The background of the entire page is a light green map of the California 11th U.S. Congressional District. The map shows major cities, highways, and geographical features. A large white box is overlaid on the top half of the map, containing the title. The number '11' is prominently displayed in the center of the map, indicating the congressional district. The map includes labels for various counties and cities, such as Contra Costa, Alameda, and San Francisco.

# ***McNerney Election Protection Task Force***

**Final Report on Findings and Recommendations  
November 6, 2006 - California General Election**

*March 2007*

*California 11th U.S. Congressional District*



# TABLE OF CONTENTS

Table of Contents .....	i
Acknowledgments .....	ii
I. Introduction .....	1
II. Background .....	1
III. The Beginning .....	3
A. Electronic Voting Machines .....	3
B. HAVA and Voter Purges .....	5
C. Vote Tabulation .....	6
IV. Pre Election .....	7
A. Voter Education .....	7
1. General Voter Information .....	7
2. VVPAT .....	7
B. Voter Purges .....	8
C. Relationship with RoVs .....	9
D. Volunteer Recruitment and Management .....	11
E. Legal Preparedness .....	12
1. Gathering Evidence for Challenges to Election Day Results .....	12
a. Observable Irregularities .....	12
b. Unobservable Irregularities .....	14
2. Preparing for Election Day Litigation .....	14
V. Election Day .....	15
A. Campaign Coordination .....	15
B. Structure .....	16
C. Poll Monitor Training .....	18
D. Deployment .....	19
E. Incident Reporting .....	20
1. Process .....	20
2. Results .....	21
F. Data Collection and Retrieval .....	24
G. Chain of Custody .....	27
VI. Post-Election Day - 1% Manual Tally .....	29
VII. Recommendations .....	32
A. Pre election .....	32
B. Election Day .....	33
C. Post Election .....	37
VIII. Conclusion .....	40
List of Acronyms .....	42
List of Charts .....	42
Appendix 1 - Incident Report Detail .....	43

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## I. Introduction

The basis for a democratic election is that the process be free and fair. The foundation for a free and fair election is a process that is transparent, accurate and secure. The McNerney Election Protection Task Force (“EPTF”) monitored the 2006 general election in strategic areas for the purpose of determining whether there was sufficient accuracy, transparency and security to assure reliability of reported election results. Preparations were made to observe the election process for integrity and gather evidence sufficient for use in a recount or election contest if necessary.

An overview of EPTF findings reveal that constraints placed on the system, particularly by electronic voting, do not allow for meaningful observation in many areas of the election process. The number of incidents that occurred, and the information obtained, was of sufficient import to include and consider in any discussion of a recount or election contest if called for in California Congressional District 11 (“CA CD 11”). The EPTF is confident that the correct election result was reached. EPTF is equally confident that its efforts served both as a valuable check on the processes implemented by election administrators and as a deterrent effect against potential interference with voter rights.

The EPTF observations during the 2006 election cycle show that improvements in the election process can and should be made. Specific recommendations are included in the body of the report and address pre-election, Election Day and post-election events. In general, EPTF recommends that if electronic voting machine use continues, there must be increased voter education and poll worker training that is targeted to address the set-up, use, security and closing procedures.

## II. Background

Since the early days of American electoral history there have been reports and allegations of irregularities, votes for sale, political-machine-run victories, voter fraud, voter intimidation and voter disenfranchisement. In recent years, the American election process has come under increasing public scrutiny. Reported irregularities and flaws in Florida, publicly witnessed on television screens across the nation in 2000, led to a U.S. Supreme Court decision<sup>1</sup> that finally determined the outcome of the U.S. Presidential election. Following the 2000 general election, efforts at reform legislation began, including the Help America Vote Act, passed in October 2002 (HAVA).<sup>2</sup> HAVA impacts virtually every part of the voting process, from voting machines to provisional ballots, from voter registration to poll worker training. Nevertheless, national media reported irregularities continuing in years 2004 and 2006.

The interest in protecting fairness at the polls and in the vote count has become particularly acute in close political races. The difference of a few votes per precinct in a district can mean the difference between winning and losing an election. Close races receive the most election protection effort because they are most vulnerable to the effects of manipulation.

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<sup>1</sup> *Bush v. Gore*, 531 U.S. 98 (2000),

<sup>2</sup> See [http://www.fec.gov/hava/law\\_ext.txt](http://www.fec.gov/hava/law_ext.txt)

Election integrity activists, political parties and other interest groups have responded to protect the election process and assure that elections are not won or lost due to unfair factors or influence.

In June 2006, Jerry McNerney won the Democratic Primary race for CA CD 11 and became the Democratic candidate to oppose the Republican incumbent Richard Pombo in the November 2006 general election. Mr. Pombo was in his seventh term of office in a district with more registered Republican voters than Democratic voters. In September 2006, political polling results showed a closing vote gap between McNerney and Pombo. Media evaluations of the Congressional seat changed from “safely republican” to “leaning republican” and ultimately to “toss-up.” Within the McNerney for Congress campaign, as the gap closed, protection of each McNerney supporter’s vote became increasingly important. A McNerney Election Protection Task Force [“EPTF”] was initiated by a group of “McNerney for Congress” volunteers for the purpose of protecting voter rights and making sure that each vote for McNerney was fairly cast and counted.

The EPTF brought together voting rights activists and McNerney volunteers of varied skills and capabilities who were interested in organizing a comprehensive Voter Protection program for the McNerney campaign. The scope of endeavor was large. CA CD 11 encompasses four Counties, with four different Registrars of Voters (“RoV”)<sup>3</sup> and four different methods of voting (See Chart # 1 below, “Election Equipment Used in CA CD 11 Counties, November 2006”). As a result of the constituency make-up, and use of the Diebold, Inc., voting machine, EPTF determined that the highest vulnerability to lost votes for McNerney was in San Joaquin County. Therefore, EPTF determined to focus efforts primarily, although not exclusively, in San Joaquin County.

On behalf of the McNerney for Congress campaign, in the course of two months, EPTF: identified voting rights issues; educated voters; alerted purged voters of their unregistered status; established working relationships with Registrars of Voters; recruited, mobilized, trained and put on the ground 130 volunteers on election day; coordinated EPTF election day efforts with the California Democratic Party and the McNerney Get Out The Vote (“GOTV”) program; deployed trained poll monitors to ninety (90) polling places; deployed twenty-five (25) lawyers and “rovers” to respond to “hot sites and incidents;” received and responded to eighty-seven (87) reports of voting irregularities<sup>4</sup>; collected and compiled vote tallies from polling places; and, analyzed collected data to identify patterns and trends of voter disenfranchisement and irregular practices. Post-election, EPTF observed the 1% tally of vote process required by the California Election Code.<sup>5</sup> As a result of the McNerney victory, EPTF was relieved of follow-up legal

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<sup>3</sup> RoV Deborah Hench, San Joaquin County; RoV Dave McDonald, Alameda County; County Clerk-RoV Steve Weir, Contra Costa County; and, RoV Jesse Durazo, Santa Clara County.

<sup>4</sup> According to the California Democratic Party, incident reports received by the McNerney EPTF were second in number only to Los Angeles County, and constituted 40% of all incident reports statewide.

<sup>5</sup> California Elections Code Section 15360(a) provides: “During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official. In addition to the 1 percent count, the elections official shall, for each race not included in the

activities for which it also prepared, i.e., initiating a vote recount request and/or filing an election contest proceeding.

The EPTF report and recommendations is a product of Election Protection Task Force efforts.

### **III. The Beginning**

The EPTF concept was born when a McNerney for Congress staff member identified nine concerned McNerney supporters interested in voter protection issues and connected them through an email introduction. A first meeting was held on September 16, 2006 and general areas of voter protection needs were discussed. A Yahoo web group was set up to provide a vehicle for group communications. Initial volunteers formed a core group and were encouraged to recruit additional volunteers. Regular Saturday meetings were started and continued through November 4, 2006.

The EPTF categorized three phases of the election process: Pre-election, Election Day and post-Election Day. Events affecting the election were distinguished for each period and action items were developed where points of voter, or election, vulnerability existed. Vulnerable areas where protection efforts could be most effective in securing a fair election were determined by EPTF as: Electronic Voting Machines, Voter Purges, Poll Worker Interference and Vote Tabulation.

#### *A. Electronic Voting Machines*

The expanding use of electronic voting has added new wrinkles to claims of unfair voting processes. First, electronic voting is vulnerable to “wholesale” fraud. Studies show that thousands of votes can be changed without leaving any trace of manipulation.<sup>6</sup> Before electronic voting, voter fraud could be found only at a “retail level” rather than a statewide or national level, i.e., manipulation of local results could occur through ballot boxes simply being tossed into the bay, by lead pencil jams in lever operated machines and other creatively nefarious methods. Second, an apparent conflict of interest within privately held electronic voting machine manufacturing companies in favor of Republicans has been reported. For example, Walden O’Dell, former CEO of Diebold and a major fundraiser and contributor to the Bush presidential campaign, publicly stated: “I am committed to helping Ohio deliver its electoral votes to the president next year.”<sup>7</sup> And republican Representative Charles Hagel of Nebraska was the chairman of the electronic voting machine maker, American Information Systems, which in 1997 was renamed Elections Systems and Software (“ES&S”).<sup>8</sup>

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initial group of precincts, count one additional precinct. The manual tally shall apply only to the race not previously counted. Additional precincts for the manual tally may be selected at the discretion of the elections official.”

<sup>6</sup> See Johns Hopkins University Information Security Institute, Technical Report TR-2003-19, July 23, 2003, available at <http://avirubin.com/vote.pdf>; Alan Boyle, .E-voting Flaws Risk Ballot Fraud, MSNBC, July 24, 2003, available at <http://msnbc.msn.com/id/3077251/>.

<sup>7</sup> *Cleveland Plain Dealer*, *Voting Machine Controversy*, Julie Carr Smyth, August 28, 2003.

<sup>8</sup> [www.senatemajority.com](http://www.senatemajority.com), *Chuck Hagel's Voting Machines*, Srinu Sonti, July 20, 2006.

While some states mandate a statewide voting system, California allows each of its 58 counties to select a system, subject to state certification. Thus, a variety of equipment manufacturers, processes and procedures exist across the state. CA CD 11 consists of parts of four different counties: Alameda, Contra Costa, San Joaquin and Santa Clara, each using a separate combination of voting equipment. Each county used new equipment for the first time either in the 2006 November general election or the 2006 June primary election. In any event, the potential for unknown errors and glitches in these new systems remained throughout the CA CD 11.

**CHART #1 - ELECTION EQUIPMENT USED  
IN CA CD 11 COUNTIES, NOVEMBER 2006**

	<i>Alameda</i>	<i>Contra Costa</i>	<i>San Joaquin</i>	<i>Santa Clara</i>
<i>Number of CA CD11 precincts</i>	97	174	398	61
<i>Machine Vendor</i>	Sequoia	ES&S	Diebold	Sequoia
<i>Primary Voting Method</i>	Precinct Based Optical Scan ("PBOS")	Precinct Based Optical Scan ("PBOS")	Direct Recording Electronic ("DRE") Touchscreen	DRE Touchscreen
<i>Primary Voting Method Model</i>	Optech Insight	M100	Accuvote TS-x	Edge II DRE
<i>Accessible Voting Method</i>	DRE Touchscreen	Touchscreen Ballot Marking Device ("BMD")	DRE Touchscreen	DRE Touchscreen
<i>Accessible Unit Model</i>	Edge II DRE	Automark	Accuvote TS-x	Edge II DRE
<i>Absentee Counting Model</i>	Optech 400-C	M650	Accuvote OS	Optech 400-C
<i>Absentee Counting Method</i>	High speed OS	High speed OS	High speed OS	High speed OS
<i>Absentee Ballot Sorting</i>	None	Handsort	Handsort	Machine

Among the four counties, two primary types of voting machines were used: the Optical Scanner ("Opti-scan") manufactured by Sequoia Voting Systems ("Sequoia") and Election Systems & Software ("ES&S"), and, the Direct Record Electronic touchscreen machines ("DRE") manufactured by both Sequoia and Diebold, Inc. (See Chart 1, above).

A voter using an Opti-scan votes on a paper ballot by marking choices with a pencil, similar to a student marking an answer on a standardized test. An election poll worker feeds the voted ballot into the Opti-scan machine. The machine reads and records the vote electronically,

unless the voter has voted for too many candidates per race (a ballot containing more votes for candidates than allowed, an “over vote,” is rejected). The ballot is, by definition, voter verified because the voter personally marks the ballot. The paper ballot is preserved as a written record of the vote. Alameda and Contra Costa Counties used the Opti-scan as the primary form of voting.

A voter using a DRE machine typically touches a display button adjacent to the chosen candidate or issue on the machine’s display screen. As of 2004, all DRE machines in California were required to have a Voter Verified Paper Audit Trail (“VVPAT”).<sup>9</sup> After the voter touches all his/her choices, and before the ballot is officially cast, the selections are printed onto a viewable paper record. The VVPAT remains stored in the machine to be used for the 1% manual tally of precincts and, if needed, for any vote recount. Some counties have DRE machines that integrate the VVPAT process into screen prompts that remind voters to review the VVPAT before touching the “Cast Ballot” button. Other DRE machines do not have screen prompt reminders. San Joaquin and Santa Clara Counties used DREs with VVPAT printers as the primary voting method. Santa Clara County DREs were manufactured by Sequoia. San Joaquin County DREs were manufactured by Diebold, Inc.

The Diebold VVPAT printer has a black opaque cover, called a “privacy flap.” The default position for the flap was closed which caused the paper record of the vote to be obscured from open view. The stated purpose of the “privacy flap” is to ensure the privacy of votes cast by visually impaired voters.<sup>10</sup> An issue regarding the Diebold design is that a large majority of voters are not visually impaired and, unless notified to open the flap and review the paper trail underneath, are unaware they can view the VVPAT to verify their vote. The Diebold DRE display screen does not prompt voters to view the paper record before casting a ballot.

The EPTF evaluation of voting machine issues resulted in a multi-pronged approach toward protecting the vote. The first prong was to educate voters to improve voter empowerment. The second was to establish a relationship with RoVs to work cooperatively to minimize problems on Election Day. The third was to recruit and train poll monitors to be onsite at polling places to observe and report issues on Election Day.

### B. HAVA and Voter Purges

In the 2006 California primary and general elections, HAVA laws had a direct effect on voter registration purges. HAVA required that by January 1, 2006, all states must create and maintain a statewide voter registration database that includes a number identification for each voter. In November 2005, California Secretary of State Bruce McPherson announced an agreement between the California Secretary of State and the U.S. Department of Justice pursuant

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<sup>9</sup> Elections Code Section 19250(a) provides: “On and after January 1, 2005, the Secretary of State shall not approve a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.”

<sup>10</sup> [http://www.diebold.com/dieboldes/solutions\\_management\\_printer.asp](http://www.diebold.com/dieboldes/solutions_management_printer.asp), “Accessibility, The AccuView Printer Module offers a unique, integral magnification element that can be easily used to enlarge printed selections for visually-impaired voters....A viewing window privacy cover allows blind voters to cast their ballots in complete confidentiality as required by the Help America Vote Act.”

to HAVA to create a Statewide Voter Registration Database.<sup>11</sup> The administration of President George W. Bush declared the agreement a “model for other states . . .”<sup>12</sup>

In Los Angeles County, between January 1 and March 15, 2006, the new Voter Registration Database rejected 14,629 voter registrations, constituting 43% of those who registered in that time period,<sup>13</sup> indicating that the “model” had created widespread voter disenfranchisement. Concern for inappropriate voter purges was heightened among voting rights activists. To address the issue, EPTF designed a program to identify potential voter purges and notify likely McNerney voters of the need to re-register.

### C. Vote Tabulation

At the close of polls on Election Day, voting machine totals are collected by precinct and transported by poll workers to Central Collection facilities.<sup>14</sup> The Central Collection facilities gather the votes from all polling places for transport to the Registrar of Voters offices where they are counted. Each County is required under state law to provide a “Statement of Vote” certified by the RoV within 28 days of Election Day.<sup>15</sup> The RoV is also required under state law to conduct a 1% manual tally (see fn. 5, above), i.e., the RoV must randomly select at least 1% of the precincts voted, manually count the votes and compare the result with the computer count result. The purpose of the 1% manual tally is to provide a check on the accuracy of the computer count.

Based on anecdotal reports of ballot destruction in previous elections, and on evidence of DRE voting machine vulnerability to manipulation, EPTF determined that efforts to observe the chain of custody from polling place to central collection facilities, and to collect polling place summaries of vote totals, would be valuable. The information obtained could serve as evidence of the need for a vote recount and/or an election contest. At minimum, the data would serve as a baseline of information for future election cycles. Additionally, because the 1% manual tally served as a “check” on the accuracy of the overall vote tabulation, EPTF determined that a “check” on the integrity of “the check” was a valuable effort.

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<sup>11</sup> “Memorandum of Agreement,” [http://www.usdoj.gov/crt/voting/hava/ca\\_moa.htm](http://www.usdoj.gov/crt/voting/hava/ca_moa.htm)

<sup>12</sup> <http://www.californiachronicle.com/articles/viewArticle.asp?articleID=12079>Electronic voting

<sup>13</sup> L.A. Times, March 29, 2006 by Jordan Rau; <http://www.computerworld.com/printthis/2006/0,4814,110353,00.html> (April 7, 2006); [http://www.sen.ca.gov/reapportionment/Hearing\\_Transcripts/4\\_06\\_06.htm](http://www.sen.ca.gov/reapportionment/Hearing_Transcripts/4_06_06.htm) (testimony of Sen. Debra Bowen)

<sup>14</sup> Elections Code Section 14421 provides: “The precinct board shall group voted ballot cards and voted separate write-in ballots, as directed by the elections official, and place them in containers. The board shall also place spoiled and void ballots, if any, in containers as directed by the elections official. All of these ballots, along with the containers for voted ballot cards, shall be placed in one or more boxes, which shall then be sealed and delivered as soon as possible to the receiving centers or central counting places with the unused ballots, supplies, and other materials as directed by the elections official.”

<sup>15</sup> Elections Code Section 15372 provides: “The elections official shall prepare a certified statement of the results of the election and submit it to the governing body within 28 days of the election or, in the case of school district, community college district, county board of education, or special district elections conducted on the first Tuesday after the first Monday in November of odd-numbered years, no later than the last Monday before the last Friday of that month.”

## IV. Pre-Election

### *A. Voter Education*

The EPTF identified a need for voter education on issues as basic as general “Voter Rights” under California Law, and as detailed as the purpose and use of the black privacy flap over the VVPAT. Due to limited resources, EPTF voter education addressed a limited number of issues.

#### *1. General Voter Information*

In an effort to reach a broad audience of voters on general voter issues, EPTF sought use of mass media, including television and radio. A local community television station in the city of Livermore regularly broadcasts community interest programs. EPTF contacted the station and scheduled a date to fill a 30-minute time slot with an Election Protection Program presentation on basic voting information. The program covered the different voting processes in the four counties in CA CD 11, i.e., confirming voter registration, voter verification, how voters can protect their vote to make sure it is counted and what to do if a voter observes seemingly improper procedures at the polls. The program was taped for replay and televised on two dates prior to Election Day. The video was also posted on the program’s website and continues to be available to the public.<sup>16</sup>

All four County RoVs in CA CD 11 maintain online websites containing various features. Late in the election process (after the deadline for timely voter registration), an EPTF volunteer used the Alameda County RoV’s website’s search feature to confirm his voter registration. The website listed the volunteer as not registered. A time-consuming direct telephone follow-up to the Alameda County RoV’s office confirmed the volunteer was, in fact, registered. Similar errors were found on a check for absentee ballot receipt. EPTF discovered a pattern of inaccurate voter registration information on the website and contacted the Alameda County RoV. However, the RoV refused to take the website down or notify the public of the error. Rather, the RoV noted on the site that voters identified as not registered may call and check.<sup>17</sup> The EPTF made efforts to inform voters, particularly those voters who checked the website in the weeks before the RoV placed the note, of the website’s unreliability through contact with local media outlets and through an email blast from the McNerney website. The number of voters who may have been disenfranchised by the error is unknown.

#### *2. VVPAT*

Review of San Joaquin County election procedures indicated a need to inform voters of the VVPAT’s purpose to provide voters with a procedure to check and verify their vote. In 2004, California required that DRE voting machines have a VVPAT (see fn. 9) to allow voters to verify

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<sup>16</sup> Comcast cable channel 26, “Grassroots Issues” - <http://www.grassrootsissues.com>.

<sup>17</sup> In contrast, Contra Costa County mailed post-cards to voters that inaccurately identified polling places. Upon discovery of the error, the RoV immediately provided a public notice correction through the media and sent out corrective information to voters.

that a machine recorded the vote as intended. One goal of EPTF voter education was to inform voters of the verification process and assure, through use of the VVPAT, that voter intent was accurately recorded. Specifically, on Diebold machines, the voter must open the VVPAT privacy flap to view their vote.

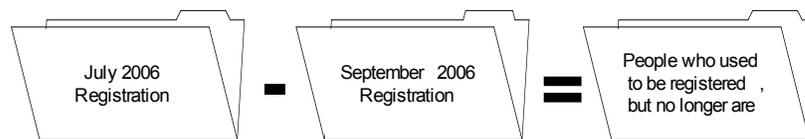
The EPTF created a simple non-partisan flyer that showed a picture of a Diebold machine with the VVPAT flap open. The flyer informed voters to be sure the flap was open and check that the paper record matched their intent before the “cast ballot” button on the display screen was touched. Flyers in English and Spanish were distributed to voters through McNerney GOTV precinct walker volunteers during the weekend canvass before Election Day. The flyer was also part of the Poll Monitor packet provided to poll monitors to highlight the issue with voters and poll workers on Election Day. Some monitors asked poll workers on Election Day to post a flyer in the polling place. Using the flyers, other monitors advocated that VVPAT flaps be taped open or removed entirely to be replaced only for visually impaired voters.

B. Voter purges

Voter purges resulting from the HAVA mandated Statewide Voter Registration Database (see above, in “Background”) caused EPTF concern that McNerney voters were being purged from voter registration rolls without notice. Based on the number of voters reportedly purged in Los Angeles, EPTF was concerned that voter purges may impact historically Democratic voters, particularly in Hispanic communities. The EPTF set a goal to gather data on voter purges, analyze the data and compare the impact on voter groups. With comparative analysis and identification of purged voters, EPTF planned to notify likely McNerney voters and recommend voter re-registration in time for the November 2006 election.

The EPTF obtained publicly available voter registration data of San Joaquin County registered voters from July 2006 to compare with September 2006 registration data. The information is public information and readily obtained for use in normal campaign activities.

In simple terms,



From the data, an EPTF database specialist extracted voter names that appeared in the July 2006 rolls but did not appear in the September 2006 rolls. 6800 names were identified. Approximately 2200 of those voters were registered democrats in San Joaquin County. San Joaquin County has an historical Republican voter registration advantage. The data indicated that voter purges did not have a partisan impact. Nevertheless, an issue remained whether any of the democratic purged voters would re-register if notified.

Using data that showed the voting frequency of voters before the purge, the list of 2200 registered democrats was reduced further to 1100 democratic voters to contact.

Two different methods were considered to notify purged democratic voters: by telephone or by mail. A telephone bank was considered the most effective way to reach voters before the registration deadline. However, a telephone bank was not feasible due to lack of EPTF personnel and equipment resources.

Instead, a simple 5.5" x 4.25" postcard was created to send to formerly registered voters. The post card front side contained the voter's July 2006 address, with the campaign's return address. On the back side was a message that said, "You are no longer on the voter rolls at the address on the other side." Postcards were inexpensive and 1<sup>st</sup> class postage cost 24 cents each. With 1<sup>st</sup> class postage, cards undeliverable to the registered address would be forwarded by the Post Office to a new address, if available. And cards sent to voters having no forwarding addresses would be returned to sender. Two volunteers printed, stamped, and mailed the 1100 cards in one long evening.

Of the 1085 postcards mailed, 137 were returned from the post office. 21 of the 137 returned cards had forwarding addresses and the remaining 116 stated that the voter no longer lived at the address and no forwarding address was available. One card was marked as "deceased." Thirty names were recovered, i.e., names that are recorded on the November 6, 2006 voter registration files that were not on the September 2006 files. The EPTF assumes these voters successfully re-registered in response to the notification.

The purged voter project was valuable to the campaign because it verified that the purge process of matching the voter rolls to Department of Motor Vehicle records, while ostensibly not biased against potential McNerney voters, did result in over one thousand potential McNerney voters being purged. By performing a voter roll data analysis early in an election cycle, a campaign can cast a wider net on voters purged from voter rolls and potentially find and restore more disenfranchised voters.

### C. Relationship with RoVs

The California Secretary of State ("SoS") has enforcement jurisdiction over state and federal election law in California. The Secretary of State issues regulations to implement election policy and law but does not directly supervise each County office. Each County's Registrar of Voters (RoV) has responsibility for administration of elections, with broad discretionary authority. RoVs are responsible to the County Board of Supervisors. Because they conduct and directly supervise elections, RoVs are the key to accuracy, transparency, security and fairness.

The EPTF quickly determined that a positive relationship with RoVs in each of the four counties that make up the CA CD 11 was important. First, RoVs were the primary source of information on election operations, registrations and vote counts. Second, RoV cooperation, assistance and intervention would be the most effective method to resolve election procedure issues.

Establishing a cooperative, trusting relationship with the RoV in San Joaquin County was especially important for several reasons. San Joaquin is the home County of then-incumbent Richard Pombo; San Joaquin is the County with the most registered voters in CA CD 11; San

Joaquin County used the Diebold DRE voting machine, which received public attention in the June Primary election as a result a PBS Newshour report that showed the San Joaquin County RoV interviewed about irregularities.<sup>18</sup> The EPTF decided to approach the RoV in the November 2006 general election with cooperative, trust building measures.

The EPTF members developed a series of questions for the RoV about the San Joaquin County election process to learn how election law and the RoV's discretionary authority would be applied. By telephone, a meeting with the RoV was arranged. A series of questions on topics regarding Voter Registration, Absentee and Provisional Ballots, Voting Security, Posting of Results, 1% Manual Tally, Reconcile of Votes and other miscellaneous matters were forwarded to the RoV prior to the meeting to allow time for review and consideration. During the meeting with the RoV and the Assistant Registrar of Voters, discussion was open and transparent and where answers or supportive documents were not immediately available, assurances were given to EPTF that they would be provided. Time constraints prevented response to all the questions posed during the initial meeting, but the meeting was adjourned satisfactorily with agreement to meet again. A follow-up meeting was equally open and transparent and it was agreed that unanswered questions could be later raised by telephone or in writing. The RoV also assured telephone access on Election Day in the event circumstances so required.

Pursuant to Elections Code Section 15004<sup>19</sup> the Central Committee of each political party is entitled to appoint two data processing specialists to observe all phases of preparation of the "election tabulating devices." The EPTF informed the San Joaquin County Democratic Central Committee ("DCC") of the authority under 15004 to have technical observers. The newly appointed members of the DCC, working with EPTF, appointed two data analysis specialists, one of whom was very familiar with election protection issues. The 15004 observers met with the RoV and arranged a schedule of meetings and observations. The observers became liaisons between the DCC, EPTF and RoV, served as another information resource and established another path for direct communications to inform and address issues.

As a result of specialist meetings and observations, 15004 specialists submitted reports that identified issues which raised lack of transparency and security concerns. Concerns identified the following areas: Mailed ballot handling; Precincts and reporting results; Polling place procedures; Memory card handling after poll close; Central tabulating logistics; Disallowed networking potential; and, Suggestions for immediate and longer range actions. Notice of concerns was given by correspondence to the RoV through EPTF only days before the election. Because of the short time before the election, it was not surprising that the RoV was unable to provide a response. Nevertheless, EPTF recommends that the issues be addressed prior to the next election cycle.

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<sup>18</sup> PBS Newshour Report, June 15, 2006, [http://www.pbs.org/newshour/bb/politics/jan-june06/voting\\_06-15.html](http://www.pbs.org/newshour/bb/politics/jan-june06/voting_06-15.html)

<sup>19</sup> Election Code Section 15004 provides: "The county central committee of each qualified political party may employ, and may have present at the central counting place or places, not more than two qualified data processing specialists or engineers to check and review the preparation and operation of the tabulating devices, their programming and testing, and have the specialists or engineers in attendance at any or all phases of the election."

In the remaining three counties (Santa Clara, Contra Costa and Alameda), less formal EPTF meetings and contacts with RoVs were made. Nevertheless, EPTF established one-on-one relationships that allowed direct communication with RoV offices.

Through the one-on-one relationships, EPTF obtained each County's poll worker training materials and Election Day handbooks. The materials enabled EPTF to train volunteer poll monitors on particular situations likely to arise based on how poll workers were trained. Where poll worker training material was deemed insufficient, poll monitors were given additional information and trained to give supportive information to poll workers. Poll monitors were also trained to suggest specific places in the training materials and handbooks where poll workers could find guidance and instruction on issues.

On Election Day, the direct communication established with the San Joaquin RoV proved invaluable. Initially, some problems called in to the RoV were quickly determined to be EPTF poll monitor issues rather than San Joaquin County pollworker issues. As a result, tactics were modified at the Stockton EPTF headquarters with issues being first triaged for significance and double-checked for verification by dispatch of a knowledgeable "rover." Only after issues were corroborated as significant was the RoV called. When called, the RoV responded positively. Even after the close of polls, when issues arose at ballot collection centers, the RoV responded promptly.

In summary, the established relationship between the San Joaquin County RoV and EPTF facilitated open communication, a good working relationship and confidence that each had the same mutual goal of an open, honest and fair election. Established relationships with RoVs in Alameda, Contra Costa and Santa Clara Counties were equally valuable, if not as extensively called upon on Election Day.

#### D. *Volunteer Recruitment and Management*

To accomplish the goals of EPTF, a large force of volunteer poll monitors was needed for deployment on Election Day. Volunteer recruitment and management issues included: recruiting an adequate number of volunteers; learning individual volunteer capabilities and limitations; periodically communicating with volunteers to maintain contact through the election process; accommodating geographically dispersed volunteers for trainings; providing a common denominator of training information to different groups; and, creating a system for assignment of volunteers to polling places.

Recruitment methods were fairly informal and included: personal recruiting by EPTF team members, campaign staff and other volunteers; flyers created and circulated by EPTF team members and placed on tables at campaign events; and, announcements at fundraising events. The campaign's website included a Volunteer sign up section with an Election Protection option. The most effective method of volunteer recruitment was "word of mouth" through personal efforts. Many Election Protection volunteers came to the campaign from outside the Congressional district, motivated by a commitment to elect the candidate, to election protection, or to policies opposed by the incumbent, particularly environmental issues.

The EPTF made a decision to select a single person to manage volunteers. The Volunteer Coordinator was responsible to gather volunteer contact and background information, confirm volunteer commitment; identify preferred assignment location; obtain information regarding availability for training and Election Day assignment; and, to maintain communication with volunteers to provide key information, such as date and place of training sessions.

The Volunteer Coordinator set up an excel spreadsheet that contained collected volunteer information. The spreadsheet was regularly updated with new information, e.g., to confirm whether the volunteer attended training or changes in availability. The spreadsheet was used by the EPTF deployment team to assign trained volunteers to polls and to direct untrained volunteers to report to a campaign office on Election Day, either for GOTV volunteering or for poll monitor training. When a volunteer was assigned to a polling place in the days before Election Day, the name and polling place assignment was transferred to official precinct lists.

Shortly before Election Day, some tension arose between competing recruitment interests of EPTF and GOTV. The GOTV effort declared a campaign need for GOTV volunteers in key areas of San Joaquin County. The EPTF leaders met with GOTV leaders and reached agreement on the importance to the campaign of both efforts and also agreed that mutual cooperation and support was the best approach. New volunteers were directed to the GOTV effort, except that new volunteers with prior election protection experience, who were lawyers or were just unwilling to do GOTV canvassing were included in the election protection effort. Additionally, specific methods of cooperation and support were adopted that included ways for EPTF volunteers to provide Election Day information to GOTV and ways for GOTV to provide Election Day information to EPTF.

#### E. Legal Preparedness

##### *1. Gathering Evidence for Challenges to Election Day Results*

There are essentially two kinds of irregularities that can lead to litigation to protect the integrity of the vote: observable and unobservable irregularities. Observable irregularities include: efforts to intimidate voters, such as posting security guards in or around polling places; intentional efforts by election workers to suppress the vote, such as refusing to accept completed absentee ballots; and, mistakes by poll workers or technological mishaps that result in lost votes, such as the failure to provide provisional ballots and voting machine break-downs. Unobserved irregularities can include: intentional manipulation of the electronic voting machines through computer hacking or software design; technological glitches or ballot design problems that result in a difference between recorded votes and actual votes cast; and, stealing or tampering with ballots. The EPTF developed a plan to gather evidence to document both kinds of irregularities.

##### *a. Observable Irregularities*

The best legal evidence of observable irregularities is eyewitness accounts from poll monitor volunteers or voters. The EPTF maintained records of volunteer contact information and the polling places to which they were assigned to facilitate post-election contact. Volunteers were instructed during training sessions to encourage disenfranchised voters to provide names and

contact information to poll monitors. In the event a decision for recount or election contest was considered, volunteers and/or voters could be contacted for evaluation and, where appropriate, declarations could be prepared to describe relevant facts. If necessary, individuals could be prepared to present oral testimony.

The EPTF provided volunteers with “incident report” forms, which were designed to help create a written record of irregularities that were observed by poll monitors and reported to lawyers staffing telephone hotlines. Poll monitors were asked to record all variety of incidents and lawyers were asked to record the reports received through the hotline. Although the statements in these reports are hearsay<sup>20</sup>, and so have limited value as courtroom evidence, the reports can provide information to help determine whether grounds exist for a legal challenge, and could serve as tools to support testimony of eyewitnesses.<sup>21</sup>

Poll monitor training sessions included the subject of EPTF legal concerns regarding photographs. Some volunteers intended to bring cameras for recording noteworthy events during Election Day. The EPTF training sessions counseled volunteers to take photographs only in accordance with the Elections Code. The Elections Code prohibits photographing voters or otherwise recording a voter entering or exiting a polling place “with the intent of dissuading another person from voting.”<sup>22</sup> The California Constitution requires that voting be secret.<sup>23</sup> The Elections Code prohibits voters from showing their marked ballots to anyone “in such a way as to reveal [the] contents [of the ballots].”<sup>24</sup> In short, photographs create significant legal exposure to volunteers without providing firm legal rewards. By contrast, photographs can provide enormous benefits with the media. With a caveat regarding photography prohibitions, volunteers were encouraged during training to take photographs of the election returns posted outside the polling place and chain-of-custody events after the close of polls. Photographs were encouraged not as legal evidence but rather as a method of verification of information reported by the volunteer. Future election protection efforts should consider integration of a sophisticated media operation to determine how to deploy well-trained and well-equipped photographers or videographers to trouble spots.

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<sup>20</sup> Evidence Code Section 1200(a), provides: “‘Hearsay evidence’ is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.” For example, an incident report that described a poll worker’s behavior, offered as evidence to prove that poll workers had intimidated voters, is “other than by a witness testifying at the hearing” and, absent an exception to the rule, would likely be excluded as hearsay.

<sup>21</sup> Witnesses may be allowed to use hearsay documents to “refresh their recollection” (Evidence Code Section 771(a)) about events that they witnessed. In other words, a witness may review a document before or during testimony to refresh the memory of events witnessed, although the document may be excluded from evidence and the witness may be cross-examined about the reliability of the information in the document. Also, a court may allow a report into evidence for a purpose other than proving the truth of the statements made in the document. For example, the report could be offered to support the witnesses’ credibility by demonstrating that the witness reported the irregularity before he or she knew there would be litigation that challenged election results.

<sup>22</sup> Elections Code Section 18541(a)(3) provides: “(a) No person shall, with the intent of dissuading another person from voting, within 100 feet of a polling place, do any of the following: ... (3) Photograph, videotape, or otherwise record a voter entering or exiting a polling place.”

<sup>23</sup> Article 2, Voting, Initiative and Referendum and Recall; Sec. 7: “Voting shall be secret.”

<sup>24</sup> Elections Code Section 14276 provides: “After his or her ballot is marked, a voter shall not show it to any person in such a way as to reveal its contents.”

b. *Unobservable Irregularities*

Evidence-gathering of unobservable irregularities was focused on two separate areas: (1) tabulations of votes printed on Summary Totals Reports from individual voting machines posted at polling places at the close of polls on election night, and (2) transport of ballots and voting machines from the polling place to their final election night destinations.

The first effort asked volunteers to record, on preprinted sheets, the tabulations of votes for designated races (the Eleventh Congressional race, the race for Secretary of State and local races in San Joaquin County) that each voting machine produced on election night from posted results.<sup>25</sup> The goal was to provide a basis for comparison between immediate election night results and final statement of vote results to detect any post-election manipulation of the vote-counting process.

The legal evidentiary challenge was to simplify the form volunteers were asked to complete to minimize the risk of data entry errors, and to create as much integrity in the chain of custody as possible. Accordingly, EPTF limited the number of races monitored and requested that volunteers drop-off completed forms to EPTF Legal Centers on election night where a small number of volunteers could safeguard the data collected.

The second effort involved training volunteers to observe poll-closing procedures and report any process irregularities that may impact unobservable irregularities. Volunteers observed poll closings and followed poll workers in vehicles to ensure that ballots and voting equipment were handled and transported appropriately. Irregularities occurring inside vehicles transporting ballots were not always observable, but EPTF considered that the presence of volunteer observers, even from a distance, may have acted as a deterrent to inappropriate conduct. Volunteers were also stationed at the San Joaquin County RoV office after poll closing to observe the delivery and unloading of ballots and memory cards.

2. *Preparing for Election Day Litigation*

The potential for Election Day litigation posed the challenge of anticipating legal issues and making preparations to draft and file legal pleadings within a matter of hours. Preparation of draft pleadings in advance of Election Day would require enormous resources given the nearly endless variety of issues that could arise. Additionally, litigation in the Eleventh Congressional District could involve jurisdiction in any one of four California County Superior Courts. The EPTF decided that the historical rarity of Election Day litigation in California did not justify devotion of scarce time and resources to fully address the extent of litigation preparedness required. Nevertheless, the following steps were taken to prepare for the possibility of litigation.

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<sup>25</sup> Elections Code Section 19384 provides: “The precinct board shall, before it adjourns, post conspicuously on the outside of the polling place a copy of the result of the votes cast at the polling place. The copy of the result shall be signed by the members of the precinct board. If the machine is provided with a recording device, the statement of result of votes cast produced by operating its mechanism may be considered the “result of the votes cast” at the polling place.” (Also see fn. 36, below)

First, forms and examples of pleadings filed in previous litigation by a local law firm that specializes in election law, as well as papers that had been collected by the California Democratic Party Promote and Protect the Vote (P2TV), were gathered. These included:

The complaint in *Hispanic Political Council v. Pringle* (No. SACV 88678 AHS (RWRX)) filed in the Central District of California in 1988 challenging the Republican Party's posting of uniformed security guards at polling places in certain Hispanic neighborhoods; The South Carolina Democratic Party Election Day 2002 Legal Packet with Complaints and temporary restraining order papers for the following categories of election problems: (1) improper treatment of moved voters; (2) misconduct by poll workers; (3) mistreatment of Democratic poll watchers; (4) misconduct by Republican poll watchers; (5) inappropriate challenges in general; (6) inappropriate challenges based on discrimination; (7) intimidation; (8) polls not opening during proper hours; (9) problems with voting machines or vote recorders; and (10) and post-election problems; and, The California Democratic Party's "Preparing for Election Day 2006: A California Lawyer's Manual"<sup>26</sup>

Second, EPTF investigated and determined the procedures that would govern Election Day issues that might arise after the end of the day when courts had closed and how to respond appropriately and expeditiously. In California, the Judicial Council provides a list of names and telephone numbers for judges assigned to election night duty in each county. The EPTF made contact with those Counties to facilitate communication with the court during regular court hours and directly to "on duty" judges after closing, if necessary.

Third, EPTF attorneys were available throughout the day and night ready to draft and file necessary papers.

The preparations were useful. In one Election Day incident, for example, a discussion commenced between lawyer rovers and EPTF Legal Center lawyers in preparation for drafting declarations to seek judicial intervention after regular court hours. However, the roving lawyers at the scene were able to mediate a resolution with the confidence that EPTF was prepared to act in the event of a breakdown in negotiations.

## **V. Election Day**

### **A. Campaign Coordination**

In the early stages of organization, EPTF determined that coordination of efforts with other groups engaging in election protection would be helpful and beneficial. An initial contact with the Democratic National Committee's ("DNC") election protection effort led EPTF to the California Democratic Party's ("CDP") "Promote and Protect the Vote" ("P2TV") election protection program led from Los Angeles.

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<sup>26</sup> <http://www.cadem.org/atf/cf/{BF9D7366-E5A7-41C3-8E3F-E06FB835FCCE}/ELECTIONWATCHMANUAL2006.PDF>

The CDP had decided to use a pre-existing in-state system, which included an in-state telephone hotline (“877 321 VOTE”), instead of using the DNC system and national hotline. In prior election cycles, CDP developed election protection training and training materials for lawyers. The CDP scheduled training dates in different California cities in the months before the 2006 general election. The EPTF lawyers attended the CDP P2TV training. Continued communication between EPTF and CDP P2TV developed a coordinated Election Day incident reporting process from CA CD 11 to the CDP hotline.

The EPTF and CDP agreed that the McNerney EPTF would publicize and use the CDP’s “877 321 VOTE” hotline number. The EPTF encouraged voters and poll monitors to use the hotline number for general informational issues, such as the location of a voter’s polling place, and for calling in reports of incidents. It was agreed that calls not considered “general informational issues” would be re-routed from the CDP P2TV center in Los Angeles to EPTF Legal Centers for response (see “Election Day Operations Structure,” Chart 2, below).

The EPTF also contacted the Angelides Campaign for Governor of California, which had implemented a “street law” program for election protection. Maintaining open contacts and communication allowed coordination of a potential response to a threatened strike by San Joaquin County Union Workers in Stockton. The Angelides campaign also deployed some of its “street law” volunteers, specifically several law students, to the Stockton EPTF Legal Center for deployment. On Election Day, the volunteers were trained and assigned to polling places as monitors.

### B. Structure

An organizational structure was designed for the operational process and reporting chain of command. The operational process was set up as follows:

EPTF Lawyers and Poll Monitors were instructed to report incidents to the CDP P2TV hotline.

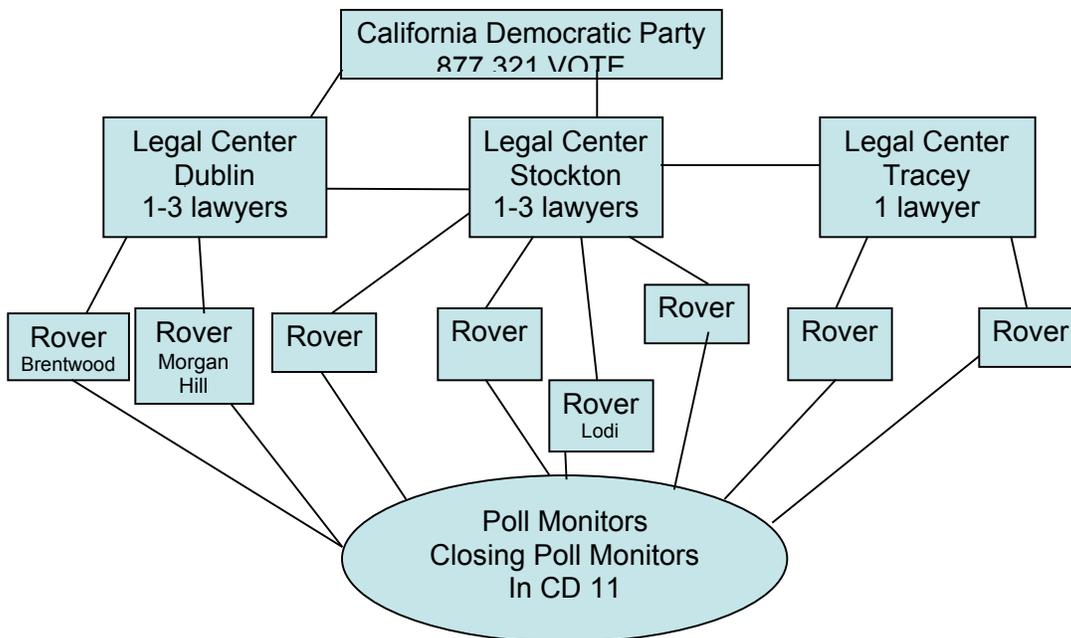
CDP P2TV would re-route CA 11 incident reports to EPTF Headquarters in Dublin.

The Dublin Center would route incident reports, according to precinct number, to Legal Centers in Stockton, Tracy, Dublin, or to identified locally placed lawyers in Brentwood and Morgan Hill.

Legal centers would dispatch incidents to “rover” lawyers for response to the scene to evaluate, assist in resolution and report back.

CHART # 2

## Election Day Operations Structure



In operation, the combined volume of GOTV and EPTF telephone calls coming in to the Dublin Legal Center soon overwhelmed the five available phone lines. The operational process was modified on Election Day to meet the demand by use of emailed incident reports from CDP to the Stockton Legal Center. The Dublin Legal Center remained in contact with other Centers through use of personal cell phone numbers.

The availability of the CDP hotline operation was valuable to EPTF because of the many incoming lines that were manned by experienced operators. Importantly, the available lines provided protection from any external attempts to overload or “swamp” the system. The EPTF structure provided a system that allowed for a central “triage” of incident reports, communication with poll monitors at the local scenes, the dispatch of lawyers to incident scenes to evaluate the legal circumstances, an immediate telephone reporting system back to legal centers, and, a documentation process for collecting data for post-election analysis on issues experienced by voters and election workers.

One anomaly in the structure existed due to the nature of the CA CD 11; only parts of each County are included. The CDP P2TV program provides statewide coverage and organizes by County. The EPTF effort focused lawyers and poll monitors only on those parts of the Counties within the federal 11<sup>th</sup> Congressional District. Thus, while EPTF responded to a few incidents within the Counties but outside the District, limited manpower and resources required concentration of lawyers and monitors only in areas within the 11<sup>th</sup> District.

### C. Poll Monitor Training

A comprehensive, two-hour training was created by EPTF leaders and given to poll monitors.<sup>27</sup> Material was customized in detail for each county, particularly in San Joaquin County based on information provided by the Elections Code Section 15004 observer information and question and answer sessions with the RoV. An important reference source was training materials provided by RoVs to pollworkers. Lawyers responsible for managing incident reports on Election Day attended the CDP's P2TV lawyer training. Three full trainings were given to poll monitors before Election Day in groups of 30, 50 and 6, respectively. A training session was given to volunteer lawyers by telephone conference call and additional abbreviated trainings were held for individual volunteer monitors on Election Day.

The EPTF training sessions began with election protection terminology and a basic explanation of the types of voting machines and voting processes in use in CA CD 11. An important focus of the introductory section was the question: "Why is the volunteer monitoring a polling place?" Trainees engaged in an evaluation of individual motivations and progressed to a discussion on poll monitor duties.

The training presentation included discussion of the obligation under California law<sup>28</sup> that polling places be open to public observation, how to work cooperatively with poll workers, what to look for and why, poll opening, poll closing, chain of custody, voter intimidation tactics, voter identification rules, voter challenges, voter intimidation and harassment and the right to vote provisionally. A "Poll Monitor Training Packet" was provided to volunteers and reviewed in detail with trainees. The Packet included checklists on how to: report incidents; get help from the Legal Team; identify machine problems; identify voter rights issues; and, the procedure and forms for collecting Summary Totals for each machine upon poll closing.

Trainers distributed index cards for arriving participants to write down questions that arose during training. At the conclusion of the prepared instruction, time was allotted to answer written and follow-up questions.

Volunteers unable to attend training before Election Day were trained in one of two ways. One group, consisting of lawyers with experience in election protection, received Poll Monitor training materials by email and a condensed version of the training by telephone conference call.

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<sup>27</sup> The training presentation and materials were created by EPTF using information from many sources, including the following websites: Election Monitoring in California – September 2006 – Michelle Gabriel, <http://www.countedascast.com/monitoring.php>; Black Box Voting Citizens Toolkit – 2006 – Bev Harris, <http://www.countedascast.com/monitoring.php>; Pollworkers for Democracy 2006 web incident reporting form, [http://www.pollworkersfordemocracy.org/pollworker\\_info.html](http://www.pollworkersfordemocracy.org/pollworker_info.html); SaveRVote Riverside County 2006 training material – Maxine Ewig and Tom Courbat, [http://electiondefensealliance.org/sav\\_r\\_vote\\_election\\_monitoring\\_field\\_guide](http://electiondefensealliance.org/sav_r_vote_election_monitoring_field_guide); Verified Voting 2006 election observing questionnaires, <http://www.verifiedvotingfoundation.org/article.php?id=6390>.

<sup>28</sup> See California Elections Code sections 2300(9)(a), 14215, 15004, 15104, 15204, 15272, 15360, 15629, 19370 and, see also, [http://www.ss.ca.gov/executive/press\\_releases/2004/04\\_078.pdf](http://www.ss.ca.gov/executive/press_releases/2004/04_078.pdf)

Other volunteers reported to the Stockton office on Election Day and received abbreviated training before being assigned to lower priority polling places.

#### D. Deployment

With nearly 400 polling places in CA CD 11, and approximately 70 poll monitor teams, setting priorities in deployment of volunteers was critical. In the weeks before Election Day, a deployment plan was drafted that focused efforts in San Joaquin County for several reasons. First, the City of Tracy is home to the former incumbent Richard Pombo and the City of Stockton is home to key members of his staff. Second, San Joaquin County used the Diebold voting machine, which was the subject of a PBS Newshour report (see fn. 18, above) that showed problems in the June 2006 primary election with memory card seals being torn off and featured poll workers stating that the VVPAT is not for voters to view.<sup>29</sup> Third, the San Joaquin RoV had stated her intent to post summary totals of votes at poll closing, enabling our monitors to gather information for each machine for later comparison with the certified statement of vote.

Using data from previous elections, EPTF members prioritized San Joaquin County polling places based on three primary factors: 1. Whether many McNerney voters were expected at the polling place; 2. Whether there was greater influence of Pombo-supporters than McNerney supporters at the polling place (e.g., the poll was located in a Pombo supporter's home or poll workers were Pombo supporters); and, 3. Whether the polling place included a high number of Hispanic voters in a polling place, which in the CDP's experience, increased the risk of voter suppression.

Assignment of poll monitors to polling places occurred the day and night before Election Day. Experienced poll monitors were assigned to more complex areas. Untrained poll monitors were asked to report to EPTF Legal Centers to attend an abbreviated training session and then were assigned to a lower priority polling place.

128 volunteers were deployed in the field on Election Day as follows:

- 3 Rapid Response lead lawyers in the Dublin campaign office;
- 14 poll monitors in Alameda County (Dublin and Pleasanton);
- 9 poll monitors in Contra Costa County (Brentwood), including one lead lawyer for the area;
- 2 Rapid Response lead lawyers in the Stockton campaign office;
- 69 volunteers in Stockton, along with two section 15004 observers, and rotating roving monitors;
- 2 poll monitors in Lodi, including a Rapid Reponse lawyer;
- 2 poll monitors in Manteca;
- 1 Rapid Response lead lawyer in the Tracy campaign office

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<sup>29</sup> The VVPAT (Verified Voter Paper Audit Trail) was added onto the Diebold machine after the issue of verification of electronic voting arose. The VVPAT shows a record of votes cast by electronic selection on a paper printout. The voter is instructed to verify that what shows on the electronic machine matches the votes shown on paper. The verification should occur after making vote selections and before pressing the "cast ballot" button.

23 volunteers in Tracy, including three roving lawyers and 18 poll monitors;  
3 poll monitors (all lawyers) in Santa Clara County (Morgan Hill);

In October, it became apparent that EPTF efforts could be effectively coordinated with the McNerney GOTV program to mutual benefit. It was agreed that EPTF Poll Monitors would fulfill GOTV Poll-Checker duties by checking voter rosters during the course of the day, as authorized under the Elections Code,<sup>30</sup> and by calling in information about the voting status of McNerney-targeted voters to GOTV team leaders. On the other hand, GOTV poll checkers would report untoward incidents observed at the polls to EPTF and also collect the Summary Totals of votes posted at closing of polls on particular races and report the data to EPTF.

In the main focus areas of Stockton and Tracy, GOTV poll checkers reported incidents and/or collected post-closing Summary Totals for EPTF. However, EPTF Poll Monitors did not effectively check and report on voter rosters, in large part because of the short time available to plan effectively and provide meaningful training on collection and transmission of voter information.

### E. Incident Reporting

#### *1. Process*

An EPTF goal was to document incidents that occurred at polling places on Election Day to make a record of events that may adversely impact the Election Day process. Evidence of irregularities could be used to evaluate a decision whether to proceed with a request for recount or a decision to file an election contest. Equally important to EPTF was the intent to gather data for use in recommendations to improve future elections.

On Election Day, incident reports were submitted from multiple sources. The EPTF volunteer poll monitors were provided with a checklist of items to observe with reporting forms to identify anticipated issues. The forms were reviewed in training sessions and poll monitors were asked to call in incidents to the Legal Center for follow-up. Poll monitors were requested to document each incident observed and turn in the written forms to the Legal Centers. Submitted forms were gathered from the Legal Centers after the election and cross-referenced to avoid duplication of reported incidents. Particular attention was given to avoid duplication of incident reports by multiple poll monitors and in polling places containing multiple precincts.

An “incident report” was defined as the experience of one person at one polling place. If one person was assigned to several polling places, each polling place incident report was designated as a new report. If another person at the same polling place submitted information, it was considered a separate report. However, the same incident described by more than one person was counted as only one incident.

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<sup>30</sup> Elections Code 14223(b) provides: “Any person may inspect the roster while voting is in progress and while votes are being counted. However, this shall not be done at a time or in a manner which will impede, interfere, or interrupt the normal process of voting.”

Incidents were categorized into three major groups: Voting Issues; Machine Issues; and, Pollworker Issues. Voting issues included voter suppression incidents. Machine issues covered issues of failure in the voting equipment, some of which may have been caused by pollworker error. Pollworker issues included: pollworker performance, not involving voting machines; people working at the polls and at collection centers, the RoV's staff and the RoV; and, any pollworker performance other than those dealing with the voting machines.

Reported incidents were often inter-related and, thus, the same event could lead to multiple incidents. A typical example is the privacy flap that covers the VVPAT for visually impaired voters. A closed cover was defined as a machine issue. A closed cover that was reported to a precinct inspector and not opened was defined as a pollworker issue.

2. Results

**CHART #3 - MONITOR AND PRECINCT INFORMATION BY COUNTY**

	<i>Alameda</i>	<i>Contra Costa</i>	<i>San Joaquin</i>	<i>Santa Clara</i>	Totals
<i>Number of Monitors</i>	9	7	80	2	98
<i>Number of reports</i>	9	4	70	4	87
<i>Number of incidents</i>	17	9	224	20	270
<i>Precincts with incidents</i>	8	5	79	6	98
<i>Precincts monitored</i>	11	6	101	6	124
<i>Number of incidents per monitor</i>	1.9	1.3	2.8	10.0	2.8
<i>% precincts with incidents</i>	72.7%	83.3%	78.2%	100%	79.0%

With 80% of EPTF volunteer poll monitors deployed in San Joaquin County, the majority of incident reports naturally came from San Joaquin County. Chart 3 shows that the number of monitored precincts with incidents is in the 73-83% range for each county, except Santa Clara. The EPTF concludes that the data for Santa Clara County is not useful for any trend analysis due to the low number of poll monitors deployed there.

Analysis of residential and non-residential precincts<sup>31</sup> in San Joaquin County was made as shown in Chart #4. Incidents occurred in both residential and non-residential precincts at the same approximate rate of 80%. A more notable difference in incidents occurring in residential precincts than in non-residential precincts occurred in Tracy. The EPTF concludes that, overall, incidents were as likely to occur in a residential precinct as in a non-residential precinct.<sup>32</sup>

<sup>31</sup> Residential precincts are those in citizen homes compared to non-residential precincts in schools, churches, etc.

<sup>32</sup> A more detailed break down of incident types for San Joaquin County is contained in Appendix 1.

**CHART #4 - NUMBER OF PRECINCTS MONITORED WITH AND WITHOUT INCIDENTS IN SAN JOAQUIN COUNTY**

		<i>Without Incidents</i>	<i>With Incidents</i>	<i>Total</i>	<i>% Monitored precincts with Incidents</i>
<i>Stockton</i>	Residential	3	8	11	73%
	Non residential	13	38	51	75%
<i>Tracy</i>	Residential	1	8	9	89%
	Non residential	5	19	24	79%
<i>Lodi</i>	Residential	0	1	1	100%
	Non residential	0	5	5	100%
<i>Totals</i>	Residential	4	17	21	81%
	Non residential	18	62	80	78%
	Total – Residential & Non-residential	22	79	101 <sup>33</sup>	78%

The types of incidents across each county are shown in Chart #5.

**CHART #5 - NUMBERS AND TYPE OF INCIDENTS PER COUNTY**

	Alameda	Contra Costa	San Joaquin	Santa Clara	Totals
Incident Summary					
<i>Voting Issues</i>	4	1	3	1	9
<i>Machine Issues</i>	3	2	120	12	137
<i>Pollworker Issues</i>	10	6	91	7	114
<i>% machine issues</i>	17.6%	22.2%	53.6%	60.0%	50.7%
<i>% pollworker issues</i>	58.8%	66.7%	40.6%	35.0%	42.2%

The majority of reported incidents were divided between pollworker issues and machine issues. Importantly, in Counties that used only Touchscreen DRE machines (San Joaquin and Santa Clara) the percentage of machine issues is in the 50-60% range. By comparison, Alameda and Contra Costa Counties show a significantly lower percentage with use of the Optical Scan machine (17% and 22% respectively).

The top 5 machine issue incidents, accounting for approximately 85% of the issues, were:

Machine Breakdown	29%
Paper Jams	21%
Long lines	14%

<sup>33</sup> EPTF assigned monitors to 90 precincts. However, some monitors went to multiple precincts and incidents were also reported from precincts observed by McNerney GOTV volunteers and citizen voters aware of the CDP hotline telephone number. An additional eleven monitored precincts are reflected in the Chart 4 total.

Privacy flaps closed	11%
Access Card and machine	10%

Machine breakdown was further subdivided into individual problems, of which the most frequent were:

Failure to power up/not working	22%
Unresponsive buttons <sup>34</sup>	19%
Mechanical	8%

Paper jams were often caused by pollworkers incorrectly loading the paper roll. Long lines were caused due to a variety of reasons including machine breakdowns, late opening and voter sample ballots not matching the electronic ballot order. Access cards and card activator equipment raised many issues.<sup>35</sup> A cover, or “privacy flap” closed over the VVPAT was difficult to measure in number of incidents because a closed cover may have occurred at multiple times during the course of Election Day, and on multiple machines, but were recorded as one incident. If the issue of closed covers was recorded by the number occurring for each machine, the result would be the highest number of incidents recorded.

The top 5 pollworker issues were:

Obstructed Monitoring	23%
Totals not posted	14%
Hostile/rude	13%
Confusion on paper and provisional ballots	11%
Poor behavior	8 %

The most technically difficult pollworker issues were confusion over the use of paper ballots and provisional ballots, and, when and how voter roster sign-in is required. The remaining pollworker incidents reported were behavioral issues.

Chart #6 shows the number of reported incidents by type in San Joaquin County precincts.

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<sup>34</sup> “Unresponsive buttons” refers to voters pressing on the “button” on the touchscreen display and difficulty with machine acknowledgment of voter selection.

<sup>35</sup> “Access cards” are also known as “ballot encoder/activator cards.” Ballot encoder/activator failure is defined as: “A malfunction or interruption of that piece of a DRE that encodes a smart card or other similar device with the voter’s ballot or with critical demographic data that allows the machine to access the proper ballot for the voter” (See [www.eac.gov/election\\_survey\\_2004/doc/EDS-chap%2011%20equip%20malfunctions.doc](http://www.eac.gov/election_survey_2004/doc/EDS-chap%2011%20equip%20malfunctions.doc)). Incident issues include lost activator cards, activator cards not working, activator machine not working (cards could not be activated, thus preventing votes), activator card stuck in voting machine, activator card locked voter out (did not allow voter to vote). Ballot encoder/activator issues apply only to DRE equipment, and do not apply to the Opti-scan machine.

**CHART # 6– SAN JOAQUIN REPORTED INCIDENTS BY ISSUE TYPE**

<i>City</i>		<i>Voting</i>	<i>Machine</i>	<i>Pollworker</i>	<i>Totals</i>
<i>Stockton</i>	Residential	0	24	16	40
	Non residential	3	35	45	83
	Total	3	59	61	123
		2%	48%	50%	
<i>Tracy</i>	Residential	0	8	8	16
	Non residential	0	53	22	75
	Total	0	61	30	91
		0%	67%	33%	
<i>Lodi +</i>	Residential	0	1	0	1
	Non residential	0	5	4	9
	Total	0	6	4	10
		0%	60%	40%	
<i>San Joaquin</i>	Residential	0	33	24	57
<i>Totals</i>			58%	42%	
	Non residential	3	93	71	167
		2%	56%	43%	

Chart #6 shows that the overall ratio of machine incidents compared to total incidents, and, the overall ratio of pollworker incidents as compared to total incidents, were in the same range regardless of whether the polling place was residential or non-residential.

*F. Data Collection and Retrieval*

The EPTF was concerned that vote totals from voting machines were vulnerable to inaccuracy due to intentional manipulation, negligence, and machine or software error. In addition to collecting information about incidents at polling places, EPTF sought to check the accuracy of official vote tabulations. The EPTF anticipated a close race and made pre-election legal preparations for a vote recount request and/or an election contest if the vote count appeared inaccurate. Based on historical reports of irregularities involving voting machines, EPTF concluded that one way to check the accuracy of votes due to machine irregularities or software error was to compare the Summary Totals Report printed out from each machine VVPAT printer to the official vote results. For reasons previously stated, the focus was on San Joaquin County.

California Elections Code Section 19370 provides that individual machine results “shall be posted” at the close of polls on a wall outside the polling place<sup>36</sup>. A decision was made to collect

<sup>36</sup> Election Code Section 19370 provides: “As soon as the polls are closed, the precinct board, in the presence of the watchers and all others lawfully present, shall immediately lock the voting machine against voting and open the counting compartments, giving full view of all counter numbers. A board member shall in the order of the offices as their titles are arranged on the machine, read and distinctly announce the name or designating number and letter on

these results. The San Joaquin County poll workers Handbook identified posted totals as a “Summary Totals Report” (“STR”).<sup>37</sup> At the close of polls, poll workers printed out two copies of a paper tape from each voting machine’s VVPAT that contained a summary of all votes cast. One tape was signed by poll workers for return to ballot collection centers and the other was to be posted on the outside wall of the precinct.

The EPTF created a data collection form for poll monitors to use at the close of polls that included: the precinct number; the serial or identification number for each voting machine; the total number of voters by machine; the total number of votes for each candidate in the CA CD 11 race<sup>38</sup>; and, the signature and contact information of the volunteer who filled out the form (for use as witness location information in the event a court proceeding later became necessary). Poll monitors were also encouraged to take digital photographs of the VVPAT tape information where feasible.

The Summary Totals Report Collection form was given to EPTF poll monitors and GOTV checkers with a request to return the summary vote total information, with any incident reports, to EPTF Legal Centers. Data for the McNerney-Pombo race, at the individual machine level, was retrieved from 90 polling places. Complete data from several polls could not be collected for a variety of reasons: poll workers that failed to post results, incomplete data due to paper jams, difficulties in operating the VVPAT printer, or, simply because of poll worker inexperience. Of the 90 polls from which data was collected, 50 provided useable information for comparison purposes. An EPTF subcommittee met after Election Day and entered the collected data onto a spreadsheet.

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each counter for each candidate’s name and the result as shown by the counter numbers. He or she shall also in the same manner announce the vote on each measure.

“If the machine is provided with a recording device, in lieu of opening the counter compartment the precinct board shall proceed to operate the mechanism to produce the statement of return of votes cast record in a minimum of three copies, remove the irregular ballot, if any, record on the statement of return of votes cast record. The irregular ballot shall be attached to the statement of result record of votes cast for the machine and become a part thereof. *One copy of the statement of return of votes cast for each machine shall be posted upon the outside wall of the precinct for all to see.* The statement of return of votes cast for each machine for the precinct shall constitute the precinct statement of result of votes cast.” [Italics added]

<sup>37</sup> The SJC RoV advised EPTF that poll workers would be trained to post the summary totals report. The “Quick Reference Guide” to the SJC Poll Workers Handbook includes instructions on how to post the report, although the requirement to print and post the report was not included in the closing checklist. In contrast, Santa Clara County’s RoV interpreted Elections Code Section 19384 as not requiring posted totals. In a communication from the Santa Clara County RoV office to an election integrity advocate dated November 1, 2006, it was stated that “Santa Clara County ROV will not be posting election results at polling places because: a) We do not follow EC 19364[sic] Article 6 Counting Procedures, 19380-19386 seem to pertain to machines where all results are tallied and tabulated. Our Election Officers do not count results for each candidate and race, nor do we transmit the results of votes cast. b) We have been training since October 2<sup>nd</sup> and all written procedures have been printed. c) The suggested SOS procedure is complicated and could compromise the processing of the results cartridges to the ROV for central counting. d) Some locations, such as schools do not allow us to post things past Election Day. e) The guidelines provided by the SOS state ‘may print results’.”

<sup>38</sup> An EPTF decision was made to collect the totals not only for the McNerney Congressional race, but also for two additional contests (California Secretary of State and the Mayor of Tracy) to compare for patterns. The data is not covered herein because unnecessary to the report conclusions.

The method and format of the San Joaquin County Statement of Vote does not allow an accurate match of Summary Total Reports to the Statement of Vote for several reasons. First, in San Joaquin County, provisional ballots<sup>39</sup> are voted on the DRE machines and, therefore, are necessarily included in the STR. However, provisional ballots must be verified before being counted in the SoV.<sup>40</sup> Thus, every provisional ballot disqualified at the central tabulation is another vote difference between the STR and SoV.

Second, paper ballots voted at the polls do not appear in the Summary Total Reports. In some polling places, paper ballots were cast to avoid long waits in line of up to two hours. And, by SoS directive, any voter may choose to vote by paper ballot rather than by electronic machine.<sup>41</sup> Paper ballots were not counted until they reached the central tabulation center. Paper ballots cast at precincts are not included in the STR and, therefore, prevent an accurate comparison of the STR to the Statement of Vote.

Third, the Statement of Vote reports vote results by precinct. Summary Total Reports can be compared to the SoV for “single” precincts. However, some polling places consolidated several precincts into one location. Votes at multiple precinct polling places were often commingled between the machines (usually to reduce long lines). For multiple-precinct polling places with commingled voting, comparison could not be made precinct to precinct. Rather, only the combined STR sums at a multiple-precinct location could be compared to the SoV sum of all precincts voting at that location. Some multiple-precinct polls maintained precinct separation and voting was not commingled on all the machines. In those cases, precinct-specific machine voting procedures were used. Nevertheless, in precinct separation situations, data collection by poll monitors required a precise record of voting machine serial numbers, by precinct, to assure STR numbers were recorded on the data collection form in the correct precinct.

Despite difficulties, EPTF compared STR vote data collected by volunteers on election night with the certified Statement of Vote (SoV). The results provide only a gross approximation of consistency between the STR and SoV. Minor modifications to the RoVs’ Statement of Vote reporting procedure are needed to allow the public, candidates and government officials to verify that no post-vote modification occurred, whether by hacking, software manipulation or mere machine error. Even though the SoV format did not allow verification by an exact match, the

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<sup>39</sup> Elections Code Section 14310(a) provides: “At all elections, a voter claiming to be properly registered but whose qualification or entitlement to vote cannot be immediately established upon examination of the index of registration for the precinct or upon examination of the records on file with the county elections official, shall be entitled to vote a provisional ballot...”

<sup>40</sup> Elections Code Section 14310(c) (2) provides: “Provisional ballots shall not be included in any semiofficial or official canvass, except upon: (A) the elections official's establishing prior to the completion of the official canvass, from the records in his or her office, the claimant's right to vote; or (B) the order of a superior court in the county of the voter's residence. A voter may seek the court order specified in this paragraph regarding his or her own ballot at any time prior to completion of the official canvass. Any judicial action or appeal shall have priority over all other civil matters.”

<sup>41</sup> SoS Press Release, September 16, 2005, item 3, at [http://www.ss.ca.gov/executive/press\\_releases/2005/05\\_106.pdf](http://www.ss.ca.gov/executive/press_releases/2005/05_106.pdf), and, SoS October 3, 2006, Memo to All County Clerks, see: [http://www.votetrustusa.org/pdfs/California\\_Folder/CASos\\_SusanLapsley\\_PaperBallotsMemo\\_100306.pdf](http://www.votetrustusa.org/pdfs/California_Folder/CASos_SusanLapsley_PaperBallotsMemo_100306.pdf), “...all county election officials shall have an adequate supply of paper ballots...available at the voting locations for use in the event of a temporary loss of the ability to use electronic equipment **or if a voter chooses not to vote on electronic equipment.**” [Italics in original, emphasis added]

exercise of gathering STR data provided two benefits. First, GOTV volunteers were able to learn the results of their efforts within hours of the polls closing. Second, the EPTF team obtained insight into whether STR results were close to the vote reported by the SoV. A large difference between STR vote tallies and SoV can raise a red flag suggesting the need for further investigation and possible steps toward a recount and/or election contest.

### G. Chain of Custody

Chain of custody refers to the custody of the ballots from the polling place to the central counting facility.<sup>42</sup> Integrity of the voting process includes an assurance that votes cannot be manipulated or tampered with during transport from polling place to the vote counting site. With electronic voting, memory cards from each machine are, essentially, electronic ballot boxes. Studies have reported that one memory card, altered or switched, can change the result of an election.<sup>43</sup> Transportation of small sized memory cards, in the dark of night, present difficulties in observing for possible irregularities and may be a break in the chain of custody.

The EPTF determined that monitoring the chain of custody would unlikely catch a blatant ‘smoking gun.’ Nevertheless, by physically monitoring transportation of the ballots, EPTF efforts would provide a deterrent effect. In the event of a stop or detour during transport, a record of the event could be made and reported.

In San Joaquin County, EPTF volunteers followed the chain of custody of ballots transported by pollworkers from several polling places to one of six collection centers. Ballots were dropped off by pollworkers and then transported by San Joaquin County Sheriff deputies to the Central Tabulation Center, while being followed and observed by EPTF observers. One chain of custody monitor reported that a pollworker stopped at an apartment house prior to going to a collection center. EPTF volunteers reported hostile election workers at two collection centers where County employees made efforts to stop the volunteers from meaningful observation. EPTF contact with the RoV resolved the situation and the volunteers were permitted access for observation. Other reports included confusion by some pollworkers about what election materials were supposed to be in particular transport bags. One report identified an issue of only one pollworker in a transport vehicle instead of two, as required by the California Elections Code (see fn. 42). There was also a report of confusion at the Stockton Collection Center about whether all precincts had reported in and when to close.

The two Elections Code Section 15004 observers (see fn. 19, above) were stationed at the RoV’s office in Stockton between 8:00 p.m., and 1:15 a.m., to observe the drop off procedure and election night vote count. A report of observations was submitted to EPTF that documented delivery of memory cards, ballots, VVPAT canisters and bags of supplies.

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<sup>42</sup> Elections Code Section 14434 provides: “The sealed packages containing the lists, papers, and *ballots* shall be delivered by two of its members without delay, unopened, to the elections official or to a receiving station designated by the elections official.” [Italics added]. See also Elections Code Section 14421, fn. 14.

<sup>43</sup> <http://itpolicy.princeton.edu/voting/>, <http://itpolicy.princeton.edu/voting/ts-paper.pdf>

Processing of DRE machine memory cards began about 8:45 p.m. after arrival of the first batches. Approximately ten election workers received materials from pollworkers making delivery in vehicles. The street in front of the RoV office was temporarily closed to receive material. Poll workers were not allowed out of their cars. Poll materials were handed out of car windows or taken from trunks without vehicle occupants getting out. Silver bags with memory cards were received by a separate set of election workers. The cases were opened and voter rosters, zero and summary totals and paper poll materials were removed. VVPAT canisters containing VVPAT rolls remained in silver cases and were immediately packed into a truck. Blue and pink bags containing paper ballots were thrown into cardboard boxes without check-in verifications. When filled from deliveries, the boxes were also packed into the truck. When filled, the truck was taken to the RoV warehouse for security purposes.

The RoV followed an “Asset Management Inventory Control” system. Each silver bag had a bar code which was scanned by two election workers. EPTF is advised that the system was developed by and for the San Joaquin County RoV’s office and is not Diebold software. Five other election workers responsible for unbagging and scanning memory cards into the inventory system were stationed in an observers' area. Two workers carried scanned bags from the sidewalk into the observers' area. An additional four or five people inserted memory cards into, and operated, the upload DRE machines. The upload machines were positioned behind glass walls. The machines transferred vote data to a Global Election Management System (“GEMS”) computer server. The GEMS server was also behind a glass wall, but the display screen was not visible or observable.

Approximately 1,230 memory cards were brought in from polling locations and the six collection centers, including the central tabulating center. The cards were scanned into the inventory system via external bar codes and then each was manually inserted into one of approximately fifteen DRE machines for "up-load" into the GEMS server.<sup>44</sup>

In anticipation of inevitable glitches in the large scale of operations, the RoV stationed four people in the central tabulating facility to address “exceptions,” i.e., missing memory cards, memory card bags with missing cards, cards brought in without bags and DRE machines with irretrievable memory cards because stuck inside machines.

Preliminary election results were released at 12:30 a.m., on election night, which included votes from uploaded memory cards, validated mail precinct ballots and absentee ballots processed as of the previous afternoon. The preliminary results did not include missing memory cards, provisional votes, unvalidated mail precincts and unprocessed absentee ballots. The RoV office was then closed and locked for the night.

Vote tabulation efforts recommenced the following morning at 8:00 a.m. By 9:30 a.m., eleven memory cards (out of 1,245 total cards) remained missing and approximately fifteen thousand out of fifty thousand paper ballots were left to be validated, processed and counted. The

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<sup>44</sup> The actual number of DRE machines used for upload is unknown due to the positioning of machines in the room behind the glass wall. Similarly, due to positioning behind the glass wall, none of the GEMS server screens were visible.

EPTF was informed that the missing cards were ultimately located and all ballots were duly processed and counted.

## **VI. Post-Election Day - 1% Manual Tally**

Elections Code Section 15360(a) (see fn. 5 above) provides that after Election Day, the votes of at least 1% of the precincts in each county, randomly selected, shall be manually counted. The manual count is intended to serve as the primary check on the accuracy of the electronic vote totals. Elections Code Section 15272<sup>45</sup> provides that the manual counting of votes is open to the public for observation. The EPTF decided early that representatives from the team would be present to observe the manual count process to ensure transparency in this part of the electoral process. A 1% Manual Tally Coordinator was selected to coordinate observation in the four Counties within CA CD 11. A team of observers was organized that placed two observers in Contra Costa County, two in Alameda County, one in San Joaquin County and five in Santa Clara County.

Issues that arose during the manual tally process included: the process of each county for “random selection” of 1% of precincts; the extent of openness allowed for observation; the physical method of conducting the hand count; the potential for RoV staff error in the count; and, the potential for manipulation of the vote.

Consistent attendance of volunteer observers at all manual tally sessions will always be difficult, particularly for all volunteer, campaign-based, election protection efforts after a candidate has won or conceded. The EPTF effort was no exception and attendance in all four counties for the duration of the 1% manual tallies was not possible due to factors such as family illness, number of days and hours necessary to complete the count and because of some loss of volunteer interest in the wake of a clear victory by McNerney. In order to accomplish observation of every step of the 1% tally in all four counties, a much larger group of volunteers devoted to full-time observation over days and weeks would be necessary. The EPTF was unable to sustain a group so large. The EPTF report findings are valid in their focus on what was observed but are necessarily limited by the inability to fully staff volunteers in this election cycle for the entire lengthy process required of a 1% manual count in four separate counties.

All four counties selected the 1% sample to be counted prior to completing the initial Statement of Vote. Only Alameda and Contra Costa County provide the SoV online. The EPTF is not aware of any system in the four counties for follow-up of problems encountered in the 1% manual tally. Any errors are dealt with ad hoc and corrected, but there seems to be no attempt to determine if problems may be more widespread. For example, in a number of instances discrepancies of one or two votes were noted in the Opti-scan votes. These apparently were resolved by correcting specific problems in particular paper ballots. In no instance did anomalies

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<sup>45</sup> Elections Code Section 15272 provides: “The count shall be public and shall be continued without adjournment until completed and the result is declared. During the reading and tallying, the ballot read and the tally sheet kept shall be within the clear view of watchers.”

lead to a wider examination. Occurrences in a small sample might be expected to occur in more samples but no effort was made by RoVs to follow up on the possibility of anomalous patterns.

### *Contra Costa County*

Contra Costa County used a publicly observed and transparent method of randomly selecting precincts for manual count. Three colored, ten-sided dice, contained in a sealed package, were presented and opened in full view of observers. The dice were rolled and the sequential face-up number results determined the precinct number to be included in the manual count. The hand count of votes in the dice-selected precincts was made under public observation. Observers stood close enough to see the ballots as read aloud and tallied by County employed election staff. Staff appeared comfortable with the presence of observers.

Electronic vote totals were not available to staff in advance of the hand count of the voter verified paper audit trail (VVPAT). Therefore, no bias could be formed to influence a hand count to coincide with a previously determined electronic vote total.

Difficulties were observed with paper ballot scanning. Contra Costa County election workers made efforts to rehabilitate<sup>46</sup> and count paper ballots that were rejected by optical scanners. If a ballot was rejected by the Opti-scan because of extraneous markings, the ballot was rehabilitated to reflect the voter's intent rather than discarding the ballot on technical grounds. However, scanning repetitions and rehabilitations were time-consuming because scanners did not appear able to consistently process the size of ballot used, particularly ballots that had been folded.

### *Alameda County*

Alameda County used a publicly observed and transparent method of randomly selecting the precincts to be hand counted. Alameda County used numbered balls picked from a rotated drum (the same system used in the past for jury selection). Each number drawn from the drum was put into a sequential order to determine the precinct number selected for inclusion in the manual count.

Alameda County made efforts to rehabilitate and count paper ballots that were rejected by optical scanners. Where ballots were rejected by the Opti-scan because of extraneous markings, the ballot was rehabilitated to reflect the voter's intent rather than discarding the ballot on technical grounds. EPTF volunteer manual count observers were not permitted close enough to the manual count to see any information on the DRE VVPATs, which adversely impacted the ability to perform a meaningful observation.

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<sup>46</sup> "Rehabilitation" refers to efforts of election workers to "rehabilitate" paper ballots that were rejected by the Opti-scan machine due to extraneous markings. Workers review the ballot to determine the voter's intent and mark a new ballot consistent with that intent and then re-scan the ballot. For example, a voter may mark a bubble next to the candidate's name and also write the candidate's name for emphasis. The extra writing causes rejection by Opti-scan but the voter's intent is clearly observable. A new paper ballot with the marked bubble, but without the candidate's name, is re-scanned and the vote is counted.

### *Santa Clara County*

Santa Clara County allowed unrestricted public observation of the 1 % manual count of paper ballots. EPTF volunteer observers were permitted close enough to see ballots being read aloud and tallied. However, observers were not permitted sufficiently close to DRE VVPAT counting to allow a meaningful observation. County election staff appeared comfortable with the presence of observers. Santa Clara County has an electronic sorting machine to sort absentee ballot envelopes by voting precinct as they are received at the RoV's office. The value of sorting absentee ballots by precinct is that ballots can be selected by precinct and compared with electronic totals in the Statement of Vote, a comparison not possible in counties where absentee ballots are hand counted from mixed-precinct boxes. Pre-sorting absentee ballots by precinct would also result in a minimized cost of a recount after the election, if requested.

Electronic vote totals were not given in advance to Santa Clara County personnel conducting the manual VVPAT counts. Thus, staff is beneficially “blinded” from knowledge of the electronic vote totals during the count. However, machine totals for absentee and paper ballots were known. Thus, staff was subject to suggestion of the number necessary to match paper to machine totals, which can compromise the reliability and integrity of the process.

Santa Clara County made efforts to rehabilitate and count paper ballots that were rejected by optical scanner to ensure votes reflect a voter’s intent rather than discard a ballot on technical grounds. Santa Clara County used computer software to generate random selection of precincts. There was no observation that selection was not random. However, the use of vendor generated computer software does not allow transparency in the process.

The Santa Clara County paper ballots were too large to go through scanners easily without producing time-consuming repetitions and rehabilitations. The scanners do not appear to be appropriately designed to process the size of ballot that is used, especially when that ballot has been folded.

### *San Joaquin*

San Joaquin County used a random number generator calculator, purchased “off-the-shelf” at a local office supply store, to generate random samples. The Assistant RoV’s experience with the calculator in previous employment with the California Department of Weights and Measures was considered by the RoV to be adequate experience for use of this random number generator method. The samples selected may have been random, but the lack of transparency in the process prevents a meaningful conclusion. The RoV contends that the ability to use dice or similar methods is not workable in San Joaquin because of the precinct numbering system that identifies precincts by categories such as by city, by mail ballot precincts and by absentee precincts. Nevertheless, the RoV stated that no future use of the calculator would be made due to lack of transparency concerns.

In San Joaquin County, observers were kept too far away from the hand count of the VVPAT tapes to allow meaningful observation. Observers noted errors during the manual count. The RoV reports that even a minor error in the count of any one precinct resulted in a complete

recount of that precinct. Given that San Joaquin County uses only DREs, the voter verified paper audit trail should precisely correspond to the electronic vote, but it did not, at least initially.

## **VII. Recommendations**

The McNerney Election Protection Task Force (EPTF) began with the premise that the 2006 general election should be monitored to assure integrity in the vote. The public will be satisfied in a fair and acceptable result if the process is fair and reliable. To assure the process is fair and reliable, the procedure must be accurate in receipt and recording of votes, counting of votes and reporting of votes. To determine accuracy, the process must be transparent and secure. Thus, achieving integrity in the result means assuring accuracy, transparency and security.

The EPTF recommendations are separated into three categories (Pre-election, Election Day and post-election) and three Criteria categories (accuracy, transparency and security). The observation is identified, categorized and the recommendation is stated. Some observations have combined categories.

### A. PRE-ELECTION

#### 1. Alameda County Voter Registration Status on Website - *Criteria: Accuracy*

*Observation:* In Alameda County, the Registrar of Voters website contained a search function that provided inaccurate information. Registered voters were advised they were not registered. Notice of the error by EPTF resulted in a modification that suggested voters call the RoV office to confirm registration. Notice of inaccuracy to affected voters was not given by the RoV.

*Recommendation:* RoVs should immediately acknowledge and take responsibility for errors and inaccurate information. Immediate public notice of RoV errors that affect potential voter disenfranchisement should be given with information to induce any voter action needed for correction.

#### 2. San Joaquin County Absentee Ballot Reporting - *Criteria: Transparency*

*Observation:* In San Joaquin County, there was no public reporting of absentee ballot signature rejections. It is unknown if other counties provided this information.

*Recommendation:* RoVs should make the number of absentee ballot rejections public as part of the official canvass.

#### 3. DRE Machine Supervision - *Criteria: Security*

*Observation:* In San Joaquin County, DRE machines were stored outside the supervision of poll workers in a locked garage or home, which has a potential for security breach

*Recommendation:* New procedural guidelines to address security of voting equipment at polling places should be drafted and implemented.

4. Raising Ballot Option Awareness - *Criteria: Accuracy*

*Observation:* Voters are unaware of the right to vote by paper ballot, nor of the purpose of the provisional ballot and poll workers.

*Recommendation:* RoVs should initiate a public campaign of voter education and post specific voter rights at polling places.

B. ELECTION DAY

5. Provisional Ballot Reporting - *Criteria: Transparency*

*Observation:* In San Joaquin County, acceptance or rejection of provisional ballots was not publicly reported. It is unknown if the other counties provided this information.

*Recommendation:* The numbers and results of provisional balloting should be made public as part of the official canvass.

6. Central Tabulation Observation - *Criteria: Transparency*

*Observation:* In San Joaquin County, the public is allowed to observe only from a position behind a glass wall 20 feet or more from workers at the Central Tabulating Center. Election workers are observable in performing tasks, but the information being processed, including on the GEMS server screen, is not observable.

*Recommendation:* Adequate room should be provided to observers to view the information processed and a second monitor for the GEMS server should be placed for observer viewing.

7. Observation of Voting Machine Security Seals - *Criteria: Security and Transparency*

*Observation:* In San Joaquin County, polling place procedures did not allow monitors to see voting machine security seals to check for tampering. It is unknown if the other counties allowed access.

*Recommendation:* Observation of seals by poll monitors should be allowed to check against tampering.

8. GEMS Server Security - *Criteria: Security and Transparency*

*Observation:* In San Joaquin County Central Tabulating Center, the GEMS server was positioned near modems, routers, telephone and networking equipment. Improper connection could easily have been made. Although assured by election workers that the equipment was powered down, the inability to adequately observe GEMS server on election night prevented confirmation of non-connection.

*Recommendation:* Modems, routers, telephone and networking equipment should not be in proximity to the GEMS server. The GEMS server should be observable to monitors.

9. RoV Employee Identification - *Criteria: Security*

*Observation:* In San Joaquin County, roving RoV employees (e.g., Field Inspectors) visited polling places to change VVPAT paper rolls. Monitors and poll workers could not verify Field Inspector employee status to assure that only proper personnel had access to the DRE machines.

*Recommendation:* Provide Field Inspectors and other RoV employees with official RoV identification badges with direction to show I.D. on request.

10. VVPAT Paper Rolls - *Criteria: Accuracy and Security*

*Observation:* In San Joaquin County, DRE printer and paper jams were major issues.

*Recommendation:* Poll workers should receive detailed training and hands-on experience with loading paper rolls and machine handling to prevent and/or correct paper jams. Alternatively, paper rolls can be preloaded before delivery to polling place and trained field technicians can change paper rolls.

11. VVPAT Effectiveness - *Criteria: Accuracy and Security*

*Observation:* Voters are often unaware that voter review of the VVPAT is necessary to ensure that voter intent is accurately recorded. Poll workers are often unaware that the VVPAT privacy flaps should remain in an open position.

*Recommendation:* Remove VVPAT covers entirely to allow open access for voter review. Have 'privacy flaps' available and on-hand at polling places for use by sight-impaired voters. Require all DRE touchscreen machines to include an onscreen prompt that reminds voters to check the VVPAT before casting a ballot. Institute a pre-election voter education program that includes the importance of reviewing the VVPAT before casting a ballot.

12. DRE Machine Testing - *Criteria: Accuracy and Transparency*

*Observation:* In San Joaquin County, some DRE machines had unresponsive buttons and failed to record voter preference.

*Recommendation:* In-depth failure analysis should be performed on any equipment reported with problems that should have been caught during Logic and Accuracy testing. Root cause analysis of DRE touchscreen issues is needed. The County and voting machine vendor should work together transparently on review, analysis and prevention. Testing protocols need review and revision for adequacy of testing methods.

13. Paper/Electronic Ballot Consistency - *Criteria: Accuracy*

*Observation:* In San Joaquin County, voter confusion was caused by the lack of consistency in the layout of candidate order and placement in sample ballot as compared to the electronic ballot.

*Recommendation:* Review sample and electronic ballot layouts to assure consistency in matching the order of candidates in the sample with the order on the electronic ballot.

14. Paper Ballot Supply - *Criteria: Accuracy*

*Observation:* In San Joaquin County, in contravention of a Secretary of State directive, polling places ran out of paper ballots.

*Recommendation:* Review the number of paper ballots used in 2006 general election to develop a system for a sufficient sample ballot inventory at each polling place.

15. Paper Ballot Security - *Criteria: Security*

*Observation:* In San Joaquin County, marked and cast paper ballots were observed unsecured on tables. Delivered absentee ballots were observed in non-secured bags and cases.

*Recommendation:* Provide locked ballot boxes for absentee, paper and provisional ballots for secure storage at polling places.

16. Paper/Provisional Ballot Procedures - *Criteria: Accuracy*

*Observation:* In San Joaquin County, poll workers confused the receipt of paper ballots with the process for receiving provisional ballot envelopes.

*Recommendation:* Clarify procedures for differentiating paper and provisional ballots in poll worker instructions and training.

17. Long Voter Lines - *Criteria: Accuracy*

*Observation:* Long lines of voters were common. In some polling places with multiple precincts, long lines existed at one precinct but not another.

*Recommendation:* Review polling places and precincts to develop a model that takes into account the time necessary to vote and review the VVPAT, the nature of precinct neighborhoods, and, determine peak voting times. Supply polling places with an adequate number of machines based on the model. Train poll workers to relieve long lines by offering paper ballots to voters or allowing use of machines from other precincts within the same polling place.

18. Adequate Equipment Supplies - *Criteria: Accuracy*

*Observation:* Long lines were often caused by insufficient number of available voting machines due to machine breakdown. Spare equipment appeared to be in short supply and unavailable where necessary.

*Recommendation:* Counties should review the inventory and availability of spare equipment. Counties should compare the efficiency and reliability of DRE machines to alternative equipment (e.g., Opti-scan) and select usage based on the results. In Counties where usage of DRE machine continues, inventory should increase and repair time improved. A reliable back up system should be in place in case of failure. Poll worker training should include procedures for prompt response to equipment failure and the use of paper ballots.

19. Multiple Precinct Polling Places Vote Totals - *Criteria: Accuracy and Security*

*Observation:* In polling places with multiple precincts, voters often used machines that were not from their precinct. But Statement of Vote results were reported by precinct and, thus, do not accurately reflect the vote. Totals from posted results could not be checked against the Statement of Vote due to the mixing.

*Recommendation:* Clarify use of machines at polling places by precinct. Additional voting systems may alleviate the need to use machines from another precinct. Add issue of cross precinct voting to poll worker training, but only to alleviate long voter lines.

20. Adequate Polling Place Space - *Criteria: Security*

*Observation:* Some polling places were small and compromised voter privacy.

*Recommendation:* Locate polling places with adequate space or reconstitute polling place into a mail precinct.

21. Posting Summary Total Reports - *Criteria: Transparency*

*Observation:* In Santa Clara County, the RoV did not post summary total reports at all. In San Joaquin County, some poll workers did not post the summary totals; other poll workers refused to allow monitors to observe the closing.

*Recommendation:* Printing and posting of the Summary Totals Reports should be mandatory by law. RoVs should include the requirement of printing and posting Summary Totals Reports in training and in the Closing Checklist on the poll workers' handbook.

22. Public Monitoring - *Criteria: Transparency*

*Observation:* Field inspectors gave incorrect information to poll workers regarding the public's right to monitor. Collection center employees blocked observers and were intimidating.

*Recommendation:* Clearly define and train Field Inspectors on duties and limits of duties. Provide in-depth training to Field Inspectors, including a chain of command for decision-making from poll worker to Field Inspector to RoV. Clarify poll worker training on the role of poll watchers and monitors. Provide training to Collection Center employees on the role of poll watchers and monitors and citizen observers.

23. Public Monitoring - *Criteria: Transparency*

*Observation:* In San Joaquin County, while many poll workers were very cooperative, some poll workers were rude and intimidating to monitors. Poll workers at collection centers refused to provide identification and some hid identification from monitors.

*Recommendation:* Provide training to poll workers on dealing with the public in a respectful way.

24. Electronic Equipment - *Criteria: Transparency, security, and accuracy*

*Observation:* San Joaquin and Santa Clara Counties use touchscreen DREs as their primary method of voting which present a number of issues inherent in the machine.

*Recommendation:* Precinct based optical scanning circumvents many DRE machine issues and is recommended over DREs. Additionally, the Opti-scan allows a more efficient 1% manual tally process.

25. SJC Provisional Ballot Procedures - *Criteria: Transparency*

*Observation:* In San Joaquin, provisional ballots were placed on the DRE machines. The end of day posted totals included these provisional ballots. This also caused confusion at the 1% manual tally when the provisional votes were skipped and the tally did not match the summary at the end of the VVPAT roll. In addition, posted totals could not be matched precisely to the SoV.

*Recommendation:* Provisional ballots should be cast by paper ballots rather than by DRE machine.

26. Reporting Precinct Vote Data - *Criteria: Transparency*

*Observation:* Summary Total Reports (STR) posted at closing of polls did not match the Statement of Vote because unverified provisional votes are included, and paper ballots are not included, in STRs but are all combined in the Statement of Vote. Comparison of precincts from STR to SoV cannot be made.

*Recommendation:* With the SoV, also publish a list that includes the precinct numbers voting at each polling place to ease the calculation of the group comparison. Publish the tallies per precinct with separate sub tallies of DRE ballots and written ballots in the SoV.

C. POST ELECTION – 1% Manual Tally

In February 2006 a subcommittee of the Alameda County Citizens Advisory Group to the Registrar of Voters released a report on proposed best practices for conducting the 1% tally pursuant to relevant Elections Code Sections.<sup>47</sup> The RoV practices on the 1% manual tally in the four McNeerney counties were observed and evaluated based on those criteria as identified in quotes below.

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<sup>47</sup> See <http://www.countedascast.com/docs/Principles-Criteria-For-Random-Audit.pdf>

27. Sample Selection Method - *Criteria: Transparency* “The method of selecting samples should be fair, open to public observation and inspection and easy to understand and verify. It should be random and understood to be so by the general public...”

*Observation:* Contra Costa used three colored 10-sided dice, which were presented sealed in their packing and opened in full view of public observers. Alameda County used numbered balls picked from a rotated drum in full view of public observers. San Joaquin used an “off-the-shelf” random number generator, not in full view of public observers. Santa Clara County used computer software to generate random samples.

*Recommendation:* San Joaquin and Santa Clara should switch to open, transparent, and easily understood methods of choosing samples and publicize the selection. Contra Costa and Alameda Counties used acceptable selection methods.

28. 1% Sample Selection - *Criteria: Security* “The 1% sample should be selected and the audit carried out only after all counting of ballots is complete and a preliminary Statement of Vote is completed. No changes should be made to the Statement of Vote until the 1% audit is completed; the SoV should be ‘frozen’ before the random sample is selected and the audit is begun.”

*Observation:* All four counties selected the 1% sample prior to completing the initial Statement of Vote.

*Recommendation:* A publicly available, frozen statement of vote prior to random selection of units to audit eliminates any possibility of manipulation in an open, transparent manner. If the selection of units for hand count occurs prior to completion of the interim statement of vote, all ballots not yet counted should be enumerated and set aside for separate analysis and separated in the final Statement of Vote. If those votes are provisional ballots, a separate report of those provisional ballots should be a part of the final Statement of Vote.

29. Public Observation - *Criteria: Transparency:* Full, public, meaningful observation of the process of hand counting the paper ballots or audit trails.

*Observation:* Observation of the hand count of paper ballots was public in Contra Costa County and Santa Clara County. Observers were able to stand close enough to see the ballots being read and tallied. In Alameda County, San Joaquin County, and in Santa Clara County's counting of the DRE voter verified paper audit tapes, observers were not permitted sufficiently close to the process to achieve a meaningful observation.

*Recommendation:* Observers should be allowed to be to see both the actual votes or audit trail in a meaningful way.

30. Purpose of Hand count - *Criteria: Accuracy* “The purpose of the hand count of the 1% sample is ‘to verify the accuracy of the automated count.’ We understand this to mean that it

should be a genuine and independent test or audit of the accuracy and completeness of the official Statement of the Vote.”

*Observation:* For a genuine and independent audit, counters should not know the Statement of Vote results prior to counting. In Santa Clara, Contra Costa and San Joaquin County the VVPAT hand counters were not told the electronic totals in advance. In Santa Clara County the machine totals were known in advance by counters of absentee/paper ballots.

*Recommendation:* To prevent bias, the electronic machine vote totals should not be known to 1% manual hand counters before the hand count is performed. Knowledge of Statement of Vote results prior to the hand count compromises the reliability of the process and should be discontinued.

31. Categories - Criteria: Transparency - “The categories from which the 1% hand count are selected and counted should be exactly the same as the categories reported by the Registrar of Voters in the Election Summary Report and in the preliminary and official Final Reports and Statements of Vote.”

*Observation:* Counties report results by precinct using the tabulation and reporting software provided with their systems but do not always break the precinct results down into absentee and polling place votes. Except in Santa Clara County, absentee ballots are not physically sorted by precinct. Rather, absentee ballots are part of the 1% tally by batch or box. The Statement of Vote results by precinct cannot be matched to the tally. Only Alameda and Contra Costa County provides online access to the Statement of Vote.

*Recommendation:* All counties should provide the interim Statement of Vote, the final Statement of Vote, and the results of the 1% manual tallies in a format useable by different computer programs, which can be downloaded and analyzed. The interim Statement of Vote should be broken down in the same units as the votes were counted, i.e., absentee ballots by batch and not by precinct. In 2008 all counties will be required by law to sort ballots by precinct. (EC 15360(a))

32. Discrepancies - Criteria: Accuracy “The Registrar of Voters should consider in advance how to handle any discrepancies that may be discovered during the 1% audit.”

*Observation:* No county identified procedures for follow-up to troubleshoot problems encountered in the 1% manual tally. Errors are reviewed ad hoc and corrected. No attempt by RoVs was observed to determine whether problems encountered were widespread or systemic.

*Recommendation:* The results of the 1% manual tally should be published in a report by the RoV. The report should include anomalies found, efforts made to find the source, and whether there were wider implications that required further action investigation or action.

33. Ballot Rehabilitation - Criteria: Accuracy

*Observations:* Contra Costa and Santa Clara Counties made efforts to rehabilitate and count paper ballots that were rejected by optical scanners to reflect the apparent intention of the voter. Other County efforts in rehabilitation of paper ballots were not observed by EPTF.

*Recommendation:* All counties should process absentee ballots to reflect obvious voter intent.

34. Ballot Design - *Criteria: Accuracy*

*Observation:* In Contra Costa and Santa Clara Counties, paper ballots were too large to go through scanners easily without producing time-consuming repetitions and rehabilitations. Scanners do not appear to be appropriately designed to process the size of ballot that is used, especially when that ballot has been folded.

*Recommendation:* Ballot design should take into account scanner requirements.

35. VVPAT Paper Roll - *Criteria: Accuracy*

*Observation:* The San Joaquin County VVPAT paper roll was difficult to read and process on the spool arrangement.

*Recommendation:* The RoV should follow up with others that use rolls for audits to find best practices and institute more efficient procedures.

36. Audit Timeliness - *Criteria: Accuracy*

*Observation:* Counties started the audit early to accommodate the time necessary to complete the count before the deadline set by law to certify the election.

*Recommendation:* The time required to perform the audit requires study to ensure that an adequate number of teams are performing the audit to meet the state certification deadline. Sufficient time is necessary to investigate discrepancies found during the tally.

## **VII. Conclusion**

The McNerney Election Protection Task Force Report shows a slice of time in an evolving electoral process. Numerous new electronic voting, recording and counting technologies are being introduced, modified and reintroduced. New laws have been promulgated to address the concerns of government, citizens and voting rights advocates. National, state and local government, partisan political interests, partisan and non-partisan activists and citizens are engaged in efforts to bring integrity to the process and confidence in the results. But the current electoral system is not acceptable.

Citizens who are paid a modest sum to tend polling places on Election Day are patriotic and devoted. Citizens who volunteer to observe the polls on Election Day are equally patriotic and show a remarkable devotion to their duties. Local government employees that regularly work election cycles are dedicated civil servants, motivated to perform prescribed duties. Yet, good motivations of volunteer and paid workers are not sufficient to assure a fair election.

Voting is basic to the exercise of democracy. The integrity of the system, not operational efficiency, is the critical element. The promise of new technology and systems also brings new

ways to manipulate votes, which must be guarded against. With the introduction of developing technology, integrity in the process must not be compromised. Guarantees of security are less effective than transparency in assuring integrity of process.

The McNerney Election Protection Task Force sought to monitor transparency in the voting process wherever possible with a fervent belief that a fair election would provide an acceptable result no matter which candidate was declared the winner. The 2006 mid-term election was not perfect, was not entirely transparent and was not without security flaws that leave the system vulnerable to manipulation. We are pleased to report that for the vast majority of election officials and workers encountered, EPTF monitors observed a good faith effort to implement a fair election. EPTF found no verifiable intent to manipulate, alter or change vote results. EPTF is unable to make a judgment on the effectiveness of efforts to eliminate all potential manipulation because current procedures and systems do not allow accurate verification.

There is much room for improvement in many critical areas. The greatest challenges to election integrity that emerge from our assessment are transparency in electronic voting, the need for better education of voters, better training of election workers and more openness in the election process. Electronic voting requires significantly more transparency, significantly better independent verification procedures and significantly better security. Voters need information about voting rights and how the new technology is properly used. Election workers need better training on process implementation, machine operation, voter rights and the right of citizens to observe and monitor elections. Political candidate and issue campaigns need information about the ways to support and protect fair elections through coordination of efforts similar to those of the McNerney EPTF.

Election officials and administrators can work cooperatively with non-governmental organizations to improve the elections process. This includes a willingness to be open-minded to suggestions that improve the process and, particularly, a willingness to explain the reasons for rules, regulations and conduct. Sharing information and ideas will lead to mutually productive working relationships.

Importantly, we believe the dialogue on election protection should not end with certification of election results. Rather, election cycles are continuous and voting integrity is as important in a local mayoral race as in a presidential election year. Both provide information and experience that can be useful and productive to improve the next cycle that is soon to arrive.

## **List of Acronyms**

BMD –	Ballot Marking Device
CA CD 11 –	California Congressional District #11
CDP –	California Democratic Party
DCC –	Democratic Central Committee
DRE –	Direct Electronic Recording Voting Machine
EC –	California Elections Code
EPTF –	McNerney Election Protection Task Force
GEMS -	Global Election Management System
GOTV –	Get Out the Vote
HAVA –	Help America Vote Act, 2002
P2TV –	Promote and Protect the Vote
PBOS –	Precinct Based Optical Scan machine
PBS –	Public Broadcasting System
RoV –	Registrar of Voters
SJC –	San Joaquin County
SoS –	California Secretary of State
SoV –	Statement of Vote
STR –	Summary Total Report
VVPAT –	Voter Verified Paper Audit Trail

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## **List of Charts**

- Chart # 1 - “Election Equipment Used in CA CD 11 Counties, November 2006”).
- Chart # 2 - “Election Day Operations Structure,”
- Chart # 3 - “Monitor and Precinct Information by County”
- Chart # 4 - “Number of Precincts monitored with and without incidents in San Joaquin”
- Chart # 5 - “Number and Type of Incidents Per County”
- Chart # 6 – “San Joaquin Reported Incidents by Issue Type”

**APPENDIX 1**

**SAN JOAQUIN COUNTY INCIDENT DETAIL**

<b>Stockton Incident Summary</b>					
Voting Issues	3				
Machine Issues	59				
Pollworker Issues	61				
	123				
<b>Stockton Incident Detail</b>					
<b>Voting issues</b>					<b>3</b>
	Intimidation				1
	Polling Place issue				1
	Mis-marked ballot				1
<b>Machine issues</b>					<b>59</b>
	Access card and machine				4
	Disabled accessibility				1
	Cover Closed				6
	Long lines				10
	Machine (DRE) breakdown				14
	Audio dropped candidate				1
	Battery power low				1
	Error message				1
	Fails to power up/not working				3
	Hard to read				1
	Mechanical				1
	Memory card issues				2
	Unresponsive buttons				3
	Wrong screen				1
	Paper Jams				13
	Printer Issues				6
	Seals broken				2
	Totals not posted - machine issue				3
<b>Pollworker issues</b>					<b>61</b>
	Access cards lost				1
	Chain of custody to collection center				3
	Confusion - general				1
	Confusion on paper and provisional ballots				6
	Confusion on polling place				1
	Covers closed and PW unwilling to keep open				2
	Hostile/Rude				7
	Kudos				3
	Long lines preventable by PW				1
	Missing ballots				3
	Missing equipment				5
	Obstructed Monitoring				13

	Polling place not private				2
	Poor behavior				6
	Signage/gates				1
	Totals not posted - pw issue				6
<b>Tracy Incident Detail</b>					
<b>Voting issues</b>					<b>0</b>
<b>Machine issues</b>					<b>61</b>
	Access card and machine				9
	Disabled accessibility				1
	Cover Closed				7
	Long lines				7
	Machine (DRE) breakdown				21
		Fails to power up/not working			4
		Freezes			1
		Hard to read			1
		Incorrectly displays voter preference			2
		Mechanical issues			2
		Miscellaneous			3
		Red line on display			3
		Unresponsive buttons			4
		Wrong screen			1
	Paper Jams				13
	Printer Issues				3
	Seals broken				0
	Totals not posted - printer issue				0
<b>Pollworker issues</b>					<b>30</b>
	Chain of custody to collection center				0
	Confusion - general				0
	Confusion on paper and provisional ballots				4
	Confusion on polling place				1
	Covers closed and PW unwilling to keep open				3
	Hostile/Rude				4
	Kudos				0
	Missing ballots				0
	Missing equipment				1
	Obstructed Monitoring				6
	Odd vote totals				1
	Polling place not private				0
	Poor behavior				2
	Signage/Gates				1
	Totals not posted- PW issue				7
<b>Other Incident Detail</b>					

<b>Voting issues</b>						<b>0</b>
<b>Machine issues</b>						<b>6</b>
	Access card and machine					
	Disabled accessibility					
	Cover Closed					1
	Long lines					1
	Machine (DRE) breakdown					
	Unresponsive buttons					
	Fails to power up/not working					
	Memory card issues					
	Machine not working					1
	Paper Jams					
	Printer Issues					1
	Seals broken					1
	Totals not posted - printer issue					1
<b>Pollworker issues</b>						<b>4</b>
	Chain of custody to collection center					
	Confusion - general					
	Confusion on paper and provisional ballots					
	Confusion on polling place					
	Hostile/Rude					1
	Kudos					
	Missing ballots					
	Missing equipment					
	Obstructed Monitoring					3
	Polling place not private					
	Poor behavior					