

Santa Cruz County Grand Jury



2006-2007

Final Report



County of Santa Cruz

GRAND JURY

701 OCEAN STREET, ROOM 318-I
Santa Cruz, Ca 95060
(831) 454-2099

June 28, 2007

Your Honor Judge Almquist and Citizens of Santa Cruz County,

We respectfully offer our report to the citizens of Santa Cruz County with the hope that we have contributed to the transparency of government and a deeper understanding of our county services. We have researched each report as thoroughly as possible and gathered a depth and breath of knowledge that could not have been gained in any other way. In so doing, the Grand Jury has followed a tradition that dates back to medieval England's King Henry II.

The practice of overseeing local government was included in the formation of the colonies and incorporated into the writing of the U.S. Constitution. In California, the Grand Jury system has existed in every county since 1850. It has the charge to examine local governmental agencies and effect change by producing findings, recommendations for improvement and commendations. The title "Grand" refers to the seating of a panel of 19 members instead of 12 in the criminal jury system.

Santa Cruz County is one of the few remaining counties to select their jurors from the list of voters and vehicle registrations. The jurors are selected in a drawing after going through a selection process to assure representation from each of the supervisorial districts and interviews with the presiding judge. Now that the work is completed in the Santa Cruz Grand Jury Report of 2006-07, we will pass the torch to the next year's jurors.

Each of us as jury members gained new and unexpected insights that greatly helped us meet the challenges that we faced, and I would like to offer my sincere thanks to each member for being willing to work diligently and professionally to the end of our term of service.

We would also like to thank those who provided material during our investigations, thereby helping to set a higher degree of accountability and endeavor to benefit our County. Due to the fact that an average citizen has limited time to observe and ask questions of their governing body, we, the jury, sought to be the ears, eyes and voice in your quest for excellence in government.

Sincerely,

A handwritten signature in cursive script, appearing to read "Yamindra KanagaSundaram".

Yamindra KanagaSundaram
Foreperson
2006-2007 Grand Jury of Santa Cruz County

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Introduction to the Santa Cruz County Grand Jury

Two Types of Grand Juries in Santa Cruz County

As with many California counties, Santa Cruz County has two types of Grand Juries. The regular, or civil, Grand Jury is an investigative body that serves for one year. There are nineteen members on the jury. The civil Grand Jury is not involved with trials but rather serves as a watchdog over local government and other tax-supported entities.

The other Grand Jury is a criminal Grand Jury that deals with issuing indictments (charging a person with a criminal or public offense). This jury is called up as needed on a case-by-case basis.

Duties and Powers of the Civil Grand Jury

The Civil Grand Jury has three primary functions:

- To randomly audit local governmental agencies and officials.
- to publish its investigative findings and recommendations toward improving those governmental operations in the interest of the community being served.
- To investigate citizens' complaints.

The Civil Grand Jury investigates local government agencies and officials to evaluate if they are acting properly. If a Grand Jury determines that they are not, it has various options. The most frequently used option is the presentation of a report outlining the Grand Jury's findings and recommendations in the matter. Such reports are public and sometimes attract media attention. Agencies or elected officials discussed in the report must respond specifically to the report's findings and recommendations according to a specific timeline.

Citizens may file complaints with the Grand Jury to request that it investigate what they perceive as wrongdoing by a public agency, such as a school district or a police department. The Jury decides if a complaint has merit and is not obligated to pursue every complaint. County complaint forms are available from the following address:

Santa Cruz County Grand Jury
701 Ocean Street, Room 318-I
Santa Cruz, CA 95060
(831) 454-2099
FAX (831) 454-3387
grandjury@co.santa-cruz.ca.us
www.co.santa-cruz.ca.us/grandjury

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**Grand Jurors
2006-2007**

Yamindira KanagaSundaram, Foreperson

Margaret Cheney

Carol Felton

Janette George

Hilary Hamm

Carol Hara

Bill Hay

Jonathan Krupp

Armand Langmo

Charlie McFadden

Pat Rex

Eric Rice

Bob Shaw

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2006-2007 Santa Cruz County Grand Jurors, from left: Pat Rex, Hilary Hamm, Carol Hara, Janette George, Jon Krupp, Margaret Cheney, Bill Hay, Charlie McFadden, Eric Rice, Bob Shaw, Armand Langmo, and Yamindira KanagaSundaram. Not pictured: Carol Felton



Santa Cruz County

Grand Jury

Final Report:

Section 1
Audit and Finance Committee Reports

Window Dressing or Effective Oversight? Citizen Oversight Committee, Measure D Bonds Cabrillo Community College District

Synopsis

An investigation was completed to determine if the Cabrillo Community College District had clearly identified and described the projects proposed to the voters and effectively initiated, structured and implemented the Citizen Oversight Committee (COC) required as part of Measure D, a \$118.5 million Bond Fund passed by county voters in March 2004. The investigation reviewed the performance of the oversight committee, including its reports to the public. The investigation did not reveal any misappropriation of funds or any violations of the law or regulations in the creation and operation of the committee. However, it did reveal several areas where the district and the committee could improve oversight and provide greater transparency to the public in the expenditure of the bond funds.

Definitions

COC

Citizen Oversight Committee.

Independent Audit

An audit by a Certified Public Accountant of the financial statement of the District's Measure D Bond Fund and a performance audit to assure that funds have only been expended on voter approved projects.

Measure D Funds

The \$118.5 million Measure D Bond Funds passed by the County voters in March 2004 to use for construction, rehabilitation and leasing of school facilities.

Background

Legislation

Proposition 39, an initiative constitutional amendment and statute, was passed by state voters in November of 2000. It amended the California Constitution and resulted in a revision to the California Education Code. It provided for a 55% vote to pass local bond measures, in lieu of the standard 2/3 vote requirement, if specific accountability requirements were incorporated in the bond measure. These "accountability requirements" (Article XIII A Sec 1 (b) (3) of the California Constitution) for school bond measures are summarized as follows:

- Must require that funds can only be spent for construction, rehabilitation, and/or leasing of facilities including furnishings and equipment.
- Must contain a list of specific school facilities projects to be funded.

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- Must require an independent annual performance audit to ensure that funds have only been spent for the projects listed in the measure.
- Must require an independent annual financial audit until funds have been spent.

In addition, California Education Code Sections 15278-15282 directs that the bond measure require the formation of an independent Citizen Oversight Committee. Its purpose is to inform the public as to the district’s compliance with the above accountability requirements. The scope of its activities is divided into two categories, required and optional, as follows:

Required	Optional
<ol style="list-style-type: none"> 1. Ensure that the district conforms to accountability requirements. 2. Ensure that the district does not spend these funds on salaries or other operating expenses. 	<ol style="list-style-type: none"> 1. Receive and review performance audits. 2. Receive and review financial audits. 3. Inspect school facilities and grounds. 4. Receive and review deferred maintenance proposals. 5. Review efforts by the district to implement cost-saving measures

The Education Code also specifies that the Citizen Oversight Committee shall:

- Consist of a least seven members. Four members shall come from specified interest groups.
- Have members who are not district employees, officials, contractors, vendors or consultants.
- Have members who serve for a term of two to four years without compensation.
- Receive from the district all necessary technical and administrative support to further its purpose.
- Hold meetings open to the public with published meeting minutes.
- Report on its activities to the public at least once per year.

Measure D bonds for the Cabrillo Community College District for \$118.5 million committed the district to incorporate statutory requirements described above to qualify for the 55% voter approval standard.

Status of Measure D funds

Design and construction is well under way on a number of projects. Some projects are complete. As of June 30, 2006, \$24.4 million had been expended and a total of \$101. 2 million had been committed. The oversight committee has published two annual reports, and two annual financial and performance audits have been conducted. Enough work has been completed to allow an initial evaluation of the performance of the district and the Citizen Oversight Committee in meeting their obligations under Measure D.

Voter Pamphlet Information

The California Constitution requires that a bond measure contain a list of specific school facility projects for accountability purposes. The list contained in the voter pamphlet for Measure D was organized into a paragraph format naming categories of projects, albeit with some specific projects noted. This specific list is not used in subsequent documents as the projects are reported on and tracked. In fact, a new approach to the list is developed for each type of report. The following illustrates the point:

Voter Pamphlet (VP).....	9 categories of projects
Master Plan of November 3 2004 (referenced in VP).....	29 projects/categories
COC 1 st Annual Report (2005).....	17 projects/categories
2005 Audit Report.....	8 projects/categories
2006 Audit Report.....	7 projects/categories
COC 2 nd Annual Report (2006).....	22 projects/categories
Master Plan, Measure D Project list January 18, 2007.....	70 projects

It’s understood that the format of the project descriptions used for the voter pamphlet may have been drafted for ease of reading; however, this format makes the reporting and accountability to the public problematic. It is not as transparent as it could be.

The reference to the District Facilities Master Plan and the November 3, 2003 amendment is not very helpful either. Even if a voter were to take the trouble to find this document, the amendment still deals largely in categories of projects, not strictly a list of specific projects. The net effect is that the specific project list is more obscure than necessary.

It seems clear from the language of the law that there is to be a certain level of specificity in the project list. It states, “A list of specific school facilities projects to be funded...” shall be included in the proposition as an “accountability requirement” (Article XIII A Sec 1 (b) (3). If the list is specific, clear and well defined, it will be traceable in reports to the public as to when funds are expended and when they are not. Accountability will thereby be maintained. It should start with the master plan and the voter pamphlet and then be carried through to other reports and documents.

It is recognized that the list will change somewhat over time to adjust to unforeseen circumstances. This should be covered by annotations to the list. There is no suggestion that anyone is trying to mislead the public, but the public has a right to understand what they are voting for and what they are getting as the projects progress.

Independence of the Citizen Oversight Committee

The Education Code stipulates that an oversight committee member shall not be an employee, or an official of the district or a vendor, contractor or consultant to the district. In order for the committee to provide objective oversight, this independence is essential. It appears that the district has met the letter of the law. The question remains as to whether this specific legal requirement is all that is necessary to provide credible independent oversight.

There are several practical things that the district could do to enhance the independence and thus the credibility of the oversight committee and the district's standing in the eyes of the public. The normal review functions could include additional items which may result in recommendations to the board for consideration. After a response from the board, the oversight committee would go on record with its acceptance or its objection. Some examples that the committee could undertake are:

- By-laws
- Selection of the independent auditor
- Audit scope and methodology (prior to the audit)
- Final audit report (prior to board acceptance)

Citizen Oversight Committee Membership

The seven-member minimum requirement listed in the Education Code allows for five members from interest groups (a business person, taxpayer, senior citizen, representative from a college support organization and a student) as well as two at-large members not belonging to one of these groups. Since it is likely that some expertise that would benefit the committee in its work would be found in the at-large members, the possibility of increasing the number of members to bring a broader range of expertise should be considered. The argument that more at-large members would dilute the voices of the stipulated interest groups is true. However, that was already contemplated in the law when it stipulated that seven members is a minimum.

There are a number of specific areas of expertise that could be invited in press releases and other solicitations and should be given weight in consideration for COC membership. Some of these areas are as follows:

- Accounting
- Financial Management
- Auditing

- Construction
- Construction Management
- School Administration
- Experience with DSA
- Value Engineering

Citizen Oversight Committee By-Laws

The committee's by-laws were prepared by the district and issued to the committee. The by-laws authorize facility inspections and review functions for: the audit report, deferred maintenance proposals and cost-saving measures when offered by the district. The available meeting minutes do not reflect any review of deferred maintenance and cost saving proposals.

The by-laws do not define the process to deal with concerns or issues raised by the oversight committee itself. They do not authorize a committee role in working with the district to establish priorities when projects are delayed or cancelled, as suggested by the text of Measure D. In fact, the by-laws devote twice as much space to what the committee is not authorized to do than what they are authorized to do.

Independent Audit Report

The performance audit dated June 30, 2005 reported on some categories of projects traceable to the Master Facilities Plan and the November 3, 2003 amendment, but not on a complete specific project list that could be regularly monitored in future reports. It did not list the authorized projects for which no funds have been expended. Such listing may not be required by the law but would enhance transparency and aid the voter in understanding the status of the Measure D projects. This first audit report does not mention the total number of invoices paid with Measure D funds and the number of invoices checked and their total value. Such numbers would give a better insight to the scope of the audit and the basis for accepting the conclusions of the audit. It merely states that they found no non-compliances. Since we do not know the size of the sample and the total number of invoices, the Grand Jury does not have a basis for judging the reliability of the implied conclusion that there have been no misappropriations of funds.

The performance audit dated June 30, 2006 has similar shortcomings. Although the inspected invoices (totaling 25% of expended funds) are listed, the total available invoices for inspection are not listed. Furthermore, the 25% value was not applied to each category of expenditure. All that is certified is that they found no misappropriations in what they looked at. We, therefore, do not have an independent auditor's opinion that there have been no misappropriations of funds.

Construction Quality Control and Construction Safety Programs

The Citizen Oversight Committee appears to have no role in the review of construction quality control and construction safety programs. Although such a role is not required by

law, one might expect that the committee would insist on seeing program documentation to confirm that such programs are in place. Quality control problems could have a serious impact on cost and schedule. The public is reliant on the district to oversee these functions. The district contracts with contractors, the construction manager and inspector of record to assure quality and safety. However, in order to manage these areas and ensure compliance, an agreement on the definition of roles and responsibilities is critical.

The district has not fully implemented or defined an integrated program that captures all construction activities. The design team and the construction contractors play the key role, but the oversight function of the district over the contractors, construction manager and the inspector of record is critical to such projects. Many elements are in place, but there is no single document for each of these two areas that defines the role and responsibilities of all the parties.

Findings

1. The specific project list which defines for the voters what they are voting on is not clear and consistent in the District Master Plan, voter pamphlet, COC Annual Report and the performance audits.
2. The district has narrowly interpreted (as reflected by the development and provisions in the by-laws) the requirement for COC independence. It meets the minimum membership requirements specified in the California Education Code.
3. The district limited the membership to the legally required seven members and did not pursue expanding the number of members to obtain relevant expertise on the oversight committee to provide more effective oversight.
4. The Citizen Oversight Committee by-laws were, in effect, imposed on the committee without significant discussion or a vote by the committee members. These by-laws limited the committee's authorized activities (only four listed activities) to less than what was communicated to the voters that is to "work with the Citizen's Oversight Committee on prioritizing ... projects..." per the voter pamphlet.
5. The independent performance audit reports by two CPAs did not express an opinion about whether or not there had been any misappropriation of funds.
6. The district has not defined and published an integrated construction quality control program document and a construction safety program document for the Measure D projects.
7. One inspector of record did not agree that he had responsibility for what was called "quality control" by the construction manager.

Conclusions

1. Greater transparency can and should be achieved in tracking projects. In order for the oversight committee, auditors, district staff and the public to track the specific projects throughout the life of the Measure D program, it is necessary for the district to define and maintain a consistent, detailed specific list in all the public documents.
2. The oversight committee would be more credible and effective if it were to function with more independence and a broader scope of authorized activities.
3. The oversight committee could be more effective if it were to have members with expertise covering more of the relevant Measure D program activities.
4. The oversight committee should be given the opportunity to review, discuss, propose and then formally adopt its own by-laws.
5. The performance audits are not adequate to establish, with credibility, that there have been no misappropriations of funds.
6. Some projects have had significant quality control problems. One inspector of record was released from the program by the district in part due to disagreements over the inspector's role in quality control. With regard to construction safety, there have not been major safety incidents to date. In both these areas, however, a more defined and rigorous approach to management is needed.
7. The members of the COC are sincere and civic minded. They deserve our thanks for being willing to serve. Furthermore, the district staff was found to be cooperative and competent in their dealings with the Grand Jury.
8. The oversight of the Measure D Bond projects is more than "window dressing," but it can be improved.

Recommendations

1. For bond measures, the district should develop a clearly numbered specific facilities project list for the voter pamphlet and use that specific list in future tracking and reporting.
2. For future Citizen Oversight Committee annual reports, the committee should develop a specific facilities project list that translates all of the Measure D project categories to a project list and identifies those projects for which Measure D funds are planned but have not been expended to date.
3. The independence of the oversight committee should be strengthened. The committee should be more proactive and take the following steps with the district's concurrence and cooperation:
 - Review, recommend changes to the district, if any and, formally adopt the by-laws, with or without comments.

- Review and formally comment on the selection of the independent auditor prior to the appointment.
 - Review and formally recommend changes to the District, if any, on the audit scope and methodology prior to the audit being conducted.
 - Review and comment to the District on the final audit report and formally accept with or without comments.
4. Increase efforts to solicit membership in the Citizen Oversight Committee to a broader audience such as with newspaper advertisements and/or announcements inviting individuals with specific relevant expertise to apply.
 5. Revise by-laws to describe the process for resolving issues of concern to the oversight committee.
 6. Revise by-laws to include the committee's role in prioritizing projects for delays or cancellations as described in Measure D.
 7. The district should document the roles and responsibilities of the district, the construction manager, the contractors and the inspector of record for construction quality control and safety.
 8. In the future, the auditor should use a more specific facilities project list.
 9. In future audits, the processes and a sufficient number of invoices should be tested to allow the auditor to render an opinion with a high and defined level of confidence that there has been no misappropriation of funds.
 10. In future audits, the auditor should report on the number of invoices examined and the total invoices processed for the Measure D fund.

Responses Requested

<i>Entity</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within</i>
Cabrillo Community College Governing Board	1 - 7	1 - 10	90 Days October 1, 2007

References

Documents

Voter Pamphlet for Santa Cruz County March 2, 2004
Cabrillo College District Facilities Master Plan November 3, 2003 update
Cabrillo College District Facilities Master Plan March 7, 2007 update
Cabrillo College Organizational Chart dated September 2, 2004
Citizens Oversight Committee Annual Report March 2004 through June 2005
Citizens Oversight Committee Annual Report March 2005 through June 2006
COC Meeting Minutes dated August 24, 2004
COC Meeting Minutes dated December 14, 2004
COC Meeting Minutes dated March 8, 2005
COC Meeting Minutes dated June 14, 2005
COC Meeting Minutes dated July 12, 2005
COC Meeting Minutes dated August 4, 2005
COC Meeting Minutes dated Nov 9, 2005
COC Meeting Minutes dated February 7, 2006
COC Meeting Minutes dated May 9, 2006
COC Meeting Minutes dated August 8, 2006
Measure D Bond Fund Financial and Performance Audit June 2005
Measure D Bond Fund Financial and Performance Audit June 2006
District By-Laws for Citizens Oversight Committee — undated
Stradling/Yocca/Carlson/Routh--Bond Council Agreement of May 1, 2003
Bogard/Kitchell Agreement for Construction Management Services of January 7, 2004
and amended March 1, 2006
Bogard/ Kitchel (David Tanza) letter of March 15, 2007 Subject: Quality Control
CA Constitution Article XIII A Section 1 Subdivision (b) Paragraph 3
CA Education Code Section 15278-15282
CA Building Standards Administrative Code, Part 1, Title 24, Sec 4-341 to 343

Web Sites

Cabrillo Community College and COC: www.cabrillo.edu
California Constitution text: www.leginfo.ca.gov/const.html
California Education Code: www.leginfo.ca.gov
San Joaquin Delta College and COC: www.bond.deltacollege.edu
El Camino College and COC: www.elcamino.edu

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Property Assessment: What's business property really worth?

Synopsis

The Santa Cruz County Grand Jury reviewed the process used by the Santa Cruz County Assessor's Office to establish value and determine the reduced assessment on a business property.

The Grand Jury used information from a previously decided case of a large commercial entity that involved a collection of businesses, parcels and associated improvements. One of the key elements of this case was the use of an assessment methodology known as the "income method" for, at least in part, determining the fair market value of a business property.

The Grand Jury's objective was not to validate or "second guess" the assessor's actual determination of the full cash value in the case reviewed but to understand the process employed in making that determination and to evaluate whether that process would deliver a fair and reasonable property valuation. No attempt was made to review all of the assessor's processes.

Definitions

Assessment

An estimate of the "full cash value" of a parcel and improvements for the purpose of determining the property tax.

Capitalization

Converting regular income over a period of time to an equivalent monetary value.

Comparables

Like properties, equipment and improvements having known market values that can be used to estimate the value of targeted properties, equipment and improvements.

Consolidated Financial Reports

A combined financial statement for a corporate entity which includes all of the profit centers in one combined financial statement.

EBITDA

Earnings Before Interest, Taxes, Depreciation, and Amortization — a measure of business income.

Income Method

A property assessment methodology used to establish the value of business property in which capitalization of a net income stream is used as one approximation. That is to say, we estimate the capital investment that would be required to produce the net revenue stream. We must assume a reasonable rate of return commensurate with the risk. The

resultant capital investment would include land and improvements. To arrive at a calculated land value, the value of the improvements would be subtracted.

Parcel

Basic unit of real property subject to an assessment.

Proposition 13

An amendment to the California Constitution passed by the voters in June 1978, governing the taxation of real property. Proposition 13 prescribed an assessment structure for establishing the base full cash value of a property and imposed limits on increases in the assessment above the base.

Proposition 8

An amendment to the California Constitution that amended portions of Proposition 13 (see below) passed by the voters in November 1978. Proposition 8 permits property tax payers to request a reassessment of their property when they believe that their property has been reduced in value due to damage or other economic conditions. As Proposition 13 did not provide a mechanism for reducing the assessment, Proposition 8 was passed a short time later to incorporate a reduction mechanism.

Background

Assessor's Office Responsibilities

Property taxes are based on the assessed value of a property. It is the responsibility of the assessor to establish the full cash value of the property upon which the amount of property tax is calculated. The assessor does not collect taxes nor set the rules for how a property is assessed. In order to meet the responsibilities of the office, the assessor must:

- Locate and identify the ownership of all taxable property in the county.
- Establish a value for each property subject to property taxation.
- List the value of each property on the assessment roll.
- Apply any applicable legal exemptions and exclusions.

Assessed Valuations

The assessed value of real property is determined by law which includes the effects of Proposition 13. Proposition 13, passed in June of 1978, requires that the assessed value of real property be set at the 1975-76 full cash value (base year value). Real property is then reappraised only when a change in ownership occurs, or after new construction is completed. Generally, a change in ownership is a sale or transfer of property; new construction is an addition or improvement to a property. Except for these two instances, property assessments can be increased annually by the percentage increase in the consumer price index but by not more than 2%.

However, business personal property (non-land/improvements such as equipment) and certain restricted properties are reappraised annually. The owners of all businesses must file a property statement each year detailing costs of all supplies, equipment and fixtures

at each location. This annual statement is required unless the property qualifies for direct assessment (appraised by assessor). Business inventory is exempt from taxation.

Proposition 8, passed in November of 1978, amended Proposition 13 providing clarifications and a mechanism allowing an assessor to reduce an assessment when a property has been substantially damaged or its value has been reduced by “other factors” such as economic conditions. A reduction to the base-year value under the auspices of Proposition 8 is not permanent. Assessors are required to track every reduction until the base year value is restored.

A number of factors are used in assessing or reassessing the value of business property:

- Market price of comparable land, considered at the most likely highest value usage.
- Construction costs.
- Equipment and improvements costs.
- Business income, commonly EBITDA – earnings before interest, taxes, depreciation, and amortization.

Disputed Assessments

It is the assessor’s responsibility to establish a value for each property subject to property taxation. Property owners who disagree with the assessor’s appraisal can present their case to the assessor and provide evidence supporting a claim for a lower assessment.

In the event that the property owner fails to convince the assessor, the property owner has the right to appeal to the Assessment Appeals Board, a three-person board of citizens appointed by the Santa Cruz County Board of Supervisors.

Finally, property owners who are not satisfied with a determination by the Assessment Appeals Board can take their case to Superior Court.

Scope

The scope of this Grand Jury investigation was limited to a review of the assessor’s process used to reassess a unique commercial property owned by a privately held company. No attempt was made by the Grand Jury to validate or “second guess” the assessed value determined by the assessor.

Findings

1. The case studied involved one company having a large number of parcels and multiple businesses. It was necessary for the assessor, with the property owner’s eventual concurrence, to segregate the parcels and associated improvements and other assets in order to determine which parcels, improvements and other assets were related to the requested assessment reduction.

2. The business associated with the requested assessment reduction in this particular case is relatively unique making the use of “comparables” difficult. The Assessor’s Office, therefore, relied on the Income Method for determining the value of the property.
3. The initial assessment was established using base-year values adjusted per the requirements of Proposition 13 and augmented by annual valuations of equipment. Reductions under the auspices of Proposition 8 were based on multiple factors including the capitalization of the business’ five-year average income stream.
4. A one-year study of the business was conducted by the assessor. Industry experts were consulted to assure the assessor’s understanding of the business and the reasonableness of various valuations.
5. Externally audited consolidated financial reports were used as a starting point for the income analysis. Secondary financial reports, isolating the business associated with the requested assessment reduction from the consolidated financials, were prepared by the property owner.
6. The property owner’s accounting processes, audited consolidated financial reports and breakouts were tested by the assessor’s staff working both at the property owner’s site and in the Assessor’s Office.
7. An agreement stipulating the value of the property in question for tax purposes (Settlement Agreement and Mutual Release) was approved by the Assessment Appeals Board and executed by the property owner and the county.
8. Annual reviews by the assessor of the reduced assessment are being conducted as required.

Conclusions

1. Based only on the case described in this report, the Grand Jury found the assessor’s process for handling the request for a reduced assessment of business property owned by a privately held company to be reasonable, thorough and professionally conducted.
2. A company’s stated income can be suppressed by paying excessive salaries or other benefits to owners, employees or vendors. This can affect the company’s Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA), which can then artificially lower its assessment.
3. A higher level of confidence in the financial statements provided by business property owners would be realized by having an external auditing firm review and certify the statements. The certification should apply to that portion of the business which is being used for property evaluation purposes.
4. The current Assessor’s Office web site does a reasonably good job of describing the assessor’s functions for the majority of the county’s properties. However, many citizens are concerned about how the larger county taxpayers are assessed

and whether their size and influence leads to preferential treatment.

5. A more effective public outreach could reduce the concerns about possible preferential treatment for some large high profile land parcels.

Recommendations

1. Expand the Assessor’s Office web site to include a discussion of how business assessments are conducted. Without disclosing confidential financial information, the methodology used by the Assessor’s Office should be explained for different categories of properties so that the appraisal approach is more transparent. This would enhance the public’s understanding and perception of the fairness of the assessment process.
2. When the income method is used, thoroughly investigate the ownership structure of a business to assure that the Earnings Before Interest, Taxes, Depreciation, and Amortization (EBITDA) is not being reduced through expenses that principally benefit the owners or owner-related parties (e.g., excessive salaries, “consultancies,” travel and entertainment, gifts). If such expenses are found to have reduced the income of the business being evaluated, they should be added back into the stated EBITDA.
3. When using a business property owner’s financial statements to determine the income stream to be used in the assessment of business property, require that those statements be audited and certified by an independent external auditing firm for the applicable portion of the business.

Responses Required

<i>Entity</i>	<i>Findings</i>	<i>Recommendations</i>	<i>Respond Within</i>
Santa Cruz County Assessor		1-3	60 Days September 1, 2007

Appendix – Sources

Documents

Property owner’s financial reports — audited consolidated financial reports, breakout of financials describing the business associated with requested assessment reduction.

Assessor’s working documents — spreadsheets used in validating property owner’s breakout.

Settlement Agreement and Mutual Release (“Stipulation Agreement”).

Other legal documents — Assessor’s Office.

Web Sites

Proposition 8 (1978) — <http://traynor.uchastings.edu/cgi-bin/starfinder/18364/calprop.txt>

Proposition 13 (1978) — http://www.leginfo.ca.gov/.const/.article_13A

Santa Cruz County Assessor — <http://www.co.santa-cruz.ca.us/asr/index.htm>



Santa Cruz County

Grand Jury

Final Report:
Section 2
Cities and County Committee Report

Electronic Voting A Strategy for Managing the Voting Process

Synopsis

The Grand Jury investigated Santa Cruz County's response to the requirements of the "Help America Vote Act" and the county's effectiveness in implementing so-called "electronic" or "computerized" voting machines. The investigation revealed that the county's strategy in deploying new voting machines was effective. The overall security, reliability and accuracy of the voting and counting process were found to have met reasonable expectations. In general, the suitability of polling stations and worker training was also found to have been adequate. Public reaction to electronic voting was measured in an exit poll on the day of the November 2006 election. There were areas that could be further improved from the standpoint of efficiency and public confidence and understanding of the process. These areas are identified in this report.

"This is the biggest change we've seen in the elections process in the history of the nation."

Bruce McPherson, former California Secretary of State

Background

"The Help America Vote Act" (HAVA or the Act) was passed by Congress in 2002 to provide assistance with the establishment of minimum election administration standards for federal elections. HAVA provides the states with funds, which in part are to be disseminated to the counties to meet the various provisions of the Act. The Act requires:

- Nationwide implementation of provisional voting.
- Voter ID requirements for new voters in federal elections.
- Replacement of punch card and lever voting machines.
- Voting system accessibility for voters with specific needs.
- A centralized statewide voter registration database in each state and territory.
- Specialized handling of absentee ballot applications for military and overseas voters.
- Each state and territory to define what constitutes a valid vote.

As the result of both federal and state legislation, HAVA and California's Proposition 41 (the Voting Modernization Act), major changes are occurring in the processes by which state and Santa Cruz County voters cast their ballots, as well as in the way votes are tabulated. Regarding the move to electronic voting machines, the former California Secretary of State, Bruce McPherson, said: "This is the biggest change we've seen in the elections process in the history of the nation."

With this change, specialized computers are used directly by voters in casting their ballots and provide for automation of the tabulation of the votes.

Early attempts to use such machines around the country have led to a number of problems — from power outages that made machines unusable, to machines rebooting for unknown reasons mid-day during an election, to difficulties experienced by precinct staff in starting the machines and properly capturing totals.

There are several vendors of voting machines, including: Sequoia Systems (the system used by Santa Cruz County in the November 2006 election), Diebold Machine, and ES&S Machine. To date, there have not been any reports of significant Sequoia failures, but serious concerns have been raised about the reliability of other systems. In North Carolina, it was reported that 16,000 votes were lost (Diebold Machine). Also, there were 18,000 missing votes in Florida, which have not been resolved (ES&S Machine).

Reliability concerns arise both from questions about the workings of the generally privately owned and proprietary software and the vulnerability of the machines to fraud. According to an expert, fraud results from manipulations of the operating software (hacking) or of physical manipulations, such as swapping out memory cards containing the machine software and/or the vote totals. The new California Secretary of State, Debra Bowen, has recently commissioned a study of the matter. She has formed a team of highly technical members. They will be doing a “top to bottom” review of the various voting systems. This study will include:

- Reviewing the source code. It is proposed to maintain the source code at the state level.
- Performing “attack” testing to ensure that the system cannot be hacked.
- Conducting a voting system documentation study.

This will be the first time that Sequoia Voting Systems has been reviewed by the State of California.

Santa Cruz County evaluated several options before selecting Sequoia Systems as the vendor for new voting equipment. Santa Cruz County has been notably cautious in their approach to changing the voting processes, both because of concerns regarding the reliability of the new systems and because of cost issues. Our county has opted to implement the minimum legally required system — which is to have a single touch screen machine in each precinct polling location and to allow voters to choose between paper ballots capable of being optically scanned or the touch screen machine. Although optical scanning had been used in earlier elections, voters began using touch screen machines in the last election (November 2006).

Scope

The Grand Jury has chosen to review the following issues as they relate to the new voting process:

- Adequacy of security in the election process.
- Performance of the voting machines.
- Reliability and accuracy of the vote tallies.
- Adequacy of poll worker training.
- Suitability of polling place physical arrangements.
- Adequacy of election staffing.
- Adequacy of public education of the voting process.
- Suitability of the current strategy to comply with the Help America Vote Act.
- Poll worker and voter opinions of the new process.
 - Poll worker and voter surveys.
 - Grand Jury observations.

Definitions

400C Ballot Counter

Machine that counts the paper absentee ballots.

Electronic Voting

Using computers to capture, record and tally votes.

HAVA

Help American Vote Act — act passed by Congress in 2002 which specifies that all federal elections must meet certain minimum standards.

Memory Pack

A cartridge which plugs into scanner and contains the files unique to that precinct.

Memory Stick

A portable device which stores data.

Optical Scanner

Computer equipment that scans, counts, and accumulates the paper ballots.

Paper Trail

Verification of each voter's choices. The paper trail on the touch screen computer consists of a compilation of the voter's votes that is visible to the voter at the end of the ballot process.

Polling Place

A place where people vote, usually — but not always — voting precincts have their own polling places.

Poll Worker

A person who is trained to work in the polling place.

Proposition 41

Voting Modernization Act of 2002 — state proposition which authorized the state to sell \$200 million in bonds for updating voting systems.

Proprietary

Exclusive; secret; may not be accessed by anyone but the owner.

Results Cartridge

A cartridge which plugs into the touch screen machine; it contains the unique form for that precinct and a data field for counting the votes as they are input on the screen by the voter.

Sequoia Systems

One of several voting computer system vendors; the vendor chosen by Santa Cruz County and used in the November 2006 election.

SERVE

Secure Electronic Registration and Voting Equipment.

SQL Server

SQL (Structured Query Language) is the programming language that communicates or interfaces with the database that stores voting data. The server is the main computer on which the database resides.

Touch Screen

A computer display which the voter can control by touching the screen.

Voting Precinct

One of several districts into which a city or county is divided for voting. Most precincts have their own polling places, but in Santa Cruz County’s November 2006 election, some precincts shared polling places.

Findings

1. Adequacy of Security in the Election Process

A. Data Security

1. The Sequoia Systems (Sequoia) software is privately owned and proprietary. California is requesting that the code be accessible to the state.
2. Sequoia equipment and software goes through extensive testing by Sequoia Systems. This testing is required by the state.
3. The Sequoia Systems’ touch screen voting machine uses a voter verified paper trail which is the fundamental protection against software errors in recording the vote, provided there is a good audit procedure following the election.
4. Procedures are in place to protect the integrity of the data on the voting machines’ memory packs and results cartridges. These items are external and

removable and protected with traceable seals. Any sign of tampering with the seals is reported to the Election Department and investigated. There is a standard reporting form, and written procedures are provided to the poll workers.

5. The ballot information file for each precinct was created by the Santa Cruz County Election's Department's Information Systems Analyst and the program coordinators. It was sent electronically to Sequoia, the vendor, where the ballot election files were created. Sequoia also provided the printed paper ballots. There was a unique file created for each precinct. Files were then sent back electronically to the SQL server which resides in the Information Systems Analyst's office for updating and testing. Sequoia provided all testing scripts and assisted in the testing this past election.
6. Prior to the November 2006 election, the ballot information was reviewed, modified and approved by the county program coordinators and the Information Systems Analyst until it was ready to be sealed. The Information Systems Analyst, via a memory stick, manually extracted the data and loaded it onto a stand-alone laptop system. The cartridges for the voting machines were written from this system. They were sealed and coded. Once sealed, they were ready for distribution to the voting machines.
7. During the last election, some areas for improvement on warehouse check-in and out of equipment were noted. For example, the person checking out equipment was not identified.

B. Warehouse Security

8. All voting equipment and accessories for Santa Cruz County are stored in a secure warehouse within the city of Santa Cruz. The exception to this is the SQL server, which is used as a network server for the Elections Department, and the 400C (absentee paper ballot counter) which resides in the Information Systems Analyst's secured office. All files are backed up and stored in a storage area offsite at the Elections Department warehouse.
9. The results cartridges for the touch screens and memory packs for the scanners are created on a stand-alone computer at the warehouse. They are then loaded and sealed into the appropriate precinct equipment and stored until ready to be shipped to the polling place. Access to both the warehouse and office are controlled through the use of color-coded security badges. Four Elections Department supervisors with the widest access to the county's voting machines and voting materials have their own color-coded badge. Temporary employees, who must be escorted and supervised inside the secure area, have a different color badge, as do permanent Elections Department employees, visitors and exhibitors, and voting machine vendors.
10. The warehouse has an alarm system, provided by First Alarm. An access card is required in order to enter. The Information Systems Analyst, Department Information Systems Specialist and the Election Officer have the First Alarm access code.

11. A large door is locked from the inside. All equipment is within a caged area of the warehouse with controlled access.

C. Poll Site Security/Physical Equipment

12. The assigned person at each precinct picks up the voting equipment from the warehouse the day before the election. The cartridges are already in place and sealed. A poll worker takes the equipment home. On election day, they take it to the polling place and set it up.
13. At the close of the polls, two designated persons break the seals on the results cartridge and the memory pack and remove them from the machines. Cartridges and seals are put in a sealable orange bag. The printer is removed from the touch screen machine for transport. The orange bag and printer are prepared by an inspector and a designated person. These items are taken to the election department, where the bags are checked, verified, and stored in the Information Systems Analyst office until ready to tally. The person who checked out the equipment and brought it to the polling site is also responsible for taking it back to the county building. All voting equipment is eventually returned to the warehouse for storage.
14. After the November 2006 election, the above process was reviewed by election staff. It was found that there were delays in equipment check-in.
15. The issue of fire protection of the polling places was not addressed when the polling places were chosen. Since most poll sites are in public buildings, it was assumed that the fire protection available at the poll site location would be relied on.

2. Performance of the Voting Machines

17. Sequoia Systems is a state-approved vendor for the new voting equipment. They were chosen by Santa Cruz County to provide the voting equipment.
18. The touch screen voting machine has a printer which records the votes. It has 300 feet of paper inside the machine. During the last election, the paper often jammed.
19. During the November 2006 election, two or three scanners failed and at least 12 printers jammed. When the failed scanners were tested, it was determined that they probably had been damaged in transport.
20. The 400C Ballot Counter Machine reads the ballots very quickly. However, the catch basket, which is located outside the machine, is not large enough to hold all of the ballots. As a result, ballots can get bent or be ejected onto the floor.

3. Reliability and Accuracy of the Vote Tallies

21. The results cartridge plugs into touch screen equipment. It contains a database for capturing the votes as they are input by the voter. This cartridge cannot be removed without breaking a seal.
22. The memory pack plugs into the optical scanner. It also uses a database for capturing the votes as they are input when the ballot is scanned. The memory pack cannot be removed without breaking a seal.
23. Firmware (software imbedded in the machine) operates the machines. The Secretary of State demands the firmware be at a specific level (version). It cannot be changed after 60 days prior to election. A test is run to ensure the firmware level (version) is correct.
24. To ensure the reliability and accuracy of the equipment, logic and accuracy testing is conducted by the vendor and county personnel. Some experts believe that this testing is insufficient for validating the accuracy and reliability of the vote. They argue that it consists only of verifying whether the equipment is working. It does not evaluate the equipment's security.
25. After they are finished voting, voters who use the touch screen equipment can verify the accuracy of their votes by looking at a compilation of their votes that is displayed in a window on the machine.
26. Following a written procedure, the designated poll worker and one other poll worker break the outer seal and assist the first voter to verify prior to his or her vote that the "total votes" displayed is zero. Both the poll worker and the voter sign an official document verifying that the vote count is zero.
27. On 10 percent of machines, a random sample with full paper recount is taken to check that the machines are tallying correctly.
28. After the November 2006 election, Capitola initiated a manual recount. Each precinct was reconciled separately. With approximately 3000 votes to count, it came out to within one vote of the machine count. The final election results did not change.
29. During the November 2006 election, a number of absentee ballots had to be redone due to the types of pens used. Some voters used pens that bled through the paper and could not be read by the scanner.
30. Provisional ballots were being used for voters who had come to the wrong polling place. Some provisional ballots had to be redone because they were folded the wrong way.

4. Adequacy of Poll Worker Training

31. An organized training plan with documentation was provided for the poll workers and inspectors. One person at each polling site was trained and certified to use the machines. There were “rovers” who traveled between polling sites to check on machines and supplies.
32. Before the November 2006 election, county staff did a lot of on-the-job training while concurrently preparing for the election because the equipment arrived late.
33. The training documentation from the vendor had to be completely redone because it had to be customized to the design of the Santa Cruz County election model.
34. In the future, the Elections Department plans to create a professional DVD to supplement poll worker training.
35. Poll workers have documentation binders which have flip charts and checklists. Also, they are trained how to deal with the press and observers.
36. Poll workers indicated they wanted more “hands-on training” with the machines in addition to having more poll workers trained on the equipment. These machines are sophisticated computer equipment, and if something goes wrong, many poll workers don’t know what to do. (See Poll Worker Survey in the Appendix for more information.)

5. Suitability of Polling Place Physical Arrangements

37. The physical arrangement of the polling places was similar to past elections. This consistency contributed to a stable atmosphere.
38. The touch screen machine was positioned with the back of the machine to the wall. This placement meant that the voter’s selections could be seen by others standing nearby.
39. The county was proactive in making the touch screen machine wheel chair accessible by re-engineering the support legs. In addition, they custom designed carrying bags for the scanner.
40. Santa Cruz County was sued by the State Attorney General for not following Americans with Disabilities Act (ADA) regulations for polling sites. The parties agreed to settle the lawsuit without finding that the county had violated the ADA regulations.
41. Some polling places that were shared by more than one precinct also shared touch screen machines. This arrangement caused some confusion because voters had to identify which precinct they were voting in as the first step in the voting process, and many did not know.

6. Adequacy of Election Department staffing

42. In the start-up process for the new voting system, the Department Information Systems Specialist, Elections Officer, Assistant County Clerk and the Information Systems Analyst were trained first, and then they were able to provide training for others. Sometimes training occurred simultaneously with the installation of the new equipment.
43. The staffing for the poll places was conducted in the same manner as in previous elections. Polling place staff is typically temporary help from the community. The polling place supervisors are relied upon to pick up the equipment at the warehouse the day before the election, keep it at their houses overnight and take it to their polling places in the morning for set up.

7. Adequacy of Public Education of the Voting Process

44. In an effort to educate the public, the Elections Department distributed thousands of voter pamphlets to the public via U.S. mail. The department personnel also gave speeches and distributed educational material at local public schools, bookstores, the Capitola Mall, and the county fair. Media promotion included television and public radio interviews and press releases.
45. Despite the education campaign, some voters were confused as to how to mark their ballots. For example, some voters who used the paper ballots did not understand how to connect the arrows to the candidate or issue they were voting on.
46. In general, voters who used the touch screen machine seemed unaware of the importance of verifying their votes by comparing them with the compilation of their ballot that was visible through a window on the machine.

8. Suitability of the Current Strategy to Comply with HAVA

47. County election officials determined that there would be one touch screen at each polling place. The new scanner would be the main voting machine. They reported that this choice proved to be a good decision. Not only did it provide the necessary accommodations for voters with disabilities, but it also ensured the reliability of the voting process. Having a mixture of technologies ensured that votes could be cast in the event of equipment failures. For example, if the touch screen printer jammed, except for those who are sight impaired, voters had an option to use a paper ballot.

48. A recent news release announced that Florida will shift its voting system to a system of casting paper ballots counted by scanning machines. Several counties around the country will be moving to adopt the touch screen system with the paper trail.

9. Poll Worker and Voter Opinions of the New Process

A. Poll Worker and Voter Surveys

49. On election day, the Grand Jury conducted a two-part poll worker survey and collected 104 surveys for analysis. The first part of the survey covered the poll worker training (see #4 above — Adequacy of Poll Worker Training), and the second part was a critique of the election day process. While most were extremely positive as to the work of the Elections Department, they made substantive recommendations for continued improvement of the elections process including the use and placement of the equipment. [See Appendix for full results of the survey.]

One hundred and four poll workers out of a total of 917 in Santa Cruz County were surveyed. They were asked to rate aspects of the voting experience from 1 to 5, with five being the best rating possible. The results were as follows:

- Training materials: 4.3
 - Overall preparation: 4.0
 - Adequacy of election day staffing: 4.5
 - Ease of equipment set up: 4.3
 - Workers indicated they wanted more training on the machines and “hands on” practice.
50. The Grand Jury also conducted exit surveys with 320 voters throughout the county. (The total votes cast was recorded as 50,189 in 170 polling places.) The results of the survey are as follows:
 - Only about 19 percent of the sample chose to use the touch screen machines.
 - One hundred percent of those who chose to use the touch screen felt comfortable using it.
 - Ten percent of those who chose to use the paper ballot with optical scanner felt uncomfortable using it.

B. Grand Jury Observations

51. Members of the Grand Jury made general observations while conducting the exit voter and poll worker’ surveys at the November 2006 election. They witnessed the failure of some equipment and agreed with many of the

solutions suggested by the poll workers. [See Appendix for more information about the survey.]

52. During the November 2006 election, it was observed that most poll workers gave paper ballots to the voters and did not indicate that the touch screen method was available.
53. It was also observed that not all voters were offered a receipt for voting when they used the touch screen machine.

Conclusions

1. It is a matter of national priority to have a transparent electronic process and accurate election results.
2. The County Elections Department has done a good job of securing the voting data. It has provided traceable seals, “stand-alone” cartridge creation and storage, extensive testing, detailed procedures and complete systems backup.
3. The touch screen voting machine adopted by the county uses a voter-verified paper trail which provides verifiable voting results and a method for testing. This system, combined with a good audit procedure, ensures voting accuracy.
4. For the November 2006 election, Sequoia Systems not only supplied the test cases, but also assisted in the testing. There was no independently controlled testing in addition to what the vendor provided.
5. The Elections Department warehouse — where the cartridges are prepared and stored until ready for shipment to the polling place — is sufficiently secure. Besides being badge access controlled, it is protected by the First Alarm Security System.
6. Proper procedures are in place to ensure the security of the data.
7. All types of equipment had problems. Printers jammed, and two or three scanners failed. Proactive planning by the Elections Department helped mitigate these problems.
8. The 400C Ballot Counter had problems that need to be corrected in the future. Although it counted the votes quickly, some ballots were damaged when they were ejected from the machine.
9. The Elections Department was proactive in creating written procedures for all aspects of the election process and identifying areas of improvement after the election. Poll workers were supplied with good procedures to do their jobs.
10. The touch screen set up provided adequate wheel chair access. The Elections Department was proactive in re-engineering the machine support legs to accommodate a wheel chair. However, the placement of the touch screen computers in some polling places contributed to the lack of voter privacy,

Also, some co-located precincts shared a touch screen, which confused some voters when they were asked to identify their precinct.

11. The fact that Santa Cruz County is not flat in several locations and uses many older buildings as polling sites led to a lawsuit against the county alleging the county's failure to comply with accessibility regulations. The parties agreed to settle the lawsuit without finding that the county had violated the Americans with Disabilities Act requirements.
12. Because several staffers had to be both trainers and trainees, the Elections Department was stretched very thin in training for the new voting system. Due to this shortage of staff and time crunches, some poll workers were not completely prepared. Even though the poll workers were trained to advise voters that the touch screen was available for their use, most workers presented the paper ballot as the only option.
13. Voter awareness and understanding of the new voting process could have been better. Even though voters were informed about the new process, many lacked a good understanding of how it differed from the previous process, and some were confused about the new ballots. Many understood that the touch screen was new but did not realize that their paper ballot was being scanned, which was a new process.
14. Although there was some confusion over the new process, most voters felt comfortable using the new equipment.
15. Although this change in the voting system complied with the "Help America Vote Act," using the new technology did, in fact, take longer, cost the county more and required more staff and testing.
16. The strategy to put just one touch screen at each polling place proved to be a good one. It satisfied the requirements for voter accessibility while providing more current technology for voters. The mixture of technology also provided backup. If the printer or other equipment had a problem, voters had another way to cast their votes.

Recommendations

1. The Elections Department should continue to make security improvements, thereby ensuring the integrity of the data.
2. Because this was the first year using the new electronic voting system, the Elections Department relied heavily upon the vendor for testing and support. In the future, the Election Department needs to create and conduct its own testing program.
3. The use of the verifiable paper trail on the touch screen voting machine has proven successful. Public awareness of this method of verification should be stressed in the future.
4. The poll workers should continue to follow procedures established for ensuring the security of the data, which include traceable seals on the memory packs and results cartridges and procedures for handling the seals. If a seal is found broken on a machine, that machine should not be used. In addition, all machines which have a broken seal at the end of the day, should undergo a full manual count.
5. The Elections Department should work with the vendor to solve the various problems that arose with the ballot counter damaging ballots.
6. The Elections Department should set up procedures for auditing the absentee ballots.
7. Because comprehensive poll worker training proved difficult to provide with a limited staff and it is important to have most poll workers trained on the machines, staffing should be increased so that the management is not stretched too far by overseeing the election process while also training other staff and temporary employees.
8. In future elections, the touch screen machines should be set up to provide more privacy for the voter. The side panels should also be larger for privacy in voting.
9. Each precinct should have its own touch screen in the future to avoid voter confusion.
10. Because the “ledger” size of the paper ballots was too large to fit comfortably in the old polling booths, the size of the paper should be adjusted to solve this problem.
11. Because of the common practice of storing the equipment at the polling place supervisor’s house overnight, these supervisors should be identified as far in advance as possible to allow for additional training on security procedures and the vulnerability of the equipment.
12. The Elections Department should plan to strengthen its “advertising” campaign for future elections. It should focus on educating the voters to verify the paper trail when using the touch screen equipment.
13. The Elections Department should review the appendix to this report and take appropriate action based on poll worker and public responses.

