as you know, that vote isn't counted
7 until we go back and do the necessary processes to verify
8 that person was eligible to vote and didn't vote in any
9 other manner. But that tape is never marked. So what I'm
10 seeing is that if we have a recount, you have a recount
11 board going back mining through a bunch of paper looking
12 for references to find out which of those were counted and
13 which of them weren't. I think it just makes it a very
14 cumbersome process.

15 And, lastly, I'd like to mention that, to my
16 understanding, the third-party product that is the
17 automatic tally is not available yet -- and I'm just
18 concerned about the Panel certifying a product that hasn't
19 been demonstrated with this third-party product and how it
20 might count or take into account the provisionals.

21 And I thank you for your time.

22 CHAIRPERSON KYLE: Thank you.

23 Any questions from the Panel?

24 PANEL MEMBER JEFFERSON: So the first half of
25 what you said regarding the switching of printers, I just

1 want to agree with everything that you said. I have great
2 trouble with the idea of switching printers in a poll site
3 for the reasons you cited; the pollworker training and the
4 slowing down of the process. But also because the
5 connector between the printer cable and the motherboard of
6 that system is a parallel port connect which is a bunch of
7 pins. If you're going to be doing 10,000 or 20,000
8 switches in the county in one day, you're going to bend
9 pins. You're going to disable printer cables at least, if
10 not printers. I just don't think this is a robust way of
11 handling the problem of randomization.

12 I think a much more robust way if you must do
13 this at all, is to during the recount process take a pair
14 of scissors -- inside of buying 4,000 extra printers, buy
15 five pairs of scissors. And during the recount process,
16 cut those paper tapes at the places you would have traded
17 the printers and you get the same degree of randomization.
18 Preferably cut them a lot more times than that.

19 PANEL MEMBER CARRELL: My only response would be
20 that randomizing the printers is one option. Cutting the
21 tape is another option. I'm sure there are other options
22 out there that we don't know about that counties may be
23 doing now for other purposes. I would just leave it to
24 staff to work with the vendors and counties to ensure
25 there are procedures in place that guarantee privacy for

1 the vote, even if it's not a procedure we discussed here.

2 CHAIRPERSON KYLE: Cathy Darling.

3 MS. DARLING: Good afternoon. Cathy Darling,
4 Registrar of Voters for Shasta County.

5 I just wanted to urge the Panel to certify this
6 system. I went to Nevada in late August to observe their
7 early voting. Marc Carrell was there on that same visit.
8 I think we saw, especially in the Clark County Registrar
9 of Voters Office, a series of procedures that ensure the
10 security of the VeriVote and the votes as they are
11 removed, stored in canisters, and locked in a vault.
12 That's the way Clark County does it. Not necessarily
13 would we all be able to duplicate that here in California.

14 But I really am very concerned about the level of
15 detail that the Panel is discussing as far as fragmented
16 procedures. I think that if the Panel would like to
17 recommend, or I would certainly love to participate in,
18 some kind of a Committee that would consist of Secretary
19 of State Elections Division staff, along with vendor staff
20 and counties as well, to develop procedures respective to
21 each individual system. And I don't know if that's
22 something that is a realistic goal or not.

23 But I would also like to echo what Caren and Tony
24 have said earlier today in respect to the fact we have a
25 deadline that is feeling, I'm sure, close to impossible

1 for those counties who haven't started yet. I feel very
2 lucky that I inherited a county that had a DRE system so I
3 am HAVA compliant, and I feel very comfortable with that.
4 But I think if we can keep the big picture and, as John
5 said, keep our eye on the ball with this process, it would
6 be really helpful. And considering that 1438 makes each
7 individual registrar personally liable for conducting
8 elections with uncertified equipment, right now in June of
9 '06, I'm looking at a fine of I don't even know what. So
10 we would love your help.

11 CHAIRPERSON KYLE: Good suggestions. Thank you.

12 Any questions or comments?

13 PANEL MEMBER MOTT-SMITH: I just want to ask if
14 we're going to work with --

15 ELECTIONS ANALYST WAGAMAN: On the staff level,
16 I'm fundamentally lazy when I can be, so I'd would be
17 happy to work with counties to rip off their good ideas of
18 how to do this. So that will be on a personal level of
19 assurance we'll be doing that, assuming that was a part of
20 the recommendation, Mr. Carrell's modification.

21 CHAIRPERSON KYLE: You're being too modest,
22 Mr. Wagaman. You're hardly lazy.

23 Kim Alexander.

24 MS. ALEXANDER: Hello again. Kim Alexander with
25 the California Voter Foundation.

1 I would like the Panel to consider awarding
2 limited certification of the VeriVote printer, and only at
3 the time when there is a particular county with an
4 election in front of them that wants to use it. What I'm
5 recommending is that the VSPP follow the same path that it
6 followed in the fall of 2002 when Sacramento County wanted
7 to use the Avante DRE machine with a voter verified paper
8 trail. What this Panel said at that time was, we will
9 provide limited certification for a one time only basis
10 for one county to use this machine with the obligation to
11 report back to the Panel how it went. And that's just
12 what happened, and it was a great learning experience for
13 everyone.

14 I've seen the VeriVote in action. I'm very
15 hopeful it will be the solution that the counties need.
16 And I'm also very aware of the tight timelines everyone is
17 on. But I also realize we're poised -- our counties are
18 poised to make huge purchases of this device without it
19 being tested in a robust way in an actual California
20 election.

21 And this is not Nevada. We have different laws.
22 We have different procedures. We have a manual count
23 requirement. In Nevada, they had no reason, no
24 requirement to ever look at that voter verified paper
25 record again once the election was over. We have a 1

1 percent manual count requirement. We will look at them.
2 If we have a county -- maybe there's a local election in
3 Santa Clara or in San Bernardino coming up this spring
4 where the VeriVotes could be used on a limited basis and
5 we could have a report back. And that way before this
6 machine gets deployed, thousands of them get deployed in
7 our counties in California -- because we know there are
8 thousands of Sequoia touch screens already in California.
9 And we anticipate, we hope they'll all be able to be
10 retrofitted.

11 If you give 100 percent certification today and
12 all those counties go out and acquire thousands of
13 VeriVotes and we have an election and we find out there
14 was some unanticipated problem, then we're stuck trying to
15 retrofit thousands and thousands of these machines.

16 So that is my recommendation, is we see if
17 there's a county that has plans to go forward. I don't
18 believe the San Bernardino experiment, while it was
19 valuable, was large enough to give us enough of a real
20 world experience of what using the VeriVote in a
21 county-wide election or in a city-wide election would be
22 like.

23 I also want to urge this Panel to convene the
24 Technical Oversight Committee. While I'm sure everyone in
25 this room is just regaled by this discussion that we've

1 been having not only at this meeting but the October
2 meeting, it seems to me a lot of the technical issues
3 we're trying to work out here in this public forum could
4 be worked out with the Technical Oversight Committee
5 convened. That's what the Secretary of State's Ad Hoc
6 Touch Screen Voting Task Force recommended, that we have
7 another Panel separate from the VSPP that would be
8 responsible for working out the technological and policy
9 issues associated with voting equipment that we're
10 considering or that's already in use.

11 So I urge you to convene that Panel as soon as
12 possible, so as more vendors come forward with their voter
13 verified paper trail machines, that we won't have endless
14 hearings where every single detail has to be worked out in
15 this hearing room, as fun as it is.

16 The last thing I want to mention is that -- and
17 it had come up a little bit earlier today. Something we
18 really haven't talked very much about, and is a good
19 example why we need the Technical Oversight Committee to
20 ramp up, I would like to urge this Panel to prohibit the
21 use of bar codes on the VeriVote machine and, in fact, on
22 all voter verified paper records in California. The
23 VeriVote currently includes bar code, and it's an optional
24 feature according to the vendor.

25 The presence of the bar code on the voter

1 verified paper record will undoubtedly cause some voters
2 to wonder what data is contained in those bar codes. And
3 some of those voters may conclude the voters identity is
4 included. And it will also leave the impression that the
5 voter verified paper record will be read by machines
6 rather than people. And that's one of the things we're
7 trying to overcome, is to give people confidence that any
8 reasonable person can and has inspected the ballots and
9 verified they're accurate. Until the time that the use of
10 bar codes serves a particular purpose, I would urge this
11 Committee to prohibit the use of them on California voter
12 verified paper records.

13 CHAIRPERSON KYLE: Thank you.

14 Any questions from the Panel? Comments?

15 Thank you very much.

16 Jim March. He's our last speaker.

17 We'll take a quick break after that, then
18 reconvene and wrap this up.

19 MR. MARCH: Thank you.

20 I'd like to point out what amounts to the
21 equivalent of a giant pink polka dotted elephant sitting
22 in the third or fourth row up that everybody is trying to
23 ignore, that this Panel has ignored consistently going
24 back at least a year and a half that I know of. And that
25 is the federal oversight process that's reviewing all of

1 these machines, including that one, including Diebold,
2 including all of them, before you get to them, that
3 federal oversight process is broken. It's flawed.
4 Diebold proved it conclusively.

5 One of the related things that you guys have
6 ignored so far is the release of 13,000-plus Diebold
7 internal memos in the summer of last year. It hit Wired
8 Magazine 7th of August 2004 -- no -- 2003. Excuse me.
9 Those internal e-mails, among other things, detailed how
10 Diebold gamed the federal oversight process. There were
11 orders from higher level Diebold employees, Senior
12 Engineer Ken Clark, Vice President at that time. I
13 believe he still holds --

14 CHAIRPERSON KYLE: Mr. March, you're saying
15 something that we have in your letter. I'm going to ask,
16 is this on point to the VeriVote?

17 MR. MARCH: Yes, it is. Believe me, I'm rolling
18 around there. I'm coming back.

19 Diebold gamed the federal oversight process.
20 Orders came down from higher level employees to lie to and
21 mislead the federal independent testing authorities. Now,
22 having done that, they proved that it was possible to game
23 that system.

24 Now, you guys have been dancing around the
25 subject for the first time today, of source code review.

1 And you have to because of SB 1367, I believe it was, gave
2 you the authority to review source code for the first
3 time. That's good. But in my opinion -- or at least my
4 suspicion, is a better way to put it, I don't think you
5 have the ability to do proper source code review at the
6 level that the federal testing authorities are supposed to
7 be doing but are not. And if that's the case, if the
8 federal oversight process is broken, and you guys are not
9 able to provide an effective backstop to them, then,
10 Houston, we've got a problem. That means none of these
11 systems are fundamentally trustworthy. Not one.

12 Now, I know that's a very unpleasant fact. It's
13 a very inconvenient fact, because it makes all of the
14 actions of this Board going back at least a year and a
15 half that I know of something of a joke. But that's the
16 reality that somebody is going to have to face at some
17 point, if we're going to have secure elections that the
18 public can trust in California.

19 And my other concern is that in ignoring that
20 giant polka dotted pink elephant, or pair of them, if you
21 want, this Board hasn't acted very professionally over the
22 last year and a half. The California State Auditor's
23 opinion of other processes run by the Secretary of State
24 has been that it's not very professional either.

25 CHAIRPERSON KYLE: Mr. March, are you going to

1 tie this into the VeriVote?

2 MR. MARCH: Yes, I am.

3 CHAIRPERSON KYLE: So far I'm failing to see a
4 connection.

5 MR. MARCH: Well, that machine was tested with
6 the same federal oversight process that doesn't work.
7 That means I don't have a lot of trust in it.

8 This certification process was run over the
9 course of the last year and still today by an office that,
10 according to the State Auditor's Office, is capable of
11 fairly severe levels of mismanagement. I didn't say that.
12 California State Auditor's Office did.

13 So taken together, I don't have a lot of trust in
14 the actions of this Panel today or over the course of the
15 last year and a half. And I would hope that you would
16 welcome the California Auditor's Board reviewing this
17 Panel's actions to the same level they've reviewed the
18 HAVA Panel's action -- the HAVA money distribution system.
19 They found that very wanting. And I believe if they
20 review the actions of this Panel, they'll find those
21 actions wanting.

22 And all taken together, I have deep concerns over
23 this entire process, and I believe those concerns need to
24 be registered. Thank you very much.

25 CHAIRPERSON KYLE: Thank you.

1 Any questions or comments? Let's take a
2 ten-minute break. Come back at 3:00.

3 (Thereupon a recess was taken.)

4 CHAIRPERSON KYLE: Let's get started again.

5 So we are now at the point in the agenda where I
6 will entertain a motion or motions on the Sequoia VeriVote
7 printer application that's currently before us in the
8 recommendation.

9 PANEL MEMBER CARRELL: Can I just ask staff to
10 reiterate back some of the things that the members of the
11 Panel may have mentioned as things that we might want
12 included in the motion so we have the motion in front of
13 us.

14 ELECTIONS ANALYST WAGAMAN: Modifications I have
15 so far from what's written is the correction to the
16 version number. Skipping down to 5, one, that the system
17 cannot be used until -- and I'm unclear whether it would
18 be the actual source code is in hand or the agreement --
19 the signed confidentiality agreement was in hand.

20 PANEL MEMBER MILLER: The agreement in hand, not
21 necessarily the source code. Based upon the fact that SB
22 1376 does provide access to the source code.

23 ELECTIONS ANALYST WAGAMAN: That would be the
24 addition there.

25 The second addition of the paragraph to Condition

1 5 would be that the cost of any review of that source code
2 would be borne by the vendor.

3 PANEL MEMBER MILLER: Any reasonable cost.

4 ELECTIONS ANALYST WAGAMAN: Adding an 8, which
5 was from staff, the certification be limited to use for
6 English and Spanish.

7 Adding a 9 that a working copy -- before the
8 system can be used, that a working copy of equipment be in
9 possession of the Secretary of State's Office.

10 Ten would be that the procedures before -- again
11 before use, procedures be modified to address the secrecy
12 issues. And that would be done -- not part of the
13 recommendation, but that would be done in conjunction with
14 the counties and vendor.

15 PANEL MEMBER MILLER: With respect to Number 9,
16 the working unit, that should be subject to reasonable
17 confidentiality agreement.

18 ELECTIONS ANALYST WAGAMAN: Same language with
19 Number 5.

20 PANEL MEMBER MOTT-SMITH: I wanted to ask what
21 the intention of that was exactly. Is that just the
22 firmware? Are we also looking for a tabulation system as
23 well here, putting those results into a tabulation system?
24 I'm not sure we know what we're getting into here either
25 in terms of equipment or storage or --

1 PANEL MEMBER MILLER: Since that was Mr.
2 Carrell's recommendation, I'm not going to speak to that.
3 It's my view it should be not the vote tabulating
4 system that's connected there, but over their example or
5 something like that.

6 PANEL MEMBER CARRELL: Right. The
7 recommendation -- and, well, in the Secretary's directive,
8 it was that we have a working model on site so that we --
9 much like that one, so we can --

10 PANEL MEMBER MOTT-SMITH: Precinct-based voting
11 equipment.

12 PANEL MEMBER CARRELL: So when we're looking and
13 making decisions, and later on when there's references
14 made, we can look at it and see what's been discussed,
15 instead of trying to remember.

16 ELECTIONS ANALYST WAGAMAN: It's hardware and
17 firmware, not software?

18 PANEL MEMBER JEFFERSON: Why are we excluding the
19 software from this?

20 PANEL MEMBER CARRELL: We would have a server
21 but --

22 PANEL MEMBER JEFFERSON: It seems to me if we're
23 certifying a whole voting, we should have a whole voting
24 system. We should have the back end as well as the front
25 end.

1 ELECTIONS ANALYST WAGAMAN: That would be the
2 Panel's discretion.

3 PANEL MEMBER JEFFERSON: Let me suggest that to
4 the Panel.

5 PANEL MEMBER MILLER: I don't know what we're
6 getting into. I parrot John's comment. I don't know what
7 all would be involved in terms of having the vote
8 tabulating device that is normally back at the registrar's
9 office. I have no idea.

10 PANEL MEMBER JEFFERSON: Well, it's a PC and some
11 software and some readers.

12 ELECTIONS ANALYST WAGAMAN: It will vary from
13 piece of equipment to piece of equipment how much it is.
14 Generally, a piece of software on some kind of computer,
15 some vendors will be using COTS equipment, so they'll have
16 to be getting COTS licenses, if they actually want to get
17 that equipment.

18 PANEL MEMBER MILLER: Maybe Mr. Charles could
19 speak to that.

20 MR. CHARLES: We'd be happy to provide it. What
21 it would entail is an open copy of the WinEDS tabulation
22 system, election management system, on a PC, which we
23 presumably would require a considerable amount of training
24 for state staff to be able to use. I think if the testing
25 authority that the state uses would like to have a copy of

1 it on hand so somebody who's had some experience -- and
2 that may make more sense. But I would be happy to provide
3 a machine to the State that the State could use for
4 training purposes, for demonstration purposes, and be
5 happy to help design a ballot for that.

6 PANEL MEMBER MILLER: Mr. Carrell, was this a
7 demand type of a provision, or must have for --

8 PANEL MEMBER CARRELL: Well, I was making the
9 recommendation based on the directive from the Secretary
10 last year that we should be requiring it from all vendors
11 from now on so we have a sample of every voting machine.

12 PANEL MEMBER MILLER: But that was a demand
13 provision. We had the right to demand.

14 CHAIRPERSON KYLE: We could trigger it at an
15 appropriate time.

16 PANEL MEMBER MILLER: Right. And the provision
17 should be different than we had last time, which was
18 difficult to implement.

19 PANEL MEMBER CARRELL: Okay.

20 ELECTIONS ANALYST WAGAMAN: So if I'm reading
21 correctly, the Option 9 would parallel Number 5, except
22 instead of referencing source code, it would be
23 referencing a copy of the equipment.

24 PANEL MEMBER MILLER: The confidentiality
25 agreement would be different.

1 ELECTIONS ANALYST WAGAMAN: I mean, the language
2 of 5, not 9, and 9 would be parallel.

3 PANEL MEMBER MILLER: Right to demand, shall
4 provide on demand.

5 CHAIRPERSON KYLE: Does that answer your question
6 in terms of what is the current recommendation?

7 PANEL MEMBER CARRELL: Yes.

8 CHAIRPERSON KYLE: Do I hear a motion?

9 PANEL MEMBER MOTT-SMITH: I move the staff
10 recommendation.

11 PANEL MEMBER DANIELS-MEADE: Second.

12 ELECTIONS ANALYST WAGAMAN: Is that with or
13 without which modifications?

14 PANEL MEMBER MOTT-SMITH: With the modifications
15 as you enumerated.

16 CHAIRPERSON KYLE: And your second was?

17 PANEL MEMBER DANIELS-MEADE: With the
18 modifications.

19 CHAIRPERSON KYLE: With the modification of 5 and
20 the addition of Item 9 and 10.

21 Any further discussion before we vote?

22 All those in favor say aye.

23 (Ayes)

24 CHAIRPERSON KYLE: All those opposed.

25 (Nays)

1 CHAIRPERSON KYLE: Any abstentions?

2 Okay. Ayes have it.

3 Let's move right into Grandfathered Voting
4 Systems Report, discussion item only. We're going to take
5 up Item Number 2 next month when we have prepared reports
6 from San Francisco and others.

7 Mr. Wagaman if you'd proceed, please.

8 ELECTIONS ANALYST WAGAMAN: This item was placed
9 on your agenda at the request of at least one vendor and
10 several counties. This was not staff initiated. It was
11 initiated at their request.

12 The issue is there are currently several systems
13 in the state that have a state certification, but not a
14 federal qualification. There are exceptions, but the
15 general reason is those systems were certified prior to
16 the existence of the federal qualification process, or at
17 least the federal qualification itself.

18 The issues that have come up as counties and the
19 vendors are trying to, again, deal with this transition to
20 meet the 2006 deadline, there are two primary issues that
21 have come up with these systems. One is at some point are
22 these systems going to be decertified as they currently
23 exist? That affects the counties making their decision of
24 whether they want to replace that system entirely or just
25 add a one per precinct kind of option to meet the

1 accessibility requirement.

2 The second issue that comes up is if these
3 systems need to be modified at some point, will that be a
4 trigger for requiring federal qualification, or can they,
5 in essence, piggyback on the previous grandfathering and
6 still go through state certification, but not have to go
7 through the federal qualification process? In the past,
8 those requests have been dealt with on a case-by-case
9 basis and evaluated both by staff and the Panel on a
10 case-by-case basis whether that would be a trigger for
11 qualification. The question from, again, vendors and
12 counties is whether that's an ongoing policy or whether
13 that may change in the future.

14 The systems where you see this continue to be
15 used in the future is first the Datavote system. This is
16 the remaining punch card system used in the state. It is
17 not a pre-sorted punch card system, so it was not part of
18 the previous decertification there. It's used in ten
19 counties right now, supported by two different software
20 packages. Both those counties are planning to replace
21 that system. So that's dropping off before the 2006
22 deadline. The remaining eight counties are all supported
23 by a Sequoia's teamwork system.

24 I believe most of those counties are planning on
25 replacing that system in order to get their HAVA 102

1 money. However, I don't know for certain all those
2 counties are planning on replacing that system. Hence,
3 the reason it's included on the list as a potential system
4 that is currently grandfathered, not qualified, state
5 certified. These readers haven't been changed since the
6 1970s. There's no firmware involved there. So they don't
7 change. That may -- I think at least one county may
8 desire to retain that, whether that is a viable option for
9 them.

10 Mr. Chair, do you want me to go through all the
11 different systems, or do you want to do these one at a
12 time?

13 CHAIRPERSON KYLE: Thank you. Good question.
14 I'd like to do these one at a time.

15 Is there anyone from the counties affected by the
16 Datavote who are here who would like to say anything? I
17 didn't think so.

18 Anyone else want to say anything on this point?

19 MS. HANSON: I gave Mr. Wagaman a clarification
20 of correction this morning. And I just wanted to make
21 sure that -- I'm Terry Hanson, the Registrar of Voters
22 from Yuba County.

23 ELECTIONS ANALYST WAGAMAN: The clarification
24 here is Yuba County is going to fit between A and C here,
25 in that their hardware is the Datavote equipment. But

1 they are supported by a different software package.
2 They're supported by the BCWin package from DFM that was
3 referenced. It primarily supports the Mark-A-Vote system.
4 This is one exception it's supporting Datavote. So it's
5 going to be referenced in both.

6 CHAIRPERSON KYLE: Duly noted. Thank you for the
7 clarification. All right.

8 ELECTIONS ANALYST WAGAMAN: Moving on, the
9 InkaVote system is currently used in only one county,
10 Los Angeles. It's an optical scan system, consists of two
11 parts, both of which are grandfathered. The first is the
12 ballot card readers. It reads the InkaVote ballot. The
13 second is their central tabulation system. MTS, the
14 currently certified version, is 1.3.1.

15 Again, this is an example of a system that has,
16 in essence, piggybacked on previous grandfathering to when
17 we've had a couple of changes in the last year, we state
18 certified those without, again, requiring qualification at
19 that time. I would defer to Ms. McCormick, if she's still
20 in the room, as to the county's long-term plans as
21 relating to that system.

22 CHAIRPERSON KYLE: Ms. McCormick.

23 MS. MC CORMICK: Thank you for the opportunity to
24 talk about grandfathered systems. I was very appreciative
25 when Michael called me a couple weeks ago and we started

1 talking about this.

2 Just a one-minute sort of contextual thought is
3 that what all of us want and what you do as a Board and
4 your certification is success, and success and accuracy,
5 and accuracy is the key to a voting system and counting
6 the accuracy accurately is what all of us want.

7 And in September 2001 when the former Secretary
8 of State decertified the punch card systems, in L.A.
9 County we're looking at 27 months between that date and
10 the date we had to have a new system, which at the time
11 was tremendously frightening as a short time line. But as
12 we all know, now we're looking at less than a year to put
13 in a HAVA compliance system, and there were a lot of
14 challenges to doing that.

15 So what I would just like to mention is I think
16 we need to keep in mind the overriding macro-approach is
17 that we want with our systems if they count accurately --
18 and our InkaVote system when it was certified in 2002 and
19 looked at very thoroughly and went through very rigorous
20 testing and in a sense gone through additional testing.
21 But probably the most important test was the November 2004
22 election, because we counted three million ballots on the
23 system. And our 1 percent manual tally was very accurate.
24 And we had very good success and the voters were very
25 happy with the system, so that we've been through a lot of

1 testing and we know it's accurate.

2 What we want to do now, because of the uncertain
3 environment -- and again, my Board of Supervisors hasn't
4 made a formal decision, but we intend to be in front of
5 them in the next month or so, no more than six weeks -- is
6 to move into a direction of putting a HAVA compliant box
7 into the InkaVote system. And there are several vendors
8 out there who we're talking with about that process.

9 But, overall, our goal and when we issue our RFP,
10 which we're anticipating doing no later than March of this
11 year, is to continue counting our InkaVote ballots into
12 the future on the system we have now on the central count
13 system. In other words, we would have the HAVA compliant
14 box, which could provide some unofficial results for us at
15 the precinct level.

16 But before we ever certified our results, we
17 would have them go through the very readers we're talking
18 about that have been certified and counting the vote
19 accurately before we ever certified anything, which would
20 give us the assurance that we know it's going to be
21 counted right, and you as well, since you tested that
22 system. But also will give us an opportunity to look at
23 the precinct results and compare with anything else and
24 see if there are any anomalies in any kind of a box we
25 might drop in to do the over and under vote testing and

1 the blind voting capacity.

2 So that's sort of an outline of where we're going
3 and what we are wanting to do as this process -- and I
4 know you're just beginning this discussion. But as this
5 process goes forward, is to not lose the flexibility that
6 we need to be able to count the votes in this near-term,
7 in the next few election cycles. I don't know what's
8 going to happen after that. But we're certainly looking
9 at '06 and '08 as being this type of a configuration, at
10 least that's the goal right now. Again, my Board hasn't
11 made a formal decision, so I don't want to speak for them.
12 But I have indications that's the direction we'll be going
13 in.

14 So I just want to let you know that we don't
15 intend to, like, switch gears and go to some other system
16 and which, you know, obviously, it's going to have to go
17 through the state certification process. But we're still
18 looking for our own comfort level that we know that we're
19 going to count the ballots accurately. And we know we can
20 do that with the current system. And, frankly, there's a
21 lot of unknowns out there. So that's the approach we have
22 right now and certainly be willing to answer any questions
23 I can in this uncertain decision at this time.

24 CHAIRPERSON KYLE: Thank you.

25 Any questions?

1 Mr. Carrell.

2 PANEL MEMBER CARRELL: You talk about HAVA
3 compliant box. What is currently not compliant?

4 MS. HANSON: Right now, we don't have any ability
5 for the blind to vote unassisted on the InkaVote system.
6 And we don't have the over and under vote protection, over
7 vote protection being required. And the devices we're
8 looking at would give us those. But at this point in time
9 having been through the federal or obviously the state
10 certification process, they're at different stages of the
11 federal process right now, the vendors we're looking at
12 who got those systems.

13 PANEL MEMBER CARRELL: You're looking at
14 different vendors?

15 MS. HANSON: Yes, we are.

16 CHAIRPERSON KYLE: Any other questions, comments?

17 Mr. Mott-Smith.

18 PANEL MEMBER MOTT-SMITH: You lost me a little
19 bit on what it is exactly that you're proposing that you
20 would count the ballots at the polling place, but then --

21 MS. HANSON: We'd do some unofficial counting at
22 the polling place, because it wouldn't include absentee
23 and wouldn't include provisionals, because the
24 provisionals would be paper provisionals and envelopes.
25 So now we have 6 or 7 percent of our ballots in November

1 '04 that were provisional. Clearly, those won't be in
2 that count.

3 But on official election night, we're looking at
4 the capacity to have that information quicker through this
5 new additional box, because that would be a nice benefit
6 to have, is to have the ability to get some quick results
7 with 5,000 precincts, which, of course, our Board of
8 Supervisors would very much like to see after 75 years in
9 a central count environment of slow counting.

10 That would be unofficial. It wouldn't include
11 absentees. It wouldn't include provisionals. And it
12 wouldn't be official. It would just be election night
13 tally we could get out of those boxes that we had the
14 ability to get that number in on. That's what we're
15 looking at is sort of an unofficial tally, but that would
16 meet the two different requirements of HAVA, which is the
17 blind unassisted and the independent and the over and
18 under vote protection. A new creative model, but that's
19 what we do in L.A. We're always coming up with a new
20 creative model and trying to make all this work.

21 CHAIRPERSON KYLE: Other comments? Questions?

22 Thank you very much.

23 MS. HANSON: Thank you.

24 CHAIRPERSON KYLE: Mark-A-Vote.

25 ELECTIONS ANALYST WAGAMAN: Mark-A-Vote is an

1 optical scan system supported by one vendor, DFM. It's
2 currently used in actually nine counties. The tenth
3 county is the Yuba County which uses the DFM, central
4 tabulation system, but they use the Datavote reader.
5 Readers very similar to the Datavote readers in that
6 they're old. They've been around forever. They haven't
7 been changed in forever.

8 The second part is their central tabulation
9 system, BCWin, which consist of several components which I
10 won't read you all the version numbers of. That's
11 again -- and this is one of the vendors that requested
12 this topic come forward.

13 Specifically, they have two issues. One, their
14 clients are trying to determine if they're going to hold
15 onto those Mark-A-Votes or replace them. And, two, they
16 have what they've classified as bug fixes to this BCWin
17 package that they have prepared. And they want to know if
18 they're going to be their trigger for qualification and
19 bring that forward and piggyback it on the current
20 certification.

21 CHAIRPERSON KYLE: Okay. Bruce Krockman.

22 MR. KROCKMAN: Mr. Chairman, thank you. I think
23 Michael did an excellent job of sort of wrapping up where
24 things are at. There are a few additional components we
25 would like to address in the software application relating

1 to the fact that -- the Panel may not notice there's a
2 brief bit of background. There's a tab card based system.
3 As the cards are read through the card reader, there's a
4 header card and end card that tells the beginning and end
5 to a precinct. Those header and end cards are based on
6 card punches. I don't know how many of you have seen a
7 card punch laying around recently, but they're a little
8 harder to find.

9 So I've been directed by our management to
10 develop an alternative input component, primarily most
11 likely be something bar coded or, you know, manual input.
12 We don't know for sure yet. So that if and when -- I
13 should say when, because it's not a matter of if. When
14 that card punch we have dies, that democracy of these
15 eight counties won't come to a screeching halt.

16 But it raises the specter -- and this was the
17 conversation Michael and I had. What happens when we come
18 to you with these modifications? Clearly, the market
19 doesn't support the effort to go through federal
20 certification. We have a limited number of counties that
21 use the system and use it effectively, cost effectively.
22 But to take it through what the current standards are
23 would require essentially gutting the system, starting
24 from scratch, and taking it up to the feds and back down
25 to you. The effort probably exceeds its utility. So at

1 the point that you guys require that type of certification
2 pretty much is the last breath for the BCWin application.
3 And that is really kind of the specter that we see hanging
4 over this.

5 CHAIRPERSON KYLE: Questions or comments from the
6 Panel?

7 Thank you very much.

8 MR. KROCKMAN: Thank you.

9 CHAIRPERSON KYLE: County of Sonoma,
10 Ms. Atkinson.

11 Just for the record, that was Bruce with DFM
12 Associates.

13 MS. ATKINSON: Good afternoon. Janice Atkinson,
14 County of Sonoma.

15 And I want to apologize. I have a cold. I've
16 been sitting here just like dying in the audience for the
17 last how many hours.

18 Sonoma County has used the Mark-A-Vote voting
19 system for 21 years very successfully. It's very
20 accurate. It's very voter friendly. And we have been
21 proceeding along the route that we are going to continue
22 to use the Mark-A-Vote voting system into the future.
23 It's what we consider to be the best voting system for our
24 county, particularly since we have over 42 percent of our
25 voters as permanent absentee voters. It's a very absentee

1 voter friendly system. It's very easy -- you know, it's
2 an optical scan system where the candidates are printed
3 right on the cards. The voters can see them. They can
4 mark them. It obviously has its built-in paper trail,
5 because everybody sees their ballot cards.

6 We have the -- we automatically have the problem
7 solved of how the votes are stored, because of course
8 they, once again, all go into the same ballot box and all
9 mixed up and nobody knows whose ballot is which. So, you
10 know, I feel like here we have a system we've used for 21
11 years, and we've already overcome all of these systems'
12 problems that are coming up today.

13 I was very concerned actually to see that this
14 was going to come up before the Panel, only in that I had
15 not considered the fact that this Panel might actually
16 decertify the Mark-A-Vote system, being it has been
17 previously grandfathered and has been used quite
18 successfully by a number of counties for a number of
19 years.

20 We have been proceeding with the Voting
21 Modernization Board all along stating we were intending to
22 stay with the Mark-A-Vote system. We do intend to add one
23 unit per precinct for the visually impaired to vote
24 unassisted. We have yet to see a system get certified we
25 can do that with, but we're looking forward to that.

1 But now I feel at this very late date it appears
2 that, you know, there may be a possibility that
3 Mark-A-Vote could be decertified. And I feel that we've
4 been put at a great disadvantage to have to begin today
5 looking at the possibility of replacing our entire voting
6 system.

7 Other than that, I'd be happy to answer any
8 questions.

9 I will tell you that over 50 percent of our
10 ballots cast in the last November election were cast by
11 mail, and we had an 89.4 percent turnout in our county,
12 the second highest in the state.

13 CHAIRPERSON KYLE: Very good.

14 Any questions or comments?

15 Thank you for that information. Very helpful.

16 Santa Cruz County, Gail Pellerin.

17 MS. PELLERIN: Hello. My name is Gail Pellerin.
18 I'm the Santa Cruz County Clerk.

19 And it's interesting to note this next primary
20 ahead of us has an election date of 06-06-06. We dubbed
21 it the beast. And certainly if Mark-A-Vote went away, it
22 would truly have a terrible effect on our county and the
23 voters in our county, so we certainly hope it will stay
24 with us.

25 As we transform, as we catch up with the federal

1 requirements, we do intend to have and meet those
2 requirements by January '06. I would certainly like to
3 see more systems certified than decertified. It would be
4 helpful in meeting the goal of having a voting system that
5 any voter can vote on and vote a secret ballot. So I do
6 urge this Board also to move quickly in certifying systems
7 so we have something available to us.

8 Tomorrow, certainly, with the Prop. 41 Bond Board
9 meeting, we're going to ask to extend that July '05
10 deadline, because its clock is ticking very quickly for
11 counties who are sitting here wanting to comply, wanting
12 to meet all the needs, and have a system that we feel
13 confident in, our voters feel confident in, and is safe
14 and secure that can count votes accurately. So
15 hopefully -- Mark-A-Vote does that right now. We'd like
16 to keep it and supplement it and look to the future for
17 new voting technologies to be certified. Thank you.

18 CHAIRPERSON KYLE: Thank you.

19 Anyone else on Mark-A-Vote?

20 Okay. D, Optech Eagle.

21 CHAIRPERSON KYLE: This one is complicated. The
22 Optech Eagle IV-C, these products come from a company back
23 that used to be ES&S and Sequoia together, so both those
24 companies support this product. The Sequoia versions of
25 this are qualified and certified, so we're not talking

1 about those. This is limited to the ES&S products. They
2 are run in three different counties. Each county is in a
3 different version. So I'm going to walk through each and
4 its current status.

5 The version run in Amador, they only run the
6 Eagle 1.28, 1.50. That version has a full certification
7 on it. It has not got a qualification but is fully
8 certified.

9 Second version is running in San Francisco. This
10 is both the Eagle and the IV-C. This is the rank choice
11 voting version of the firmware. That's probably going --
12 will be addressed at the February meeting, so that will be
13 when that item will come up.

14 The final version is in San Mateo, which runs
15 again both the Eagle and the IV-C. That version carried a
16 one-time use certification for the November election.
17 There's currently an application before us -- or an
18 application was just submitted today actually to extend
19 that certification through the end of the year to allow
20 the transition of product to go forward. The vendor in
21 their letter that was also submitted today indicated that
22 by April 15th they will submit documentation to the SOS as
23 to their long-term plans as related to the Eagle and the
24 IV-C and whether that would include getting it qualified,
25 replacing entirely, what their long-term plan is for that

1 equipment. That's it.

2 CHAIRPERSON KYLE: Thank you. Any comments by
3 ES&S?

4 Any comments from San Francisco, San Mateo, or
5 Amador?

6 Did we have public comments?

7 ELECTIONS ANALYST WAGAMAN: There were no public
8 comments submitted timely. I believe there were a couple
9 that were submitted after the deadline, which would have
10 been given to you as before. As I noted before, this is a
11 discussion item only, so any action would be not have been
12 noticed under the 30 days, so it would be out of order.
13 But if there's any discussion, that was the reason it was
14 noticed on your agenda.

15 CHAIRPERSON KYLE: Thank you.

16 Any further discussion by Panel members or
17 questions regarding this topic?

18 PANEL MEMBER CARRELL: I have a question. Just
19 so I'm clear, if a vendor is not intending on phasing this
20 out and counties intend on using it beyond the January 1,
21 '06, they have to be modified to become HAVA compliant?

22 ELECTIONS ANALYST WAGAMAN: They could be
23 supplemented in. In the case of, for example, the
24 Mark-A-Vote, that system is currently certified. It
25 carries a full certification. So they could add a

1 supplemental -- in essence, a second voting system on top
2 of it that met the HAVA requirement, as long as that
3 system was certified.

4 PANEL MEMBER CARRELL: That's with regard to the
5 accessibility provisions. That doesn't talk about the
6 over vote provisions or the confirmation of choices. I'm
7 sure Mark-A-Vote is compliant. But the InkaVote, there's
8 a question whether -- in my mind, whether it truly
9 provides for confirmation of one's vote.

10 But are there other aspects of HAVA they have to
11 comply with that they weren't originally considered --
12 accessibility aside, because you can accomplish that with
13 a second system.

14 ELECTIONS ANALYST WAGAMAN: And the over vote,
15 under vote can be met through an education process. It
16 may require modification to those use procedures.

17 PANEL MEMBER CARRELL: To do a precinct-based
18 count versus a central count or something like that.

19 ELECTIONS ANALYST WAGAMAN: That's one of the
20 things with the systems later in the year we're going to
21 be looking at use procedures to make sure they're all HAVA
22 compliant to those requirements beyond the accessibility.
23 But, again, as of right now, that is a -- in the case of
24 Mark-A-Vote, is a certified piece of equipment.

25 PANEL MEMBER CARRELL: The question before us,

1 we're not going to decide on today, that we need to
2 consider is if a system can be modified through different
3 procedures, do we have to require it to go back to the
4 feds? Or do we have to require it to be state certified
5 over again? Or can it be done at an administrative level?
6 If it can't be modified, do we decertify the system?

7 ELECTIONS ANALYST WAGAMAN: There are really two
8 questions. One is can a system that is not qualified but
9 state certified, that as long as there's not any changes
10 to that system other than procedural changes, can that
11 system just continue to be used? Or at some point -- that
12 system, as long as it carries full certification, could be
13 used forever, unless a proactive action was taken by this
14 Panel and the Secretary. And is there any anticipation of
15 that kind of an action coming up? That was the question
16 posed primarily from the county side.

17 From the vendor side, the question that was posed
18 was these changes that come up, if they need to change
19 that system that's previously been certified, can they
20 make that change without triggering the federal
21 qualification or, in essence, is the policy that no
22 further certification would be issued without
23 qualification?

24 PANEL MEMBER CARRELL: When do you believe you
25 will have evaluated all the current grandfathered systems

1 to understand what's required to make them HAVA compliant?

2 ELECTIONS ANALYST WAGAMAN: Well, again, the HAVA
3 requirements primarily with the issues you're talking
4 about, these systems would not address the accessibility
5 requirement. The other requirements would be, I
6 believe -- all the systems would be able to meet the --
7 with the procedures modification, I'd have to go back and
8 study that issue specifically. But I believe that
9 procedural solutions with a supplemental system, they'd be
10 able to meet the HAVA requirements.

11 PANEL MEMBER CARRELL: My recommendation is to
12 request staff to sort of give us a breakdown of these
13 systems by any issues that HAVA presents for any of them.
14 And if there are none, there are none. But if there are
15 any, how then would those issues be resolved procedurally,
16 software, firmware, hardware, whatever, or by a
17 supplemental system that can accomplish it?

18 If we have a chart like that in front of us and
19 this item on the next month's agenda, I would recommend
20 that we establish some sort of policy, whether our policy
21 is we'll deal with it case by case or whether we actually
22 have a specific policy so that everyone is on notice as to
23 what's going on. We can't do that now. It hasn't been
24 noticed. But if we're discussing it now and then make a
25 decision next month.

1 ELECTIONS ANALYST WAGAMAN: On that particular
2 part of it, the decision making, I would have to defer to
3 counsel. Since this item was originally noticed as a
4 discussion item and since we've passed the meeting notice
5 date for the February meeting, whether it could be rolled
6 over, and that would -- then could you take action. Or
7 does it have to go to the March meeting.

8 PANEL MEMBER CARRELL: The next appropriate
9 meeting.

10 PANEL MEMBER MILLER: I would concur with Mr.
11 Carrell. I'll certainly work with staff on the HAVA
12 aspect of this.

13 CHAIRPERSON KYLE: So directed.

14 I think on terms of notice, we might be able to
15 do it in February since it's a roll over of this.

16 PANEL MEMBER MILLER: This is a discussion item,
17 not an action item. So it wouldn't be rolling over and
18 acting.

19 CHAIRPERSON KYLE: The action item would be the
20 second --

21 ELECTIONS ANALYST WAGAMAN: We'll look at that.

22 CHAIRPERSON KYLE: So in that regard, we do want
23 to take it up at the next available meeting and continue
24 to work on it. And we'll conclude that agenda item.

25 Now, is there anything on residual vote? You

1 said it is incomplete. Is that something we should roll
2 over?

3 ELECTIONS ANALYST WAGAMAN: Residual vote, you
4 have in your binder the results I have today. We're still
5 waiting on eight or nine counties. I have three upstairs
6 since I've been down here. So by the next meeting we'll
7 have all that done so you'll not only have the raw --

8 CHAIRPERSON KYLE: I'm going to roll the agenda
9 item over to the next month.

10 PANEL MEMBER CARRELL: If I could ask you include
11 the residual vote numbers on that same chart with the HAVA
12 compliance, so we have a sense of the residual vote
13 information for each system. Even if it's the same chart,
14 just providing it to us when we review that.

15 ELECTIONS ANALYST WAGAMAN: I'll figure out the
16 best way to do that.

17 CHAIRPERSON KYLE: And Kevin Chung, you still
18 have an opportunity under other business if you wanted to
19 address the Panel. If not --

20 MR. CHUNG: I'm Kevin Chung from Avante.

21 I just want to more in generic terms discuss
22 about the HAVA in 2002 certification and the certification
23 sort of thinking HAVA compliance. I have a concern in the
24 sense that in the HAVA law, Section 301, specifically
25 specify any accessibility equipment has to be certified to

1 the standard in existence. That was supposed to be 2002
2 standard. At this point, all your HAVA money and
3 distributions are based on 1990 standard. I wonder how
4 you make that into real compliance. That's really my
5 concern.

6 CHAIRPERSON KYLE: Thank you very much. And duly
7 noted.

8 There's not other business. I'm going --

9 PANEL MEMBER MILLER: Mr. Chair, could I indicate
10 as a point of personal privilege that the HAVA Task Force
11 with respect to 301 will be meeting briefly for
12 information purposes only in the Boardroom, second floor.
13 We will then send out the information to the members of
14 the Task Force by e-mail. And we will be meeting the
15 first part of February with a substantive meeting.

16 CHAIRPERSON KYLE: Any other housekeeping
17 announcements?

18 ELECTIONS ANALYST WAGAMAN: I just want to verify
19 the agenda for the February meeting that the items would
20 be rolled over from many times the Avante application
21 under optical vote tracker, the roll over from this
22 meeting on the rank choice voting item, continuation from
23 this item on the grandfathered voting systems, roll over
24 on the residual vote report, and any other business.

25 CHAIRPERSON KYLE: Correct. Thank you very much.

1 This meeting is adjourned.

2 (Thereupon the Voting Systems and Procedures

3 Panel meeting adjourned at 3:43 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
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8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 4th day of February, 2005.

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