

TOUCH-SCREEN VOTING THE FUTURE OR FAILURE?

Recent decisions by the California Secretary of State have preempted the conclusions and subsequent recommendations of the Grand Jury concerning touch-screen voting in San Diego County. It is no small irony that the optical scan option the Secretary of State recommends for use in November is the only component that actually had a failure in the vote tabulation for the 2004 Primary Election. The Secretary of State's decision also undermines voter confidence in using electronic voting in the future. We believe this decision was not completely based on analysis and sound logic.

The Grand Jury believes that the problems surrounding the touch-screen voting experienced in the March primary would not recur in the 2004 Presidential Election. Implementation of our recommendations would resolve the problems encountered in the Primary Election. The decision by the Secretary of State could actually leave the voting process more open to irregularities than going forward with touch-screens.

SUMMARY

The California Secretary of State, in 2001, decertified punch card voting systems used by San Diego and many other counties in the state. The San Diego County Board of Supervisors, on the recommendation of the Registrar of Voters, voted to purchase a touch-screen based system from Diebold Election Systems.

The Grand Jury realized the potential significance of the new system and in early November 2003 decided to conduct a study of the new voting system and its implementation. The Grand Jury was the only impartial group to observe all phases of the process. Our report is based on information gathered from many sources, but most importantly from our own observations.

As has been widely reported, San Diego County experienced a serious problem with one piece of equipment used in the electronic voting. The failure of that piece of equipment caused many polling places to open after the official starting time of 7:00 AM, potentially causing some voters to be disenfranchised. There have been many reports in the media concerning this problem. It is unacceptable for any voter to be prevented from casting their vote and a solution to that issue is of the utmost importance.

It was essential that the Grand Jury look at the entire electronic voting process to determine whether the new voting technology protected the integrity of the votes cast. We would then determine whether a solution to the problem that kept the polls from opening on time could be found and implemented that would assure the integrity of the entire voting process.

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The Grand Jury believes that if the Registrar of Voters is able to implement our recommendations, the new voting technology will restore confidence in the security and integrity required to protect the voting process.

PURPOSE OF THE STUDY

In November of 2003, the Grand Jury recognized the significant issues involved in planning and implementing a new electronic voting system for the County of San Diego. We wanted to observe the process to be able to give the public a reliable, unbiased account of the implementation of the new election system. Our study began with the implementation planning process and concluded after the election was certified. We did not investigate any aspect of the procurement process.

PROCEDURES EMPLOYED

The Grand Jury employed many different processes and procedures in doing their investigation. Included were:

Interviews

The Grand Jury interviewed:

- The Registrar of Voters (ROV)
- Senior staff of the ROV
- Many managers and employees of the ROV
- The Deputy Chief Administrative Officer (DCAO) charged with investigating and reporting on the events surrounding the March 2 Primary Election
- A member of the DCAO panel that conducted the investigation into the events surrounding the March 2 Primary Election.

Documentation

The Grand Jury reviewed the following documents:

- *James March, et al, Plaintiffs vs. Diebold Election Systems, Inc: Diebold, Inc., Superior Court of the State of California, County of Sacramento*
- Training manuals and supporting material for training provided by the ROV
- Miscellaneous communications concerning implementation of electronic voting from Kevin Shelley, Secretary of State sent to ROVs statewide
- Many local, regional, and national media reports concerning electronic voting in general and the San Diego County experience specifically

- *Direct Recording Electronic (DRE) Technical Security Assessment Report*, Compuware Corporation, November 21, 2003
- *Position Paper and Directive of Secretary of State Kevin Shelley Regarding the Deployment of DRE Voting Systems in California*, Kevin Shelley, Secretary of State, November 21, 2003
- *Trusted Agent Report – Diebold AccuVote-TS Voting System*, RABA Technologies, January 20, 2004
- *Polling Place Monitoring Training Manual, California Statewide Primary Election March 2, 2004*, Kevin Shelley, Secretary of State, February 25, 2004
- *Initial Report – March 2, 2004 Primary Election*, Alex Martinez, DCAO, March 8, 2004
- *Second Report – March 2, 2004 Primary Election*, Alex Martinez, DCAO, April 16, 2004.

ROV Training

One or more members of the Grand Jury attended each type of training session conducted by the ROV that are listed below:

- Precinct Inspector Training
- System Inspector Training
- Troubleshooter Training
- Troubleshooter Supervisor Training.

Election Day Observations

At least two members of the Grand Jury were on hand and observed each of the following:

- The precinct support “hot line” at the ROV office from opening at 5:30 AM until it closed
- Analysis and resolution of problems reported to the “hot-line” including the initial reports of Precinct Control Module (PCM) battery failures
- Opening of various precincts around the County of San Diego
- On-site voting at the ROV office
- Closing of the polls at the ROV office

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- Return and processing of first electronic media containing election results
- Return, processing, and storing of all electronic voting equipment returned to the ROV warehouse
- Processing of all electronic media containing election results
- Initial reporting of the first absentee precincts
- Collection, processing, and reporting of all votes electronically cast
- Election night tabulation of results
- Post election resolution of issues and anomalies.

DISCUSSION

There has been a lot of controversy over the events surrounding the March 2004 Primary Election. Rather than restate facts that have been discussed by many sources, this report will focus on the Grand Jury's observations leading up to the election, Election Day, and the subsequent activities that led to certification of the election.

In November 2003, the Grand Jury recognized the significance of the changes planned for the 2004 Primary Election. At that point, we decided to conduct a study of the new voting system. We were in the unique position of being an impartial body that planned to observe and report on the implementation of the new electronic voting equipment.

The Grand Jury's investigation of the new voting system started in December 2003 with a presentation by the Registrar of Voters (ROV) and senior ROV staff. The investigation was concluded with the final certification of the vote count in March. Grand Jurors from diverse backgrounds, including three Jurors with over eighty years of combined experience in information technology, both hardware and software, observed and reported on their observations

The ROV created four training classes oriented to the functions required to support the new voting system. Each class offered training for a specific audience, Precinct Inspectors, Systems Inspectors, Troubleshooters, and Troubleshooter Supervisors. Members of the Grand Jury attended at least one session of each of the classes.

The Grand Jury had observers at multiple precinct locations before polls opened to observe the precinct workers as they used the new system for the first time. Grand Jurors were also present at a number of precincts to observe the poll closing process. We had observers at the ROV office on Election Day from 5:30 AM, when the hotline opened until 4:00 AM the next morning when the ROV office finally closed after completing the initial vote count.

The first calls came into the ROV hotline concerning the Precinct Control Module (PCM) failure between 6:15 and 6:30 AM. We observed the initial confusion as the problem began to unfold. We observed the ROV staff working with the vendor, Diebold Election Systems, to analyze the problem and put together a “work around”¹ to correct the problem. We observed the phone lines into the hotline become overloaded and sensed the frustration of the poll workers and the ROV staff because they were unable to get the solution out to the field in a timely manner.

Based on our observations and other information gathered by the Grand Jury, our report focuses on three specific areas that have been in the media: the problem with the PCMs, the overall performance of the touch-screens, and the problems with counting the absentee ballots. We will also address several issues that have not had much, if any, coverage in the media.

Touch-Screen Voting Equipment

The two major components of the electronic voting system are the Precinct Control Modules (PCM) and the touch-screen voting machines. The problem widely reported in the media concerned the PCMs. There were **no reported failures** of the touch-screens. For the 2004 Primary Election, the ROV distributed almost 10,000 touch-screens to 1,611 precincts countywide. Each precinct had one PCM and a minimum of four touch-screens with larger precincts having as many as six or eight.

The precinct captains were instructed to set up the touch-screens the night before the election. If that were not possible, the precinct captains were to begin setting up the touch-screens no later than 6:00 AM on the day of the election. The PCMs were to remain in their sealed cases until the morning of the election, but should have been opened and checked no later than 6:30 AM the morning of the election. Of the 10,000 touch-screens, there were fewer than one hundred machines, less than one percent, that had problems when they were powered on. No precinct was unable to open because of problems with the touch-screens. The major problem was with the PCMs.

Precinct Control Module

The function of the PCM is to create a Voter Access Card (VAC). The card is handed to the voter who will put it into a slot on the touch-screen. The appropriate ballot for that voter will appear. Once the voter has cast their ballot, the VAC is erased and revalidated for use by another voter. For the primary election there were as many as eleven ballot possibilities depending on the voter’s party preference. The actual functioning of the PCM was almost flawless. The problem involved starting up or “booting” the PCM. Once the PCMs were running, they were able to create the VACs allowing voters to access the appropriate electronic ballot.

¹ A “work around” does not fix a problem, but is a series of steps that will circumvent the problem and allow the hardware or software to function as designed. It is a generally accepted technique to use a “work around” to circumvent a problem until a permanent solution is implemented.

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The vendor had set-up the PCMs so that the appropriate “start up” or launch screen would appear on the PCM. With the launch screen displayed, the PCM would be immediately ready for use. The problem that arose caused the PCM to not display the launch screen. Instead, the PCM displayed a standard Microsoft Windows® desktop. The “work around” involved going through a series of standard PC steps of opening a series of folders to get to the appropriate launch screen.

According to reports, the problem was the result of a “battery failure” in a number of PCMs. The “failure” caused the PCMs to come up in Windows® mode instead of the expected election mode. It has only recently been revealed that the batteries performed as designed. After the election, the ROV received documentation from the manufacturer of the PCMs documenting that the expected battery discharge time was approximately one week. Had this fact been known prior to the election, we believe that this issue would have been addressed by changes to the ROV documentation and implementation.

The Grand Jury’s observers noted that the ROV hotline began receiving calls about the problem from the precincts at approximately 6:30 AM. By 7:00 AM the PCM problem had been diagnosed, the “work around” developed, and the hot line staff was given the solution. From that point forward, it was a matter of determining which precincts were having problems and walking them through the “work around”. Unfortunately, the combination of the number of precincts experiencing the problem combined with the lack of technical experience by some of the precinct workers led to a logjam on the phone lines into the hotline contributing to the delay in opening some precincts.

Until a precinct could get their PCM up and running, they could not open the polls. This meant that at the precincts experiencing problem with PCMs, a number of voters were asked to wait. As we know from the media reports, a number of the early voters were not able to wait. Three alternatives were available to those voters. The alternatives were to go to the ROV office and vote electronically or by paper ballot, go to another polling place and cast their ballot or return to their assigned polling place later and cast their ballot. If the voter did come back later and cast their ballot, they were inconvenienced, but **they were able to vote**.

In the case of the voter that went to another precinct to vote, they would be asked to cast a “provisional ballot”.² By voting at a different precinct, it is likely the voter could be

² A provisional ballot is handled outside the normal vote processing procedure after the election. A form is filled out with the reason for casting the ballot provisionally. As part of the election certification process, all provisional ballots are individually scrutinized to determine if the ballot is valid. In the case of a voter voting at a different precinct, they may have been presented with the option to vote on a race in which they were not eligible to vote. The ROV would make the determination and count only the valid votes.

partially disenfranchised.³ In the case of a voter who was not able to either vote at a different precinct or later at their own precinct, they would have been completely disenfranchised. We know that both instances occurred. The number of provisional ballots can be determined, but the number of voters who did not get their opportunity to cast a ballot at all can only be estimated. It is not acceptable that anyone should be disenfranchised.

It must be emphasized that the problems with the PCMs discussed above were the result of not getting them operational in a timely manner on Election Day. Once the PCMs were up and running, there were **no reported voting irregularities** caused as a result of their use. The same is true of the actual vote recording using the touch-screens.

Touch-Screen Machines

There were nearly 10,000 touch-screen machines distributed to 1,611 polling places. Less than one-half of one percent of the units experienced any sort of problem. The problems that did occur were at the initial start up of the touch-screens. The most common cause was a problem with the connection to the internal printer. The printer is used to printout a “zero total” report prior to putting a touch-screen into service. If a problem could not be addressed by the poll worker, with or without the assistance of the hot line, the machine was not used. There was never more than one failure at any polling place. As part of the canvassing process, all of the votes from all touch-screen machines were processed and counted. Every machine was accounted for and all votes were accounted for. There were **no reported lost or spoiled votes** caused by use of the touch-screens. They worked virtually flawlessly.

There is a feature of the touch-screen equipment that has not received much attention. The design of the Diebold TSx touch-screens allows them to be converted for use to create VACs. In a situation where a PCM could not be brought up for any reason, one of the touch-screens at a precinct could be reconfigured by the Systems Inspector to create VACs. Although the troubleshooters were trained on how to make the conversion, this capability was not taught to the Systems Inspectors nor was it documented in the supporting materials. The ROV felt that there was enough complexity in implementing the new election system without adding more confusion. We observed at least three instances of touch-screen machines being converted.

Absentee / Paper Ballot Processing

A problem did occur with processing the absentee paper ballots. The problem was caused by a programming error in the vendor provided software used to accumulate the votes as the paper ballots were read by an optical scanner. The problem involved 2,821 votes that had been miscounted and reported in the original canvass and vote

³ The ballots are specific for each precinct based on the city, county, state, and federal districts. A voter voting a provisional ballot at a different precinct would be presented with the ballot appropriate to that precinct. It is possible that the ballots for the two precincts would not be congruent, and the voter would not be able to vote on all of the races.

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certification. The problem was discovered by the ROV as part of their normal auditing procedures, and an amended vote certification was filed. No final election results were affected because of the error. The 2,821 miscounted votes represented 1.3% of the absentee vote and only 0.46% of the total vote count. The generally “accepted” error rate for punch card voting was 3%.⁴ The worst part of this new system was **six times better** than what had been acceptable in past elections.

Other Issues Involving the New Voting System

The Grand Jury, in our observations and investigation, did find a number of issues that, although they did not affect the outcome of this election, could compromise the integrity of the touch-screen process.

The design of the Diebold touch-screen equipment is generally very well thought out. It is designed to be protected from potential tampering. The design, combined with the way the ROV has implemented the touch-screens, gives us a great deal of confidence in the overall integrity of the new process. A key part of the ROV implementation was to have each touch-screen isolated from outside access such as the Internet or a local-area-network (LAN). There was no external way for someone to “hack” into the system.

We found four things that were of concern on the touch-screens and two concerning the PCMs.

Touch-Screen Equipment

On the touch-screens, access to the internal supervisor software is controlled by a master access card and associated password. A VAC cannot allow access into the supervisor software. The problem we identified stems from Diebold’s security implementation. All master access cards nationwide are identical. Even more disturbing, all passwords nationwide are identical. The Grand Jury identified these problems very early in our investigation. Since that time, there have been a number of reports and media stories concerning this issue.

Equally as troubling an issue is the keys used to physically secure the touch-screens. Like the master access cards and passwords, they too are the same nationwide. These problems could have a high potential to affect the integrity of any given machine.

Another problem the Grand Jury discovered can be described as a design flaw in the location of the power switch on the touch-screens. On the side of each touch-screen machine there is a lockable access door that covers the power switch and the ballot memory card. The memory card is used to program the touch-screen unit and record the ballots as cast. The lock is opened by using one of the keys. To protect the integrity of the hardware prior to opening the polls on election day, the ROV placed a seal on the access door.

⁴ Nationwide surveys have shown an overall error rate with punch cards of 3%. Errors include over votes, under votes, spoiled ballots, and damaged ballots.

On the morning of the election, the seal is broken by the precinct captain, the door unlocked and opened, and the power switch pressed to turn the machine on. The door is then relocked until after the completion of voting. The Grand Jury observed that, without a seal on the access to the ballot memory card, there is no visible way to determine if the ballot memory card has been tampered with. The same door should not control access to the on/off switch and the memory card. If they were separated, the seal for the memory card could remain intact until after closing of the polls. The solution to this problem could be as simple as drilling a hole in or cutting away part of the access door to expose the power switch.

The last issue with the touch-screen is the lack of an auditable paper trail. The paper trail⁵ issue is one that has received a lot of coverage in the media. The most compelling reason for a paper trail is as an audit tool. The voter would have a chance to review their votes not only on the touch-screen, but also on a printout. Once the voter verified that the printout represented their choices, the vote would be cast and the printout retained at the polling place. The Secretary of State has made the paper trail a requirement for the 2006 elections.

Having an auditable paper trail on the touch-screens would allow the random reconciling of votes cast electronically against the paper trail. Except in the closest election where a recount hinged on a few votes, we do not see the paper trail having widespread use.

Precinct Control Modules

The PCM issues concern how the ROV implemented security on the PCM and a function of the PCM that was not used. The PCMs were delivered to the precinct captains, as early as a month before the election, in a molded plastic case similar to a small suitcase. The case was secured with a paper seal that was not to be broken until the day of election. This meant the PCM batteries could not be recharged before Election Day. It is very likely that the battery problem would have been avoided if the PCMs could have been recharged by the precinct captain prior to election day.

The Grand Jury observed that the PCM had a counter that was incremented every time a VAC was created. When questioned, the ROV had no intention of using the counter in a precinct reconciliation process. The ROV could have used the counter to verify the number of ballots issued against the number of votes cast. This would provide an additional audit trail to support the integrity of the touch-screen election process. With punch card voting, the ROV knew how many punch cards were sent out, how many were returned, how many were voted, and how many were spoiled. If ballots were missing, they would be aware of it. The PCM counter could be used in the same manner. The counter would indicate how many VACs were issued. The counter would allow the ROV to determine if the ballots issued equaled the ballots cast.

⁵ The paper trail suggested is not a receipt such as voters had received in the past. It is a document that would be retained and secured at the precinct.

Miscellaneous Issues

The Grand Jury also observed a number of things involving the preparation for the election. Two of the more significant were the recruiting of paid volunteer poll workers and the training of these workers and others involved in the election.

Precinct Volunteer Selection

With over 1,600 precincts and 4 people required to staff each precinct, the ROV must recruit over 6,800 paid volunteers for each election. The majority of those recruited have worked previous elections; many of them have been working elections for over twenty years.

In the past, all four of the people at a precinct were capable of performing all of the functions in the voting process. With the implementation of the new voting system, the ROV divided the tasks into two groups, Precinct Inspector and Systems Inspector. Each of the two groups had an assistant inspector assigned. Within each of the two groups, the inspector and assistant can rotate between tasks. The Precinct Inspectors were responsible for the paperwork and voter validation. Their tasks were very similar to those performed in the past.

The job of the Systems Inspectors included the setup and monitoring of the new hardware. In recruiting System Inspectors, it is highly desirable that the candidates have some basic PC skills. Because of time constraints, the ROV was forced to rely on people who expressed a desire to be a System Inspector. There was little time during the interviewing process to determine the PC skills and technical comfort level of each candidate. Some of the problems encountered with the PCMs might have been better handled had the Systems Inspectors been evaluated on their PC skills.

Precinct Volunteer Training

A corollary to the selection process was the training given to the inspectors. There were different classes designed for the Precinct and System Inspectors. The Precinct Inspectors class focused on the precinct administrative process related to processing the voters with a cursory overview of the new election hardware. The Systems Inspectors training had a hands-on session on the PCM and a session on the touch-screen. Although the contract provided for Diebold to create and conduct the training, the ROV opted to assume that responsibility and to do the training themselves.

Based on the observation of many sessions of the Precinct Inspector classes and the Systems Inspector classes, the Grand Jury found the classes to be of poor quality. It appeared that the classes, and the materials supporting them, were not of professional quality. The instructors were ROV employees who are very knowledgeable about election processes and procedures. The priority should have been on the new equipment being used.

The ROV staff also developed and presented classes to the troubleshooters and the troubleshooter supervisors. Although the materials and content of these two classes were better prepared, the quality of instruction was still not of an acceptable quality.

Timeframe for Implementation

The Grand Jury believes many of the problems were due to the extremely short timeframe for the ROV to prepare for the March election. The final decision to purchase the new election system from Diebold was not made until early December 2003. The systems did not begin to arrive at the ROV warehouse until early January 2004. The ROV had less than three months, from the final procurement decision to the day of the election, to put together an implementation plan and less than two months to receive, inventory, quality check, and program the systems for the election. With the training and initial distribution of systems beginning a month before the election, the actual time from receipt of the hardware to distribution was less than one month.

FACTS AND FINDINGS

The focus of almost all of the pre-primary discussion in the media was on the integrity of the election and the vulnerability of the electronic voting systems. Because of lawsuits and other pressures, the ROV management and staff worked diligently to put together an implementation strategy for the new touch-screen voting systems. In spite of all the fears, there were **no reported voting irregularities** associated with the touch-screens. In an election that was many times more complex than the upcoming 2004 Presidential Election, the touch-screens worked virtually flawlessly.

The problems that occurred with the PCMs were not acceptable. There are reasonable and easily implemented solutions to the problems encountered. A significant improvement would be upgrading the training for the Precinct and System Inspectors. Adding a section covering troubleshooting for the type of problem encountered in March should be added to the curriculum. The manual distributed to poll workers should be completely reorganized. Much of the documentation should be rewritten to make it more complete and troubleshooting oriented.

Included in the training and in the supporting documentation should be:

- The steps required to convert a touch-screen to perform the function of a PCM to create Voter Access Cards.
- Procedures should be added to the training to convert touch-screens to be used as a back up of the PCM. This would give one more safeguard against a problem such as the one that occurred in March.

Late in the pre-election process, the Secretary of State requested that paper ballots be available for voters not wanting to use the touch-screens. With the complexity and number of versions of ballots⁶ involved, it was not physically possible to get enough

⁶ Each voting district has its unique ballot with eleven different options based on party and non-partisan voters. Additionally ballots were available in, English, Spanish, and Tagalog. The total number of different ballots required would have been as high as 25,000-30,000.

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ballots printed and distributed to the precincts. The ROV had all versions of the paper ballots available at their office.

The Grand Jury believes many of the problems were partially attributable to the extremely short timeframe for the ROV to prepare for the March election. With more time to work with for the November election, the ROV should re-examine all of the processes, procedures, training, and documentation for the new voting systems. They should evaluate what worked and, if possible, improve on those items. They should take a “clean sheet of paper” approach to any part of the implementation that needs to be significantly changed.

As a result of our observations, the Grand Jury concluded that San Diego County’s initial use of the touch-screen voting was a qualified success and that the integrity of the election process was maintained. We find no reason that the equipment, with the implementation of the recommendations below, should not be used in future elections.

Facts

- Many precincts did not open on time because of a problem with the Precinct Control Module.
- There were no reported voting irregularities associated with the touch-screen voting equipment.
- The hot-line set up by the ROV was overloaded with calls early on Election Day.
- The initial tally of 2,821 absentee paper ballots was incorrect and the subsequent vote certification had to be amended.
- The decision to purchase the equipment was made in December 2003. The equipment arrived in January 2004, was distributed beginning in February and used for the election on March 2, 2004.

Findings

- A number of voters were either completely or partially disenfranchised as a result of the late opening of some precincts.
- The short time frame from approval-to-receipt-to-distribution-to-implementation of the new voting technology significantly impacted the implementation process.
- Outside activities such as lawsuits, media distraction, Secretary of State rulings often diverted attention and effort from the immediate task of implementing the new voting system.

- Recruiting of System Inspectors needs to be enhanced to do a better evaluation of their PC literacy and comfort with technology.
- The training and support materials for poll workers, troubleshooters, and troubleshooter supervisors were of generally poor quality.
- The classes for poll workers, troubleshooters, and troubleshooter supervisors were of generally poor quality.
- The way the ROV implemented the new voting system made it impossible to be “hacked” from the outside. There was no external access to the PCMs or touch-screens.
- The current method of insuring the security of the PCMs by sealing the case in which they are stored contributed to the battery discharge issue.
- The access security to the supervisor software on the touch-screens is unacceptable as currently implemented by the vendor.
- The design of the door securing the ballot memory card on the touch-screen unity requires breaking the door seal to turn on the machine. This means the ballot memory card is not secured by a seal during the Election Day.
- The lack of a voter verifiable paper trail makes it difficult to convince the public of the integrity of the new voting technology.
- A voter verifiable paper trail would be a significant tool in auditing the results of electronic vote tabulation.
- A voter verifiable paper trail could be a valuable tool in a recount of close elections.
- The timeframe of the March 2004 Primary Election did not allow for distributing appropriate paper ballots to each precinct.

RECOMMENDATIONS

The Grand Jury recommends that the San Diego County Board of Supervisors direct the San Diego County Registrar of Voters do the following:

- 04-09-1** Require modification of the recruiting and selection process for poll workers to include an evaluation of the candidate’s PC literacy and comfort level in dealing with electronic systems.
- 04-09-2** Require a review of the training materials, classes, and choice of instructors. Procedures and documentation should be modified or rewritten. Instructions for the resolution of the battery problem encountered in March should be

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added to the training and documentation. Consideration should also be given to having the materials and classes redone by professional trainers.

- 04-09-3** Require a new method for securing the integrity of the Precinct Control Modules to allow them to be plugged in, charged, and inspected by the poll workers before the day of the election while maintaining the security of the equipment.
- 04-09-4** Require the vendor to change the master access cards that are generic nationwide to cards that are at least specific to San Diego County if not individually unique. The vendor should also be requested to allow the passwords associated with the master access cards to be chosen and generated locally by the Registrar of Voters.
- 04-09-5** Require the vendor to modify the door securing the on/off switch and ballot memory card on the touch-screen machines so that the system can be turned on or off without breaking the seal on the memory card.
- 04-09-6** Require the vendor to design and implement a voter verifiable paper trail for each vote cast. The paper trail votes would be retained at the precinct, archived, and used only for random validation of electronic votes in selected precincts or in the case of a closely contested race requiring a recount. A paper trail is required by the Secretary of State for the 2006 elections.
- 04-09-7** Require that paper ballots be available at all polling places for voters to use at their option.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933 (c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b),(c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion

of the finding that is disputed and shall include an explanation of the reasons therefor.

- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required by the date indicated:

<u>RESPONDING AGENCY</u>	<u>RECOMMENDATIONS</u>	<u>DATE</u>
San Diego County Board of Supervisors through the San Diego County Registrar of Voters	04-09-1 through 7	08/30/04