

MARTA STEELE

**Grassroots, Geeks, Pros, and Pols:
The Election Integrity Movement's Rise
and the Nonstop Battle to Win Back the
People's Vote, 2000-2008**

**A Columbus Institute for
Contemporary Journalism Book**

MARTA STEELE

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FOREWORD

Marta Steele's **Grassroots, Geeks, Pros, and Pols**

Without democracy, America is just a bunch of bloated rest steps on a spider web of highways.

And that's the way they want it. "They" being that 1% that don't want your vote to get in the way of their dash to the cash.

No one steals votes to win elections. Votes are stolen because they are worth their weight in gold and then some. The reason elections are jacked is to make sure those who are rich get richer.

And that's what makes Steele's book like perfect teeth: astonishingly bright with a great big bite.

Marta Steele's grok'd it. Vote theft is class war by other means.

What Steele does here is give you the *where*, *when* and *how*. A car is found at the bottom of a Florida swamp with 1500 ballots marked for Al Gore. In a hot race in North Dakota, Native americans (8-to-1 Democrats) couldn't vote without showing ID, which few had. It doesn't matter that the state doesn't require photo ID. And so on *ad nauseam*.

Here is the masterwork on every way that the scoundrel class shred and savage our right to vote.

And not just a few votes and registrations sink into the swamp. It's millions. And, in the overwhelming majority of cases, it's the votes and registrations of poor, Black, and Hispanic voters.

Most of these voters are Democrats, but Steele is not partisan in the least. Indeed, she shows that while America's dispossessed seek shelter in the Democratic Party, they are still kept in the back of the ballot protection bus. (Unlike Republicans, when Democrats hold \$38,000 a plate dinners, they let the poor lick the plates.) I particularly enjoyed her

basting Al Gore and his crew for not protecting the least among us.

While *Grassroots, Geeks, Pros, and Pols* has the heft and footnotes of an academic treatise, it's a fun read. Suggestion: take a double of Felipe II with you into this zoo of miscreants, and savor the dark humor of one method of vote heist after another.

Here is the line-up of ballot burglars who think democracy is a safe to be cracked.

Bless Marta Steele for setting off the burglar alarm.

Greg Palast

Author of *Billionaires & Ballot Bandits: How to Steal an Election in 9 Easy Steps* (2012), *Vultures Picnic* (2011), and *The Best Democracy Money Can Buy* (2004).

www.BallotBandits.org

PREFACE

Marta Steele is a woman obsessed.

She may be widely known as an exceptional writer and editor but her passion, in her heart and soul, is as a voter, as citizen who believes in the bedrock power of the ballot.

As a writer and researcher of thoughtful reports on Op Ed News and other outlets, she is now blowing the whistle that must be blown on threats to democracy that have been underreported.

Marta Steele knows, as should every citizen, that the fight for the franchise has moved this Republic from the property of the propertied classes into an imperfect democracy, where, despite all of our many problems, the right to vote is still the centerpiece of what makes America America and, potentially, makes us great.

Voting is the centerpiece because it is there, in the sanctity of the ballot box, or in front of the voting machine, that the people of this country—all of us—decide who we want to lead and represent us.

The vote is the people's megaphone.

Elections are the ultimate way people get some say, in an age where the Supreme Court has conferred the status of personhood on corporations, giving them the right to speak with their money in the electoral process.

With the Citizens United decision transforming a barely fair playing field and tilting it against popular control, with candidates selected through back room manipulation influenced by media domination, the right to vote is at risk.

At risk not just by frauds largely committed *against* voters, not *by* voters, as well as by devious laws, rules and regulation that, in the name of improving the voting process, end up despoiling it.

That's why the election integrity movement Marta Steele writes about is so important, and despite the massive media coverage of elections largely ignored.

When she speaks of a national network of election integrity activists, she reminds us of how many of us are enraged by the erosion of an institution that is supposed to be our ultimate guarantor.

That doesn't mean we always have what we need to vote for. As Will Rogers put it, "anything important is never left to the vote of the people. We only get to vote for the man but never get to vote on what he is to do."

The great journalist Henry Mencken observed years ago, "Under democracy one party always devotes its chief energies to trying to prove that the other party is unfit to rule - and both commonly succeed, and are right."

But with all its flaws and many failures, democracy is still a system worth fighting for. Imagine what our country would be like if only the 1% of the elite got to vote?

It doesn't take all that much imagination. The fight for civil rights and women's equality was often a fight for suffrage. We lived through long decades of racial discrimination and rule by rich white men.

No one wants to go back to those days.

And as the election of 2000 and 2004 showed, elections can be sabotaged and will be sabotaged when the public is asleep.

As a journalist, I wrote a book and made the film *Counting on Democracy*, about the way sleazy practices in the 2000 presidential elections. More shocking were reports, largely unreported, that as many as 6 million votes went uncounted in the year that the Supreme Court decided who would be our president.

Marta Steele is going much deeper in this book than those journalists among us who each year treat elections as a horse race with no shortage of commentary on the protagonist but almost no reporting on the key issues of the mechanics of democracy: how elections are actually run and how votes are counted.

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Everyone knows we have a financial crisis, but too few recognize that, alongside it, is a democracy crisis that needs to be attended to before it is gone.

This book gives us the facts and inspires us to do what must be done.

Danny Schechter
Author, Filmmaker and Blogger
New York, December 2011

INTRODUCTION

by **Bob Fittrakis and Harvey Wasserman**

Marta Steele has done yeoman work for the election integrity movement. She has plowed through more websites and blogs than one can even imagine. She set out with the nearly impossible task of writing the definitive historical narrative of the folly of electronic voting in the United States between 1988 and 2008. More shockingly, she accomplished that task.

Electronic voting machines are perfectly designed to steal elections. That's their principle purpose. Ireland has just gotten rid of them altogether. Germany, Japan, Canada, Switzerland all use paper ballots. Why? Because you can actually count them in public, and then count them again.

But here in the US, elections are corporate-owned and operated. Anyone who experienced pushing the e-spot for John Kerry and having the name George W. Bush light up---as happened so often in Ohio 2004---knows all too well that what Marta Steele documents in this remarkable book has become the defining reality in American election theft.

What she has done by way of documentation is truly impressive. Never again will those who question the validity of electronic voting be called “conspiracy theorists.” Through sheer tenacity, the author has scoured the vast morass of cyberspace and brought back all the essential data and assembled it in an understandable and analytical fashion.

Readers can only draw one conclusion from her work – those who deny the death of democracy are foolish “coincidence theorists.”

She accumulated mountains of incidences that show the so-called “red shift” in favor of the Republican Party is not an anomaly or computer “glitch,” but evidence that there is systematic tampering of computerized voting machines by private companies connected to the Republican Party. Although our newspaper, the Columbus Free Press, and our website freepress.org published plenty on the flaws of electronic voting

and election irregularities, we were nonetheless overwhelmed by the research documented in this volume. Those who read this book will no longer fall for the easy propaganda lines and talking points put forth by Karl Rove and his cohorts in explaining away impossible election results.

This book is important because its research is so detailed, its history so clear, and its analysis so convincing. The book destroys the mythology that “it can’t happen here” – that our system is an old and infallible democracy that can’t be corrupted. This powerful work will force all who read it to take a side, but more importantly, to take action, perhaps even direct action.

A key breakthrough that the book allows is to shatter the absurd notion that the empire of the United States may very well meddle in and steal elections abroad, but would never use these tactics at home. The fact that the Bush family, with their patriarch George Herbert Walker Bush being the CIA director, is so inextricably linked to the rise of electronic voting and improbably election results, should be no surprise. That’s why it is no coincidence that she starts her history of election voting irregularities in the year that George W. Bush wins the New Hampshire primary and becomes president.

The Bush family ascendancy corresponds to black box, nontransparent voting in America. The more we’ve privatized our software and hardware and called it “trade secrets,” the better the Bush family candidates have done, against all odds. Their presidential victories, with the official exit polls falling well outside the margin of errors and predicting victories for their opponents, would easily be denounced by election observers in a Third World country.

Small wonder that when push came to shove, Ohio's Republican Secretary of State J. Kenneth Blackwell refused to allow United Nations observers into the Buckeye State polling places to check the veracity of the 2004 balloting.

We believe this book does more than any other to expose the evils of electronic voting. The endnotes alone amount to a giant

step forward in revealing the crimes of privatized e-voting in our nation.

As Al Gore and John Kerry refused to do, we must now face the reality that as long as our balloting process is dominated by electronic machines, the outcome of any election can be flipped by a governor or secretary of state with a few late-night key strokes. Considering the hundreds of millions the rich and super-rich are willing to spend to control the government, would you ever doubt they would hesitate to buy an election?

What Marta Steele has done is to confirm far beyond any reasonable doubt that as long as electronic machines are at the core of our vote count, there is no such thing as democracy in the USA. What we have instead is an electronic corporatocracy ... proprietary, secretive, anti-democratic and for sale (or lease) to the highest bidder. The real question is: now that Marta had made this all perfectly clear, what are we going to do about it?

Bob Fittrakis and Harvey Wasserman

ACKNOWLEDGMENTS

Just as I structured this volume, I will also proceed in chronological order with my thank-you's, and there are many.¹ First to the wonderful and amazing grassroots Election Integrity (EI) movement, with all of their varied and awesome accomplishments, skills, and contributions, the shoulders on which giants stand and depend.

Among the giants, there were those who drew me into EI in the first place. There was Bob Fertik, whose webpage Democrats.com I read feverishly, whence I was drawn to a demonstration in front of the Fox News building on Sixth Avenue in New York in spring 2001. During his speech, he mentioned one investigative journalist, Greg Palast, who had discovered tens of thousands of Florida voters, mostly Democrats, who had been illegally left off of voter lists. Palast tried to reach those in charge with this information which, of course, was ignored because it would have turned the tide away from Bush 43, that polluted stuff.

Now that I was a rebel with a cause, Election Integrity (EI), I became an author in search of a character, the reverse of the Boccaccio title, and settled on the fascinating and heroic Palast, whose speaking engagements I followed and wrote about; I had the privilege of finding him and author/attorney Vincent Bugliosi at a penthouse party in New York held for EI Democrats a month and two weeks before 9/11, which more or less put a lid on the movement for a year or so and prevented a score of relevant newly published books from reaching the public. Back to July 31, though, I also met attorney and activist Lou Posner. I had taken notes as Palast and Bugliosi addressed us and asked Lou if I could write this up for his webpage, VoterMarch.org, later joined by his site Nobloodforoil.org. He said yes, and I was soon writing article after article about Palast and EI, which he gladly posted, reaching up to a million people in a movement he founded, VoterMarch, that spread all over the country and accomplished so much.

In this process, I had many questions for Greg Palast, which

his assistants answered quite knowledgeably, one of whom became a fast and devoted friend after reading my writing and criticizing it, Fredda Weinberg, Greg's webpage creator. With her expertise, selflessness, and artistic talent, she has since then created two valuable websites for me, WordsUnltd.com and Editingunltd.com.

In 2005, I became a Progressive writer for the Internet and, after producing a paper publication for four years (1999–2003), *Words, UnLtd.*, I took it online as WordsUnLtd.com, there to this day, though I reach the most people through Opednews.com, for which I have been writing since 2006. Here I have to thank owner Rob Kall for his receptivity, encouragement, and support as he published article after article. I still write for his site. I also want to thank Mike Rectenwald and Lori Price of Legitgov.org, who published my work on the Iraq war and Election Integrity, after the paper edition of *Words* and before my webpage saw the light.

After the disastrous Election 2004, when the horrified and indignant grassroots movement proliferated rapidly, I found out about a group newly forming in Central Bucks County, Pennsylvania—I lived in Lower Bucks so drove about thirty miles to the pilot meeting, where I met the two founding mothers, Mary Ann Gould and Ruth Matheny. Mary Ann was an awesome presence, with her deep expertise in strategizing and politics. Ruth was a tireless, dedicated comrade who eventually became an election judge in Central Bucks.

I became blogger and press liaison for the Bucks County Coalition for Voting Integrity (CVI). The group grew rapidly, from all-women to coed, and the men who joined up were amazing and multiply talented.

We first became visible through our appearances at the public meetings held by the Bucks County commissioners and, in the time period set aside for audience comment, challenged them endlessly on their preference for full-face touchscreen voting machines, the most exigent among our many issues. Several of us ladies became a “lunch bunch” who spent many

an early afternoon fuming and strategizing over sandwiches and caffeine: Connie Fewlass, tireless presence at polls and on spreadsheets; Madeline Rawley, our fearless researcher and brains of the group; the well-read and superbly informed Janis Hobbs-Pellechio; Barbara Glassman, a most worthy and constant font of EI-relevant developments; and Sandy Schiff, who very generously lent us space for meetings frequently.

Out of those humble beginnings when, at a grange fair, Governor Ed Rendell told us to go find something else to do and his secretary of state, Pedro Cortés, wished we had, one day we reached the local papers, then the countywide paper soon after and, before we knew it, there was a press conference where the local congressman, Jim Fitzpatrick, officialized us. The sole Democratic commissioner held back tears in the biting cold, marveling at our persistence, materialized out of a few “loud-mouthed broads.” I wondered why none of the politicians wore coats in that weather and decided then and there to keep on writing, period, never having considered a political career anyway.

As a new supporter, the congressman endorsed legislation being advanced by a colleague just across the Delaware River in New Jersey, Rep. Rush Holt (D-NJ), who has been a tireless presence in the movement, crafting bill after bill in Congress toward fairer elections, assisted by his most capable and articulate counsel, Michelle Mulder.

Mary Ann’s battle for better election systems was unprecedented and tireless, 24/7 persistence and vigor, despite a number of health issues she put on hold until, by the time of the grange fair exhibit of touchscreens and a few optical scanners, her preferred voting medium, she was wheelchair bound and still not allowed into the display tent because of her outspoken opposition to touchscreens, even though she was the only disabled person to show up and qualify to test their accessibility. I can attest to the fact that the chosen touchscreens weren’t even accessible to a nearsighted voter, me, who wanted to write in a candidate. The write-in component was at the top right of a tall machine, so that shorter people would be even

more challenged. And even then the mechanism was carelessly designed—with cheap glossy paper that barely showed pencil marks—quite indifferent to those with other preferences, from Donald Trumps to other alternative party candidates.

I can't thank Mary Ann and my other colleagues in CVI enough for their support for and encouragement of my incessant writings on our incessant activities and must single out my dear friend to this day, Connie Fewlass, for the stunning example of dedication and self-sacrifice she set—at one point she and her husband, Jack, drove down to Tennessee to buy some used voting machines at a ridiculous discount to bring to an EI genius, Rebecca Mercuri, to tinker with and explore more deeply the issues we were pounding and she had testified about long before we came along. Rebecca showed remarkable patience with the numerous emails I sent her regarding the technical aspects of EI and I'm very grateful to her.

In addition to Rebecca, other email correspondents have deepened my insights profoundly. These include Mary Ann, again, and the entire CVI listserv, which have educated me time and again on issues I've been unaware of through conventional media. Then there was Howard Stanislevic, founder of the E-Voter Education Project who, in our many conversations, not only taught me about New York particulars but convinced me that the EI stories emanating from the Empire State could comprise at least one book in themselves. Nor can I omit the weekly radio program *Voice of the Voters*, on which I blogged for its duration, 2006–2008, and which provided the foundation of this book with the many dynamic and indispensable EI advocates and authorities, celebrities, and experts interviewed expertly by Mary Ann and later others, including Lori Rosolowski and Jim Strait, who initially offered us radio time and space at his station, Renaissance Radio in Philadelphia and South Jersey, to begin this remarkable project.

Among those I interviewed for this book were owners of webpages from which I've drawn a great deal of knowledge and insight, including Lynn Landes, who graciously allowed me

time for a telephone interview as well; Rob Kall; Ellen Theisen and the late John Gideon; and the indefatigable truth hound Brad Friedman, whose intricate and comprehensive coverage of the EI movement is unequaled; he has been helpful to me via personal communications more than once. I also greatly benefited from the website Votescam.org, which has a full archive of EI-related events. And there were many others, including Dr. Charles Corry's page "Vote Fraud and Election Issues."

I was interrupted from my efforts for two years by a sudden illness brought about by my 24/7 efforts over the course of three months to write this entire book—ridiculous of course and for which I paid. Obviously I came back to it, last September (2011), to be exact, when I was nearly recovered, and devoted another five months to writing nonstop, though at a slower pace to avoid relapsing.

My copy editor/proofreader and dear friend Maureen Haggerty did an excellent job weeding out verbosity and polishing my prose.

Over time, for many years, I'd be remiss not to thank my good friend, filmmaker, News Dissector, and author Danny Schechter for all he taught me about the worlds of politics, economics, and human nature at large, as only a seasoned and lifelong New Yorker can, and for inspiring this book—he must have written at least three in the time it took me to complete it. And he had already written many other books, a landmark accomplishment for an expert in many fields and an activist.

Investigative journalist and author Greg Palast's name appears here again as a source of information, viewpoint, and humor for years. It is a privilege to know him and interact with him as one revelation after another shocks and enlightens all those who are concerned not only with EI, but the future of this planet as it is mangled by the malpractice and greed of an oligarchy/plutocracy who can't see beyond their own power hunger and avarice.

This book would not have seen the light without my publishers, CICJ Books, and the constant contact with and

excruciating rounds of editing and proofreading done by professor, attorney, and nonstop activist Bob Fittrakis who, with his colleagues Harvey Wasserman, Cliff Arnebeck, and others, assured the well-deserved victory of Barack Obama in 2008, an event that must receive more coverage than it has so far. In my first phone conversation with Bob, I tearfully thanked him for saving our democracy—as he continues to work toward it day after day. Deepest gratitude also to Harvey Wasserman for his glowing reinforcement toward the end of the production period. I am also indebted to Bob's wife, Suzanne Patzer, for all of her hard work and patience.

Now, to turn more toward my own origins, I must thank my mother, Rose Scott, for her constant support and faith in me as I struggled out of illness and back into authoring. This book couldn't have seen the light without her. My daughter, Liza Gwendolyn Steele, has set a shining example as an amazingly tireless PhD candidate in public sociology, statistics, and economics at Princeton University, accomplishing what seems from my myopic perspective to be the impossible and then some.

It is to Liza and Rose that this book is dedicated and to the memory of my Uncle, Karl M. Light, who passed away after an extraordinary 85 years on May 20, 2012. Also to my father, Otto J. Nussbaum, a genius who died before his nearly done book would have been published. This is for you.

And once again, I reiterate this dedication to the tireless dedication of the *grassroots, geeks, pros, and pols* who together work nonstop to undo the reactionary/radical, plutocratic, and corrupt election establishment, a gargantuan and ongoing effort.

Marta Steele
Washington, DC
June 2012

MARTA STEELE

Author's Introduction

Voting integrity means one person, one vote, counted transparently, available tangibly in the event of a recount or audit. Any human structure is subject to error.—Bev Harris

Why does “the good” have to be an abstraction only?—Anon.

The subject of this book is neither voting nor elections nor even the quick rise and gradual fall of the touchscreen voting system.

It is Election Integrity (EI), which subsumes all the above topics but adds the most vital element: people.

Election integrity is the value system that underlies a vote that is cast privately and then counted and recorded in full view of the public. There must be impartial, nonpartisan human witnesses to every part of the voting process except the act of voting.

Most people's politics are clear, but it is those who are enigmatic, especially these days, who choose the winner: Independents in swing states. Why must this be?

Because the either/or dichotomy never stands for long. Our two-party system is working less and less well. Independents want more choices. In 2008, 30 percent of the one hundred million who usually sit out elections came out to vote. The arguably greatest president in US history (Abraham Lincoln) was elected in a multipartisan venue.

A system characterized by Election Integrity is a far more ideal setting than our present situation. But it is a form of the good for which many people are fighting. We must be sure that the people's will prevails.

Where there is doubt, there is chaos, as there was in two of the most corrupt presidential elections in our history: those of 2000 and 2004. Election Integrity was somewhere else—in our dreams. And so we worked very hard, we the grassroots. A few of us were around before 2000, anticipating, because of the electronic corruption that existed, the electoral chaos of the first decade of the millennium.*

Then the chaos erupted and its antithesis was conceptualized as Election Integrity.

Hundreds of activist groups began to spring up, first gradually and then in a torrent after Election 2004, when history repeated itself so ridiculously that we all were clowns, whether we had won or lost. We thought we were fighting for the right machine, but not even the best machine will work well in a corrupt system.

Machinery was our language, though, and our catalyst, for a while.

It was all accidental, all serendipity, just because of some corruption in Florida that violated everything that *American* is supposed to mean, and *democracy*, and *Election Integrity*.

Because machines were found to be faulty, a cataclysm occurred and suddenly, not without some backstage machinations, we were in a new age of

push buttons and touchscreens and instant tabulations.

But it didn't work. It was a misreading of an ambiguous, hastily thrown-together law. Technology betrayed us. We may have come into the era of big-box stores and discount warehouses, but there is no such thing as a discount voting machine.

There is certainly cheap crap with huge price tags. But cheap computerized voting machines won't work even in an ideal society, let alone a corrupt one.

So when you combine a corrupt society with very faulty machinery—machinery we wouldn't entrust with our money—cataclysm results.

The hideous reality is that ATMs, which are transparent and technologically effective, can cost less than half as much as do totally opaque and dysfunctional voting machines.

And to the latter we entrust something even more sacred than money or election integrity—our vote—the bottom line of our democracy.

The right of voting for representatives is the primary right by which other rights are protected.—Tom Paine

Let each citizen remember at the moment he is offering his vote . . . that he is executing one of the most solemn trusts in human society for which he is accountable to God and his country.—Samuel Adams

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The rational and peacable [sic] instrument of reform, the suffrage of the people.—Thomas Jefferson

The vote is the most powerful instrument ever devised by man.—Lyndon B. Johnson

Whoever calls this era the age of technology is wrong. Because so far, it has been impossible to invent a voting machine that will work as well as an ATM or even a PC. We are still in the Dark Ages perhaps because we, the majority, don't understand the importance of the vote. When we do, and that will take us a while, then we will create computerized voting machines that work.

Many people say that democracy is slipping away, and that other forms of government better define the present age in America: plutocracy, oligarchy, would-be feudalism, and so on. Perhaps that is why no one can invent a “democracy machine” that works. Because at heart no one wants to or has the courage to.

Theoretics aside, this book is all about the grassroots, academics, professionals, and politicians who together worked toward election integrity between 2000 and 2008. Any member of the latter three categories could also be part of the grassroots by joining or forming a grassroots organization. A person who instead supported grassroots efforts fell into one of the other three categories.

Together, we were unbeatable.

And who were the “enemies”? Rich people. It is that simple.

Theirs could be any profession or description in the world, including geek, pro, pol, or even grassroots (Tea Party, e.g.). But their common denominator is wealth. Ours is democracy for all, including them and their antitheses.

A battle between a form of government and a financial status is at best awkward and cacophonous.

But we fought anyway.

And even though they are trying to buy our country and our democracy, they haven't yet succeeded.

This may not be too evident today, but it certainly was on November 4, 2008, at 11 P.M. Eastern Time, when the people's will prevailed because Election Integrity/true democracy vanquished its enemy. The people's will prevailed.

It was that simple.

EI moved toward the paper ballot as unit of our democracy even as the enemy has moved toward the dollar bill as unit of its takeover.

Now you can find out how.

Marta Steele
Washington, DC
April 2012

*Please note that throughout this volume all of the references to the weekly radio program *Voice of the Voters* come from *Words, UnLtd.* blogs written by Marta Steele. I have tried to avoid “[sic]” in direct quotations, keeping it when I find usage blatantly “against the rules,” but rarely in these instances is meaning lost. There are no serious errors in such contexts. I

augment meaning within brackets where this is needed to
make syntax coherent.

Chapter 1

Origins of the Election Integrity Movement

Election 2000: Forces that led to the formation of the EI movement and agitated its growth

The one vote that made George Bush president in 2000 was from the Supreme Court.—Rick Jacobs

If our identity as a nation was stolen by election theft, how long would it take for us to figure it out?—Pokey Anderson

If all the ballots had been reviewed under any of seven single standards . . . Mr. Gore would have won.—New York Times

Having electronic voting machines that can be trusted should not be a partisan issue, but for some reason it has been.—Adam Cohen

We have had some very deep flaws that we ignored for a long time until we saw that close presidential election in 2000.—Norman Ornstein

As the 2000 election so vividly demonstrated, nearly any election system, no matter how smoothly it has appeared to work in the past, reveals its shortcomings in a close race.—Pew Charitable Trust

You won the election, but I won the count.—Anastasio Somoza, Dictator

I can imagine no Indiana Jones film with as many gasp-inducing twists and turns as this story.—Brad Friedman

The presidential election of 2000 is notorious as a crisis of unprecedented proportions. The indecisive poll results in Florida led to thirty-six days of recounting ballots, controversy in that process, lawsuits, and the ultimate decision to refer the impasse over who won the election to the United States Supreme Court. *Bush v Gore*, the resulting lawsuit, was decided in favor of George W. Bush, though a

large proportion of the population believed that Al Gore had clearly won. The Court simply stopped the vote recount at a point when Bush was a bit more than one hundred votes ahead. Bases of decisions that determined who would next occupy the White House were suspect, according to prosecuting attorney and author Vincent Bugliosi, who called the Court's decision on December 12 the darkest day in the history of its existence.¹ Justice Antonin Scalia justified halting the recount in Florida with the words that a continued recount would cause² "irreparable harm to petitioner [Bush], and to the country, by casting a cloud upon what he claims to be the legitimacy of his election,"³ and Justice Sandra Day O'Connor said that she wouldn't be able to retire unless Bush was elected.^{4,5}

At the base of the Supreme Court decision was a distorted and forced interpretation of the Fourteenth Amendment, claiming that equal protection had been violated because of inconsistent methods applied to the recount. According to Brad Friedman, "There, the problem was attempting to meet Florida's 'intent of the voter' requirement in 'the absence of specific standards to ensure its equal application.'"⁶ The decision was therefore pronounced "one-time" and "non-precedent-setting." Since "12/12," however, others have attempted to use the decision as a precedent. Most recently, in 2009 the defeated incumbent Senator Norm Coleman (R-MN) wanted to base a Supreme Court case on the same principle, even though the Minnesota federal court had already ruled that Al Franken, his Democratic opponent, legally won the election. Minnesota, meanwhile, went without one of its two senators for more than four months—could it have been partisanship once again that was holding things up?

Some of the irregularities that led up to this disgracefully politicized Supreme Court decision occurred with punch-card voting (the hanging-chads scandal)⁷; others occurred when a poorly designed ballot, the infamous butterfly ballot, was so confusing for senior citizens to read that much of Palm Beach County's largely Jewish population ended up voting for Pat Buchanan,⁸ who hardly represented their interests. In a further calamity, a contrivance of then-U.S. Representative Tom DeLay, a group of Bush aides were bussed to Miami-Dade County and so badly harassed those doing the recount that it was halted there (the "Brooks Brothers Riot").⁹ Black high school graduates and college students were turned away from the polls. Other blacks were barred from voting via intimidation, lies, and

actual roadblocks before they got to the polls and by early closings that kept them from voting after work.

According to elections attorney Robert F. Kennedy Jr., the tipping point was Volusia County, where the machinery subtracted sixteen thousand votes from Gore's total in enough time for Fox News to declare victory for Bush and for Gore to concede.¹⁰ Then the total shifted to Gore's column—now he was ahead by fourteen thousand votes.¹¹ At fault was a possibly defective memory card. But the damage had been done, associating Gore with flip-flopping and being a bad sport and so on, an image encouraged and spread by the Bush machine. Another opinion is that the *overvotes*, ballots with choice indicated by both punch-card hole and write-in space, where the voter intent is clear, would have put Gore over the top by at least 6,600 votes.¹²

The list goes on: Florida's secretary of state was also head of the Bush election campaign¹³ (as was J. Kenneth Blackwell in Ohio in 2004¹⁴). An estimated 57,700 [at that time; see below, p. 214] supposed ex-felons were kept from voting, though more than 95 percent of them were innocent, including 54 percent who were "guilty of voting while being black."¹⁵ The secretary of state failed to process six hundred thousand new votes.¹⁶

In September 2000, Republican Congressman Tom Feeney of Florida, then speaker of the state legislature, asked a computer programmer, Clinton E. Curtis, to write a program that would rig Florida's machines to produce 51–49 percent victories for the candidate of choice. Curtis, a Republican, said that was easy to carry out; he assumed the purpose was to curtail cheaters on the other side. Election officials could never prove fraud—they would have had to examine the source codes of the machines, or else a paper record. Both were proprietary.¹⁷

Here is the historical article published December 4, 2000, at Salon.com, in which investigative reporter and BBC journalist Greg Palast revealed the list of supposed ex-felons, some 80 percent of them black, who were kept from voting. Palast claims that this opportunistic disenfranchisement kept Gore from the White House.¹⁸ Publication occurred well before the historic Supreme Court decision of December 12, 2000, but publicity was curbed in this country.¹⁹ Europeans, though, were shaking their heads in disbelief, well aware of Palast's findings.

Palast wrote in February 2001:

When I ran my first story in the *Guardian* about the theft of the Florida vote, Americans by the thousands flooded our Internet site. They set a record for hits before the information-hungry hordes blew down our giant server computers. When BBC ran the story, viewership of the webcast of *Newsnight* grew by 10,000 percent as a result of Americans demanding to see what they were denied on their own tubes.

This notorious, award-winning muckraker worked for the BBC and the *Guardian* in England because the mainstream press in this country shunned him 99 percent of the time. He writes that CBS considered running the story, but backed out after contacting Jeb Bush's office for verification and receiving none.

Filmmaker and activist Danny Schechter, whose documentary *Counting on Democracy* was released in 2003, winning prizes at festivals while being shunned by PBS, had this retrospective anecdote about the massive cover-up:

A car was being dredged up after sinking in a canal in Miami Dade County on August 9th, 2002. Divers who found the car also found a locked metal box that when opened contained uncounted ballots from the November 2000 election. The large majority of the presidential votes in the lost container were for Al Gore. Of the approximate 2500 soaked ballots over 1600 were for Al Gore. The election of 2000 just won't go away. . . . Local police spokesperson Jeanne Pierre Dorvil stated that the matter would be investigated.²⁰

Those who believe that the election was conducted more fairly than not point out that "according to the *Miami Herald*, some 5,000 convicted felons, 75 percent of whom were registered Democrats, illegally voted in Florida."²¹ Therefore, felons voted illegally rather than being prevented from voting. This source, Nicholas Stix, also argues that stories about "racist police roadblocks" were fallacious, as was the claim that "voting machinery in black neighborhoods was dilapidated."²² He attempts to debunk the myth that "voters were misinformed about how to vote" and that "black college students were targeted for disenfranchisement." As to Greg Palast's findings about disenfranchised, alleged "felons," Stix points to the Florida law

that keeps [authentic] felons from voting. The purpose of this law, passed in 1868, was indeed to prevent blacks from voting, many of whom were arrested as felons when attempting to vote.²³ Whites feared they were gaining too much power during Reconstruction.²⁴

The overvotes in which voters marked and also wrote in the name of their choice would be even more clearly legal votes than the so-called *undervotes* that had been eliminated for failing to register a choice that voting machines could read.

This new information indicating that the wrong presidential candidate moved into the White House also makes a mockery of the November 12, 2008, front-page stories of the *New York Times*, the *Washington Post*, and other leading news outlets, which stated that Bush would have won regardless of the Supreme Court's ruling.²⁵

Beyond the specific ballots, the newspapers agreed that Gore lost thousands of more votes because of errors in filling out confusing ballots in some precincts. *USA Today* estimated that Gore lost fifteen thousand to twenty-five thousand votes, "enough to have decisively won Florida and the White House."²⁶

The *Miami Herald* noted that a recent statistical study by six academics from leading universities concluded that the infamous butterfly ballot in Palm Beach County probably cost Gore at least thirty-four hundred votes from accidental double punches and up to another twenty-four hundred votes that were mistakenly cast and counted for Reform Party candidate Pat Buchanan.²⁷ While these unofficial newspaper tallies obviously won't change the fact that George W. Bush was awarded Florida's twenty-five electoral votes and thus the presidency, they do underscore the fact that the American people chose Gore to be their leader.²⁸

But it is agreed by many that Gore conducted an abysmal campaign,²⁹ handing over the reins largely to his children.³⁰ Gore said that ultimately, as he suffered through those excruciating days between Election Day and December 12, his concern was for his country.³¹ Bush had no such misgivings, and some say that he won the recount for that very reason. Gore, said these same writers, had won the election.

Here is John Dean's postmortem on Gore 2000:

Al Gore, to win in Florida, should not have restrained his Florida team, worrying unnecessarily that the establishment elite would be unhappy with him. . . . Bush was prepared to tie up the

election indefinitely, if necessary, an attitude that Dean thinks would have won the election for Gore. He could have prevailed in the Florida recount: He had more actual votes than Bush, not to mention more voters who were disenfranchised by Florida election errors. In truth, he won the Florida vote, but lost the recount.^{32,33} [Emphasis by the author]

The United States Supreme Court had taken away the legal prerogative of the Florida Supreme Court, which had unanimously agreed to continue the hand-recounting of votes that was leading in Gore's direction.³⁴ Gore also decided to limit the recount to four largely Democratic counties although he could have had the entire state's votes recounted.³⁵ That *Bush v Gore* saw daylight "to avoid a constitutional crisis"³⁶ is an argument that Bugliosi finds "preposterous" and devotes pages of his book to a rebuttal. The politicization of the Supreme Court is also defended through reference to the Democratic majority in the Florida Supreme Court, wrote Bugliosi. But in the latter case, the justices were studying the laws³⁷ involved without reference to "irreparable harm" or the need to retire with the "right" president in office. The famed prosecutor of the Manson trial and author of *Helter Skelter* does admit that once the case was tried at the highest level Gore lost. On top of everything else going against him, he had retained weak attorneys for the case.³⁸ He fired and replaced one of his two attorneys right before the trial.

Attorney Bob Fittrakis and author Harvey Wasserman wrote a scathing article on Gore's behavior after the initial results of this historic debacle, condemning the former vice president for the deep damage done to democracy that subsumed the day Progressives call 12/12. They called Gore's decision to have recounts in just four counties instead of the entire state "a miscalculation of epic proportions."³⁹

They also fiercely condemn Gore's behavior on the quadrennial meeting of the Electoral College in January 2001. Gore gavelled down every attempt among House representatives to challenge the seating of the Florida delegation, per guidelines supplied in the Fourteenth Amendment along with a historic precedent set in 1887 in response to another stolen election.⁴⁰ Gore begged then-Senator Hillary Clinton not to join the representatives and therefore strengthen their clout. Activist Fittrakis and Wasserman inveighed against the use of the College instead of the popular vote to elect the president, given its

origins as protector of small states. Moreover, the Electoral College system had come in handy for southern states, who then counted a slave as three-fifths of a person, thus swelling the number of their allotted electoral votes without granting voting rights to slaves.⁴¹

After the Supreme Court “selected” Bush, mainstream media follow-up on this alleged politicization was slow in coming. The illegality of Bush’s presence in the White House was again publicized in early February by *The Nation*.⁴² The *Washington Post* reported on work in progress by the U.S. Commission on Civil Rights (see below), proving that disenfranchisement of minorities had impeded an accurate vote count.⁴³ Frank Rich picked it up in an op-ed piece in the *New York Times*, as did a few other columnists and radio show hosts.⁴⁴

Election 2000 had handed the United States a Republican administration by an alleged margin of 537 in Florida. That state decided the race with its twenty-five electoral votes, thereby steering the events that followed—harrowing for most of the citizenry—plunging a large majority into recession and despair, and costing or ruining countless lives both here and abroad.

The ratio between 537 votes and the 105,405,100 votes cast in November 2000, is approximately 1:200,000. That’s as if one out of every two hundred thousand voters had determined the outcome of the election.

Far more attuned to the issues four years later, the *New York Times* reported that according to a Zogby poll, “even in red states, which voted for George W. Bush, 32 percent of the public believes that the election was stolen. In blue states, the fraction is 44 percent.”⁴⁵

A similarly minute, but inverse and undeniably ethical moment in U.S. history steered this country’s fate on November 3, the day before Election 2008. On that day, in a hearing in Ohio’s federal court, Karl Rove’s IT operative Michael Connell was kept from manipulating electronic voting machines across the country to hand the victory to the clearly less popular candidate, John McCain.⁴⁶ The will of the people, squelched for the previous eight years, came roaring through Rove’s virtual levee. A Democrat prevailed in the presidential election, and Democrats took over the majority in both houses of Congress. We the people came alive. At the eleventh hour, that evening, Rove predicted Obama’s victory.

I shivered with grateful fatigue at 11 P.M. on November 4 when California’s electoral votes put Obama over the finish line by a large,

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decisive margin. I leaned back into my living room couch, overwhelmed, considering how many years and how much activism and how many blogs and how many disappointments and harrowing events had occurred—and I had to stop the room from spinning in order to stay awake another hour to hear and witness Obama’s acceptance speech. It’s as if I’d stayed up one long, horrendous night to study for the most difficult final exam ever taken—arguing for democracy, summoning every resource I could to save democracy from what seemed to be an inevitable demise.

There were five hundred thirty-seven votes in 2000 and one federal court hearing in 2008 less than twenty-four hours before Election Day. Of course, so much machination preceded both events. But timing in each case was crucial. The recount in Florida was halted when the Supreme Court Justices saw it veering in what seemed to them the wrong direction. And Rove’s corruption was halted in its third attempt to thwart the will of the American people when it was recognized as such by Solomon Oliver, a federal judge in Ohio.

Some will say that the wisdom of another Solomon saved our infant democracy—the fate of an entire nation—as much as King Solomon’s decision in ancient Judea saved an infant’s life.

Chapter 2A

Preliminary Reactions to Election 2000: Academic/Mainstream Political

Studies and reports that mainly agreed with the fledgling Election Integrity (EI) movement that Election 2000 had been delivered by corrupt forces and the [that awful word] conspiracy and discrimination that allowed it to happen

We have a very sad and, I would say, embarrassing system of voting. The error rate is enormous.—Jimmy Carter

One of our most sacred rights as Americans is the right to make our voice heard at the polls.—Senator Barack Obama

The Caltech/MIT Voting Technology Project (VTP), a group of computer scientists, mechanical engineers, and political scientists, was established by California Institute of Technology (Caltech) President David Baltimore and Massachusetts Institute of Technology (MIT) President Charles Vest in December 2000 as “an ongoing project to prevent a recurrence of the problems that threatened the 2000 U.S. Presidential Election,” by means of “assess[ing] and improv[ing] voting systems in the United States.”⁴⁷ Stephen Ansolabehere, then a professor of political science at MIT, led the group from 2000 to 2004.

The study was conducted on the basis of the “overcounting, undercounting, or not counting votes for any reason” by all voting instruments.⁴⁸ Between 1.5 and 2 million votes were not counted due to confusing paper ballots or faulty equipment.⁴⁹

The first activity of the team assessed voting technologies and found that paperless electronic voting on digital recording electronic systems (DREs) did not perform as well as did systems that produced optically scanned paper ballots (optical scanners, or opscans). These two types of machine were used by most municipalities in the country in 2001.⁵⁰ The final version of this first project, *A Preliminary Assessment of the Reliability of Existing Voting Equipment*, revised

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and expanded, came out on March 30, 2001.⁵¹ Wrote the UK *Independent*:

The central finding of this investigation is that manually counted paper ballots have the lowest average incidence of spoiled, uncounted, and unmarked ballots, followed closely by lever machines and optically scanned ballots. Punchcard methods and systems using direct recording electronic devices (DREs are the worst) had significantly higher average rates of spoiled, uncounted, and unmarked ballots than any of the other systems.⁵²

Said Ansolabehere, “optical scanning is a pretty good interim solution for the next five or 10 [*sic*]years.” The annual cost would be approximately \$2 per voter, or \$200 million (over a fifteen- to twenty-year span, according to the Fact Sheet published with the report).⁵³ Ansolabehere told the *New York Times* in 2004 that he believed that the ultimate voting method will be via the Internet, once all the myriad and inevitable complications are worked out. He added that this outcome is “inevitable.”⁵⁴

A January 2003 update affirmed that DREs were “among the worst-performing systems.” Most reliable of all was hand-counting paper ballots—“an option that US electoral officials seem to consider hopelessly antiquated, or at least impractical in elections combining multiple local, state and national races for offices from President down to dogcatcher.”⁵⁵

Invited in January 2001 to participate in [Florida] Governor Bush’s Select Task Force on Election Procedures, Standards and Technology, Ansolabehere presented a report he wrote for the occasion, *Residual Votes Attributable to Voting Technology*. Statistics in the report persuaded the participants to allow counties to choose between DREs and opscans rather than requiring DREs throughout the state.⁵⁶

Ansolabehere circulated his report, expanding it in March 2001 and July 2001 as debate on election reform in many categories spread throughout the country. The paper was read by the United States Congress, the National Conference of State Legislatures, the National Commission on Federal Election Reform, and state and local election officials and various organizations.⁵⁷

In another March 1, 2001, report—*Residual Votes Attributable to Technology: An Assessment of the Reliability of Existing Voting*

Technologies, VTP examined the rate of spoiled and unmarked ballots, or “residual rate” of various voting machines in use. Spanning presidential elections from 1988 to 2000 and more than 2700 counties and municipalities, VTP offered its readers a broader perspective—that is, electronic election systems have been problematic and highly corruptible since their introduction into use in the early 1960s.⁵⁸ Already in 1975, Roy Saltman had reported on this.⁵⁹

New information revealed that 2 percent of all presidential votes are residual, occurring most frequently where punch-card and DRE machines are used, and most rarely with opscans and hand-counted paper ballots. The performance of the punch-card machines alarmed the researchers: the residual rate was nearly double that of the other equipment studied.⁶⁰

On July 16, 2001, after meticulous examination of “the vast mosaic of voting laws, procedures, and equipment across the United States,”⁶¹ VTP released *Voting: What Is, What Could Be*.⁶² Among the report’s findings was that “[a]ccording to the U.S. Census Bureau, problems with registration eliminated another 3 million (7.4 percent), and long lines, inconvenient hours, or polling place locations or other problems eliminated yet another 2.8 percent (approx. 1 million).” Other problems included loss of an unknown number of absentee ballots.⁶³

VTP here suggests liberal use of provisional ballots for voters with registration problems attempting to vote at polling sites. Opposed to Internet voting, it recommends limiting absentee voting and expanding early-voting options. It proposes a newly engineered and designed electronic voting system with a memory card that contains a blank ballot, the voting-precinct number, and the name of the election official in charge. In an enclosed booth, the voter inserts the card into a PC. The ballot will be displayed and the voter can mark his/her desired candidates and positions on issues.

The voter then removes the memory card from the PC and proceeds to another private booth, where simple card-reading devices again display the voter’s choices. Once these are verified, the voter pushes a “vote” button. At this point, no further changes are possible.

The resulting data are then transferred to another machine that records and counts the votes. The system should be simple enough that election officials and the public are able to check its accuracy.

Accessibility for election officials and the public is paramount in this system. Partial reliance on PCs is acceptable, and advances in

cryptography, such as digital certificates, enable verification that votes have been recorded and counted correctly and have not been changed.

Proprietary software is acceptable in the PCs used by voters, but “open source” code, which can be publicly audited, should be used in the other devices that record and count votes. The report stipulates that “each separate part of the voting system must also keep a log of all activity, including maintenance, within each machine.”

Between election days, instead of being stored and idle, the machines should be made available for use by public-school districts.⁶⁴

Predicting that “the report will have a big impact,” Kim Alexander, president of the California Voter Foundation, hailed it as “the first major contribution in the voting-technology debate to come out of academia.”⁶⁵

In their September 2002 update of the initial findings of their project “Voting Technology and Uncounted Votes in the United States,” Ansolabehere and Dr. Charles Stewart III, also a professor of political science at MIT, reported that “The difference between the best performing and worst performing technologies is as much as 2 percent of ballots cast. Surprisingly, (hand-counted) paper ballots—the oldest technology—show the best performance.”⁶⁶ They further found that “the second best performing system in terms of residual votes (undervotes or overvotes) was actually one of the punchcard systems. But, (it was) the type that sucks the chad out rather than leaves it hanging there.”⁶⁷

Moreover, “the voting and vote-counting problems in Florida were not the worst in the country. The rate of spoiled, unmarked, or uncounted ballots in Illinois, South Carolina, Idaho, Wyoming, and Georgia and cities including Chicago and New York in Election 2000 were all higher than in Florida.”⁶⁸

The report concluded by recommending optical scanners or paper ballots as preferable to other voting systems in place in 2000: lever machines, DREs, and punch cards.

Paul Gronke, of Reed College’s Early Voting Research Center, wrote in the *Election Updates* blog page of the VTP website, that Michael Alvarez and Thad Hall, both of VTP, invented the concept of *voter confidence*: the voter’s belief that his/her vote has been counted as intended which, Gronke posits, consists of the following considerations:

- Did you vote for the winner or the loser?
- The quality of poll workers
- Concerns about voter fraud
- Overall evaluations of the voting experience

“We did not find, however,” Gronke continues, “contrary to some previous work, that voter confidence levels were significantly different across different modes of balloting (early in person, absentee, and at the precinct on election day).”⁶⁹

On the same page, he contributed a graph that measures three groups of eligible voters:

- Pre-election respondents who said they intended to vote;
- Pre-election respondents who said they were uncertain whether they would vote; and
- Post-election respondents who reported voting

Most interesting, wrote Gronke, was the group that was uncertain. It reported “substantially lower confidence levels,” indicating possible positive correlation between that level of confidence and voter turnout.⁷⁰ Oddly enough, VTP also found in 2003 (revised 2004) that the presence of paper trails decreases voter confidence in a voting system.⁷¹

Interviewed on October 26, 2004, VTP codirector Ted Selker emphasized the importance of on-the-ground processes and procedures along with technology. “We have to do good ballot printing. We have to do good poll worker training. We have to have good polling place operations and be careful how we treat ballots as we go from the voting machine to the tallies,” he said.

He also reminded listeners that “voter mischief has occurred throughout history. . . . Ballots got stuffed, they got stolen, they got changed.”⁷²

Among the voluminous number of VTP working papers published since the group’s prolific beginnings, subjects range far and wide within the field: from the September 2001 *19th Century Ballot Reform in California: A Study of the Huntington Library’s Political Ephemera Collection* to the October 2004 *The Reliability of Electronic Voting Machines in Georgia* to the January 2004 *The*

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SAVE System: Secure Architecture for Voting Electronically to the March 2007 *Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transit Problem* to the February 2005 *Whose Absentee Votes Are Counted?* to the November 2003 *Why Everything That Can Go Wrong Often Does: An Analysis of Election Administration Problems* to the March 2008 *Russian Elections: An Oxymoron of Democracy* and *Ukraine's 2007 Parliamentary Elections: Free and Fair or Fraud Once Again and the Argument for Election Observers.*⁷³

A 2008 retrospective on VTP's accomplishments lauded the distinguished group's projects, including working papers, academic articles, and books, whose now expanded goal is to "develop better voting technologies, improve election administration, and to deepen scientific research in these areas."⁷⁴

Current activities include:

- Developing better voting systems standards and testing practices;
- Studying and developing novel and improved post-election auditing procedures;
- Assessing and evaluating the voting experience in federal elections;
- Examining ways to make the process of voter registration more secure and more accessible;
- Evaluating methods of voter authentication, and their effects on the election process; and
- Improving voting technologies.⁷⁵

On August 1, 2001, a report by the bipartisan National Commission on Federal Election Reform (NCFER), led by former presidents Jimmy Carter, a Democrat, and Gerald R. Ford, a Republican, was released. This study of the Florida 2000 "electoral malfunctions" went far beyond the borders of the Sunshine State, citing "sloppy, inconsistent and antiquated election administration that analysts believe kept millions from casting a valid vote in 2000."⁷⁶

The report was expected to attract support for a Senate bill much milder than the Dodd-Conyers bill (the *Equal Protection of Voting Rights Act of 2001* [S.565/H.R.1170]; (see below); in that it "does not force changes on states."⁷⁷ Sponsored by Senators Mitch McConnell

(R-KY), Sam Brownback (R-KS), and Charles E. Schumer (D-NY), the *Bipartisan Federal Election Reform Act of 2001* (S-953) is described as “closer in spirit to the commission's report than the Dodd bill is.”⁷⁸

The thirteen Carter-Ford report policy recommendations include the following:

- The states should adopt a uniform system of statewide voter registration.
- States should allow "provisional" ballots in which someone can vote and have his or her eligibility verified later.
- Congress should enact legislation to hold national elections on a national holiday, like Veterans' Day.
- States should restore voting rights to felons after they have served their sentences.
- States should allow no more than 2 percent of votes to be discounted because of errors by either voters or equipment and taking into account that perhaps three-fourths of one percent of voters make no choice at all.
- A federal agency should develop national standards for voting machines.
- States should adopt uniform standards for what constitutes a valid vote.⁷⁹
- News organizations should refrain from predicting winners of national elections as long as polls remain open in any of the forty-eight contiguous states, the report continued, and the federal government should provide matching grants of up to \$400 million annually to the states to improve their voting systems.

The report was criticized for not touching the subject of election system reform.⁸⁰ It did however, strongly influence the Help AmericaVote Act. (see below).

President Bush, while not specifically endorsing any recommendation, claimed to support four broad goals: “1) keeping the primary responsibility for elections with the states; 2) limiting the role of the federal government to helping states with technology; 3)

enforcing voting rights; and 4) upholding the voting rights of members of the armed services.”⁸¹

The McConnell-Brownback-Schumer bill, the *Bipartisan Federal Election Reform Act of 2001*, would provide \$2.5 billion and create a commission to draft new voting procedures, based on the recommendations of a blue ribbon study panel that the Act also mandated.⁸²

The Act enumerates the duties of the commission and the “voting mechanism” requirements of systems purchased with the grant money it was in charge of allocating. Duties of the commission include overseeing the enforcement of all federal legislation concerning the rights of voters who are handicapped; carrying out the federal specifications regarding overseas military absentee ballots; serving as a clearinghouse of all information pertaining to U.S. elections and voting; commissioning bipartisan panels of election officials to assist state officials with procedures at any level of jurisdiction; and researching and studying issues itself and publishing findings in the form of papers, pamphlets, and reports relevant to federal, state, and local matters.

The commission was also to attend to compliance with Title IX of the *National Voter Registration Act of 1993* (the “Motor-Voter law”), concerning voting by mail.⁸³

In October 2001, the Government Accountability Organization (GAO) published another report on Election 2000, *ELECTIONS: Statistical Analysis of Factors That Affected Uncounted Votes in the 2000 Presidential Election*.⁸⁴ The specific focus was reasons for the large number of uncounted votes.

Criteria that formed the basis of the study, gathered from Census 2000, were a county’s population size, racial composition (percentage of African American and Hispanic residents), and age (percentage of 18–24 year olds and residents over 65).⁸⁵

The study concluded that:

- The higher [the] percentage of minority voters, higher # of votes lost;
- Counties with younger and more educated voters had a lower rate of vote loss;
- The largest number of uncounted votes were in counties that used punch card machinery;

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- Optical scanners lost 1.1 percent fewer votes than did punch card systems; and
- Counties with punch card systems tended not to include minority voters.⁸⁶

Further, the state in which counties are located wields more influence on votes than do the counties' demographics and machinery combined, but all three factors had statistically significant effects on uncounted presidential votes.⁸⁷

And now to focus in more on Florida 2000:

A recount by Knight Ridder (owner of the *Miami Herald*), begun on December 2, 2000, reported that Gore was already ahead by 140 votes after a recount of the undervotes of one county, according to the Guardian.co.uk. The ballots were accessed through the *Freedom of Information Act*. The lead was “expected to soar” when the recount continued after the Christmas holiday. According to the *Guardian*, “In a separate exercise, the *Miami Herald* commissioned a team of political analysts and pollsters to make a statistical calculation based on projections of votes by county, concluding that Gore won the state by 23,000.” This report was published on December 24, 2000.⁸⁸

In January 2001, a consortium of the largest newspapers in the United States (*New York Times* and its affiliates, including *Boston Globe*; *Wall Street Journal*; Washington Post Company; CNN [which later dropped out]; Tribune Publishing; Associated Press; *St. Petersburg Times*; and *Palm Beach Post*) hired the University of Chicago's National Opinion Research Center (NORC), which focused on 180,000 uncertified votes from all over Florida, both undervotes [ballots unmarked] and overvotes [ballots with desired candidate checked off as well as written in]. Results indicated that Al Gore did win—he simply received more votes than Bush did.⁸⁹ NORC's purpose was to “help state legislatures, other decision-makers, and developers of ballot systems to work toward more reliable ballot systems.” NORC further observed that “[the data] simply reflects the reality of the disparate ballot designs used throughout the state of Florida” (That disparity is unconstitutional, according to the Supreme Court's twisted interpretation of the Fourteenth Amendment; the

Justices wrote that a continued recount would violate the Equal Protection clause, a “non–precedent-setting,” “one time only” basis for the argument used to dismiss the evidence of voter preference).⁹⁰ According to John Nichols, coauthor of *Jews for Buchanan*:

The contested presidential election of 2000 has been pushed so far off the national radar that a consortium of media outlets, after spending more than \$1 million to sort through Florida’s uncounted ballots in search of a winner, felt no compunctions about delaying revelation of the results for two months in order to avoid the suggestion of disloyalty to a president whose electoral legitimacy remains dubious at best.⁹¹

According to Dr. Kirk Wolter, NORC's Senior Vice President for Statistics and Methodology:

The intention of the project from NORC’s viewpoint is not to identify who got more votes but rather to examine closely the variabilities in the voting systems themselves. This information will be helpful to State and local governments in selecting balloting systems that count ballots with a high degree of reliability.⁹²

Participants in the study would be free to use the data for both analysis and reporting, as would academics and other members of the public, once the information was published by the media.⁹³

The *New York Times* did its own analysis of how mistaken overvotes might have been caused by confusing ballot designs. It found that the butterfly ballot in heavily Democratic Palm Beach County may have cost Gore a net 6,286 votes, and the two-page ballot in similarly Democratic Duval County may have cost him a net 1,999 votes, either of which would have made the difference. The rest of the media consortium did not consider these ballots, which gave no clear indication of a voter's intent.⁹⁴

On April 3, 2001, the *Miami Herald* and *USA Today* reported on another study of Florida 2000. Conducted by the accounting firm BDO Seidman, this study counted more than sixty thousand votes in Florida's sixty-seven counties, tabulating separate vote totals in several standard categories. Its conclusion was that Bush had

probably won, with only one “generous” scenario that would have allowed for a Gore victory.⁹⁵

A report by Dr. Susan A. MacManus et al., *Floridians Want Reform of the Election System. . . . Now*, published April 16, 2001, and sponsored by the Collins Center for Public Policy, Inc., and the James Madison Institute and available from the CalTech/MIT Voting Technology Project, posited that meaningful voter reform involves three key elements:

(1) the broadest voter participation possible, through language assistance, early voting, absentee voting, provisional and substitute voting, and felon re-enfranchisement; (2) the creation of a system of voting with ample meaningful citizen participation, through returning to a process of civilian run elections and through the creation of a citizen’s board of elections; and (3) the creation of a transparent system with adequate accounting safeguards, through the continued use of independent outside observers and through the implementation of financial audits of funds designated for the conduct of elections, the creation of accounting and procedural safeguards, data collection and analysis.⁹⁶

The United States Civil Rights Commission, the [first] government agency to become involved in this conversation, released *Voting Irregularities in Florida during the 2000 Presidential Election* exclusively to the *Washington Post* on June 5, 2001. Based on hearings held five months earlier, in Tallahassee on January 11 and 12, 2001,⁹⁷ the report concluded that “the Florida presidential elections appear to have been marred by voter disenfranchisement.” Some of the study’s results include:

The assignment of many African Americans to polling sites that lacked sufficient resources to confirm voter eligibility; failure to process voter registration applications under the ‘motor voter’ law in a timely manner; use of defective and complicated ballots that caused many ‘overvotes’ and ‘undervotes’; early closing of polling places; relocation of polling places without notice; use of old and defective election equipment in poor precincts; failure to provide requested language assistance to Haitian American and

Latino American voters; and failure to ensure access for voters with disabilities.

Moreover, Florida “failed to provide adequate training to its poll workers and committed inadequate funds to voter education.” This report was also said to have been “purposely timed to have no effect on the outcome already certified by Al Gore in January 2001.”⁹⁸

In response, state government officials promised to eliminate the purposely erroneous and illegal list of supposed felons from future elections.⁹⁹ This did not occur. What actually happened in 2001 was that the state made it legal to keep voter rolls and the purge list secret. In 2004, before the next presidential election, there was another list of forty-seven thousand names to be purged from the voter rolls.¹⁰⁰ After the NAACP sued in 2001,¹⁰¹ Florida agreed to screen suspected felons more carefully but maintained the racist denial of voting rights to ex-felons—and budgeted another \$2 million for more fraudulent felon purges.¹⁰² The state compiled the new lists, instead of hiring out this job to a private firm as it had done in 2000. Under the new process, the counties have to send certified letters to suspected felons and can remove them from the rolls if they do not promptly respond.

Another process, enacted in 2001 under the state's election reform laws, was developed to determine which names to remove from the rolls. The county supervisors worked to develop additional safeguards. Supervisor Ion Sancho, after perusing the list for Leon County, found mistakes.¹⁰³ The Brennan Center for Justice at New York University, having discovered that the master list of felons contained “at least some former felons with restored voting rights,” sued to overturn the ban on felons, on the grounds that it violated the voting rights of more than one in four black men.¹⁰⁴

According to Sam Stark, author of *The Right to Vote Comes in Many Colors*:

Besides Florida, the states of Mississippi, Alabama, Virginia, Kentucky, Iowa, Nevada and Wyoming also ban ex-felons for life from exercising their right to vote. Tennessee and Washington disenfranchise people convicted prior to the mid-1980s. Arizona and Maryland impose lifelong disenfranchisement on two-time felons. Texas disenfranchises ex-offenders for two years after they have completed their sentences.¹⁰⁵

Later in 2001, the Office for Civil Rights Evaluation released a four-part review of “national election reform initiatives, as well as studies and proposals of both public and private entities, to facilitate the [United States Civil Rights] Commission’s ongoing monitoring of voting rights enforcement and election reform.”¹⁰⁶ *Election Reform: An Analysis of Proposals and the Commission’s Recommendations for Improving America’s Election System* offered eighteen recommendations, among them the need for national standards, sufficient funding for election reform, the need for one “central, high-ranking official” to be solely accountable and responsible for elections, strict enforcement of laws protecting voting rights, uniform tracking and reporting of election data, the strict necessity for provisional ballots, minimum national standards for voting equipment, restoration of voting rights for felons, sufficient voter education, and more.¹⁰⁷

The report was based on “a review of reports produced by national committees, task forces, and organizations, as well as the Commission’s own research.”¹⁰⁸

Statements like “Enforcement of voting rights legislation should become a cooperative effort between all levels of government, the nongovernment sector, and the public” and “For the election process to work there must be government accountability at the federal, state, and local levels for ensuring that the right to vote is not impeded” elicit an observation I came upon about how so much of election protection involves conflicts and resolutions among various levels of government and society.¹⁰⁹

On March 19, 2001, U.S. Sen. Christopher Dodd (D-CT) and Rep. John Conyers (D-MI) introduced the *Equal Protection of Voting Rights Act of 2001* (S.565/H.R.1170). The bill was supported by all fifty Democratic senators as well as Sen. James Jeffords (I-VT). The bill establishes uniform statewide voting procedures, requires poll worker training, and contains a voter bill of rights. A major goal of the bill is to improve access to voting by improving public voter information programs, instituting modern voting technology, sending sample ballots for registered voters prior to election day, and allowing for provisional voting. It also ensures accommodation for language minorities and disabled voters. Most importantly, the bill provides federal funding to ensure that the reforms are implemented.¹¹⁰

At a follow-up press conference on June 21, Senate Majority Leader Tom Daschle (D-SD) joined Dodd, House Minority Leader Richard Gephardt (D-MO), Rep. John Conyers (D-MI), and several other members of Congress as well as representatives of the civil rights community to support passage of this vital legislation to address flaws in the voting system. After months of negotiations and more than two weeks of Senate floor debate, a cloture vote on the bill failed on March 4, 2002.¹¹¹

More Books about Florida 2000

Regarding books on the sizzling subject of Florida 2000, on January 30, 2002, John Dean wrote in Salon.com: “By my count, the 36 days following the Nov. 7, 2000, presidential election generated not less than 36 books and one Ph.D. dissertation, plus countless articles and essays.” Searching Amazon.com, Dean found 790 results on *Bush v Gore* alone: books, articles, working papers, and more.¹¹² I did my own search and came upon a copy of the dissenting minority opinion of the Supreme Court dated December 12, 2000, for \$1,000. In it, Justice John Paul Stevens issues a scathing indictment of the majority consensus: “Although we may never know with complete certainty the identity of the winner of this year’s Presidential election, the identity of the loser is perfectly clear. It is the Nation’s confidence in the judge as an impartial guardian of the rule of law.”¹¹³

Dean himself confesses that after he read almost half of the books published about the period November 7–December 12, he found that “the evidence is overwhelming, and the conclusions are inescapable, if not irrefutable.”¹¹⁴

As early as January 2001, Jake Tapper, then Washington correspondent for Salon.com and reporter who delved deeply into both sides of the events surrounding Florida 2000, authored *Down and Dirty: The Plot to Steal the Presidency in the 2000 Presidential Election*. *Down and Dirty* reveals many of the “backstage” events, on both sides of the ticket, that led to Bush’s victory, including Jeb Bush’s “underground” assistance [he had officially recused himself from the process] in steering the election in his brother’s favor.¹¹⁵

Tapper wrote that Bush’s official victory resulted from absentee military ballots accepted up through November 17, though this was illegal. There were 450 by November 13, but 3,300 by November 17—votes that had been actively solicited overseas.

A total of 175,000 undervotes and overvotes weren't read because of Gore's decision that the recount should encompass only four heavily Democratic counties. The Republicans, of course, didn't want them read at all.

Tapper wrote that he felt lonely in his detailed and meticulous reporting for Salon.com on the events in Florida. In this project he was joined, of course, by Greg Palast, who did report in Salon.com on December 4, from London, on events that were at least as "down and dirty" as the details Tapper revealed.

When Tapper returned to Florida after the controversy was officially solved on December 12, he discovered he "was learning tons. Waaaaaay too much. It was unnerving how much I did not know." He found that once Bush had been elected, others in the news media lost interest in the story except for local publications like the *Palm Beach Herald* and the *Miami Sentinel*.

The more rational *Deadlock: The Inside Story of America's Closest Election*, published in April 2001 by the political staff of the *Washington Post*, explained the outrageous flouting of the law and the people's will in terms of the Republican conviction that the Democrats were evil. According to Bill Clinton, they thought that "God wanted Bush to win."¹¹⁶

In fall of 2001, John Nichols, correspondent for *The Nation* magazine, published his humorous but incisive *Jews for Buchanan: Did You Hear the One about the Theft of the American Presidency?* He proves that Gore won Florida hands down, focusing on the ambiguously designed ballots that led many elderly pro-Gore Jewish voters to indicate Pat Buchanan as their choice, wrongly—most of these votes were actually for Gore. Nichols provides "the first comprehensive and highly readable sweep over all the then-extant, many proofs of the Democrat's overwhelming victory in this contested state."¹¹⁷

According to John Dean, *Jews for Buchanan* "is filled with amusing quips, cartoons and more than incongruous—but apparently authentic—e-mail from a recused Florida governor, John Ellis '[sic]Jeb' Bush."¹¹⁸

Buchanan quotes the gonzo journalist Dr. Hunter Thompson: "Bush didn't actually steal the White House from Al Gore, he just brutally wrestled it away from him in the darkness of one swampy Florida night. Gore got mugged, and the local cops don't give a damn."¹¹⁹

And further, Pat Buchanan said: “Look, I am not unaware of what 20 years of accusations in the media can do to your reputation. Remember, I worked for Richard Nixon. I heard one old fellow in Palm Beach County say he would sooner vote for Farrakhan than Pat Buchanan.”¹²⁰

Dean writes that only two Election 2000 books attracted any real attention before 9/11: Bugliosi's *The Betrayal of America: How the Supreme Court Undermined the Constitution and Chose Our President* spent six weeks on the *New York Times* paperback bestseller list, and Harvard law professor Alan Dershowitz's *Supreme Injustices: How the High Court Hijacked Election 2000* spent seven weeks.¹²¹

Both books (which were reviewed by Salon.com), however, had fallen off the *New York Times* list a month before 9/11. Most of the many others have been ignored, according to Dean, some of them because of the terrorist attacks, which rendered the Election 2000 focus obsolete. He writes that some of them might otherwise have become best sellers.

Dean also pays passing attention to “institutional” publications like those prepared by Lexis-Nexis, *Congressional Quarterly*, the National Commission on Election Standards and Reform; and, by correspondents of the *New York Times*, *Thirty-Six Days: The Complete Chronicle of the 2000 Presidential Election Crisis*.

What would have happened with the nascent EI movement had 9/11 not occurred? There were no more *New York Times* EI best sellers on Election 2000 after 9/11, aside from Palast's three chapters in the collections he published in 2002 and 2007. A little more than a month after I'd met Palast and Bugliosi, two grassroots lions, on July 31, 2001, and I had published my first Internet article on this event,¹²² 9/11 occurred.

It was not until May 2002, when Election 2004 became an issue, that my publication *Words, UnLtd.* delved back into EI issues. Greg Palast's *The Best Democracy Money Can Buy* had been published the preceding month; its lead selection “Jim Crow in Cyberspace” focused on Florida 2000 and the illegal list of alleged felons that so perverted election results in that state.¹²³ Other studies would emerge later, unanimous in the conviction and proof, by many means, that Gore had triumphed. Notable among these are Los Angeles-based British journalist Andrew Gumbel's *Steal This Vote: Dirty Elections and the Rotten History of Democracy in America*, which economist and *New York Times* columnist Paul Krugman called the “best

overview of the Florida 2000 vote,¹²⁴ and the 2005 University Press of Florida publication *The Battle for Florida: An Annotated Compendium of Materials from the 2000 Presidential Election*, by Lance deHaven-Smith, a professor of public administration at the University of Florida. Among deHaven-Smith's notable findings is that overvotes left uncounted, found chiefly among Florida's predominantly black counties, indicated a choice for Gore both on the ballot and in the write-in section. He compares this deterioration of democratic values with the deterioration and fall of the Athenian democracy, this democracy's earliest forbear, as well as the fall of the Roman Republic.¹²⁵

In looking forward, we could not help but look back and worry. As John Dean prophetically wrote in 2002:

Many observers believe that the 2000 presidential election story is over and dead. I don't. Rather, I think these events are going to return to haunt future elections, not to mention the Senate confirmation hearing of the next nominee to fill any vacancy on the United States Supreme Court. For example, after reading these books, I would not be surprised to discover that Enron's political largess [*sic*] was somehow involved in the Florida vote-counting debacle.¹²⁶

Dean anticipated that new and better election laws would help things. Instead, later, they either hindered or, at the state level, could be ignored. He anticipated another debacle and we all suffered many more, even in Election 2008.

But meanwhile, another pivotal event occurred that would heavily influence the next presidential election, another sort of 9/11 that served to turn some attention back to Election Integrity and keep it there, the passage of the Help America Vote Act (HAVA) in November 2002. See Chapter 3 for more on this.

Chapter 2B

Preliminary Reactions to Election 2000:

Grassroots

The Most Massive Snake-Oil Scam in History

Those who expect to reap the blessings of freedom must, like men, undergo the fatigues of supporting it.—Tom Paine

The most remarkable part of the movement, though, has been the grass-roots organizations that have sprung up around the country to demand better voting technology.—Adam Cohen

Voting machines are one of the few areas recently in which a reform movement, in this case a truly grass-roots one made up largely of ordinary Americans, has not only made a huge difference — it is also well on its way to winning.—Verified Voting Foundation

But we know more today about how to build a machine to take pictures of rocks on Mars than we know about how to build a machine to safeguard the American right to vote.—DeForest Soaries

We have independent consumer protection organizations for toasters. You can read about problems with baby car seats in consumer publications. But until now, no independent, publicly funded consumer protection organization has existed for the most fundamental piece of democracy we have: Elections.—Bev Harris

We've been trying to solve the problems of program bugs in computer science for 50 years. We haven't succeeded. Any program of any size has bugs.—David Dill

Boeing spent \$2 billion over five years to write the control software for the 777, and the final product contains less than one-fourth of the total amount of software that runs on your voting machines. If airplane code were written to the same standards of reliability as voting machines, every day about 10 planes flying out of Baltimore/Washington International would experience a software failure during flight.—Justin Moore

[E]lection reform is an intuitively popular cause because who exactly is against making our democracy work better?—Heather Gerken

So long as we have enough people in this country willing to fight for their rights, we'll be called a democracy.—Roger Baldwin

The media are not on our side. The politicians are not on our side. It's just us, connecting the dots, fitting the fragments together, crunching the numbers, wanting to know why there were so many irregularities in the last election and why these glitches and dirty tricks and wacko numbers had not just an anti-Kerry but a racist tinge.—Robert Koehler

Grassroots activism is the heartbeat of democracy.—David Earnhardt

Most issues of importance have been solved by local people, the “Grass Roots” of the nation.—Bill Moyers

This chapter chronicles the slow but steady birth of a citizens' movement to recover their human rights that had become irrelevant beginning with Election 2000.¹²⁷ It had started from the top even before Election 2000—expert testimony respected but at the same time ignored: piles of white papers and computer files and passing mention in newspapers, but reality, that is, politics and corporate greed, ignored their so-accurate prophecies.¹²⁸ On the ground, history reveals that Bush 43 was acting in a noble family tradition—the circumstances of his father's election to the presidency in 1988 were equally shady. Everything that happened in November 2000 had been foreseen and proven in the two previous decades if not earlier.¹²⁹ Election 2000 was just an extreme example of the worn-out adage that “History repeats itself.”

In the thick of the thirty-six lethal days after November 7, 2000, which turned an election into an unconstitutional “selection,” a group called VoterMarch emerged to protest and fight back. On December 12, they demonstrated outside of the Supreme Court building in Washington, DC, as *Bush v Gore* was decided according to the political line-up of the Justices rather than by the Florida supreme

court (see above, Chapter 1), which should have handled the recount. According to a report posted at VoterMarch.org:

Hundreds of tourists who had come just to visit the building stood and listened to electrifying statements of the meaning of Democracy. Frequently applauding the speakers, they heard what our “public servants” whom we elected and pay to occupy the Building are failing to do.¹³⁰

Launched by New York progressive attorney Lou Posner in response to the irregularities stemming from Florida 2000, as early as November 14, as a “call . . . for critically needed voting and electoral reforms,” Voter March built an online community of activist chapters, many of which were several hundred strong. The number of subscribers to Voter March email lists and e-groups soon exceeded ten thousand, and its popular website soon scored one million hits. Linked to thousands of websites throughout the Internet, Voter March was the fastest-growing grassroots group in the country.

Another nascent protest organization, born of Internet consolidation, was Citizens for a Legitimate Government, or Legitgov.org, a “nonpartisan, pro-Democracy action group,” founded on December 12, 2000. Explained owner Mike Rectenwald, a professor at Carnegie-Mellon University:

We held and continue to maintain that the “election” of George W. Bush was a fraud, and that the installation of Bush marked a fundamental breach of the formal electoral processes in the United States of America. . . . we recognize and always have recognized the highly mediated and manipulated character of the American electoral process, a condition that has only worsened since the founding of our organization.

Our first action was to fly a banner over the Super Bowl held in the aftermath of the election theft (January 1, 2001) [*sic*] at the scene of the crime in Florida (Tampa). While the plane was hired, the banner, “Bush Stole the Election,” never flew over the stadium itself. Rather, the plane merely circled the parking lot. Needless to say, the governor of the state had something to do with this rerouting.

Rectenwald commented that “Bush's presidency is not legitimate. Our Super Bowl banner will remind the people of the real political score, and the Florida venue will make our message all the more potent. Running out the clock is an acceptable tactic in football, but not in a Democracy.”¹³¹

Rectenwald continues:

Our hope was to attain national media attention. . . . CLG's current Editor-in-Chief Lori Price . . . then worked for a television network; our thoughts were that she could help us get camera coverage of the banner. Lori has since become the heart and soul of the CLG, turning it from an obscure group of activists to a major web source for news and commentary relied on by so much of the left in the U.S. and around the world. The CLG now [2009] has a subscriber base of 65,000 and our newsletter is included in the feeds of hundreds if not thousands of sites across the web. . . . The CLG charter held that the CLG was a multi-partisan group established to ‘expose the coup’ and ‘oppose the occupation.’ We made clear our principled position on numerous occasions, but most significantly at the Voter March and Protest.

Little did we know then that the words ‘oppose the occupation’ would soon become a double entendre and stand very well for our opposition to the occupation of Iraq and Afghanistan. Even before the 2000 ‘election,’ I had personally believed that Bush's election would definitely entail the attack of Iraq. I said as much before 9-11 and the pretext for the Iraqi War was established—in an early speech I gave on the first annual ‘Not-My-President's-Day.’ A great deal of our passion had to do with the strong belief we had that same anti-democratic means by which Bush took office (literally) would be rolled out across the world during the Bush “presidency.” We publicly called Bush a war criminal and a terrorist long before it became safe and popular to do so.

Our group had planned to protest every Bush appearance outside of D.C., and we did, until the eventuality of 9-11. Before 9-11, we were subject to containment in the ‘Free Speech Zones’ set up by the Bush regime. We faced possible arrest for moving outside of such pens. After 9-11, protests of Bush's appearance became all but impossible. Nevertheless, we persisted as a news

service and stepped up our media efforts. . . .

“CLG will protest for the duration of the GW Bush Occupation,” said Rectenwald. “We’ll move on when he moves out.”¹³²

Begun in August 2000, Democrats.com, the site of the “aggressive progressives,” was the only news site that covered the Stolen Election of 2000 in Florida.¹³³ Owner Bob Fertik organized grassroots protests to “count every vote.” When 175,000 ballots were uncounted at the time the Supreme Court selected Bush as forty-third president, Democrats.com worked with the Congressional Black Caucus to challenge Florida’s electors in Congress. The scene was immortalized by Michael Moore, who began his film *Fahrenheit 911* with it.

Democrats.com helped organize protests at Bush’s 2001 inaugural, and at every public appearance by Bush, Cheney, and the Supreme Court Justices they had appointed—until September 11, 2001.¹³⁴

Editor and activist Ronnie Dugger’s website www.thealliancefordemocracy.org reported that:

According to a Washington Post-ABC poll conducted the week of January 11, 40 percent of Americans believe that Bush was not legitimately elected as President. With the electoral coup of 2000, the need for achieving Clean Elections is finally reaching America’s radar screen. That number represents a large pool of outraged citizens who may be seeking ways of turning their indignation into action. . . . The time is ripe for Alliance chapters to grow their membership by engaging newly aroused citizens through clean elections-related actions and events.¹³⁵

Voter March staged the very successful Inaugural Day Voter March at D.C.’s Dupont Circle on January 20 (other “J20” events were held throughout the country). Thirty thousand attended, marching from the Circle to Freedom Plaza.¹³⁶ Ronnie Dugger’s Alliance for Democracy, a group Dugger founded in late 1996, announced to attendees that they would take the Metro to Union Station and Stanton Square, for the counter-inauguration, which was led by “persons of color,” including Al Sharpton, Ron Daniels, and members of the National Action Network and the Pro-Democracy Campaign, “in a National Day of Resistance and Shadow Inauguration.”¹³⁷ More than forty separate activist groups, including New York’s International Action Center (IAC), coalesced into the

Justice Action Movement, which planned to disperse itself among the supportive crowds. IAC brought buses in from all over the country, as far away as Oregon.

Other “J20” demonstrations were planned by the Black Alliance Against the Bush Agenda, a coalition that includes the New Black Panther Party and about forty churches nationwide. They planned to march from the Adams Morgan section of Washington to a park in the downtown area. Malik Shabazz, an organizer for the group, said the U.S. National Park Service verbally approved a permit for their march. So far, the Black Alliance is the only group that claims to have had a police-approved permit to demonstrate.

The Reverend Jesse Jackson, head of the Chicago-based Rainbow PUSH Coalition, held a week-long voter registration drive beginning on January 15, and on January 20 planned “voter integrity” rallies and prayer vigils on the steps of local federal buildings. And the National Organization for Women (NOW) in Washington announced their plans for an inauguration demonstration, encouraging support from NOW members and others.¹³⁸

NPR reported that Voter March’s militancy was not matched by its counterpart in Tallahassee, where the crowd of one thousand, activists and workers, seemed resigned and glum.

In another athletic encounter on April 6, Citizens for Legitimate Government owner Mike Rectenwald exhorted his readers to boo when Bush threw out the “inaugural ball” at Miller Park, the new home of the Milwaukee Brewers. Naming this event “The Grand BOO-Ball,” Legitgov.org asked that all “democracy-loving fans” at the game hold up signs that read “Resign, Mr. Bush.”

On May 19, 2001, Voter March held the five thousand–strong Voter Rights March to Restore Democracy in Washington, D.C., and San Francisco. Co-sponsored by more than fifty different pro-democracy groups, the event drew activists from California, Alaska, Minnesota, Florida, Oregon, Virginia, Kansas, Colorado, Arizona, Illinois, Connecticut, and of course, Pennsylvania, New York, New Jersey, and Delaware. Wrote William Rivers Pitt, now author and editor of the popular progressive website Truthout.com:

We did not shut down Washington, D.C., and I doubt our number rose above 3,000 people. . . .

The median age of the gathering was about 40. . . .

The other protests I had participated in had been focused on a specific, narrow grievance—a war, a company, the death penalty. This march was focused upon the fact that a basic and fundamental American right had been abrogated, and because of this, a man had been installed in the White House who had not won the election. Nothing like this had ever happened in all of American history, and the fact that ordinary American citizens were compelled to come to Washington, D.C. from as far away as Alaska, California, and Minnesota on May 19th in defense of the simple right to vote exposes the degree of rage that lingers in the electorate.¹³⁹

As part of the May 19 events, Voter March presented a platform calling for a Voters' Bill of Rights that included "(1) strict enforcement and extension of the Voting Rights Act; (2) abolition of the Electoral College; (3) clean money elections; (4) instant voting run-offs; (5) proportional representation; (6) voting rights for ex-offenders; (7) easier and more reliable voting systems; (8) easier access for all electoral candidates; (9) independent, non-partisan election administration bodies; and (10) statehood for the District of Columbia."¹⁴⁰

Speakers at the rally included Robert Borosage, Washington labor-movement veteran and co-founder of the Campaign for America's Future; Ted Glick, national coordinator of the Independent Progressive Politics Network; Ronnie Dugger, founder of the Alliance for Democracy; Mike Rectenwald of Citizens for a Legitimate Government; Phil Berg, former deputy attorney general of Pennsylvania and political activist; and the Reverend O. U. Sekou, on behalf of the Democracy Summer Coalition (NAACP, IPS, IPPN, Coalition on Black Civic Participation, Global Exchange, and others). Activist Hal Rosenthal pronounced the occasion:

A day in which we promised to refer to the occupant in the White House by his only legitimate elected title, 'Governor';

A day in which we promised to continue the struggle for progressive causes;

And a day in which we promised to work to elect a President of the United States at the end of this four-year hiatus.¹⁴¹

Mike Rectenwald explained the origins of his website's name:

Legitimacy of government, I reasoned, is judged by the fit between the existing government and the declared principles of that government. To understand a nation's principles, one would turn to its founding charter, its written laws, and its political history. . . .

The U.S. government has been rendered illegitimate by its own standards, the standards of electoral democracy.

The standard of electoral democracy was eliminated when the vote counting for the Florida electorate was abandoned, and judges selected a president. Contrary to the Constitution, Dale Reynolds writes in his poem, "These Five Against Us All,"

[They] decided 'Republic' meant Republican,
though conflicts of interest they hadn't disclosed
hadn't pre-empted the candidate they chose,
and outside journalists reported it was Bush by a nose.
Bush by 5 to 4, The United States Supreme Court said.¹⁴²

Congressman Jesse Jackson Jr. (D-IL) began, in a 2001 House resolution, to forward the idea of amending the U.S. Constitution to guarantee the right to vote to every U.S. citizen of voting age. There are provisions in the Bill of Rights concerning aspects of the vote, including outlawing discrimination on the basis of race or gender, and various attorneys and other authorities have found this right implicit in the text of the Constitution. But Jackson has been campaigning for House Resolution 28 in the wake of the U.S. Supreme Court's usurping this right. As of 2006 he had fifty-eight supporters; as of 2008, he was still fighting the fight.

"Going to the polls . . . does not mean that you have the right to vote," Jackson clarified.¹⁴³

The prophetic Ronnie Dugger warned that:

He [Bush] and his allies in Congress have crushed all talk of election reform because of the obvious fact that it insults him for stealing the Presidency. . . .

Democracy without the people controlling the counting of their own votes is no democracy. Yet it goes unremarked in American elections that in most of the precincts of the country the votecounting [*sic*] is done invisibly in computers. . . .

Elections can be stolen by the computer programmers, for themselves or for their companies, without leaving a trace. Democracy itself has been privatized—that is, corporatized. . . . As vote-counting [*sic*] specialist Dr. Rebecca Mercuri wrote recently, ‘a government that is by the machines, of the machines, and for the machines can scarcely be called a democracy.’¹⁴⁴

Along with the Center for Constitutional Rights and other civil rights/human rights organizations, Voter March also sponsored the National Pro-Democracy Convention “Shaping the Future of Democracy in America: From Voter Disenfranchisement to a Voters’ Bill of Rights.” Held in Philadelphia from June 29 to July 1, with the Voter’s Bill of Rights as a primary focus, according to an unsigned source quoted at Votermarch.org, the convention

. . . galvanize[d] the disparate and disaffected constituencies and movements outraged by the flawed election to build a permanent force for real democracy. The Convention . . . [included] a Training Institute in intensive work towards election reform, a National Town Hall Meeting, where national leaders . . . [spoke] about Election 2000 and offer[ed] recommendations for democratic reforms, continuous information and discussion of the Voters’ Bill of Rights and strategies for strengthening the pro-democracy movement. Conclusion: democracy is in jeopardy. Complete overhaul of [the] system is necessary.¹⁴⁵

A July 31, 2001, fundraiser sponsored by Voter March and Democrats.com, featured early EI heroes Vincent Bugliosi and Greg Palast. Bugliosi’s *The Betrayal of America* had just come out and the famous Los Angeles County prosecutor was signing copies for us attendees. Palast discussed his discovery of the illegal voter-purge list that was one of the many reasons Al Gore lost votes and hence the state of Florida.

On September 9, Voter March and hundreds of others protested against Supreme Court Justice Antonin Scalia in Hempstead, Long Island, New York, at an Ethics conference at Hofstra University. One of the five ultra-conservative U.S. Supreme Court judges who stopped the legal hand-recount of votes in Florida in Election 2000, Scalia had been the honored keynote speaker at the university’s 2000 ethics conference. Inside the building where the conference was held, Lou

Posner hand-delivered a petition containing more than seven hundred signatures protesting against Scalia's presence to Dean Yellin of Hofstra Law School. Voter March.org reported on the events:

Inside the Conference, Voter March Chairman Lou Posner, Esq. introduced himself as a New York attorney and asked Scalia 'Your Honor, you have discussed the ethics of lawyers, while little or nothing has been said about the ethics of Judges. There has been much controversy over your decision in Bush v. Gore including accusations that you acted unethically. Could you please respond to these accusations?' Justice Scalia responded 'Yes, I didn't' in a smug and cavalier manner. Posner then responded 'No further questions' to remind Scalia that he should be on trial for his crimes. Chris Acosta, of the Voter March National Steering Committee, never made it to the question and answer session as he was ejected from the Conference for exercising his First Amendment rights when he exclaimed 'Ethics—Ha, Ha, Ha.'¹⁴⁶

The protests and Acosta's encounter with Scalia were mentioned in *Newsday* on September 10.

Voter March also sponsored speaking and book tours, as well as dozens of teach-ins and seminars across the country "to expose and educate the public of the inadequacies of our election system."¹⁴⁷

On November 3, as the country staggered back to a new reality, fear and preemptive aggression, the North Bridge Alliance for Democracy presented *Rescuing Democracy: A People's Call to Action!* at the Boston Public Library at Copley Square, proclaiming that "a new pro-democracy movement is growing in America spurred on by the widespread outrage at the abuses of democracy that occurred before, during and since the last presidential election. . . . Important goals of the conference are to engage the growing number of concerned citizens to advance a coordinated approach toward electoral reform and genuine democracy."

The roster of speakers included Professor Alex Keyssar of Harvard, speaking on "The Path of Democracy: History of Democracy in America"; Ronnie Dugger, discussing "University Corporate Globalization and Domination, HOW DOES THIS

HAPPEN? Role of Corporate-Owned Media”; and Danny Schechter of Globalvision on the “New Media Panel on Election 2000 Events in Florida”; Courtenay Strickland of Florida ACLU, Granny D (aka Doris Haddock), Congressman John Tierney (D-MA), and activist and author Dave Donnelly.¹⁴⁸

A year to the day after the *Bush v Gore* decision, a petition was written and circulated by 445 law professors:

By Stopping the Vote Count in Florida, the U.S. Supreme Court Used Its Power to Act as Political Partisans, Not Judges of a Court of Law

We are Professors of Law at 104 American law schools, from every part of our country, of different political beliefs. But we all agree that when a bare majority of the U.S. Supreme Court halted the recount of ballots under Florida law, the five justices were acting as political proponents for candidate Bush, not as judges. . . .

By taking power from the voters, the Supreme Court has tarnished its own legitimacy. As teachers whose lives have been dedicated to the rule of law, we protest.¹⁴⁹

All over the country commemorative events recalled the *Bush v Gore* decision. Citizens for a Legitimate Government and Democrats.com, along with other progressive organizations, sponsored a march in Washington, D.C. Vigils and demonstrations were held in California, Colorado, Florida, and Oregon, where the Democratic Party had unanimously approved a resolution to impeach Bush and issued the statement that “We undertake this event to reflect on our loss, our love of country, and to renew our commitment as citizens to defend the U.S. Constitution against both foreign and domestic enemies.”

And there were other venues. In New York City, the forum “Rising from the Ashes: Towards Democratic Victories in 2002 and 2004” was held in the Great Hall of Cooper Union. Issues included:

- How Democrats will build on our victories in 2001 to win Congress and elect Governors in 2002, and the White House in 2004, with the help of activists

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- How Bush is abusing our national unity to promote tax cuts for big corporations, create huge deficits, and destroy our civil liberties
- How Bush refuses to deliver half of the \$20 billion to rebuild New York
- How the Supreme Court subverted Democracy by appointing Bush¹⁵⁰

The announcement reminded activists that “Many legal scholars believe *Bush v Gore* was the worst abuse of judicial power in American history, and a fundamental usurpation of democracy by five partisan Republican Justices.”

“12/12” had a tremendous bearing on 9/11 because of all of the abuses and negligence of the usurpers that allowed 9/11 to happen. The people’s opposition was expressed by nationwide Democratic victories in November 2001. According to an archive at Democrats.com, “A nation-wide campaign to rebuild American Democracy has begun”; and:

Just as New York is rising from the ashes of the terrorist attack on 9-11, so too must America rise from the ashes of the damage done by the Bush Administration, the Republican Congress, and the Republican Supreme Court.¹⁵¹

The list of speakers included Professor Mark Crispin Miller, author of the bestselling *Bush Dyslexicon*; John Nichols, author of *Jews for Buchanan*; Todd Gitlin, author of *Media Unlimited*; and noted Democratic commentator Paul Begala, author of *Is Our Children Learning?* (There is a photo of Bush on the jacket of the book.)

Directly following upon this event, INN Reports and Democrats.com co-sponsored an evening of further commemoration in Tribeca, “We Have Not Forgotten,” which featured a screening of a new documentary, *Election 2000: The Stolen Presidency* and footage from the May 19 Voter Rights March. Additional films included *Hail to the Thief* and *The Truth Will Set Us Free*.

In further commemoration of 12/12, Philip J. Berg, Esquire, former Deputy Attorney General of Pennsylvania, political activist, and attorney with offices in Montgomery County, Pennsylvania, and

an active practice in Philadelphia, sent a letter to Sandra Day O'Connor, Antonin Scalia, and Clarence Thomas, protesting their failure to recuse themselves from participating in *Bush v Gore*.

Berg specified that:

- a. JUSTICE SANDRA DAY O'CONNOR'S election evening exclamation, 'This is terrible,' when CBS anchor Dan Rather called Florida for Al Gore before 8 P.M. clearly indicated her "preference" in the Presidential election for which there was only one decision, that being to "recuse" herself.
- b. JUSTICE ANTONIN SCALIA'S obvious conflict of interest with two of his sons working in the law firms of Ted Olson and Barry Richard, attorneys representing George W. Bush's legal interest in the cases regarding the 2000 Presidential election with one son actually working on Bush vs. Gore for which there was only one decision, that being to 'recuse' himself.
- c. JUSTICE CLARENCE THOMAS'S obvious conflict of interest with his wife working at the Heritage Foundation reviewing Republican resumes for the Bush administration for which there was only one decision, that being to 'recuse' himself.¹⁵²

In observance of Presidents' Day, Citizens for a Legitimate Government decided that a fitting gesture to recall 12/12 and the infamous "selection" would be for American citizens to write letters and cards to their rightfully elected president, Al Gore. Since the legal residence of an elected President is the White House, they asked that people write to President Gore there and that the current residents forward the letters to the addressee.

Such deliberate and politicized negligence warranted disbarment for all three. If the three justices refused to pursue it voluntarily, Berg promised to "[file] formal disciplinary proceedings with your respective bar associations."

A petition containing more than 2750 signatures accompanied the letter.¹⁵³

Further direct confrontation with a Supreme Court Justice occurred on Sunday evening, February 17, when Justice Sandra Day O'Connor spoke at the 92nd Street Y in Manhattan. The protest was sponsored by Voter March and Democrats.com.

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“This letter-writing campaign is intended to let both the true president and the one who was appointed by the Supreme Court know that we the people know the truth and will not accept an illegitimate administration,” the websites explained.

CLG added that all participants should send copies of their letters to their senators and to major national newspapers, so that the message they were sending would not be “discarded the way many of their votes were on election day.”¹⁵⁴

Chapter 3

Havoc and HAVA

Why the Help America Vote Act was passed—panic over punch-card machine foul-ups, illicit origins, and ambiguous phrasing; the disastrous proliferation of Direct Recording Electronic voting machines

[I]n responding to the chaos in Florida in 2000 these machines were rushed out before all the kinks were worked out. —Kevin Shelley

[I]f an electronic machine has malicious code in it, it's possible that all of the chads are hanging—and then you have to question every vote.—Aviel Rubin

[F]or 2,000 years, vote-riggers have found ways to manipulate every kind of election system.—Bev Harris

[C]omputer voting may, in fact, be US democracy's own 21st-century nightmare.—Andrew Gumbel

Although opinion surveys taken after the Florida debacle in 2000 consistently found overwhelming public support for uniform standards and a single type of voting machine, the federal bill [HAVA] still gives states and localities most of the control over elections.—Katharine Q. Seelye and David E. Rosenbaum

I defy you to find anything in that bill [HAVA] that would have made a tinker's damn worth of difference in what happened in Florida.—Ernie Hawkins

Democracy is too important to leave up to the votes of the people.—paraphrase from words of Henry Kissinger

[T]he miscounting of 1% of all votes in a federal race is “unacceptable.”—Lawrence Norden et al.

They say even a chimpanzee can hack an election. . . .—Howard Stanislevic

The \$3 billion of federal money has created more problems than it solved.—Doug Chapin

In late spring 2001, around the time that the *San Francisco Chronicle* and the *Washington Post* decided to devote some space to the stolen election in Florida,¹⁵⁵ panic began to seize advocacy organizations and all levels of government from another angle. Something had to be done about the voting process in response to the hanging-chads debacle in Florida. This panic was abetted by the Republican neoconservatives, in that they anticipated and encouraged the mass conversion to DREs, that would benefit their partisan corporate benefactors and hence themselves. Note that optical scanners, the more accurate of the two forms of electronic voting, were already in use and the most commonly used voting method in this county at the time.¹⁵⁶ During the panic, use grew from 30 percent of registered voters in 2000 to just under 35 percent in 2004. Purchase of DREs skyrocketed, from 13 percent of registered voters in 2000 to 30 percent in 2004.¹⁵⁷ According to David Dill of Stanford University, in February 2003, “Paperless, touch-screen voting machines [were] used by nearly one in five voting precincts nationwide.”¹⁵⁸

Maryland

But even before the infamous Supreme Court decision of December 12, 2000, the state of Maryland was worried about becoming the “next Florida” in 2004. Research began at once on alternative voting devices, and the first round ended with the admonition not to purchase paperless DREs, because of security questions. Ignoring this finding of its own Procurement Review Committee, the state board of elections selected the lowest-bidding vendor, Diebold, to provide the state with voting machines, the AccuVote-TS model, which lacked a paper trail, even though legislation just enacted in the state had mandated this.

On July 23, 2003, after its initial \$17 million (December 2001) purchase of four thousand machines, Maryland bought an additional eleven thousand machines from Diebold at a cost of \$55.6 million. The total paid by the state to Diebold as of 2009 was \$90 million.¹⁵⁹

Also on July 23, 2003, a group of Johns Hopkins University

professors, including activist Professor Aviel Rubin, issued a report harshly critical of the security of the Diebold computer source codes.¹⁶⁰ The report strongly recommended use of voter-verifiable audit trails to ensure a recount capability if one is needed.¹⁶¹

The existence of security vulnerabilities in the Diebold systems “allows for the possibility of corrupt human intervention in the voting process. . . . The system, as implemented in policy, procedure, and technology, is at high risk of compromise.” The report concluded that “if we do not change the process of designing ou[r] voting systems, we will have no confidence that our election results will reflect the will of the electorate.”¹⁶² Rubin’s website reported:

Computer Science Professor Avi Rubin touched off a national debate when he revealed that security glitches in the Diebold electronic voting machines could make it easier for election results to be compromised. Rubin himself became the center of the uproar: Diebold initiated a campaign to ruin his career; election officials in localities that had invested in the system dismissed his findings; and the media, misinterpreting his objections to specific weaknesses, cast him as a Luddite.¹⁶³

Among other problems the Johns Hopkins team found with the Diebold system, according to Rubin,

[T]he manufacturer chose Windows CE as the operating system—a bad choice from a security standard. Windows has a long history of new releases of patch just about every week. You can’t run voting machines on Windows. . . . Moreover, the smart cards used by the system to limit a voter to a single vote could be duplicated. By bringing a stack of valid cards to the voting booth, a person could cast several votes.¹⁶⁴

In addition, “ballots could be altered by anyone with access to a machine, so that a voter might think he is casting a ballot for one candidate while the vote is recorded for an opponent.”¹⁶⁵ The Hopkins team also found “the password embedded in the source code, . . . software that could be reconfigured by malicious company workers or election officials to alter voters’ ballot choices without their knowledge, and machines that could be electronically broken into through remote access.”¹⁶⁶

Rubin was further quoted on August 11: "Whoever certified that code as secure should be fired."¹⁶⁷ He said that there is no quick fix for the software. "[E]ncryption problems in the system would have required Diebold to rewrite the software from start."¹⁶⁸ Even though Diebold had begun work in July, after the report was published, to address the inadequacies highlighted, Rubin said, "I don't think they could fix these problems in five months. You cannot fix these kinds of software problems that quickly."¹⁶⁹

He also criticized the independent testing authorities (ITAs) which had initially certified the software, especially since the revised version would be returned to them for recertification. This time, however, the Science Application International Corporation (SAIC) would also inspect it.¹⁷⁰

Rubin's coauthor Adam Stubblefield was quoted in the *New York Times* on July 24, 2003, with a far-reaching assessment: "This isn't the code for a vending machine. This is the code that protects our democracy."¹⁷¹ Another coauthor, Tadayoshi Kohno, told CNET News on July 24, 2003, that "[a]s a society, we are moving too fast toward electronic voting and we need to rethink things more thoroughly."¹⁷²

On January 31, 2004, the *New York Times* editorial board opined, in "How to Hack an Election":

Concerned citizens have been warning that new electronic voting technology being rolled out nationwide can be used to steal elections. Now there is proof. When the State of Maryland hired a computer security firm to test its new machines, these paid hackers had little trouble casting multiple votes and taking over the machines' vote-recording mechanisms. The Maryland study shows convincingly that more security is needed for electronic voting, starting with voter-verified physical audit trails (VVPAT).¹⁷³

They were disturbingly successful. It was an "easy matter," they reported, to reprogram the access cards used by voters and vote multiple times. They were able to attach a keyboard to a voting terminal and change its vote count. And by exploiting a software flaw and using a modem, they were able to change votes from a remote location.

. . . Maryland's 16,000 machines all have identical locks on two sensitive mechanisms, which can be opened by any one of

32,000 keys. The security team had no trouble making duplicates of the keys at local hardware stores, although that proved unnecessary since one team member picked the lock in “approximately 10 seconds.”

. . . The Maryland study confirms concerns about electronic voting that are rapidly accumulating from actual elections. In Boone County, Indiana, last fall [2003], in a particularly colorful example of unreliability, an electronic system initially recorded more than 144,000 votes in an election with fewer than 19,000 registered voters, County Clerk Lisa Garofolo said.¹⁷⁴

Alastair Thompson, editor of Scoop.com, disclosed on September 12, 2003, that, according to a leaked internal email, Diebold and its independent testing authority Metamor, now known as Ciber, were both aware of the security vulnerabilities as early as October 16, 2001.¹⁷⁵ Ciber certified Diebold’s GEMS system.

Another electronic machine vendor, Jim Ries Jr. of MicroVote General Corporation, calling Diebold “the 800-pound gorilla in the room,” said that the scope of the testing process is limited.

For an independent test authority to absolutely, thoroughly test under all possible conditions that the device will operate properly they would have to spend, in my estimation, 10 times the amount of time and money as it took to develop it in the first place. . . . And the technology changes so rapidly, by the time they get done testing it, it’s obsolete. . . . [T]here’s really no way that I could prove to a voter, post tally, that their vote exactly counted the way that they voted it.¹⁷⁶

Needless to say, Diebold strenuously rejected the study’s findings, pointing to numerous safeguards that it and many county governments consider adequate.¹⁷⁷ Nonetheless, after the Johns Hopkins report, Ohio and Maryland put their orders for the machines on hold, awaiting an independent evaluation by SAIC of San Diego.¹⁷⁸

Two other reports commissioned by Maryland corroborated the Hopkins report. The SAIC¹⁷⁹ report, retained by Maryland Governor Ehrlich on August 7, 2003, in response to the large number of concerns raised by the Hopkins report, discovered *328 security weaknesses* with the Diebold AccuVote-TS electronic voting system, *26 of which were deemed critical*, and as a result concluded that the

Maryland elections were at “*high risk of compromise.*”¹⁸⁰

According to Reporter Luis Monteagudo Jr., writing in September 2003 for the *Union Tribune* in San Diego, where SAIC is based: “[Governor Ehrlich] ordered Maryland election officials to proceed with the installation of the machines. Ehrlich said the study [SAIC] and its recommendations will lead to safe elections in Maryland.”

The study criticized the John Hopkins research, noting that while in some cases it was technically accurate, the authors did not understand how elections are carried out and that controls and procedures would reduce or eliminate many of the problems found in the report.

SAIC, however, recommended several improvements, ranging from providing more security training and establishing audits to more technical measures like the use of cryptography and new passwords.

Diebold spokesman Frank Caplan said the company is satisfied with the SAIC report and is making the improvements to its system. “We hope that this will satisfy most of the critics, that an independent organization has reviewed the hardware, the software and the election procedures and has verified that elections can be conducted fairly and accurately with the Diebold machines,” Caplan said.¹⁸¹

Critics of the technology said the study confirms their fears that voting machines can be tampered with.

“I agree with the fixes that are required,” said Douglas Jones, a computer science professor at the University of Iowa. “On the other hand, I don't think the fixes are enough.”¹⁸²

Jones also complained that several portions of the study were omitted before publication. Maryland officials said the portions were omitted to keep information out of the hands of people who would want to tamper with the machines.

Avi Rubin criticized Maryland officials for moving ahead with the use of Diebold machines. He said the study confirms that Diebold's system is fundamentally flawed and he doubts the improvements will help.¹⁸³

A *Sludge Report*, #156, revealed that SAIC's senior vice president, Ronald J. Knecht, also a former defense intelligence chief— for defense corporations are linked to corporate efforts to whitewash both Rubin and [Bev] Harris's [more on this below] damning reports—is also associated with this lobbying effort, clearly a conflict of interest.¹⁸⁴

On November 10, 2003, the Maryland General Assembly ordered a report from a private company, RABA Technologies, as an

independent assessment of the security concerns identified by the Hopkins and SAIC reports. The RABA report confirmed the results of the earlier studies and noted that the State Board of Elections had failed to even address many of the mitigation steps recommended by SAIC.¹⁸⁵ RABA was able to hack into the system in fifty-five seconds.¹⁸⁶

Professor Jones published a detailed critique of all three of the above reports, even citing Diebold's rebuttal of Rubin's findings.¹⁸⁷ "By August 11, 2003," he wrote, "the Diebold story had made not only the *New York Times*, but also the *Washington Post*, the *Pittsburgh Post Gazette*, the *Atlanta Journal Constitution*, The *Arizona Daily Star*, MSNBC, the *Toledo Blade*, and NPR's *All Things Considered*."¹⁸⁸

In July 2004, the news broke that the state of Maryland and Diebold had been aware of what Michael Shamos called "*the most severe security flaw ever discovered in a voting system*" for two years. The defect had been described in the RABA report in January 2004. Three of the leading experts in electronic voting technology identified this defect:

Basically, Diebold included a "*back door*" in its software, allowing anyone to change or modify the software. There are no technical safeguards in place to ensure that only authorized people can make changes.

A malicious individual with access to a voting machine could rig the software without being detected. Worse yet, if the attacker rigged the machine used to compute the totals for some precinct, he or she could alter the results of that precinct. The only fix the RABA authors suggested was to warn people that manipulating an election is against the law.

Typically, modern voting machines are delivered several days before an election and stored in people's homes or in insecure polling stations. A wide variety of poll workers, shippers, technicians, and others who have access to these voting machines could rig the software. Such software alterations could be difficult to impossible to detect.¹⁸⁹

The "back door" was added to facilitate updating of the machines. "We must ask, how did software containing such an outrageous violation come to be certified, and what other flaws, yet to be

uncovered, lurk in other certified systems?” wrote the experts.¹⁹⁰

In 2004, in the March primary, when some Maryland citizens voted on paper ballots that they preferred to DREs, the Board of Elections did not want to count them. A lawsuit resulted. The Campaign for Verifiable Voting obtained thirteen thousand signatures on a petition they circulated demanding a paper trail and called for the resignation of the unpopular state elections chief, Linda Lamone, who reassured the state, “I think everything is going to be just fine.”¹⁹¹

On October 7, 2004, a stray Diebold AccuVote-TS turned up in front of the building of the state election agency. Officials there averred that it did not belong to the state and added nothing about other machines found on a sidewalk in Baltimore and in a bar. All 16,009 of Maryland’s machines were present and accounted for, the AP report concluded.¹⁹²

In Maryland in 2006, according to the *New York Times*, “the state House of Delegates voted 137 to 0 in favor of a bill to prohibit the use of its [Diebold] AccuVote machines because they were not equipped to generate a paper audit trail. (The state senate did not take up the measure and it died.)”¹⁹³

Late in 2008, the State Board of Elections (SBE) of Maryland sued Diebold to recover the \$8.5 million it had to spend to correct the problems enumerated by the Hopkins report and the others that followed.¹⁹⁴ On April 20, 2012, the case was finally settled.

According to Rebecca Wilson, co-director of SaveOurVotes.org, an EI advocacy group in Maryland:

The settlement terms require SBE and the LBEs [local boards of election] to pay \$2.9 million of the \$3.6 million owed from outstanding invoices. Also, as part of the settlement, SBE and the LBEs will receive 300 TSX units for all LBEs to expedite the GEMS upload and download process, pollbook software licenses (ExpressPoll and EPIC) at no cost through FY2016 and voting system licenses (BallotStation and GEMS) at no cost through FY2014. The total value of the voting units, software licenses, and services is \$3.4 million.¹⁹⁵

Though Maryland plans to switch to optical scanners, it will be paying Diebold until 2014 for equipment and services purchased at the beginning of the decade.

Georgia

In May 2002, Georgia became the first state in the country to trade in its optical scanners and punchcard machinery for a uniform statewide computerized touchscreen voting system (direct-recording electronic, or DRE).¹⁹⁶ This despite the recommendation of the 21st Century Voting Commission that “the chosen system should have the capability to produce an independent paper audit trail of every ballot cast [required by Georgia’s Constitution],” which Secretary of State Cathy Cox did not heed, and despite the fact that “at least two other machine vendors offered external web based or printed ballot audit trails.”¹⁹⁷ The cost was \$54 million, according to the EI activist website VoterGA.

In this process, the VoterGA report continued, “Georgia implemented electronic voting that cannot be verified, audited, or recounted. . . . Johns Hopkins found that the software had gross design and programming errors and the Nevada Electronic System Division Chief reported to the secretary of state that they were ‘a legitimate threat to the integrity of the election process.’”^{198, 199}

According to VoterGA also, “California, Ohio, Nevada and Maryland have officially concluded that machines and procedures similar to those used in Georgia are inadequate to conduct elections in their states.”

The first electronic voting system to be used in a statewide election, the Diebold AccuVote-TS R6 system was billed to the states as “state-of-the-art,” “more accurate, convenient and accessible to voters” [than lever machines and punch cards.

Even though the winning company had offered the highest bid, the \$54 million contract was accepted and twenty-two thousand²⁰⁰ Diebold AccuVote-TS R6 machines were installed in the 167 counties statewide.²⁰¹ Because of time constraints, in July 2002 Diebold was retained to run every step of the November elections, an unprecedented relegation to a private entity that sidestepped the requirement of certification. This dangerous trend soon spread throughout the country, except for Oklahoma, whose officials attend to every aspect of the election process,²⁰² and Oregon, whose citizens vote by mail to this day.²⁰³ In Georgia there was not enough time to train local officials.²⁰⁴

In July also, Diebold CEO Bob Urosevich came all the way from Texas to install a patch (“designed to correct glitches in the computer

program”) on five thousand machines in Fulton and DeKalb counties, the two most Democratic counties in the state—Fulton includes Atlanta. No state certification of the new machinery was required, despite Georgia’s law to the contrary, because Diebold was running the elections.²⁰⁵ Another reason given, according to Bev Harris, was that “they made changes only to the Windows operating system which underlies the voting software.”²⁰⁶ At the end of Election Day in November, sixty-seven memory cards were missing from Fulton County. Two days later, eleven had still not been found.²⁰⁷

Speaking of patches, Ronnie Dugger interviewed a Diebold employee sent out to convey the systems to various polls locations in Georgia. This is part of Dugger’s account:

In his front parlor at home in Georgia, Rob Behler told me that just before or just as he took over the Atlanta warehouse for Diebold, some of the voting machines had been sent out to “do demos,” and in one southern county “somebody broke in and stole . . . [nine or] fourteen of the machines and, I think, one of the servers.” He says the vote-counting programs in the stolen computers could have been completely reconstructed by reverse engineering and employed to jimmy the election.

“Quality-checking” the AccuVote machines as they arrived from Diebold at a warehouse in Atlanta, Behler and his crew found problems, he said, with “every single one” of them and about a fifth of them were shoved aside as unusable. When Diebold’s programmers wanted “patches,” that is, changes, inserted into the voting-system software, Behler said, they sent them to him via the company’s open, insecure File Transfer Protocol (FTP) site in cyberspace. On his own unsecured laptop (resting on his desk as he spoke), Behler made twenty-two or twenty-three of the cards that were used to change the programs in the machines.²⁰⁸

Right before the elections, a further patch was installed on all twenty-two thousand of Georgia’s voting machines by Diebold employees. This alarmed Election Integrity (EI) activist Bev Harris, who claimed that the patches could interfere with the integrity of the outcome of the election.^{209,210}

The state’s votes were counted on the unreliable and easily

hackable systems already being used in thirty states and five Canadian provinces.²¹¹ Also during the 2002 election, where more than one thousand votes were cast in other races, no votes were registered for governor; Clinton administration [Deputy] Attorney General [Eric Holder] lost by a surprising five thousand votes. All told, there were six major upsets of Democrats by Republicans in Georgia in the 2002 election.²¹²

Two other victorious Republican candidacies contradicted exit poll results—Max Cleland, the Democratic popular incumbent congressman in Georgia, an Iraq veteran who had lost three limbs, had been ahead of Republican newcomer Saxby Chambliss by five percentage points. Similarly, the Democratic gubernatorial candidate Roy Barnes scored 11 percent ahead of Republican Sonny Perdue. But Chambliss won by 53 percent, effecting an overnight 12 percent increase, and Perdue won by 51 percent, miraculously gaining sixteen points, the first Republican to win the office of governor of this state since the Reconstruction.²¹³ Four other upsets favored Republican candidates. These anomalies were publicized on ABC's *Nightline* and by Ronnie Dugger in *The Nation*. Robert F. Kennedy Jr. attempted to discuss this on MSNBC's *Hardball*, but Chris Mathews yelled at him.²¹⁴ The Election Defense Alliance blog called Chambliss's victory "possibly the single most blatant voting machine election rig in U.S. history."²¹⁵

Sacramento reporter Cosmo Garvin wrote this about the Georgia election in June 2003:

In Georgia, where the entire state used touch-screen voting for the first time, there were concerns that the software used to run the election accidentally had been posted on a public Internet site. [See below, Chapter 4, for the discovery of this FTP page that rocked the EI-focused contingent of the nation.] There was no evidence that the software was tampered with, though critics say it might have been. There were reports in Georgia of voters touching one candidate's name on the screen, while the machine recorded a vote for a different candidate ["vote flipping"]. Those machines were quickly replaced, and voters who were paying attention were able to correct the error, but election officials conceded that some unknown number of votes had been recorded incorrectly.²¹⁶

“Exit polling” is considered by many to be a reliable validation method that has proved to be much more accurate than pre-election polling [see below, note 221, as well as Chapter 6, for some different opinions]. Exit poll results were “withdrawn” soon after the polls closed in the November 2002 election. Voter News Service (VNS), a consortium owned by the major cable and broadcast TV networks, reported that the system “collapsed,” due to “technical problems.”²¹⁷

The polls are considered invaluable by political parties, pundits, and news organizations. Conducted since the 1960s, they provide what a UNC-Chapel Hill professor called “a nice timeline for us to study the electorate from across the nation, the region and the state.”²¹⁸

“Without exit polls, there was no other feedback to conflict with the ‘official’ results[;] this allowed the Diebold touch screen machines to change the way election fraud is carried out,” added Faun Otter.²¹⁹ The distinguished pollster Zogby, when asked for his exit poll results, said that he “blew it,” because machine tallies contradicted them. The 2002 election was the first in which the difference between pre-election polls and election results differed markedly.²²⁰ Freelance journalist and activist Lynn Landes concluded:

The sad fact is that the legitimacy of government in the United States will remain in question as long as over 98% of the vote is tabulated by machines that can be easily rigged, impossible to audit, and owned by a handful of private companies. Until we get rid of those voting machines, democracy in America may be a distant memory.²²¹

As for VNS, with which she obtained an interview in mid-September 2002:

. . . I had [an interview] with long-time VNS communications director, Lee C. Sharpio, [and] she agreed to the 1964 date. But that's about all she would reveal. There is no transparency to VNS. Shapiro will not tell you how big their budget is, nor who hires the 46,000 people she claims they use on election night to collect exit polling data, nor will she give you any proof that these 46,000 employees exist . . . no phone logs, no emails lists, no documents to prove that they do what they say they do. Shapiro would not let me talk to any employee of VNS's regular

staff of 30. She says that VNS will not let anyone witness their operations on election night nor would she disclose its location. VNS has no website and a very uninformative brochure.²²²

According to Bob Fittrakis, “Wherever Diebold and ES&S go, irregularities and historic Republican upsets follow.”²²³ Alastair Thompson looked more deeply into the gubernatorial election, to find out whether the 2002 U.S. midterm elections were “fixed by electronic voting machines supplied by Republican-affiliated companies.” He concluded that “the state where the biggest upset occurred, Georgia, is also the state that ran its election with the most electronic voting machines.”²²⁴

Frequent machine freeze-ups had also been reported. Cox was still in office in 2004 when, according to VoterGA, the Free Congress Foundation rated these machines as obsolete, the worst in the nation at F-.²²⁵ The commission had, in December 2001, recommended “that the machines ‘have an independent and paper ballot audit trail of every ballot cast.’”²²⁶

A conservative response to this blockbuster was published in the *New York Times* by John Schwartz, on February 28, 2004, “Electronic Vote Faces Big Test of Its Security”.²²⁷

For more than a year, Diebold also has been fighting conspiracy theories popularized on the Internet that say its Jetsons-at-the-polling-place wares serve as cover for an ongoing effort to stuff electronic ballot boxes on behalf of the Republican Party. . . .

In Georgia, officials say that despite occasional glitches voting has greatly improved in the 300 statewide and local elections that have been held since touchscreens were introduced. Undervoting—in which people go into a voting booth but do not cast a vote, usually because of some mistake or flaw—has dropped considerably with the use of touchscreens, they say, from nearly 5 percent in 1998 to less than 1 percent in 2002. And statewide polls suggest that most Georgians prefer the new voting system.

In a comparison of the pre-election polling and results of nineteen 2002 election races (by www.scoop.com.nz), fourteen showed a post-poll swing to the Republicans (many far outside the margin of error), two showed a swing to the Democrats (all within the margin of error), and three were “close to correct.” This “last-minute swing” had

favored the Republican Party by between four and sixteen points, including in two critical Senate races (Georgia and Minnesota) that handed the Republicans complete control of Congress.²²⁸ If the pre-election poll predictions had been correct, the Democrats would have controlled the Senate.²²⁹

According to Diebold spokesman David Bear, there were no “widespread irregularities” in the Georgia election, only normal glitches typical at the polls every time people cast their votes. There is no “cabal of nefarious folks [who] are working in concert to sway an election,” he asserted. The conspiracy theorists’ allegations about the 2002 Georgia election remain unsubstantiated by the mainstream.²³⁰

A poll taken of Georgia’s voters after the Peach Tree State had used paperless touchscreens statewide in November 2002 found a significant racial gap between those who trusted the system and those who didn’t. While 79 percent of Georgia’s white voters said they were very confident their votes would be accurately counted, only 40 percent of black voters agreed.²³¹

In another poll, the Peach State Poll, Ronnie Dugger reported that “one in eight Georgia voters were ‘*not very confident*’ or ‘*not at all confident*’ that the DREs had produced accurate results; another 32 percent were only ‘*somewhat confident*.’”

In July 2005, the 2002 election results were still under scrutiny. Rep. Cynthia McKinney (D-GA) said in a press conference on July 18 that “For E-voting activists, Georgia is the ground zero of the entire Vote Hacking bomb.”²³² More specifically, McKinney charged that

Georgia’s election officials sought to protect Diebold instead of the voters.

The first document is a list of bugs and failures experienced in Georgia’s 2002 election, none of which have been resolved to date, much less in time for the 2004 election.

Mr. Sam Barber of American Computer Technologies, Inc. has filed a federal lawsuit against Diebold. ACT was originally a Minority Owned Business contacted by Diebold to subcontract the Acceptance Testing of the Diebold system. When they discovered Mr. Barber really intended to test the equipment as prescribed by computer science, they threw him off the contract.

What they WANTED Mr. Barber’s company to do was assemble the 2 pieces of equipment and CALL it acceptance

testing. When he refused, he was dismissed by Diebold in McKinney, TX.²³³

In a study conducted by a consortium of EI advocacy groups, four years and three major elections after the DREs were acquired, Georgia's DREs accounted for seventy-eight of the 1022 problems experienced in thirty-six different states—way above what might have been the average, twenty-eight,²³⁴ and what might have been expected after so much use of the machines and, presumably, so much intervention.

In July 2008, cyber security expert Stephen Spoonamore was approached by an anonymous Diebold whistleblower who showed him a patch applied in person by Diebold CEO Bob Urosevich to machines in the predominantly Democratic counties of Fulton and DeKalb. Then, according to the office of Ohio attorney Cliff Arnebeck, Larisa Alexandrovna and Muriel Kane, “it became apparent that the patch installed by Urosevich had failed to fix a problem with the computer clock, [for]which employees from Diebold and the Georgia secretary of state's office had been told the patch was designed specifically.”

Spoonamore confirmed that the patch included nothing to repair a clock problem. Instead, he identified two parallel programs, both having the full software code and even the same audio instructions for the deaf. Spoonamore said he could not understand the need for a second copy of the exact same program—and without access to the machine for which the patch was designed, he could not learn more.²³⁵

Spoonamore reported these findings to the Cyber-Security Division of the Department of Justice, but so far [as of 2012] no actions have been taken. As of 2012 also, Georgians still voted on DREs sans paper trails.²³⁶

Andrew Gumbel, in his exposé, notes that Georgia was not the only state “last” November [2002] that experienced last-minute, surprise voting-pattern changes. There were others in Colorado, Minnesota, Illinois, and New Hampshire²³⁷—all in races that had been flagged as key partisan battlegrounds, and all won by the Republican Party. Again, this was widely attributed to the campaigning efforts of President Bush and the diffidence of the demoralized Democratic Party, too timid even to oppose the imminent war in Iraq.

Alabama

Don Siegelman was another popular Democrat in the South. The incumbent governor of Republican Alabama seemed a shoo-in for reelection and was ahead in the vote count by the time voters went to sleep the night of Election Day 2002.

But Alabamians awoke to a new, Republican governor, Bob Riley. Sometime in the middle of the night, it was alleged, two contradictory totals came in from Baldwin County, the last area to report. The second total was the one accepted, thirteen thousand votes from this heavily Republican district, putting Riley over the top by about three thousand votes. The first total of nineteen thousand votes would have meant victory for Siegelman.^{238,239}

According to the British *Independent*, “County officials talked vaguely of a computer tabulation error, or a lightning strike messing up the machines, but the real reason was never ascertained because the state’s Republican attorney general refused to authorise a recount or any independent ballot inspection.”

According to an analysis by James Gundlach, a sociology professor at Auburn University in Alabama, the result in Baldwin County was full of wild deviations from the statistical norms established both by this and preceding elections. And he adds: “There is simply no way that electronic vote counting can produce two sets of results without someone using computer programmes in ways that were not intended. In other words, the fact that two sets of results were reported is sufficient evidence in and of itself that the vote tabulation process was compromised.” Although talk of voting fraud quickly subsided, Alabama has now amended its election laws to make recounts mandatory in close races.²⁴⁰

Suffice it to say that Alabama’s attorney general had been re-elected in 1998 with the help of Karl Rove, one of his campaign managers. Attorney General William Pryor sealed the ballots in one county where there was a controversy and made it illegal to recount them, claiming his decision was consistent with state law,²⁴¹ before the Democrats could obtain a recount. According to Alabama’s

constitution, Siegelman²⁴² would have had to file an election contest in court to have the ballots unsealed.

Florida

Unnerved and shocked by its glaring nationwide visibility from Election Day through December 12, 2000, at least, the state of Florida also responded promptly to the debacle. At the beginning of May 2001, it enacted “election reform’s poster child,” the *Florida Election Reform Act of 2001*, a “comprehensive, multi-million-dollar bill to modernize the state’s voting equipment, overhaul its vote-counting practices, and improve election administration.”^{243,244}

The new law reformed and improved absentee voting, military and overseas registration and voting, poll-worker education and training, and the maintenance of the voter registration system. It also provided for the limited use of provisional balloting. It authorized several million dollars for voter education, poll-worker selection and training, and new machinery.²⁴⁵ The Florida legislature banned punch-card ballots and required that any new equipment purchased be capable of screening for over- and undervoting. Optical scanners, already used in twenty-six counties, were acceptable under the new law, as were touchscreen computers, though at the time none had been certified by the state's Division of Elections.

However, the law failed to extend voting rights to former felons and failed to provide required language assistance to non-English-speaking voters or meaningful voting assistance to individuals with disabilities. Nor did the law provide a meaningful process by which a person denied of his/her right to vote on Election Day could challenge that denial.²⁴⁶

But the wheels of change had already been turning and reality hardly equaled the purported goals of the Act. One observer reported on a demonstration of three different voting machines in Hillsborough County that the contenders for state certification were all touchscreen machines. This software expert said that he pointed out the drawbacks of the machinery and supplied the election supervisor with the names of two companies that vend optical scanners. He exhorted readers to contact the supervisor with their feedback on the situation. The account was written in June 2001.²⁴⁷

According to Rebecca Mercuri, then the nation’s leading expert in voting machine technology, which she studied for ten years prior to

receiving her doctorate in 2000, “Broward County purchased new touchscreen voting machines, manufactured by Election Systems & Software (ES&S), but back in February the Associated Press (AP) reported that ‘more than two-thirds of the first shipment had defects and will have to be repaired.’”²⁴⁸ By March 2002, Palm Beach County had already installed electronic machines, which failed soon after.^{249,250} In a village council runoff in Wellington, one candidate won by four votes in a race that yielded seventy-eight undervotes. The list of problems? “Voters said they weren’t allowed to vote in secrecy, the screens didn’t register a vote when they touched it, and that the machine froze, wouldn’t let them choose between English or Spanish, and sp[a]t out their activation cards.” Lawsuits by two disgruntled candidates were filed once Chief Election Supervisor Theresa LePore refused to have the county’s DREs, which had cost \$14.4 million, retested.²⁵¹

Needless to say, the September 10 primary put Florida back on the map as Ground Zero of election debacles.

Computer scientist Fredda Weinberg, a former associate of Greg Palast, tells the story from here:

A month after she became a lobbyist, February 2001, for the Florida Association of Counties, a lobbying group, former Florida Secretary of State Sandra Mortham²⁵² negotiated an endorsement arrangement with ES&S, a manufacturer of touch screen voting machines with impeccable Republican connections, to compensate the association for all those extra ES&S (Election Systems & Software of Omaha, Nebraska) machines sold. The iVotronics machines hadn’t yet been certified by the then Secretary of State, Katherine Harris. David Leahy, the supervisor of elections in Miami-Dade County, recommended ES&S machines to his county commissioners. In neighboring Broward County, commissioners chose the iVotronics over the objections of a female, African-American supervisor of elections.

Broward County commissioners spent \$17.2 million dollars for 5,040 machines, for 921,000 voters. One of the ten fastest-growing counties in the nation, the fastest-growing in Florida, it was the second biggest prize in the state after Miami-Dade.

On primary election day [September 10,] 2002, 200 of those 5,040 machines in Broward malfunctioned, or maybe the poll workers did not insert the activating card correctly. The poll

workers were certainly a factor in the chaos, keeping locations closed in some places until all the machines were started, neglecting to offer some voters a paper ballot. 300 out of 3,000 trained workers failed to show up altogether. At the end of the day, workers failed to properly harvest votes from some machines. Some refused to stay late after Bush extended voting hours, saying they wanted more money. Out of 110, 24 polling places opened late and 35 failed to stay open until 9 P.M.

No such apologies in Miami Dade. U.S. Rep. Carrie Meek could not vote early, and poll workers did not follow procedures spelled out in a new Miami-Dade training manual, that instructs them to contact the main elections office in the case of a computer glitch; poll workers told her and the others to leave.

The reason: The lone elections department laptop containing voter information had malfunctioned, preventing poll workers from verifying which voters were eligible or what type of ballot they should get.

Some of the voters with her left in frustration. But Meek persisted, presenting her driver's license and photo identification because she did not have her new voter registration card with her.

That wasn't good enough, Meek said she was told.

"They said, 'Your name isn't on the roll. You can't vote,'" Meek said. 'The staff didn't try to call downtown. They were just turning people away.'

The worst incident occurred at Precinct 507 in Liberty City's Thena C. Crowder Elementary, where the voting machines sputtered to a start in the morning, then crashed until mid-afternoon. There are 1,200 registered voters in the precinct, which is 90 percent Democrat and 95 percent black. Many walked away angry and suspicious after their first attempt to vote failed.

'Voting in Miami-Dade reminds me of being in a third-world country,' said retired teacher Wilhelmenia Jennings, 85, who came to vote with her 92-year-old sister, Witlean Butler. Both were turned away.

Emotions in black neighborhoods were high early. Gospel radio station WMBM 1490-AM was flooded with alerts from Broward and Miami-Dade voters shortly after the 7 a.m. precinct openings.

Former Miami City Commissioner Athalie Range was among an estimated 500 angry voters who waited at Precinct 511, Jordan Grove Baptist Church in Liberty City. Computer glitches forced it shut until after noon. As the delay continued, talk of conspiracy against black voters grew. By 12:30, only two of the machines worked. Some voters, including 86-year-old Range, were trapped in an afternoon downpour.

‘One of [the poll workers] said the batteries were put in wrong. That’s no excuse,’ Range said. ‘I expected that things would go relatively smoothly. I expected a glitch or two but not a precinct down for several hours with no relief in sight.’

One key factor in the opening wave of Miami-Dade’s tumult: Poll workers originally were told to turn on the new iVotronic touch-screen machines by inserting a “master activator” and keeping it in place for one or two minutes. But when they arrived at the polls early Tuesday, poll workers—many of whom already were baffled by the original instructions—found four pages of new instructions dated September 3. Now they were told to keep the activator in place for six and a half minutes—23 minutes for special audio booths used by the visually impaired. Many of the 6,500 poll workers said they did not receive or have a chance to read the new instructions, and others did not follow them. They prematurely yanked out the activators, blacking out voting machines from one corner of the county to another.

‘It was a hellacious day,’ said Mary Cross, a poll worker in charge of a Pinecrest precinct where 8 of 12 machines refused to boot up until after noon. ‘I don’t blame the voters for being angry.’

The county commission’s response? They’ve hired the Washington, D.C.-based Center for Democracy, which has never been called on to work in an election on U.S. soil. With a board of directors that would make George W. feel right at home, Miami-Dade has joined El Salvador, Nicaragua, and the Philippines in having supervised elections.

Per the *Miami Herald*, November 1, 2002, the price was \$92,188.²⁵³

So that, in part, anticipated the results of such “poster child” legislation in Florida. According to Mercuri, in Miami-Dade also,

there were “undervotes of as much as 48% in some precincts in the gubernatorial race, [which] caused Janet Reno to demand . . . a recount . . .” and throughout the state “a quarter of a million votes vanished.”²⁵⁴ The former U.S. attorney general and four-term Florida state attorney, now running as a Democratic gubernatorial candidate, herself had to wait outside the polls for eighty minutes before being allowed to vote.²⁵⁵ Such a calamity ensued that Governor Jeb Bush had to extend the voting session by two hours, calling the situation a state of emergency.²⁵⁶

Publication of the results of the gubernatorial primary was delayed for a week.²⁵⁷ It was reported that a higher percentage of undervotes occurred with DREs than with optical scanners in both the primary and general elections. Almost 8 percent of the electronic votes were lost. DREs were six times more likely to record no votes than optical scanners. Truthout.org’s Marjorie Cohn opined that “This suggests the possibility that intended votes were not recorded for some reason.”²⁵⁸

Rebecca Mercuri’s conclusion?:

Difficulties in Florida’s September 2002 primary were not limited to the touchscreen systems. In Union County, the optical scanning system had been erroneously programmed to print out only Republican party results, requiring a hand-count of some 2700 ballots. At least with the paper ballots, an independent tally was possible. . . . Here however, election officials reconstructed some supposedly missing votes by extracting dubiously recorded data from the touchscreen machines!

Florida’s experience may be replicated as communities rush to adopt flawed voting products and will inadvertently squander billions of dollars in public funds. National standards for design, construction and testing have lagged behind, while Voting Rights Act initiatives have stalled in Congress. Only a lengthy moratorium on new purchases of voting equipment, until these issues have truly been sorted out, can hope to restore sanity and confidence in democratic elections.²⁵⁹

Wrote Douglas Jones and Barbara Simons, “The disaster that day in Miami was the miracle that was needed to force the passage of the Help America Vote Act.”²⁶⁰

Florida’s November 2002 election went far more smoothly, though at a high price. The police ran the election, from training poll workers

to securing ballots. County workers were redeployed to assist: in the case of Miami-Dade, the bill soared to \$4 million, not counting the expenditure for the brand-new machinery in use. Unauthorized Diebold officials came into the state a week before Election Day to add patches to the machinery; there was a 16 percent discrepancy there between exit polls and machine results.²⁶¹ Moreover, according to the *New York Times*:²⁶²

Several organizations stationed monitors here, the epicenter of disasters past. They included swarms of lawyers from the Republican and Democratic Parties, observers from the N.A.A.C.P. and the American Civil Liberties Union, as well as officials from several election-machine manufacturers, eager to see how they could improve on the competition. They also included observers from Russia, Japan, Albania and Bosnia. At some precincts this morning in Liberty City, a poor black section of Miami that had serious problems in the past, the number of reporters and international observers outnumbered voters and poll workers.²⁶³

North Carolina

During early elections in November 2002, Wake County, North Carolina's newly purchased ES&S iVotronic DREs failed to count 436 votes at two precincts. The director of elections, Cherie Poucher, decided to revert to the optical scanners the county had used since 1992. She contacted the vendor and was told that "the firmware in the machines was the problem, causing some votes not to be recorded." As a result, to avoid further such problems, Poucher decided that the county would continue to vote on the optical scanners.²⁶⁴

In Wayne County, in the District 11 vote for state representative, voting systems skipped over several thousand votes, both Democratic and Republican. When the problem, diagnosed as a programming error, was fixed, 5500 more votes turned up, reversing the results achieved up until then.²⁶⁵

Follow up on this continuing saga in Chapter 5 below.

Texas

In Texas, Election 2002 in November offered puzzling results that became notorious: three Republican candidates in Comal County each received exactly the same number of votes—18,181.²⁶⁶ Rendered into code, this catch-all number becomes “a-ha-ha.”²⁶⁷ According to investigative reporter Greg Palast, “These were done on iVotronics machines, but the Democratic officials were actually able to go back and reset the machine to retally the votes and, lo and behold, suddenly the Democrats won.”²⁶⁸ In the crucial race for the U.S. Senate, early voters in Dallas County complained that “ES&S touch-screen machines were registering Democratic votes as votes for Republican candidates.”²⁶⁹ Voters attempting to opt for a straight Democratic ticket saw the straight Republican column light up instead, but a local Democrat said that they didn’t know how many votes had been so affected.²⁷⁰ The Republican candidate, John Cornyn, defeated Democrat Ron Kirk.²⁷¹

Not anticipating the 2002 debacles caused by the use of brand-new DRE systems in Georgia and Florida, Electiononline.org (part of the Pew Charitable Trust) found that:

Calls for major reform and proposed legislation promulgating sweeping new federal standards for U.S. elections in the wake of Florida’s problems do not find support among the men and women responsible for actually setting up the precincts, checking the voters and tallying the ballots, according to the survey conducted for the Election Reform Information Project. . . .

The flurry of studies, commissions, and reports on Election 2000 (see Chapter 2A, this volume) draw a polite, if unenthusiastic, response from election officials, who do not voice much respect for those who conducted the studies. . . .

And nine of ten American voters will cast their ballots on the same voting technology in 2002 as they faced in 2000. . . .

In sum, the survey finds not much has changed as election officials look to their next big challenge, the 2002 congressional and gubernatorial elections.²⁷²

According to Thom Hartmann, writing for Alternet.org, corporations were making good use of the Bill of Rights: for their own

“personal” purposes, they:

[H]ave claimed the First Amendment right of persons to free speech and struck down thousands of state and federal laws against corporations giving money to politicians or influencing elections; they've claimed Fourteenth Amendment rights against discrimination to prevent communities from “discriminating” against huge out-of-town retailers or corporate criminals; and have claimed Fourth Amendment rights of privacy that will prevent voters or public officials from examining the software that runs their computerized voting machines.²⁷³

In response to Florida 2000 also, and the incipient rush toward electronic touchscreens even before federal funding was supplied, the public—which discovered wide variations in voting laws, regulations, and practices among the states and counties—called for federal standards for elections. Defying the long tradition of state and local control of elections, which was based on constitutional language,²⁷⁴ in Congress two bills, one bipartisan, pushing for federal election standards were introduced, supported mainly by Democrats: On March 19, 2001, Senator Christopher Dodd (D-CT) and Representative John Conyers (D-MI) introduced the *Equal Protection of Voting Rights Act of 2001* (S.565/H.R.1170) “to address flaws in the voting system.”²⁷⁵

The Dodd-Conyers bill established uniform statewide voting procedures, required poll-worker training, and included a voter bill of rights. The bill’s principal aim was to facilitate the voting process by improving public voter information programs, instituting modern voting technology, sending out sample ballots to registered voters prior to Election Day, and allowing for provisional voting. It also provided assistance to language minorities and disabled voters. Most important, the bill provided federal funding to ensure that the reforms were implemented.²⁷⁶

That bill never passed. About twenty other states enacted other, less comprehensive reforms—among them banning punch card voting machines, establishing statewide voter registration systems, requiring automatic recounts in certain narrow contests, and outlawing the practice of “faithless electors.”²⁷⁷ California, “where the fight over electronic voting began,”²⁷⁸ took steps on March 2, 2002, to reform its statewide system and San Francisco initiated instant runoff ballots,

certainly a benchmark but too radical for the rest of the state.²⁷⁹

The other congressional legislation on deck, sponsored by Chairman Bob Ney (R-OH)²⁸⁰ and Ranking Democrat Steny Hoyer (D-MD), both on the House Administration Committee, was passed, but not until October 2002, because of both governmental red tape and the shock that gripped this country after 9/11. The *Help America Vote Act* (HAVA, HR 3295) purportedly mandated electronic voting machines,²⁸¹ which were subsequently and frenziedly bought out. Actually, nowhere in the text of the bill is there a mandate to this effect. But electronic machine orders swamped the three principal vendors—Diebold, ES&S, and Sequoia—among others.²⁸²

Though HAVA's primary role, according to its sponsors, was "to ensure election integrity and restore the people's trust,"²⁸³ the resulting system wrought havoc on this country: certifiers employed by the federal government were found to be incompetent or corrupt or lax in their activities or all three.^{284, 285} The machines proved, over time, to be faulty, inaccurate, and corrupted in many ways, from everything PCs routinely do wrong in homes to proprietary black-box coding (the programming that runs the machines and tallies the votes) known only by vendors, to corruptibility by hackers and politicians.²⁸⁶

According to a cover article in the *New York Times* magazine,

But the truth is that it's hard for computer scientists to figure out just how well or poorly the machines are made, because the vendors who make them keep the details of their manufacture tightly held. Like most software firms, they regard their "source code"—the computer programs that run on their machines as a trade secret. The public is not allowed to see the code, so computer experts who wish to assess it for flaws and reliability can't get access to it. Felten [a professor of computer science at Princeton University] and voter rights groups argue that this "black box" culture of secrecy is the biggest single problem with voting machines. Because the machines are not transparent, their reliability cannot be trusted.²⁸⁷

A pioneer activist on this issue was Bev Harris, a public relations professional and founder of Black Box Voting Inc., a national nonpartisan, nonprofit elections watchdog group. She helped popularize the term *black box voting*, while authoring a book of that title (more on Harris below).²⁸⁸

HAVA's main contributions were the elimination of punch-card and lever-machine voting (though its Section III contradicts this supposed mandate); the establishment of a nationwide stewardship body—the Election Assistance Commission (EAC)—supposedly, but not actually, to replace the Federal Election Commission (FEC); the ruling that all election precincts nationwide were to build accommodations and incorporate voting machinery as user friendly as possible for handicapped people; and the mandate that states maintain centralized voter-list databases. The new machinery purchased by the states turned out largely to be electronic touchscreen or push button (hereafter referred to collectively as direct recording electronic [voting machines], or DREs, though sometimes the catch-all term “touchscreen” appears instead).²⁸⁹

HAVA's fourth section allowed for and legitimized the use of provisional ballots in the event that a voter shows up at the wrong precinct or has moved away from a site where he/she was still registered. Provisional ballots are, in general, counted last if not discarded altogether, in that they must be reviewed for legitimacy one at a time after the polls close. Many provisional ballots have been discarded or remained uncounted in the years since HAVA was passed.

In the wake of the newly released legislation, which could obviously have no influence on the November election that occurred soon after its passage, nor even completely metamorphose systems nationwide by 2004, freelance journalist Lynn Landes wrote, on November 8, 2002:

And for those who believed that the new election reform law [HAVA] does anything to protect the security of your vote . . . think again. The federal standards to be developed and implemented as a result of the new law will be **voluntary**. What Congress really did was to throw \$2.65 billion dollars at the states, so that they could lavish it on a handful of private companies that are controlled by ultra-conservative Republicans, foreigners, and felons.²⁹⁰ [emphasis by Landes]

Added the *Los Angeles Times* on December 12, 2003:

Beyond not requiring receipts, the Help America Vote Act has an

even bigger and more troubling shortcoming: It fails to include any meaningful regulation of voting system manufacturers and vendors. The act does not require the companies to reveal their software coding to outside, independent reviewers.²⁹¹

While coauthors Greg Palast and Robert F. Kennedy Jr. wrote:

But from the start, HAVA was corrupted by the involvement of Republican superlobbyist Jack Abramoff, who worked to cram the bill with favors for his clients. (Both Abramoff and a primary author of HAVA, former Rep. Bob Ney, were imprisoned for their role in the conspiracy.)²⁹²

Reacting to the 2002 performance of the new crop of voting machines spreading across the country, consultant, writer, and lecturer in the field of Environmental Ethics and Public Policy Ernest Partridge decried the indifference of the mainstream media to these issues, noting that only progressives covered them on the Internet. In his March 31, 2003, essay “The Greatest Story Never Told,” he wondered how democracy could survive without an ethical election system. He listed these requirements as essential to the future of democracy:

- (a) random inspection of computer voting machines after the election,
- (b) publication of the software code, and
- (c) paper “receipts” given to each voter to inspect upon completion of his voting, to be then deposited in a “backup” ballot box.²⁹³

Ben Tripp in February 2003 offered this description of Election 2002:

[V]ast majorities of black voters voted for anti-black candidates, for example, or . . . Republican votes skyrocketed and Democratic numbers plummeted, reversing historic trends, or machines tallied more votes than were actually cast (according to a Florida official a 10% margin of error is acceptable—that would be over ten million votes nationwide). . . .²⁹⁴

The next month, amid lists of “Did You Know”’s, appeared these sobering realities:

[E]ven when we use paper ballots, most states forbid even their election officials from looking at them? The ballots are removed from the counting machine and sealed in a box; only the number on the counter is used to tally the votes. Even recounts often don’t involve looking at the ballots themselves (unless a hand recount is ordered). Yes, it’s true. The most progressive states do a spot check with a hand count of 1 percent of the votes. One percent is inadequate! But most states don’t even require anyone to look at the paper ballots at all.

[T]he public cannot send in its own computer guy to audit the code? Yes, it’s true: in most cases, election officials have to ask the company that provided the machines to troubleshoot problems. The voting machine companies went to court to have their counting code declared “proprietary” so no one can look at it. Computer experts who have analyzed the code say it is “spaghetti code” that is almost indecipherable.²⁹⁵

A year later, two children of a computer scientist testified at Secretary of State Shelley’s EVS hearing in San Diego on May 5, 2003:

Natasha: How many Republicans have to win by 18,181 votes, before you will realize that these systems are nothing more than a voter scam? If it is obvious to children like me, it should be obvious to the Secretary of State whom our parents elected to protect our vote.²⁹⁶

Alex: In one hour my dad wrote a vote-rigging program for a demonstration before the Democratic Central Committee of Orange County last week. This program contained security, testing and voter verification of the participant's votes so as to appear to be accurate and trustworthy. However when the votes were counted, all the participating members had voted for legalized child slave labor and for Osama Bin Laden for Governor. At least the computer said they did. Without a voter verifiable paper audit trail, no one could prove otherwise. The code contained less than 300 lines. There is no need for 200,000

lines of code unless a software company is planning to hide lines of rigging and this intent to rig should be assumed unless the code is short and the public can fully inspect the source code.

Incidentally, 1 hour is about \$250.00 worth of work for a computer professional. Are the software companies charging more than \$250.00 for the voting software?

. . . In Australia, the source code is open and can be seen from and downloaded from the Internet for free. If we downloaded and used this, voters would feel safer and more secure. Since it's available for free, there's no reason to steal taxpayers dollars so software manufactures can get richer.

In Canada, they still use paper and accurately count all the votes for Prime Minister within four hours. Computers can have black outs and lose votes without a paper backup.²⁹⁷

Late in 2003, a Web poll taken by the nonpartisan National Commission on Federal Election Reform (NCFER, run by the University of Virginia and the Century Foundation) questioned whether voters "[w]ould . . . feel confident about [their] vote using a computerized voting system." More than half replied that they would be concerned, and another 34 percent went ever farther, saying that they were "not at all confident."

DREs had been in use in isolated places in the country well before 2002. The earliest use is documented in Illinois in 1975. By 1996, 7.7 percent of the registered voters in the United States used some type of direct recording electronic voting system.²⁹⁸ And problems with these systems already existed. For example, the following quote from Election 1996 could describe any election after November 2000:

I held up a copy of *Relevance* magazine's November 1996 issue on "Pandora's Black Box, Did It Really Count Your Vote?" and requested that copies of the article be entered into evidence. I addressed the issue of testing the computer equipment. I pointed out that the computer "logic and accuracy test" was determined to be no test at all, because it did not check for hidden sub-routines within the source code, such as "trap doors," "Trojan horses," "flip flops," and "time bombs." I made a public records request for the logic and accuracy test results in November from Maricopa County Elections Department, but have still received no response to my request as of this date.²⁹⁹

According to information from Diebold's website, more than thirty-two thousand Diebold voting systems were used in general elections in November 2002, that is, 20 percent of voters, per Election Data Services, Inc.³⁰⁰ The violation of voter rights through computer ineptitude had been anticipated as early as 1975 in an article by independent consultant and expert Roy Saltman, followed up in 1989 by Ronnie Dugger's well-known *New Yorker* article emphasizing that computers can change the outcome of elections.³⁰¹

Reacting to the Florida 2000 debacle, Saltman, along with computer expert Rebecca Mercuri, David Dill, and others,³⁰² testified about the many drawbacks of electronic voting. Nonetheless, in response to the huge stampede generated by HAVA—though it condones all manner of voting machine, including lever and punch card as well as optical scanner and DRE—voting machine companies began manufacturing and selling huge quantities of a product that soon proved that the testimonies were accurate. The DREs were ineffective as well as easily hackable or otherwise corrupted and corruptible. As opposed to their distinguished predecessor, ATMs, DREs manufactured by the second largest vendor of voting machines in this country, Diebold, lacked auditability, transparency, and the all-important paper trail. ATMs, which Diebold had been producing for years before it ventured into voting machine vending, were also virtually immune to hacking of any sort.³⁰³ But no DRE yet produced an auditable paper trail, which HAVA mandates (Title IIIA, Section 301(a)(2)(B)(i)). Paper ballots, in addition to optical scanners or by themselves, turned out to be the best recourse. More on this below.

But DREs took over as the method of choice for voters in the 2004 presidential election. By 2001, 10 percent of this country were already voting on DREs.³⁰⁴ By January 2003, one in five precincts in this country were voting on them.³⁰⁵

In addition, the three major manufacturers of e-voting³⁰⁶ machines—Diebold (subsequently Premier Voting Solutions), ES&S, and Sequoia—were all owned by right-wing Republicans who all contributed generously to Republican campaigns. Diebold was the most generous of the three. Diebold and ES&S, the largest of the three, were run by brothers—Todd and Bob Urosevich founded AIS, one of the predecessors of ES&S; in 2002 Bob was president of Diebold Election Systems, while Todd was a vice president at ES&S.³⁰⁷ Diebold Election Systems, a subsidiary of Diebold Inc. of North Canton, Ohio [manufacturer of safes for 150 years and ATMs

more recently], was, until 2001, a stand-alone company known as Global Election Systems. After the 2000 election fiasco in Florida, larger companies like Diebold that rushed in to exploit the situation by buying smaller companies put pressure on states to upgrade their systems.³⁰⁸

In yet another scandal, Diebold president Walden O'Dell announced in a letter in 2003 that he would do all he could to be sure that a Republican presidential candidate would win Ohio in 2004. Moreover, Diebold had donated at least \$195,000 to the Republican Party between 2000 and 2002.³⁰⁹ Informed of public horror at his widely publicized words, O'Dell said he would tone down the rhetoric—that voting machines were only part of Diebold's inventory, which was more concentrated on ATMs.

The final deadline imposed by HAVA for acquisition and use of this machinery was January 2006. Many precincts at that point hadn't yet purchased the new machinery, for which HAVA had allotted huge amounts of money. In many cases, the deadline had to be extended. In the case of Bucks County, Pennsylvania, where most of my activism was focused, purchase of the machinery was delayed probably to allow more time for voting on lever machines, which we all wanted to keep.³¹⁰ Beyond that, there was an additional delay as the county commissioners hurried to display the various electronic options to the public.

The Danaher/Shouptronic 1242, with its full-face display screen resembling lever machines, first certified for use in Pennsylvania in 1984, was a variety I had particularly disliked when I tried it at one of the community exhibitions.³¹¹ It nonetheless became the machine of choice, the commissioners' favorite. In that citizens who visited community exhibits were requested to vote for their favorite voting machine among those displayed, the commissioners claimed that the 1242 was also the citizens' choice. These DREs were acquired by November 2006, but the county had to wait for reimbursement until September 2007 and in the meantime was unsure if it would even receive the funds because of its tardiness in "complying" with HAVA.

New York state, where the Election Integrity movement was born, was the last holdout in the country, voting on the Eisenhower-era lever machines until 2009.³¹² Significantly, according to historian Bryan Pfaffenberger:

Not only were voting machines first used in upstate New York, but also the Empire State led the nation in adopting voting

machines. In 1927, 80 percent of the votes cast in New York were cast mechanically.³¹³

In 2001, New York City had estimated that it would cost \$100 million to replace its lever-based voting machines with touchpad-equipped electronic systems.³¹⁴ Though in 2008 the state approved purchase of optical scanners by January 2009, after much turmoil and discord in the state legislative bodies and grassroots organizations, as of February 2009 there was some determination to hold on to the lever machines,³¹⁵ including veteran expert and activist Teresa Hommel's decision that, ultimately, lever machines represented the best option by far.³¹⁶ No certification of new machines in New York would be immediately possible anyway, because Systest, the independent certification lab, lost its accreditation from the federal government in October. Until Systest regained its certification, no system could be approved for use in New York.³¹⁷

But back in 2002, the "low-tech" machines, optical scanners, were soon the outspoken favorite of a huge percentage of the grassroots activist groups that spread throughout the nation, especially after Election 2004, when Ohio took the place of Florida as locus of compounded corruption carried out by racist intimidation and obstruction as well as manipulation of DREs. Many groups still believe that opscans are the best way to vote.³¹⁸

Chapter 4

The Battle Begins

The Second Tier of Pioneers: Bev Harris, David Dill, Rush Holt, and others and what they found

As the year ends, 2003 will be remembered by future historians as the year the pretense of democracy in the United States ended.—Bob Fittrakis

If Diebold had set out to build a system as insecure as they possibly could, this would be it. —Avi Rubin

I've come to the realization that electronic voting of any type—even if it's open source—is a terrible, terrible idea. Very often, technology provides the smokescreen to allow people to steal votes. If you look at the actual voting process, the risks are humongous.—Jason Kitcat

[N]o one is suggesting that there's any way to remove the human factor from elections. And as the circus in Florida last year showed, a close election will magnify any problems remaining in the system. —John Wildermuth

Dr. Rubin said: “You hear the famous line, ‘Why are we using 18th-century technology to vote in the 21st century?’ And the answer is because it works, and 21st-century technology is not well-suited to elections.”—Lee Dembart

It's been shown repeatedly that when mistakes have been made by computerized systems, and there have been hundreds of them, the mistakes almost unfailingly are in favor of Republicans.—Rob Kall

A vote that can not be counted is not a vote.—Rebecca Mercuri

A few enlightened representatives and senators began to respond to the HAVA havoc, Rush Holt (D-NJ) first. The bill he initiated in May 2003 to emend HAVA was HR 2239, the *Voter Confidence and Increased Accessibly Act of 2003*, whose bottom line was the requirement that all electronic voting systems produce a “voter-verified permanent record or hardcopy.” It also called for a six-month extension to the deadline imposed on states to replace their punch-card or lever voting systems, “prohibit[s] the use of undisclosed software source code and wireless communication devices, and accelerate[s] HAVA payment schedules to states.” Senator Robert Graham (D-FL) introduced the companion bill S.1980 into the Senate on September 9, 2003.³¹⁹ HR 2239 the following year became HR 550, which also called for emendation of HAVA, reiterating 2239 and in addition calling for an audit of 2 percent at least in each state by the Federal Election Commission,³²⁰ and more power to that HAVA-created Election Assistance Commission (EAC).³²¹ Another provision was the avoidance of conflicts of interest between testing laboratories and the government officials who retain them.³²² HR 550 allocated additional funding to states in the process of changing over to new equipment and required necessary accommodation to special-needs voters, both handicapped and in need of translated balloting. This bill evolved into HR 811, called Microsoft 811 by one grassroots leader³²³ because of intervention by the computer industry which, at the committee level, altered the bill to such a degree that Holt later called it unrecognizable.³²⁴ Since HR 811 was unlikely to reach the floor before November 2008, Holt authored a simplified bill requiring hand-counted paper ballots and at least a 3 percent audit. In this context, either handwritten ballots or optical scanners, which entail both an electronic count and scanned paper ballots, are encompassed.³²⁵ In 2006, Representative Dennis Kucinich of Ohio introduced legislation requiring paper ballots, HR 6200, hoping that the bill would be passed in time for the presidential election in 2008. So far [July 2012], none of those bills have been passed.³²⁶

Sacramento reporter Cosmo Garvin wrote in June 2003:

There appears to be a growing movement away from paperless voting, as the implications of such a system sink in among voters and politicians. Federal legislation introduced last week by Representative Rush Holt, D-N.J., would require voter-verified

paper records by 2004. The law's chances are slim, but [Kim] Alexander [president of the non-partisan California Voting Foundation in Sacramento] believes it marks a national shift in thinking.

I think there's a sea change coming. I think a voter-verified system is inevitable. It's just a question of how much money we'll waste and how many voters we'll lose in the meantime.³²⁷

New York Times technology expert John Schwartz on November 3 discerned a "growing controversy over one company's [Diebold's] electronic voting systems, said to be "as fundamental as the sanctity of elections and the right to free speech."³²⁸

According to Cosmo Garvin of Newsreview.com, "[Former Sacramento County Registrar of Voters Ernest] Hawkins, a nationally recognized expert on election laws and procedures, question[ed] the rush toward digital voting systems. He said the problems of the 2000 election had more to do with bad procedures and bad law than with the technology itself. Hawkins said the federal law, HAVA, is a solution in search of a problem. 'I defy you to find anything in that bill that would have made a tinker's damn worth of difference in what happened in Florida."³²⁹

Kim Alexander, president and founder of the nonprofit California Voter Foundation, wrote in July 2003:

Fortunately, support for a voter-verified paper trail is gaining momentum. A petition started by Martin Luther King III and author Greg Palast demands a halt to further computerization of balloting until such methods are no longer susceptible to political manipulation, fraud and racial bias. So far it's gathered over 39,000 signatures. In addition, Working Assets and the Electronic Frontier Foundation recently issued action alerts to their California members to contact Secretary of State Kevin Shelley and urge him to require a voter-verified paper trail.³³⁰
[more on Shelley below]

The first grassroots activist to genuinely jar the mainstream establishment, however, was Bev Harris, called the "Erin Brockovich of elections" and "Diebold's Public Enemy #1" by the *Seattle Times*.³³¹ The founder of the new website Blackboxvoting.org, Harris became famous in January 2003 when she discovered that Senator

Chuck Hagel (R-NE) of Nebraska was chairman and shareholder, by way of minority shareholder McCarthy & Co., of Electronic Software and Solutions (ES&S), this country's largest voting machine manufacturer and source of the machines that counted the majority of votes in Nebraska. He stepped down from ES&S and claimed to have sold his shares before entering the Senate race that was decided by those same machines in 1996.³³²

Hagel won the Senate chair again in 2002,³³³ with the largest margin of victory, 83 percent, in Nebraska's history. The first Republican senator in twenty-four years, he supposedly won all-black districts as well as more predictable areas,³³⁴ defeating Benjamin Nelson, the state's popular former governor.

In 2002, ironically, the state made recounts by means of ES&S optical scanners illegal.³³⁵ The move was puzzling, considering that scanners are sought after because they generate paper ballots as well as electronic tallies.

In their effort to publicize the scandal and obtain justice, Bev Harris and *The Hill's* (a respected Washington, DC, publication) Alexander Bolton sought out the Chief Counsel and Director of the Senate Ethics Committee, who was responsible for ensuring that Federal Election Commission (FEC) disclosures were complete. They asked him why he hadn't been alarmed by Hagel's 1995, 1996, and 2001 omission of any information about the shares he held in the company that owned ES&S when he ran for the Senate. After meeting with Hagel's staff on Friday, January 25, 2003, and Monday, January 27, 2003, the Senate Ethics Committee director immediately resigned his job.³³⁶ Hagel announced his retirement from office in 2008.

When Harris publicized the conflict of interest involved in Hagel's tenure, ES&S threatened to sue her unless she removed the articles from Talion.com, her website of that time.³³⁷ She received a "Demand for Retraction" on October 25, 2002. Not only did she concentrate on Hagel; she also reported that the vendor, which sold 55 percent of the voting systems used at the time, was owned by a Republican Party official and that ES&S attorneys admit that the Ahmanson family had owned the voting machine company. The Ahmansons are wealthy political activists, credited with financing the Republican Party's shift to the hard right.³³⁸

Focusing on another of the "big three,"³³⁹ while researching for a book on vote counting and computers,³⁴⁰ in February 2003 Harris discovered on a public server the source code of Diebold Election

Systems. This most prominent vendor of voting machines in the country had sold thirty-three thousand machines here by the end of 2003,³⁴¹ but was purchased by ES&S in 2009 (see Chapter 6). Harris was hunting for connections between Diebold and the Republican Party. After handing over the information to computer expert Professor Aviel Rubin and receiving his feedback on the FTP page used around the world, Harris wrote an article on July 8, 2003, on ways to bypass passwords and manipulate election results on the Diebold GEMS central tally system. (GEMS is an acronym for Global Election Management System, and the GEMS files include the vote-counting program itself.)³⁴² She described the site, which contained “several gigabytes of files including manuals, source codes and installation versions of numerous parts of the Diebold voting system, and of its vote counting programme GEMS,”³⁴³ as “a virtual tutorial for anyone interested in vote-rigging: easy-to-edit source code, hardware and software specs, testing protocols, sample ballots, and election data.”³⁴⁴ Wrote Harris:

[Responding to comment comparing FTP server to “a garage or a workbench”:] [Y]ou rarely find the innards of an election system that can tip control of Congress, or elect the president of the United States, on a workbench in a garage. Files on the FTP site included hardware and software specifications, election results files, the vote-counting program itself, and “replacement files” for Diebold’s GEMS vote-counting system and for the Windows software underlying the system. In fact, anyone with a modem [without knowledge of the system]³⁴⁵ could have hunkered over a computer to download, upload or slightly change and overwrite the files on Diebold’s FTP site.³⁴⁶

An editorial published in the *New York Times* on June 13, 2004, states that electronic voting machines should be “at least as secure as slot machines.” It describes the constantly updated security mechanisms that far exceeded standards required of DREs, noting also how outdated security standards are for voting machines, last released in 2002. “. . . Electronic voting, by comparison, is rife with lax procedures, security risks and conflicts of interest. . . . [DREs] have gaping security holes. Nevertheless, election officials have rushed to spend hundreds of millions of dollars to buy them.”³⁴⁷

In the face of this unfavorable analogy, Avi Rubin published

information on the hacking of not only slot machines but horse racing tallies.³⁴⁸ Meanwhile, early in 2004, Diebold reassured the public that it had fixed all of the problems brought to light by the numerous and alarming reports.³⁴⁹

It had taken Harris forty hours to download all of the GEMS files.³⁵⁰ Her findings, subsequently corroborated by internal memos composed by Diebold's own engineers,³⁵¹ had been anticipated as early as 1997 and again in congressional testimony in 2001 by Professor Douglas Jones of the University of Iowa. A member of Iowa's Board of Examiners for Voting Systems, Jones had warned Diebold of these problems and been promised that they would be fixed.³⁵² When he found out that they hadn't been, he said he was shocked.³⁵³ At the FTP website, Harris said she found a software patch that had evidently been added to every voting machine in Georgia a matter of days before the election, and a folder titled "rob-georgia."³⁵⁴

When Diebold threatened to sue Harris over this publication, she put the article up at her website and sent out a press release to four thousand editors.³⁵⁵

Referred to as "bigger than Watergate,"³⁵⁶ the scandal spurred even more outrage when dozens of college students posted copies of the Diebold FTP site on the Internet. They justified their actions as "trying to spread the word about problems with the company's software . . . an invaluable form of electronic civil disobedience . . . that has broad implications for American society." The students claimed immunity to copyright infringement laws on the basis of fair use.³⁵⁷

Early in September students also came upon and posted the "Diebold Memos." This series of fifteen thousand Diebold internal emails and other material dating from January 1999 to March 2003³⁵⁸ discussed flaws with the company's systems.³⁵⁹

Diebold claimed that the material was proprietary, that the students were guilty of copyright infringement, and sent cease-and-desist letters to the students and some of their colleges.

The vendor wanted the messages taken down. A lawyer for a civil liberties group said that copyright law was not being infringed, that Diebold was wrongly invoking the law "because they don't want the facts out there." In October 2004 in California, where the issue had reached the federal court, the decision favored the students' suit, ruling that "Under the Digital Millennium Copyright Act, it is illegal to send a cease-and-desist letter while knowing that the claim of

copyright infringement is false.”³⁶⁰ Diebold itself eventually ceased and desisted itself in this litigious category.³⁶¹

It was these two breaking episodes that led to another Johns Hopkins report, known as the Hopkins-Rice report, and its corroborating follow-ups; repeated publicity in the *New York Times*; substantial media attention to the manifold dangers of DRE systems, including coverage by all major network TV stations; additional publicity on Wired.com and in the April 4, 2004, issue of *Vanity Fair*; and subsequently, though belatedly, corroboration by the CIA, which feared foreign intervention in U.S. elections via modem and wireless connections.³⁶²

It is small wonder that at a National Institute of Standards and Testing (NIST) conference held in late 2003 to “restore trust and confidence in voting systems” (HAVA, whose purpose was to make sure every vote counts, had just been passed in Congress), Diebold kept a low profile indeed, in the wake of all the negative and scandalous publicity generated by these conflicts. It did not sponsor an exhibition table in the vendors’ area of the proceedings.³⁶³

Hackers also came upon out-of-date Sequoia software, which threatened the company far less than the growing amount of evidence incriminating Diebold. That infamous firm was also accused of Republican partisanship because of CEO Walden O’Dell’s pledge to deliver Ohio to Bush in 2004 and for its generous, documented donations to the GOP.

A spokesman for Sequoia said the software “was taken from the servers of a ‘grossly negligent’ contractor” to the company and not from the company itself.³⁶⁴ He said that Sequoia would hand its software over to Professor Aviel Rubin for evaluation and was sure that he would find less wrong with it than he had found with Diebold, which had sent him a cease-and-desist order because his studies were so damaging to their reputation.³⁶⁵

Professor Rebecca Mercuri was not one bit mollified. “Are these companies staffed by folks completely ignorant of computer security,” she asked, “or are they just blatantly flaunting that they can breach every possible rule of protocol and still sell voting machines everywhere with impunity?”³⁶⁶

New York Times columnist and [since then] Nobel laureate Paul Krugman quoted Bev Harris in a January 23, 2004 op-ed, “Democracy at Risk”:

Computer experts say that software at Diebold and other manufacturers is full of security flaws, which would easily allow an insider to rig an election. But the people at voting machine companies wouldn't do that, would they? Let's ask Jeffrey Dean, a programmer who was senior vice president of a voting machine company, Global Election Systems, before Diebold acquired it in 2002. Bev Harris, author of *Black Box Voting* (www.blackboxvoting.com), told The A.P. that Mr. Dean, before taking that job, spent time in a Washington correctional facility for stealing money and tampering with computer files.³⁶⁷

The immediate upshot of this particular Diebold scam, according to Jones, was that not only was the until-then popular vendor to blame, but also “. . . the entire system of Voting System Standards promulgated by the Federal Election Commission and the National Association of State Election Directors (NASED). Not only did the I-Mark/Global/Diebold touchscreen system pass all of the tests imposed by this standards process, but it also passed them many times, and the source code auditors even gave it exceptionally high marks. Given this, should we trust the security of any of the other direct recording electronic voting systems on the market?”³⁶⁸

And further, according to Salon.com journalist Farhad Manjoo, as of February 20, 2003 [quoting Doug Lewis, who heads the Election Center—a nonprofit management division of the National Association of State Election Directors, which handles part of the voting-machine certification process]:

The [certification] test, which is 163 hours long, ‘puts tens of thousands of votes into the system, and we know what the outcome is supposed to be.’ Lewis says that no voting system ever designed has been perfect. If it’s ‘created by man, it can be destroyed by man,’ he says. But he believes that several rounds of testing make the machines about as good as we can get them. [Bev] Harris finds that hard to believe. In the course of her research, she's uncovered what she says is evidence to suggest that the testing phase of the certification process is flawed. . . . [see below, on the report of Dan Spillane--AU] Computer scientists fear that malicious code can be written so as to evade

detection during the testing process, going live only on Election Day.³⁶⁹

All this is not to say that Douglas Jones didn't insist on the use of voter-verified paper ballots in lieu of DREs. He finds the same security flaws in Diebold's AccuVote optical mark-sense system, but the optical scanner uses voter-verified paper ballots and prints a paper copy of the vote totals before connecting to any remote system, features that make the flaws less significant.³⁷⁰ Said Rebecca Mercuri, quoted in Salon.com, “. . . the technical guts of punch-card and optical-scan systems are much less complex than touch-screens [*sic*] systems, and are therefore less vulnerable to hacks or bugs.”³⁷¹

In another issue reported by BlackBoxvoting.com, a whistleblower named Dan Spillane claimed to have evidence proving that VoteHere's DREs were certified despite known flaws, thereby indicating irregularities in both the NASED and the ITA certification system.³⁷² He was fired by VoteHere, he said, because he had reported this issue to colleagues and the company wanted to keep him from whistleblowing. He sued VoteHere for wrongful termination. Among more than 250 issues in the VoteHere voting system, Spillane found what he said were “critical errors that can prevent the machines from correctly registering the votes, or working efficiently on Election Day.” VoteHere did not address the flaws, says his claim, and its system was certified by independent testing labs despite the issues he had discovered. The state of Georgia had also recently approved VoteHere's machines, and others, including the military, were exploring the system for possible purchase. According to BlackBoxvoting.org, “VoteHere's board of directors includes former CIA Director Robert Gates [Secretary of Defense for the G. W. Bush and the Obama administrations]. VoteHere's chairman is Admiral Bill Owens, who was senior military assistant to Secretaries of Defense Frank Carlucci and former Vice President Dick Cheney, and also includes Ralph Munro, a key Washington State politician.”³⁷³

In December 2003, Bev Harris uncovered yet another scandal related to Diebold, this time in her home state of Washington. In King County, Jeffrey Dean obtained a contract to program the voter-registration system. County elections officials said that Dean also had a key to the computer room, the passcode to the GEMS computer, and twenty-four-hour access to the building. Just before elections, Dean sometimes recommended upgrades to new, uncertified software.

Entrusted thus with the personal information about King County residents and programs that count eight hundred thousand votes, Dean was also involved with the Windows CE operating system used by the touchscreens.

The senior vice president of Global Election Systems (soon to become Diebold) and a director of the company in 2000 and 2001, Dean had access to the entire suite of optical scan software used in thirty-seven states, and the security-sensitive Windows CE program for the touch-screens.

Jeffrey Dean was largely responsible for programming the 1.96 version of the optical scan software, which is used not just in Seattle, but throughout the United States (1.96.4 was certified in May 2003).

But one area Dean was banned from was handling any checks, wrote Harris, because he had served a criminal sentence for twenty-three counts of felony theft in the first degree for embezzlement.

While in prison he met another future Diebold employee, John Elder, jailed for five years for cocaine trafficking. As of December 2003, Elder still worked for Diebold, managing a division and overseeing the printing of both ballots and punch cards for several states. His division was responsible for mailing out the county's absentee ballots and subcontracted with a firm called PSI Group Inc. to sort the incoming absentee ballots—the most high-risk security point for absentee ballots. The county knows how many ballots it sends out but, with an intermediary sorting the incoming ballots, does not know how many are returned.

So these two ex-felons were in charge of absentee and ballot processing for some fifteen counties in both Washington and California. Harris concludes:

We've got a cocaine trafficker printing our ballots, an embezzler programming our voting system, and our absentee ballots are being funneled through a private company that hires people straight out of prison.

I don't believe there is a certification program in existence that can protect us from inside access. We need criminal background checks and robust, fraud-detering audits.³⁷⁴

In February 2004, activist Andy Stephenson, on behalf of the People of the State of Washington, sued Washington Secretary of

State Sam Reed. Stephenson filed a lawsuit demanding decertification of the Diebold GEMS 1.18.18 system which, though improperly certified, was used in two elections by four counties. The firmware for the Diebold optical scan machines was never certified at all, contrary to state law.

Stephenson therefore also sought to require certification of all optical scan firmware before the next election.³⁷⁵

The suit represented the first pre-emptive lawsuit against voting machines filed by a candidate. Stephenson was running for the office of Washington secretary of state.

According to Stephenson, the software had more than six hundred changes, including many new features, which required recertification, according to Washington state law. The system had last been certified on August 1, 2003, by the assistant secretary of state, Steve Excel.

Two suspicious incidents called into question the validity of any decisions provided: According to Bev Harris at Blackboxvoting.org on May 14, 2004, "One material witness, Washington State Elections Director David Elliott, took an indefinite personal leave of absence at about the time the lawsuit went its [*sic*] into discovery phase; at the same time, the King County Elections Office issued a directive to its employees to destroy records over 90 days old, a directive that appears to invite employees to destroy evidence."³⁷⁶

California was at the forefront of the paper-trail debate, moving faster than other states to replace its voting systems due to a federal court order to replace Florida-style punch-card voting machines, as well as the availability of \$200 million in state bond funds to improve voting systems. HAVA funding would also kick in. Moreover, California has a manual-count law that requires a subset of the paper ballots to be selected at random and publicly tallied by hand to prove that the hand-counted totals match the software-counted totals.³⁷⁷ In November 2003, California Secretary of State Kevin Shelley, despite a lawsuit, announced the requirement of voter-verified paper ballots (VVPB) on all new e-voting equipment in California by July 2005 and on all existing e-voting equipment by July 2006, making California the first state in the Union with this requirement.³⁷⁸

Shelley proceeded to decertify certain paperless e-voting

machines in four counties and permitted certification of voting systems in ten more counties provided that they adopt twenty-three security improvements that he specified. One of the improvements was to require paper ballots in the November 2004 election for voters who preferred them.³⁷⁹

Riverside County had been the first county in California to purchase DREs in 1999—and the only one until Florida 2000 stimulated a too-rapid response³⁸⁰—jeering at others who still relied on punch cards. But on the night of Election 2000, an overloaded tabulator began to delete votes from the Sequoias AVC Edges’ total. The situation was soon under control, but results weren’t published until two hours after San Bernardino’s punch-card tallies. The person in charge of repairing the malfunction was later indicted in Louisiana for felony, but obtained immunity in return for testifying against the corrupt state commissioner of elections.³⁸¹

There were other problems. The new machines lacked printers to generate paper trails and some weren’t even fitted for them, despite the state law requiring manual audit of a subset of ballots after elections. Riverside was temporarily let off the hook by then-Secretary of State Bill Jones, who pronounced retrofitted printers on DREs optional. Jones was subsequently hired by Sequoia as a consultant.³⁸²

In 2002 accountant Susan Marie Weber initiated a lawsuit against California and Riverside County officials, challenging the constitutionality of the touchscreens because they lacked a paper trail necessary for effective recounts and audits. Moreover, the system “is completely hidden from public scrutiny; the DRE machines hide the recording and counting of the vote from the voters behind its ‘proprietary’ software, thereby violating voters’ rights to have their vote counted publicly and as equally accurately as other counties with constitutionally adequate standards and procedures for voting equipment.”³⁸³ She was supported in this effort by software experts Kim Alexander, Peter Neumann, and Rebecca Mercuri.

Nonetheless, both the initial suit and an appeal were dismissed, the appeal on the grounds that “electoral fraud can never be ‘completely eliminated’ no matter what voting method is used.”³⁸⁴

The long-range results were far-reaching, according to Alexander’s blog. Not only did Secretary of State Shelley mandate paper trails throughout California by 2006; in 2005, Governor Arnold Schwarzenegger signed a bill requiring that “County elections

officials must by June 2006 use voter-verified paper audit trails to conduct a 1 percent hand tally of ballots from e-voting machines.”³⁸⁵

Another downfall for Sequoia occurred when the vendor’s FTP server exposed code created and placed online by its subcontractor Jaguar Computer Systems. The software was used to place ballots on voting kiosks and to store and tally results. This sort of negligence by the Riverside-based company left the software open to corrupt hacking by anyone with a minimal knowledge of program coding, especially since the Sequoia system is heavily dependent on Microsoft components.

As recounted in Chapter 3, a Diebold FTP page was similarly exposed on the Internet earlier in 2003. But that issue was more serious, in that the content was source code rather than, as in the present scenario, binary code, “which is already compiled into a program with the comments and other information stripped away. It’s working code, which means that the program must be reverse-engineered, or taken apart, in order to understand how it works. This is not hard to do, but it takes more time than working with source code,” in this case two months as opposed to the two weeks required to take apart the Diebold code.³⁸⁶

Alameda County had purchased four thousand Diebold touchscreens in time for the recall election in October 2003. But according to *USA Today*, at least some residents felt unsure about the outcome, due to adverse publicity already published about the Ohio-based vendor. Some said they would feel far more secure if the DRE had produced a paper receipt. Prior to the recall, David Dill had exhorted residents of Riverside and other counties to vote absentee: their ballots would then be counted by a scanner instead of a DRE.³⁸⁷

In 2004 Diebold was sued and subsequently fined \$2.6 million for delivering uncertified machinery to Riverside County. News subsequently surfaced that seventeen California counties had received uncertified systems from this vendor.³⁸⁸

In California in 2003, where 40 percent of all DREs used in this country were located, Dill was described as “screaming from the rooftops on the need for a paper trail in his state, so far without result.”³⁸⁹ It is ironic that at this point he was opposed by the Los Angeles Empowerment Group, which included many progressive-leaning organizations: ACLU, the League of Women Voters (LWV), Common Cause, the Asian-Pacific American Legal Center, People For the American Way, the Green Party, Neighbor to Neighbor, and

others.³⁹⁰

This move was projected to cause “a ripple effect across the country since California is viewed as a trendsetting state when it comes to politics and technology.”³⁹¹

By July 30, 2003, three California counties—Mendocino, Sacramento, and San Mateo – supported a voter—verified paper trail. Diebold, ES&S, and Sequoia had no choice but to scramble to meet the demand, already working since February to develop prototypes.

“If there is no longer a paper audit trail, then we lose the ability to verify the computerized count,” wrote Alexander.³⁹²

One variety of paper trail would allow voters to check their ballots on a printout available at the polling place. A variation on this would be a cryptographic-based receipt that the voter could take away from the polls. The receipt would not indicate the voter’s choice in any legible way. Yet another method would allow voters to view a receipt that remains inside the machine and then approve it or change it, on a device that prints and then deposits each vote as a separate piece of paper into a receptacle accessible to voting officials only (the Mercuri method). For the latter type, ES&S quoted a cost between \$400 and \$500 per unit.³⁹³ A committee assembled by Shelley, which included both Kim Alexander and Professor David Dill, called for this voter-verified audit trail to be part of all touch-screen systems by 2010.³⁹⁴

DREs that contain an internal roll of paper that records votes that are invisible to the voter and checked only at the end of the day by officials, do not qualify as paper trails, though many claim that they are the same thing. The paper in these rolls is of such poor quality that the ink soon disappears, taking with it all of the tabulating information.³⁹⁵

So at this point in 2003, some counties had settled on paperless DREs, which legally had to be equipped with paper trails by 2006. Others, like Los Angeles, Sacramento, and San Diego, had put off this expensive purchase and chosen to rent optical scanners for the time being, a far less expensive option. Sacramento County would switch to optical scanners by the March 2004 primaries.³⁹⁶ The cost of the temporary system was estimated at \$85,000, a pittance compared with the \$20 million cost of a touchscreen system, a critical difference at a time when the county was up against its worst budget situation in decades.³⁹⁷

As of October 2003, optical scanners were used in thirty-four of California's fifty-eight counties.³⁹⁸

A 2002 court decision had already required nine counties (encompassing 8.5 million people),³⁹⁹ including Santa Clara, Solano, Sacramento, Los Angeles, and Mendocino, to dispose of their Votomatic and Pollstar punch-card systems in favor of more acceptable alternatives, by 2004. While six counties were not there yet, they were close, local election officials said.

Santa Clara County, for example, planned to replace their punch cards with a \$19 million touchscreen voting system in time for the county's few local elections in November and the March 2 presidential primary, said Gwendolyn Mitchell, a spokesperson for the county.⁴⁰⁰ The decision flew in the face of warnings from Professor David Dill and many expert colleagues (see above, this chapter). But as a result of the 2002 primary debacle in southern Florida, caused mainly by brand-new machinery that poll officials were not sufficiently trained to operate, citizens of Santa Clara voted on its punch-card machines in November.

The county signed a contract with Sequoia for DREs to be up and running by the March 2004 primaries, based on the capability of these machines to be hooked up to printers, whether mandated or allowed by the state or county. The only reservation that remained was whether the printers would or could be certified or certifiable.⁴⁰¹

Solano County was to switch to the new touchscreen ballot system—at a cost of \$4 million—in time for the March [2004] primary, according to Laura Winslow, the county registrar of voters.

Winslow County had planned to use the new touchscreen system in November, but was delayed by the sudden need to prepare for the October 7 recall vote.⁴⁰²

The few California counties that still used two controversial punch-card voting systems could easily change over to a new balloting method by the following March, satisfying a federal court's concern about the state's recall election.

But others found no fault with holding on to their punch-card systems.

The two punch-card systems in question, Votomatic and Pollstar, had been used in California for more than forty years with few reported problems. Both the courts and the ACLU allowed for the punch cards to be used in the November 2003 elections. But the Florida 2000 debacle had caused a stampede away from this system, used by more than 40 percent of Californians in 2000 and six of the state's fifty-eight counties.⁴⁰³ State groups like Common Cause and

the American Civil Liberties Union successfully argued that the punch-card systems had an inherent error rate that effectively disenfranchised voters because ballots could not be counted accurately. Journalist Lynn Landes wondered about their motives:

It's interesting to note that recent lawsuits by voting rights organizations (ACLU, Common Cause, NAACP, etc.) against the use of the old "antiquated" voting machines, are indirectly endorsing state-of-the-art voting machine technology. These groups appear unaware that they're litigating away the rights of American citizens to open elections for, by, and of the people. What are they thinking?⁴⁰⁴

"I'm deeply concerned about the rush to change voting systems," said Kim Alexander. "I'm frustrated that the ACLU is doing everything to ban the (punch-card) systems. They're not bad systems if they're used properly."

The problem in Florida was poor maintenance of the machinery, insisted election officials and other experts. The counties in California had taken better care of theirs.⁴⁰⁵

More than 55 percent of the state's voters lived in counties that used the two systems in the November 2002 election.

"If the punch-card systems didn't work, we wouldn't have used them at all," former Secretary of State Bill Jones said. "What's so different between the recall election and the 2002 governor's race?"⁴⁰⁶

Sacramento County had used punch-card ballots for more than thirty years with success, said Jill Levine, the registrar of voters.

"Punch cards have been true, tried and tested," said Levine, who had first worked for the county registrar sixteen years earlier as what she called a "chad checker," when the county had a two-person board to review all ballots to eliminate hanging chads before the ballots were counted.

Most people would not buy groceries or use a bank ATM if they could not check their choices on a paper receipt, Alexander said.

"It's reckless to experiment with a paperless technology in the most important transaction voters ever make."

Bill Jones, who signed the agreement to eliminate the two punch-card systems, said he had never decertified them. But he found the touchscreen system better, many of which use the same technology as do some bank ATMs.

“It’s like moving from a typewriter to a computer,” he said.

The new touchscreen systems were more user-friendly to special-needs voters, both handicapped and those in need of ballots in a language other than English. Both election officials and voters preferred them because of their ease of use. Alan Brau of Northampton County, Pennsylvania, said: “The people favor ease of use over accuracy,” referring to this as “cognitive dissonance”—“the people don’t understand the implications.”⁴⁰⁷

In a direct comparison between the two systems, however, DREs won hands-down. According to Rebecca Mercuri:

[T]he shockingly high error rate of punchcard machines (3–5 per cent in Florida in 2000) has been known to people in the elections business for years. It was only after it became public knowledge in the last presidential election that anybody felt moved to do anything about it.⁴⁰⁸

Journalist and author Andrew Gumbel disagreed: “[C]omputer touchscreen machines and other so-called DRE (direct recording electronic) systems are significantly less reliable than punchcards, irrespective of their vulnerability to interference.”⁴⁰⁹

Stephen Ansolabehere and Charles Stewart, in a September 25, 2002, study entitled *Voting Technology and Uncounted Votes in the United States*, wrote that “The difference between the best performing and worst performing technologies is as much as 2 percent of ballots cast. Surprisingly, paper ballots—the oldest technology—show the best performance.”⁴¹⁰

According to the *San Francisco Chronicle* on September 16, 2003, all punch-card systems were to be replaced by March 2004.⁴¹¹

The changeover was expensive.

San Diego County spent \$30 million to buy a touchscreen system that would arrive in March 2004. Los Angeles, which has more voters than any other county in the state,⁴¹² planned to wait until it could afford to buy the touchscreen terminals. Even tiny Mendocino County spent nearly \$1 million to convert to touchscreens.

As discussed in Chapter 3 and above, this chapter, compelling evidence of the many disenfranchising drawbacks of touchscreen systems had been proved several times in 2002. So all the above-million-dollar purchases would have to be augmented with voter-verifiable paper trails by 2006.⁴¹³ Experts would reveal the manifold

problems with such a changeover, which would do nothing to eliminate the possibility of hacking and in addition would cause paper jams and incompatibility problems between the made-to-order printers and the primary machinery.⁴¹⁴ Here is a firsthand account of an actual election in which DREs with VVPAT were used:

During the manual recount, team members discovered 40 VVPAT tapes (9.66%) that were either destroyed, blank, illegible, missing, taped together or otherwise compromised.⁴¹⁵

The *San Francisco Chronicle* reported on September 16, 2003, that:

[S]ome backers of DRE systems seem to run screaming from the room whenever anyone suggests generating voter-verified paper ballots. Apparently, the technology of thermal printers is too complex for the billion-dollar industry. Backers of DRE systems have also tried to confuse the debate by suggesting that voter-verified paper ballots would exclude disabled voters. But this is nonsense. Electronic voting systems, combined with paper ballots, could provide multiple language display and audio for the disabled, and still promote good auditing.⁴¹⁶

The *San Francisco Chronicle* had reported in January 2003 that “Recent tests of computerized systems [even with paper trails] in Ohio found 57 potential security risks within the software and hardware of the system. As a result, Ohio delayed use of the machines until after the 2004 presidential election.”⁴¹⁷

Yet a further problem with DREs became evident by December 17, 2003. According to an anonymous Diebold employee, the software in all seventeen California counties using the machines was uncertified, a problem one other programmer called ubiquitous. The software had been used in at least two elections, including the gubernatorial recall in October 2003.⁴¹⁸

According to Wired.com reporter Kim Zetter:

Concerned that the problem might extend to Diebold optical scan machines used in other counties, the VSP [Voting System Panel] ordered a statewide audit of Diebold's machines to be paid for by the company. Diebold submitted a check for \$75,000 earlier this month to cover the review.

The audit looked at all versions of Diebold hardware such as touch-screen machines and optical scan units, the firmware installed on those machines and the software used on the server end to collect and tabulate votes.

The audit uncovered discrepancies between what Diebold said was installed in counties and what auditors actually found.

At least five counties were using versions of software or firmware that were different from what Diebold indicated they were using.

All counties were using uncertified software, but the most serious issues related to the tabulation software known as GEMS, or global election management system. GEMS sits on a server in each county election office, counting the votes and producing summary reports of totals.

Although the last version of GEMS certified in California was 1.17.17, auditors found that no county was using it. Instead they were using later versions such as 1.17.20, 1.17.23 and 1.18.18.102. Versions 1.17.20 and 1.18.18.102 were never qualified by federal independent testing authorities.⁴¹⁹

On February 18, 2004, Blackboxvoting.org reported that Bev Harris and several other plaintiffs were going to seek a restraining order from Sacramento Superior Court against Diebold, requiring the vendor “to disgorge and make restitution of any money or property acquired by means of their unlawful, unfair and fraudulent acts and practices.”⁴²⁰

The state’s primary the following month, California’s first “chadless” election, was “marred by hiccoughs and glitches at electronic voting machines around the state. Problems were reported to do with a small piece of equipment the poll workers use to blank a previous voter’s information [the encoder] on the Voter Access Card and re-activate it with the next voter’s information.”⁴²¹

The encoding of the cards does not require certification by the secretary of state.⁴²²

In California an April 21 hearing was held involving grassroots activists including Bev Harris up against Diebold’s president, Bob Urosevich and others. Urosevich’s replies were embarrassing and untrue, to put it mildly, according to former employee James Dunn and others, who testified to an outrageous degree of fraud,

sidestepping, efforts to install last-minute patches, and more.⁴²³ A report from the secretary of state's office stated that, after an audit of all the certified voting machinery in the state, only one county was found to be using certified but still problematic software.⁴²⁴

Harris testified about the GEMS 1.18.18 system that "the flaws we exposed . . . included "ability to bypass password, ability to overwrite the audit log, ability to change votes, ability to enter minus votes, and the use of two sets of books, one which is used for spot checks and the other for the reported results. The two sets of books need not match." Moreover, according to the release notes, she wrote, "none of these flaws were corrected."⁴²⁵

Dunn, before his testimony, described to Harris's colleague Jim March the preparation of the machines to be sent out to customers:

There was no inventory control. Patches went on some voter card encoders but not others, and records weren't kept of which were which. Patches overwrote other patches on the installation cards, with hand written version numbers crossed out and competing with each other for attention. . . . Though Diebold's technical data specs for the TSx machines specify that Diebold is ISO compliant (a quality management system for software) no attempt was made to follow even the most basic quality control standards to comply with ISO 9000. Most machines were not even tested after the patches. . . . The batteries kept dying, even when the machines were in transit only for a short time. But the batteries didnt [*sic*] even need to run down; when they got low, the machines lost their software.⁴²⁶

On April 24, a panel answering to Secretary of State Shelley recommended dispensing with the Diebold machinery.⁴²⁷

Most horrifying of all, Landes reported, the relevant federal agencies, including the Federal Election Commission, the Department of Justice, and the Department of Homeland Security, did not seem to be noticing all of these problems.⁴²⁸

At the beginning of May, "Stateside with Rosalea" reported that Secretary of State Kevin Shelley had decertified some electronic voting systems, because they do not generate VVPAT, voter-verified physical audit trails.⁴²⁹ On June 4, he released the first set of standards for paper trails in the country and exhorted EAC to establish nationwide standards.⁴³⁰

A *New York Times* editorial reported on the following July 23 that “This spring, California banned 14,000 Diebold voting machines because of allegations of ‘fraudulent actions’ by the manufacturer.”⁴³¹

That September, Governor Arnold Schwarzenegger signed into law legislation mandating that all electronic voting systems include a paper record by 2006.⁴³²

In January 2005, Secretary of State Kevin Shelley certified Sequoia’s AVC Edge with VeriVote printer, the first voting system in the country with VVPAT.⁴³³

In addition to certification problems in California and Ohio, on February 3, 2004, the chief of the Florida Voting System Certification Bureau, [Paul] Kraft, reported to the Florida Senate Committee on Ethics and Elections that half of the counties in Florida had discovered that they had some sort of uncertified election software in use!⁴³⁴

It is illegal to add uncertified patches to software that has previously been certified.

At this point in voting history, HAVA had been passed, but the Election Assistance Commission (EAC) it provided for had not yet been set up. The process took at least a year. The result was that Federal Election Commission (FEC) standards of 2002 were the most recent ones in place. Adopted by thirty-seven states, these would become outdated when EAC standards were set, which meant that any electronic machinery purchased before EAC published its certification guidelines would likely become obsolete.⁴³⁵

The EAC ended up with a skeletal staff working in borrowed offices, on a budget of \$2 million instead of the promised \$10 million. In addition to Chair DeForest Soaries, the other members were Vice Chair Gracia M. Hillman, Commissioner Paul S. DeGregorio, and Commissioner Raymundo Martinez III.⁴³⁶ The commission was too short of cash to distribute the hundreds of millions of dollars allocated to states to make necessary improvements. Nor could the commission afford the \$800,000 cost of publishing the states’ plans in the *Federal Register*. Without such publication, the states’ allocations could not be disbursed.⁴³⁷

When DeForest Soaries resigned from his position as the first head of EAC on April 30, 2005, he had this story to tell about its origins in January 2004:

What was ironic that was [*sic*]each of us accepted our

appointments knowing that EAC had no statutory authority to regulate. But what we were told was that EAC would have sufficient money to do research. And while regulatory authority was not present, we felt that if we could do the proper research, no state would be caught dead using equipment that didn't meet up to the standards that our research proved were acceptable standards. Well, in the absence of regulatory authority and in the absence of money to do the research, we were basically asked to make bricks without straw.

Well, the states were forced to comply and they were asking us for guidance. We were ill-equipped to provide guidance. We didn't begin our work until January 2004 and we spent the first three months of our work looking for office space. Here we were, the first federal commission [*sic*], responsible for implementing federal law in the area of election administration and for the first three months we didn't even have an address. And we physically had to walk around Washington DC looking for office space. This was a travesty. I was basically deceived by the leaders of the House, the Senate and the White House. And I decided that it just made more sense to spend my time watching my sons play basketball than to participate in this charade. . . .

Either EAC or some agency must have the capacity to hold the entire system, elections officials, public officials and the manufacturers of voting equipment accountable. Where there's no accountability, then you're open for fraud and for inefficiency.⁴³⁸

Soaries, in addition, charged that our electoral system was “ripe for stealing elections and for fraud.”⁴³⁹ He called “both Congress and Bush administration interests for reforming elections through the agency ‘a charade’ and ‘a travesty.’”

In addition, EAC standards are updated periodically, which can technically render newly purchased systems obsolete or complicate the process immeasurably by requiring recertification of extensive lists of components.

In a *New York Times* editorial published on May 30, 2004, David Dill is quoted as asserting that [with] its one million lines of code, software certification is called “basically an impossible task. . . . [T]here is no technology that can find all of the bugs and malicious things in software.”⁴⁴⁰

Rebecca Mercuri worried in 2003 that “no electronic voting system has been certified to even the lowest level of the U.S. government or international computer security standards such as the ISO Common Criteria, nor are they required to comply with such standards. Thus, no current electronic voting system is secure by the U.S. government’s own standards. . . .”⁴⁴¹

Bev Harris, also aware that ITAs did not test machines for security, visited Cyber headquarters in Huntsville, Alabama, where the official at the front desk tried to evade her questions of why the machines were so penetrable even after the certification process. The question was answered by Systest later (see below).⁴⁴² In July 2004, she and some colleagues, resorting to “dumpster diving” behind a Diebold plant in McKinney, Texas, found a bill from a Republican political committee that proved that the vendor supported the Republican Party. In subsequent “dumpster-diving” scenes shown in the HBO documentary *Hacking Democracy*, Harris is shown discovering original machine tapes signed by pollwatchers, after the vendor had supplied her, fifteen days after the election in question, a clean copy of the poll tapes that had been altered. The tapes and all material products of elections are required by law to be retained for twenty-two months after the election.⁴⁴³

New Hampshire activist and author Nancy Tobi wrote that EAC standards are also impossible to comply with, in that they are way ahead of systems in use and thus anticipatory without addressing what may actually materialize. These foreseen systems are, moreover, “so complex that no ordinary election official could possibly operate [them] independently of private industry control,” and hence “the e-voting industry gets richer while America’s elections become pilot runs to test new technologies,”⁴⁴⁴ and thus perpetrates the destructive lack of transparency that so violates democracy. According to Tobi:

The \$4 billion e-voting systems—and the multi-millions of continuing taxpayer e-voting investments since 2002—have delivered truly catastrophic elections.

Machine breakdowns. Unprovable election results. Unlimited avenues for manipulation.

Once the states used up the first \$4 billion federal dollars [*sic*], they were left to their own devices to come up with the continuous cash flow required to service, repair, and replace the error-prone e-voting systems. Not to mention costs for storage,

transportation, certification and recertification.⁴⁴⁵

Even Carnegie Mellon University computer expert Michael Shamos, a state voting-systems certification official for Pennsylvania and one of the staunchest advocates for new, fully computerized electronic voting systems, said of ITAs, even when approved by the National Association of State Elections Directors, that “There’s stuff in there that’s so horrible, I can’t understand it.” According to Ian Hoffman of the *Oakland Tribune*:

He [Shamos] found a quarter of the voting systems presented to Pennsylvania unsuitable for elections, with such “glaring failures” as an inability to tally votes correctly. A recent study led by the University of Maryland showed all of six voting systems tested did not record 3 to 4 percent of the votes.⁴⁴⁶

The October 18, 2004, issue of *Computer World* reported that “IT experts are highly critical of the testing process because of its secrecy... All of them refuse to provide details on how they test the voting equipment or on their findings.”

Avi Rubin described a “voting systems testing summit” he attended, sponsored by California’s then-Secretary of State Bruce McPherson, which brought together the U.S. Election Assistance Commission, secretaries of state, local election officials, vendors, voting-machine testers, representatives from NIST, social scientists who study voting issues, and computer scientists. He found it strange, given the theme of the conference, that two of the three ITAs in this country were not represented. Consequently, the representative of the other ITA, Systest, had to answer for the industry.⁴⁴⁷

In answer to questions about how flawed machine behavior is despite the expensive and intricate testing process, he explained that testing is done in accordance with “federal standards, in this case, the 2002 federal standards, soon to be replaced by the 2005 *Voluntary Voting System Guidelines* (VVSG).”⁴⁴⁸ If a serious flaw that is unrelated to the standard is found, a memo will be written, but the machine will still be passed, the hapless Systest official explained.⁴⁴⁹

But who will receive said memo? The vendors, not the owners of the machinery. The vendors are the ones who retain the ITAs, Rubin wrote:

The ITA model provides an incentive to certify bad systems, and clearly such systems are being certified all the time. When the ITAs find a serious problem, it is relayed, confidentially to the vendor, and the only thing that the public ever learns is that a machine was certified. If a machine is not certified, nobody ever learns about it.⁴⁵⁰

Rubin's remedy? The vendors should pay a tax to NIST, which would hire independent testers that would be less concerned with certification than discovering flaws:

Thus, you can be sure that the testers tried every way of failing a machine before passing it. Everything done by the testers, every test performed, as well as the result, would be public. Occasionally, to keep the testers on their toes, NIST would throw a machine at the testers with a known serious problem, just to see if the testers could find it, and testers who did not find the problem would be penalized. The whole process would be open and transparent to the public. I doubt systems such as the 2003 Diebold AccuVote would have ever made it to a polling station in that model.⁴⁵¹

Ion Sancho, longtime supervisor of elections for Leon County, Florida, said that ITAs approve the machinery submitted to them by corporate vendors because they need their business.⁴⁵²

In yet another fiasco for Diebold, a temporary word-processing professional in Los Angeles, Stephen Heller, subsequently named the "Diebold Whistleblower," came upon, stole, and exposed attorney-client privileged documents from his employer Jones Day, Diebold's attorneys, in January 2004. This was considered a felony despite the Golden State's legislation protecting whistleblowers. "Even corrupt, criminal corporations like Diebold deserve under the law to have all communications with their attorneys and their attorneys' work product kept secret, and I broke that law," said Heller in an interview.⁴⁵³ However, "What is illegal is not always wrong."

Charged with three felonies, he pleaded guilty to one, "unauthorized access to a computer." After he spent a year in prison, his charge was reduced to a misdemeanor, for which he was placed on three years' probation, fined \$10,000, and forced to apologize to

Diebold.⁴⁵⁴

But his costly sacrifice was well worth it, affirmed the actor and activist. In April 2004, as a partial result of his actions, former California Secretary of State Kevin Shelley decertified Diebold in California for what he called their *fraudulent, despicable, and deceitful behavior*—namely, “that they were in breach of California law by continuing to use illegal and uncertified software in California voting machines.”⁴⁵⁵ California Attorney General Bill Lockyer filed civil and criminal suits against the company, which were dropped when Diebold settled out of court for \$2.6 million in February 2006.⁴⁵⁶

In 2007, California’s new Secretary of State Debra Bowen questioned the validity of the entire certification process, which originated to address lever machines. On August 7, in his blogspot entry, Aviel Rubin extended Bowen’s idea to the logical conclusion that software, because it requires constant upgrades and therefore constant recertification, must be eliminated from the election process or, at least, “the dependence on software needs to be eliminated.”⁴⁵⁷ Rebecca Mercuri had a different conclusion to this most provocative question:

The problem is NOT [all capitalization for emphasis is from the direct quotation] that the voting certification process is not well suited to software, but rather that the certification process has . . . (NEVER PROPERLY INSTANTIATED GENERALLY ACCEPTED SOFTWARE TESTING METHODOLOGIES) into the requirements. The computer industry certainly knows how to test software, otherwise people would be getting killed from hospital equipment, aircraft would be falling out of the sky, and military equipment would be unreliable, at considerably higher rates than are now experienced. . . . Since the mid-1990’s I and other computer security experts (such as Peter Neumann) had urged the government to apply these industry-standard techniques to voting machines. . . . [I]n fact, the certification process COULD have been (and still can be) changed such that it requires that the typical standards that are used EVERY DAY in industry be applied to voting machines.⁴⁵⁸

Moreover:

MARTA STEELE

Incidentally, Casino Gaming Equipment (slot machines, etc.) are tested to MUCH HIGHER STANDARDS than voting machines. This is from statements by gaming equipment testers (there was a panel at IEEE-USA, and also I think some testimony before the EAC or House Science Committee. . . . So the laxity in the certification process for voting equipment and software is by CHOICE (and possibly also by DESIGN) since those who are creating and enforcing the standards are kow-towing to the vendors.⁴⁵⁹

Chapter 5

Election 2004 in Ohio and Elsewhere

The unspeakable and wide-ranging corruption in that state and others that so echoed the venue of Florida 2000

[E]lectronic voting equipment has now made fraud possible on a scale previously unimaginable. And, in most cases, it is virtually impossible to distinguish outright fraud from gross incompetence in an election.—Equal Justice Foundation

George Bush and his advisers have almost certainly already put in place their plans to fix the 2004 election. It will mean extending to other States the same chaos that prevailed in Florida in 2000.—Toni Solo

We protect the Bill of Rights, the Constitution and the Declaration of Independence. We protect the Hope Diamond. Now, we protect the most sacred treasure we have, our secret ballot.—Walden O'Dell

Karl Rove was candidly described by G. W. Bush as the architect of his 2004 “reelection.” When Rev. Jesse Jackson of plaintiff Rainbow PUSH asked Bush, before the 2004 election, to “Let my people vote,” Bush told Jackson to “call Karl Rove.”—American Blackout

*There is a book that documents fixed elections in this country far back into its history, Andrew Gumbel's *Steal This Election*. (“People have been manipulating and stealing votes more or less since the dawn of the republic.”)—Mother Jones*

. . . I don't want everybody to vote. . . . As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down.—Paul Weyrich

MARTA STEELE

It [Election 2004] was a brilliant, cynical and masterfully executed campaign of death by a thousand cuts.—Bob Fittrakis and Harvey Wasserman

Add six votes to the Democratic total in each precinct in Ohio 2004 and Kerry would have won.—Brad Friedman

In early 2004 in Columbus, Ohio, lawyer, academic, and activist Bob Fittrakis yielded to the persistent solicitations of Athan Gibbs, an owner and CEO of the voting-machine manufacturer TruVote International, and agreed to talk with him.

Gibbs wanted to know, as Ohio Secretary of State Kenneth Blackwell was pressuring the Ohio legislature to purchase electronic voting machines that lacked a paper trail, “Why would you buy a voting machine from a company like Diebold which provides a paper trail for every single machine it makes except its voting machines?⁴⁶⁰ And then, when you ask it to verify its numbers, it hides behind ‘trade secrets.’”⁴⁶¹

In an interview on WVKO radio, Gibbs observed that “It absolutely makes no sense to buy electronic voting machines that can’t produce a paper trail. Inevitably, computers mess up. How are you going to have a recount, or correct malfunctions without a paper trail?”

Gibbs was in town to demonstrate his machine at a fair. The idealistic accountant and assistant Baptist minister had been traveling all over the country with it and was being well received, especially since HAVA mandated that states review and upgrade their voting systems by 2006.

The system he presented, and the one that is called Version 2, uses what is called a cut-form printer. The voter places his/her votes onto a touchscreen. The printer produces a ballot that the voter inspects and then approves or rejects. If the ballot is rejected, the voter returns to the screen and makes the correction. The printer produces the corrected ballot. The voter reviews the ballot and, if it is correct, presses a button indicating acceptance. The full ballot is then printed, and the voter places it in a safety envelope and deposits it into a secured box. The printer then prints out a receipt with a unique code on it. The voter retains this receipt, and can use it to verify, on the

Internet, that his/her vote has been counted.^{462,463}

Said TruVote International CEO Larry Holmstrom, “The printer prints out the ballot (as shown in the video—see note 510), and the voter takes possession of the ballot physically and places it in the ballot box. This is an important concept in transparency and voter confidence. The voter[s] hold their ballot. . . . A system implemented using the 2007 guidelines such as the TruVote system accounts for all ballots and is 100% accurate.”⁴⁶⁴

Fitrakis used his interview with Gibbs in a cover story in the *Columbus Free Press* March-April edition and in another article, with Harvey Wasserman, at Motherjones.com on March 5, 2004.

Fitrakis called Gibbs’s invention “a marvel.” Gibbs was “perhaps America’s most influential advocate of a verified voting paper trail in the era of touch screen computer voting,” he added later.⁴⁶⁵

On the opposing side, Ohio Secretary of State Kenneth Blackwell was busy trying to persuade the legislature that machines without paper trails were the way to go. His spokesman, Carlo LoParo, accused paper-trail advocates of working to “derail” voting reform.⁴⁶⁶

Two weeks later, Gibbs was killed in an automobile accident while driving to his downtown office at Tennessee State University's Business Incubation Center. Fitrakis compared the event to the death in an accident of anti-nuclear activist Karen Silkwood in November 1974, en route to an interview with *New York Times* reporter David Burnham. Noted Holmstrom, “There have been multiple conspiracy theories about the death of Athan Gibbs. To my knowledge, there has been no validation of a conspiracy.”⁴⁶⁷

Said Fitrakis, Gibbs’s family promised to continue his mission to provide secure and dependable voting for everyone.

“Gibbs’ last words to me were ‘How do you explain what happened to Senator Max Cleland in Georgia? How do you explain that?’ The Maryland study and the Johns Hopkins scientists have warned us against ‘blind faith voting.’ These systems can be hacked into. They found patches in Georgia and the people servicing the machine had entered the machines during the voting process. How can we the people accept this? No more blind-faith voting.”

Congressman Jim Cooper (D-TN) said that the TruVote system was “one of the most promising technologies in the world for fixing democracies. . . . Every once in awhile, we see a fundamental need in this country and someone comes up with a fundamental discovery to fill that need, and that’s what Athan had. . . . This is a tragic loss for

the entire country.”

Gibbs’s family promised to continue his goals to provide secure and dependable voting for everyone. In 2009, Holmstrom told me that the company is raising money “to complete the software and receive certification. Athan received a patent on his system in 2005 and assigned it to TruVote.” The company expected to begin distributing the system in time for election 2010.⁴⁶⁸

Holmstrom said that once certification has been accomplished and production and distribution have begun, he plans to sell enough systems and software licenses to repay his contributors and then to donate the patent to the public. The source code will be completely transparent and accessible under an open-source license.⁴⁶⁹ The TruVote system is designed to run on any normal PC with the proper configuration. Holmstrom believes voting software must be nonpartisan and owned by the public rather than by election officials who are often politically appointed and biased. He said that “the alternative approach with optical scanned paper ballots is not reliable and accurate and has a demonstrated voter error rate of approximately 0.5% plus the error rates in scanning the ballots. This puts optical ballots in the same class as punch cards and final interpretation of the voter’s intent will be determined by election commissions—as was experienced with the Franken/Coleman senatorial election in Minnesota. The TruVote machine is 100% accurate.”⁴⁷⁰

The year 2004 was tense, as states geared up for the November presidential election, sobered and cautious after the 2000 experience and anxious not to repeat it. Ohio was predicted to be the next Florida. Kenneth Blackwell, Ohio’s secretary of state, was also head of the Bush campaign in the state, as the infamous Katherine Harris had been in Florida 2000, who subsequently became a U.S. representative⁴⁷¹—rewarded for her duplicity.⁴⁷² The Republicans had also received strong support from Walden O’Dell, CEO of Diebold, also located in the state. The story of Ohio 2004 has been the subject of several books.⁴⁷³

When, in 2006, Motherjones.com published a retrospective of the eleven worst places in the country to vote, Ohio weighed in as number eleven for its “Politicos in Charge”:

Election activists don't have Florida's Katherine Harris to kick around anymore, but in a system where most states' top election officials are also politicians, there's no shortage of other nominees for worst secretary of state. The leading candidate at that time was Ohio's Ken Blackwell, now a Republican candidate for governor, who seemed intent on making sure as few Ohioans as possible were registered to vote. In 2004 Blackwell achieved national notoriety when he announced that his office would accept only voter-registration forms printed on paper of at least 80-pound weight.⁴⁷⁴ Blackwell had to back off that requirement, but a slew of other restrictions remain, including one under which door-to-door registration workers must sign in with county officials, and another requiring them to personally mail in the registration forms they collect. . . . Who is newly registering? People who've just become citizens, young people who've just gotten the right to vote.

Meanwhile, Blackwell's office had done nothing to inform voters that come Election Day that year, they would have to bring photo I.D.s to the polls—guaranteeing that tens of thousands of mostly Democratic voters would be turned away.⁴⁷⁵

In anticipation of the 2004 election also, a lengthy Sunday *New York Times* editorial opined that “The morning after the 2000 election, Americans woke up to a disturbing realization: our electoral system was too flawed to say with certainty who had won. Three years later, things may actually be worse. If this year's presidential election is at all close, there is every reason to believe that there will be another national trauma over who the rightful winner is, this time compounded by troubling new questions about the reliability of electronic voting machines.”⁴⁷⁶

Journalist and author Greg Palast predicted that one million African American and Latino votes would be lost, or “spoiled,” as he put it. In Broward County, Florida, for example, voting machines worked well, as they did in other white districts, whereas in black districts they didn't. The biggest “dumps” of these minority votes occur in places like Florida, Georgia, and Chicago, where the Democrats “[do] not like the black ‘intrusion’ into the party.” “In the black districts,” said Palast,

. . . poll workers couldn't find passwords, the machines crashed, power failures. When machines crashed in the white areas, the tech teams came in like SWAT action. In the black areas, they

said, ‘We’ll get to you tomorrow.’ As a result, thousands and thousands of black votes were lost. They either were never punched in, or they just disappeared in an electric storm. In other words, the computers worked perfectly, that’s the game.⁴⁷⁷

In another article he wrote that “[i]n the entire nation 1.4 million black men with sentences served can’t vote.”⁴⁷⁸

Journalist Lynn Landes pointed out in April 2004 that voting machines will produce 99.4 percent of election results in November, despite the fact that “critical parts of the Voting Rights Act can’t be enforced”:

Under Section 8 of the Voting Rights Act, 42 U.S.Code §1973f, Federal Observers are authorized to observe ‘ . . . whether persons who are entitled to vote are being permitted to vote . . . (and) whether votes cast by persons entitled to vote are being properly tabulated.’

Under ‘Prohibited acts’ in §1973i, the ‘Failure or refusal to permit casting or tabulation of vote’ . . . can result in civil and criminal penalties. ‘No person acting under color of law shall fail or refuse to permit any person to vote who is entitled to vote . . . (and) Whoever . . . knowingly and willfully falsifies or conceals a material fact . . . shall be fined not more than \$10,000 or imprisoned not more than five year[s], or both.’⁴⁷⁹

Of these votes, 28.9 percent would be cast on touchscreen machines and 57.6 percent, including absentee ballots, on optical scanners.⁴⁸⁰ Fourteen of twenty swing states, accounting for two hundred electoral votes, had at least one touchscreen system.⁴⁸¹ The entire state of Ohio, however, would vote using machinery with VVPAT, whether optical scanner or DRE or punchcards, thanks to the efforts of activist organizations like Moveon.org, TrueMajority.org, VerifiedVoting.org, and ACT.⁴⁸² Of the 115 million expected votes in the United States, 100 million, or 83.3 percent, would be cast on one of the Big Three or Hart Intercivic, called an “alarming oligopoly in itself.”⁴⁸³ Nearly 50 percent of precincts would vote on machines manufactured by ES&S.⁴⁸⁴

Added Palast in late April 2004, “The Voting Rights Act of 1965 guaranteed African-Americans the right to vote—but it did not guarantee the right to have their ballots counted. And in one in seven

cases, they aren't.”⁴⁸⁵

Of Florida's sixty-seven counties, Gadsden has the highest proportion of black residents: 58 percent. It also has the highest “spoilage” rate, that is, ballots tossed out on technicalities: one in eight votes cast but not counted. Next door to Gadsden is white-majority Leon County, where virtually every vote is counted (a spoilage rate of one in 500).

. . . ‘In 2000, a black voter in Florida was ten times as likely to have their vote spoiled—not counted—as a white voter,’ explains political scientist Philip Klinkner, co-author of Edley's Harvard report.⁴⁸⁶ ‘National figures indicate that Florida is, surprisingly, typical. Given the proportion of nonwhite to white voters in America, then, it appears that about half of all ballots spoiled in the USA, as many as 1 million votes, were cast by nonwhite voters.’

Now let's talk about America. . . . Edley's team of Harvard experts discovered that just as in Florida, the number of ballots spoiled was—county by county, precinct by precinct—in direct proportion to the local black voting population.⁴⁸⁷

In late June 2004, Blackboxvoting.org directors Bev Harris and Andy Stephenson, funded by contributors, set off throughout the country to local elections “to find out what's going on and make the public aware of specific problems in order to improve electoral integrity. All elections, even national elections, take place at the local level—yet citizens have had few options to report concerns.” As the presidential election approached, they planned to send representatives throughout the country to monitor elections and participate in any way that they could.⁴⁸⁸

The people should be able to observe the entire election process, said David Dill. He found no evidence of a conspiracy in progress, but told Truthout.org that “We know people would steal elections if they get the chance, and it wouldn't be hard to steal.” The easiest way to commit fraud would be through an insider at the company, a programmer who makes a hidden change to the software. With the current procedures, there's “not a ghost of a chance the culprit would be caught.”⁴⁸⁹

The disastrous March 2, 2004, primaries in California led to decertification of Diebold machines by Attorney General Bill Lockyer. According to Bob Fitrakis, “573 of 1038 polling places failed to open on time due to computer malfunctions in San Diego County. In Alameda County, at least 6000 voters were forced to use paper ballots after Diebold machines failed.”⁴⁹⁰ On July 9, 2004, continued Fitrakis, Lockyer unsealed a whistle-blower’s lawsuit against Diebold filed by Bev Harris and computer programmer Jim March. The suit demanded that Diebold fully reimburse the state for the equipment purchases.⁴⁹¹

If Diebold up until then held the booby prize for the “worse than Watergate” publicity surrounding the FTP page mistakenly made accessible on the Internet, and the leaked emails that subsequently were discovered, discussing flaws in the company’s systems, Sequoia had its turn at infamy the next year, when Bev Harris discovered that two Sequoia employees had tampered with the WinEdS central tabulator during a local election on March 2 in Riverside County, California.

It is illegal in the Golden State for anyone but election officers to “handle, count, or canvass ballots,” or . . . to discharge or perform any of the related duties.⁴⁹²

On the extremely tamperable tabulator, the Sequoia employees were found to have adjusted software to “exactly the number of votes needed to eliminate a mandatory runoff: 50% + 1,” whereas before the tampering the totals of both candidates were close enough to warrant a recount.⁴⁹³

And, asked Harris, “Who are the men from Sequoia who accessed the central tabulator on election night, during the middle of the vote count?”

Michael Frontera is a former Denver Elections Commission executive who took a position with Sequoia shortly after placing \$6.6 million in Sequoia orders with Denver. Eddie Campbell is a Sequoia employee who lives in Denver.⁴⁹⁴

Two days later, while absentee votes were still being counted, another Sequoia employee went into the central tabulation room and was logged into the machinery by means of a password provided by a

county employee. He then took a card out of his pocket and uploaded information from the card into the tabulator. Then he exited with the card, claiming that it was his personal property, and took a plane to Denver.

Leaving the state under these circumstances, with a card that had entered data into an active tabulator is “outrageous,” as is using another person’s password to enter a system, as is doing the work of an election officer without authorization.

Where was the supervision? The county registrar of elections, whose husband was vice president of Maximus, which manufactures “smart card devices.” Moreover, Sequoia’s public relations firm in Riverside did work for the county, and the possible “ethics of representing both the vendor and the client” came under investigation. In addition, the registrar accepted travel and lodging expenses from the voting-system supplier, which was found to have been used for “participation in a paid advertisement for Sequoia.”⁴⁹⁵

According to a field poll about confidence in e-voting and the election, 35 percent of registered Californian voters distrusted the reliability of new touchscreen voting machines. (23 percent were very confident, and 39 percent were somewhat confident.) As to the credibility of the final elections, 30 percent were very confident, 42 percent somewhat confident, and 18 percent not confident. The poll was conducted by “a few” state newspapers, including the *San Francisco Chronicle* and the *Sacramento Bee*.⁴⁹⁶

That means that fully one-third of California voters distrusted e-voting at that time. According to David Wagner, professor of computer science at the University of California at Berkeley, “[I]t is crucial that we have election technology that is not only trustworthy, but that is also recognized as such, and indeed is widely trusted by the overwhelming majority of the population. This survey suggests that we have not met any of these goals.”⁴⁹⁷

Another “troubling new issue” discovered in December 2004 and reported by Scripps Howard on July 9, 2005,⁴⁹⁸ was that out of fifty states only thirty-eight states and the District of Columbia had reported complete election figures four years earlier. There were 80,644,664 ballots cast, but only 79,039,401 presidential votes counted. Much of the 1,605,263-vote difference was caused by inaccurate tabulating equipment, state and local officials agreed.

Five years later, a crucial event of inaccurate tabulation was discovered. As a result of the “Humboldt Transparency Project” in

Humboldt County, California, Secretary of State Debra Bowen released a thirteen-page report that investigated why the Diebold/Premier GEMS version 1.18.19 software did not record 197 ballots in the November 2008 presidential election. Moreover, the report continues:

Key audit trail logs in GEMS version 1.18.19 do not record important operator interventions such as deletion of decks of ballots, assign inaccurate date and time stamps to events that are recorded, and can be deleted by the operator,⁴⁹⁹ thus making it possible for anyone at all knowledgeable to completely delete audit logs, and thus hiding any and all tampering with the system. The problem, if detected by an ITA, would have disqualified the system from certification.

These gross deficiencies were discovered by Mitch Trachtenberg, a member of the project team, who had invented an “open-source vote counting program,” Ballot Browser. Using this program, he discovered that in one precinct the total given by the Premier system was 197 votes less than the results tallied by Ballot Browser.

Since thirty other states used the same system, including Maryland and two other California counties, Santa Barbara and San Luis Obispo, they could suffer from the same deficiencies in different versions of GEMS.

The project team traced the problem to a bug in Premier’s GEMS software—it was deleting the first deck of ballots in many cases—and said that because deletion did not occur after the initial count or repeated reports, there was no need to check again and discover the problem.

The worst part of the news was that the vendor had known about the problem since October 2004. The official who found it emailed the eleven counties that used the system in conjunction with a central tabulator. But these instructions, which omitted any reason for the problem, never reached the registrar of votes. When the Diebold official left his post in 2007, he neglected to inform anyone of the problem and how to address it.

Gross errors were also found with the electronic audit logs, even though the program had already been in use for ten years.⁵⁰⁰ While examining the Deck 0 programming flaw, the Humboldt Transparency Project team found that

GEMS version 1.18.19 failed to record in any log important system events such as the deletion of decks of optical-scan ballots after they have been scanned and entered into the GEMS election results database. Second, it recorded the wrong entry date and time for certain decks of ballots. Third, it permitted deletion of certain audit logs that contained—or should have contained—records that would be essential to reconstructing operator actions during the vote tallying process.⁵⁰¹

Without this information, the results of an election cannot be trusted and the system is in clear violation of the Federal Election Commission’s 1990 voting system standards that require “a concrete, indestructible archival record of all system activity related to the vote tally.”

There is, in addition, a “clear” button that can erase an entire audit log—which vitiates the certification granted to the system several times by ITAs.

The same errors were found in subsequent, ITA-certified systems with GEMS versions 1.18.20, 1.18.21, 1.18.22, and 1.18.23. And some of these were not backed up by paper ballots.⁵⁰² To this list was added, on March 17, 2009, “every version of [Premier’s] GEMS software.”⁵⁰³ And the grievous error, which had existed for ten years, “is used in more than 1,400 election districts in 31 states. Maryland and Georgia use Premier/Diebold systems exclusively[;] therefore the GEMS software counts every vote statewide.”⁵⁰⁴

Secretary of State Debra Bowen never knew about the problem.⁵⁰⁵ Diebold tried to shift the blame to the ITAs and said that fixing the problem would be very time consuming. According to John Gideon, guest-blogging on Bradblog:

Virtually every single one of them [the vendors’ machines] has proven to miscount votes, break down during voting, and otherwise stay completely un-transparent to the citizens whom they are supposed to be serving. The result has been a multi-billion dollar taxpayer boondoggle.⁵⁰⁶

And less reliable than the systems they replaced in 2000.

Trachtenberg’s invention, assembled from off-the-shelf scanners, has proved to be more reliable than those sold for thousands of

dollars. Gideon said that every opscan system should add Ballot Browser and that the municipalities have every right to sue Diebold and other vendors for “fraud, breach of contract . . . to recoup the millions spent on these broken systems.”⁵⁰⁷

In a follow-up article, “Electronic Voting Flaw Eyed by California,” reporter Matt Williams wrote that “Humboldt County Registrar of Voters Carolyn Crnich testified that the county has decided to move to a new vendor for its electronic voting, but will have to use Premier systems for its next election in May.”⁵⁰⁸

Another reliable form of auditing elections is the “citizen audit.” Proposed by election integrity expert Lynn Landes,

Its main purpose is to collect “hard” evidence of how people voted by asking voters to “go public” with their votes. Voters fill-out [*sic*] ballots that include their name, address, signature, and for whom they voted. Those ballots can then be used to verify or challenge election results. A Citizen Audit adds transparency to the voting process. It stands in sharp contrast to official audits which recount anonymous ballots, or traditional exit polls which rely on anonymous respondents.⁵⁰⁹

This practice has served to reverse initial vote totals. In one event, a candidate’s total shifted from a 48 percent loss to a 76 percent landslide after a citizen audit. In another, “[i]n a 2005 San Diego election, activists observed a shift of 4 percent of the vote from Democratic candidates to Republicans, when their results were compared to the official tally. On the basis of that evidence, a recount was ordered.”⁵¹⁰

Before the Civil War, wrote Landes, the election process was completely transparent. Trouble began when the decision was made that the vote should be private.⁵¹¹ That happened when African Americans were given the right to vote. The practice of absentee ballots resulted, the secret ballot followed, and then lever machines were invented. “[The] voting process itself began to recede from public view and meaningful oversight.”⁵¹²

According to Landes, “If candidates don’t take steps to ensure the accuracy of election results, [I predict] a complete collapse of public confidence in America’s voting system.”⁵¹³ A Zogby poll taken in mid-August 2006 revealed that 92 percent of Americans “believe that the public should have the right to observe vote counting and obtain

information about the election process [and . . . about the] voting system, including purchase costs, maintenance, storage, security, upgrades, and technical assistance.”⁵¹⁴

As for Florida in 2004, the Motherjones.com retrospective (see above) recalled that:

Voter registration forms are easily lost. In 2004, for example, headlines focused on a Republican National Committee contractor named Sproul & Associates [this firm operated in several states—see below], which subcontracted with a company called Voters Outreach of America that, in Las Vegas, was found destroying forms filled out by people trying to register as Democrats. Incidents like this would seem to justify a new Florida law that imposes fines of \$250 to \$500 per form on anyone who registers voters and doesn’t immediately deliver the paperwork to election officials, with no exceptions for difficult circumstances or natural disasters. But since it was already illegal in Florida to deliberately delay handing in voter registration forms, and since the new legislation does not apply to the two main political parties, its only likely effect is to intimidate independent voter-registration organizations; the largest among them, the League of Women Voters, has stopped doing voter registration in the state altogether.⁵¹⁵

This despite the fact that “Mail-in voter registration forms are protected by federal law. Local government must acknowledge receiving your registration and must let you know if there’s a problem (say, with signature or address) that invalidates your registration.”⁵¹⁶

In 2006, the League of Women Voters (LWV) had this repression invalidated by a lawsuit *League of Women Voters of Florida v Cobb*, which ruled that the state’s restrictions on voter registration drives were unconstitutional.⁵¹⁷

In the summer of 2004, Florida was still crippled by illegal lists of trumped-up felons. In August, the news media and the public, especially voters’ rights advocates, succeeded in pressuring then

Secretary of State Glenda Hood to dispense with the list she was assembling, which included more than twenty-two thousand blacks but only sixty-one Hispanics (less than one-half of one percent),⁵¹⁸ who tended at the time to vote Republican.⁵¹⁹ Undaunted, party operatives generated a fifteen-page caging list, of 1,886 black voters in Jacksonville who would be challenged on Election Day. Academic, activist, and author Mark Crispin Miller observes that the list received prominent coverage online, even at Washingtonpost.com, but nowhere offline.⁵²⁰

On June 2, Hood's office was reported to have neglected to address information about faulty auditing systems in ES&S iVotronic DREs and, as a result of the timing, attention to the matter would not come soon enough for the counties affected, Miami-Dade and Broward, to vote in November on improved machinery. Further, a Miami-Dade elections official, Orlando Suarez, wrote two memos in June and October of the preceding year, concluding that the iVotronic machines were "unusable" for auditing, recounting, and certifying an election.⁵²¹

An ES&S spokesperson said the auditing issue raised by the two Suarez memos "relates only to the software that generates a specific audit report." The company says it has a temporary "work-around" solution.

According to Matthew Haggman, writing for the *Daily Business Review*,

The audit logs contained in the iVotronic machines are supposed to record all activity that occurs on the touch-screen voting machines, from boot-up to shutdown. Computer experts say that if the audit log does not work, the credibility of the election can be thrown into question because there is no other way to verify that all votes were tabulated.

In his memos to Electronic Systems & Software and to Kaplan, Suarez reported that the iVotronic machines' audit log lost some votes and in some cases did not even recognize voting machines that were used in the election. For example, in the Homestead election he found that 162 ballots— more than 10 percent of the votes cast in the election—failed to appear in the system's audit report.⁵²²

Hood also worked assiduously to help add Ralph Nader to Florida's presidential ballot, in order to undermine support for John Kerry in her state. This even though, according to a court ruling, Nader had not qualified to be placed on the ballot. According to the *New York Times*,

At one point, while the court ruling eliminating Mr. Nader was under appeal, Ms. Hood's office hurriedly directed every county to add Mr. Nader's name to the ballots that will soon be sent to overseas voters.⁵²³

Ms. Hood moreover invalidated registrations [*sic*] forms on which a citizenship box is not checked, even though another place on the form contains a sworn statement that the applicant is a citizen.⁵²⁴

Refueling anger against the perennial racism that flouts the *Voting Rights Act of 1965*, the *Times* reminded readers that the poll tax is alive and well. A Latino group called Mi Familia Vota had set up a table to register new voters just outside a building in Miami where new Latino citizens were being sworn in. Department of Homeland Security officials told them to close up operations, for all sorts of trumped-up reasons that were later dismissed at a court hearing.⁵²⁵

In late August, according to the *New York Times*,

[T]he primaries in Florida were marred by an inaccurate sample ballot in one county and, throughout the state, the ambiguous voter I.D. law that requires voter identification but in its absence allows the voter to sign an affidavit swearing to his/her identity. But in Broward and Miami-Dade counties, poll watchers sent by People For the American Way saw voters without identification turned away without being offered the affidavit alternative.⁵²⁶

The bad sample ballot, circulated in Osceola County, notified voters that "Photo and Signature ID [Are] Required at Polls," without mention of the affidavit option. The omission was condoned by Secretary of State Hood. Such discrimination singles out not only minorities but also other poor people as well as senior citizens and other nondrivers.⁵²⁷

Echoed Representative Alcee Hastings, whose district includes

Fort Lauderdale and West Palm Beach, “Any way we cut it, these people are going to try to steal this election.”⁵²⁸

Prior to the Florida primary, Palm Beach Supervisor of Elections Theresa LePore, who periodically alternates her party affiliation, decided to supervise an election in which she was running to retain her office, wrote Greg Palast. The designer of the infamous butterfly ballot in 2000, whom Palast nicknamed Madame Butterfly, was unconcerned that fifteen thousand absentee ballots were missing when she began counting them on the Friday before Election Day. She could spot this category of vote, which had increased by 500 percent due to anxiety over touchscreen voting, by stipulating that voters had to identify their political party on the outside of the ballot envelope.

Wrote Palast, LePore had reserved for herself the right to determine whether signatures on these ballots were authentic. She also disallowed Democratic poll watchers.⁵²⁹

Another issue hotly debated was the addition of paper trails to DREs. The Jeb Bush administration stood behind paperless versions. Half the state voted on them; the other half had machines with paper trails. Representative Robert Wexler, a Democrat from the southern tier of the “three big counties on the Atlantic”—that is, the area of Florida most wracked by election corruption—told the *Orlando Sentinel*: “What are we going to do if there’s a close race? The voting records of these machines will have disappeared in cyberspace. . . . Apparently their motives are to suppress the vote in Florida in a number of different ways. They are refusing a paper trail on a computerized voting machine.”⁵³⁰

On September 29, in Georgia, a new initiative to allow early voting also allowed individuals to vote twice, a form of fraud punishable as a felony. Moreover, the same initiative involved the sacrifice of voter privacy, that is, the secret ballots, in that the same machinery that had removed Max Cleland from the U.S. Senate in 2002 could detect the identity of the early voters and officials could see which voter had opted for which and vary the total at whim. Early voters constituted 10 percent of Georgia’s voting population of three million.⁵³¹

Minnesota Secretary of State Mary Kiffmeyer, a Republican, became the state’s Glenda Hood, doing everything she could to thwart voters. A new statewide system for registering voters had been set up carelessly and before all bugs were eliminated. As a result, problems

were cropping up, a surprising number of them to the detriment of Democrats. Kiffmeyer even had posters warning of terrorist attacks put up outside of polling places and refused to distribute registration forms to progressive activists wanting to canvas to hand them out.⁵³²

Racial discrimination in 2004 was alive and well in other states also. In Michigan Republican state legislator John Pappageorge was quoted in the *Detroit Free Press* as saying, “If we do not suppress the Detroit vote, we’re going to have a tough time in this election cycle.” In Detroit blacks constitute more than 80 percent of the population.⁵³³

In 2004 also, further acts of discrimination were proliferating at the government level. In a congressional race in South Dakota in June, Native American voters were illegally turned away for lacking photo identification, even though it was not required. This bogus requirement was passed off as law by a white official in one heavily Native American county. Also in that state, six Republican operatives were fired after being caught tampering with fourteen hundred absentee ballots.⁵³⁴ Students at Prairie View A&M in Texas, most of them black, brought two lawsuits against Waller County, where the school is located, suing for their right to vote locally in state elections and for facilities for early voting to be open on campus for two days instead of one. “It’s another indication of systematic problems Waller County has in addressing the rights of minority voters at Prairie View,” said Attorney Jonah Goldman of the Lawyers Committee for Civil Rights Under Law, who represented the students in court.⁵³⁵ In 2003, the state’s attorney general had corroborated that students had the right to vote locally by affirming that their college residence was their domicile, countering the district attorney’s attempts to prevent this by spinning the definition of *domicile*. After uproar and outrage even from Republicans, the DA formally enfranchised the school’s student body—they could now vote locally on the basis of their college addresses.⁵³⁶

In the same county in August 2004, six black civil servants went farther, charging the district attorney and the governor, Rick Perry, with massive racist discrimination to alienate blacks from taking part in any aspect of county politics, even though blacks constituted more than 29 percent of the population there.

Focusing on conditions for voters in New Mexico from 2000 to 2004, Greg Palast discovered that in Rio Ariba, New Mexico, where the population is 73 percent Hispanic, 19 percent of votes in November 2000 went uncounted, ending up as “spoilage,” that is,

undervotes or opscan ballots incorrectly filled in. In that election, not a single vote for president was counted in one of its precincts. In Rio Ariba, the ratio of Democrat to Republican is eight to one.⁵³⁷

Palast had a statistician, Philip Klinkner, run a regression analysis in New Mexico, which revealed that votes cast by brown voters are five times more likely than those of white voters to become spoilage.

“And it’s worse for Native Americans,” wrote Palast. “Vote spoilage is epidemic near Indian reservations.”

For blacks in this country, Palast called the situation a “ballot-box holocaust.” One million black votes are lost, or 54 percent of the two million votes that become spoilage, he wrote.⁵³⁸ “The one million missing black, brown and red votes spoiled, plus the hundreds of thousands flushed from voter registries, is our nation’s dark secret: an apartheid democracy in which wealthy white votes almost always count.”⁵³⁹

Palast also forecast that even before the election John Kerry had lost one million votes or more. One of the main contributors to this deficit was Colorado, where the secretary of state struck several thousand felons from the voter rolls, though it is legal in that state for ex-felons to vote—and it is against the law to change voter lists within ninety days of Election Day. Donetta Davidson justified her illegal (at the federal level) act by declaring an emergency. She succeeded in purging 19.4 percent of those registered to vote.⁵⁴⁰ She was later promoted from secretary of state to chair of the Election Assistance Commission (EAC).⁵⁴¹

“Studies indicate that 90-some percent of people who have served time for felonies will, after prison, vote Democratic,” wrote Palast, suspecting the Republican secretary of state’s motives.⁵⁴²

But most such racist and discriminatory tactics to keep minorities away from the polls were ignored or treated with impunity.

The entire state would vote on optical scanners by the November 2006 midterm election, as a result of a lawsuit filed against the Land of Enchantment by grassroots organizations including Voter Action and Help America Recount (see below, Chapter 6).

In Ohio, Bob Fittrakis quoted a report from Citizens for a Legitimate Government (Legitgov.org) that in Hamilton County, part of greater Cincinnati, 105,000 voters were purged for inactivity.⁵⁴³

A report from the Prison Reform Advocacy Center there indicated a great deal of confusion over the voting rights of ex-felons. Once again, Hamilton County was a chief culprit, requiring these voters to

attach “documentation restoring voting rights” along with applications to vote by mail. Wrote Fitrakis:

Hamilton County practices are at odds with Ohio law, which allows felons to vote as long they are not incarcerated or in prison, even if they are on parole or in a halfway house. There are more than 34,000 ex-offenders in Ohio who are currently under some form of corrections supervision who are eligible to vote, and many don’t know it.⁵⁴⁴

Franklin County’s Supervisor of Elections Matt Damschroder sent out thirty-five hundred extremely ambiguous letters to thirty-five hundred ex-felons, telling them in essence that they were not qualified to vote, though he asserted that he was informing them of the October deadline for reregistration.

Secretary of State Kenneth Blackwell followed up with instructions that severely restricted the issuing of provisional ballots to residents of the precinct where they were attempting to vote. Congresswoman Stephanie Tubbs Jones (D-OH) opposed this severe limitation as disenfranchising voters, especially in such an inevitably controversial election, with some 150,000 voters recently registered. The nonpartisan Citizens’ Alliance for Secure Elections (CASE) supported Tubbs Jones in a letter to Blackwell, citing:

... a recent Cleveland study indicating ‘that up to 35,000 Ohio voters could be turned away from the polls on November 2 because of registration errors.’ That same study found that ‘more than 1 in 20 registrations and changes of address were compromised because of either clerical or voter errors.’ This 5% error factor could be lowered to less than 1% with proper training of election officials.⁵⁴⁵

Worried about certified election challengers confronting all new voters and thus holding up the voting process, Fitrakis wrote that “The election may rest on how many Democratic election challengers show up to advocate for urban center new voters versus how many Republican election challengers show up to question new voters.”⁵⁴⁶

In Ohio also, Sproul & Associates worked vigorously for the Republicans in swing states, ostensibly to register voters. But Mark

Crispin Miller calls their actual activities “the boldest effort to suppress the national democratic vote.”⁵⁴⁷

Among their ruthless projects were shredding Democratic registration forms in Nevada, recruiting workers from Kelly Services to stand in public places with forms referred to as surveys. Subjects who said they were Republicans were handed registration forms. Democrats were politely thanked and then ignored.⁵⁴⁸ Workers who brought in Democratic registrations were docked.

In another fraudulent Sproul scenario, workers would fool students and others into filling out registration forms that were incomplete and then complete them themselves—registering all the victims as Republicans. The activities of Sproul’s employees and other counterparts did not receive much press attention. Farhad Manjoo’s October 15 story in Salon.com, “Sproul Play,” supplied the most comprehensive coverage.⁵⁴⁹

Sproul and Associates received \$8,359,161 from the Republican National Committee, the party’s fourth largest campaign expenditure, for their efforts, which had extended from Pennsylvania, West Virginia, Ohio, and Michigan, to as far away as Nevada.⁵⁵⁰

The NAACP and People For the American Way published a report detailing some of the many other forms of racist discrimination and intimidation. On Election Day, for example, “ballot security” teams stationed in minority neighborhoods demanded voter identification even though it was not required, photographed voters, and used other scare tactics that particularly target immigrant voters.⁵⁵¹

To Gary Bartlett, executive director of elections in North Carolina, “It seems like whenever there is hanky-panky in elections, it’s usually through absentee voting.”⁵⁵² His state was the first in the country to distribute ballots for the 2004 presidential election. In 2003, three university students were charged with felonies in North Carolina, for voting both absentee and at the polls. They had been alerted by campus fliers that they would receive free concert tickets worth \$22.50 for voting absentee.⁵⁵³

Dr. Charles E. Corry of the Equal Justice Foundation agrees with Bartlett. “There is a valid reason for some absentee ballots for individuals who are in the military, will be out-of-town on Election Day, or are home bound and can’t make it to the polls,” he wrote. But more and more often, fewer excuses are needed. In many places the process is called “no excuse” absentee voting.

In Colorado about one third of all votes are cast by mail. In some areas of Washington state [King County, e g.], as many as 85% of votes are cast by absentee ballot. And now *Oregon votes entirely by mail ballot* [italics present in original]. . . . The potential for vote fraud is radically increased by this trend. In Boulder County, Colorado, it is reported that about 10–15% of all requested absentee ballots were returned by the post office as undeliverable to the address given on the absentee ballot request.⁵⁵⁴

In at least twenty-six states, residents could cast absentee ballots without claiming that they would be out of town. Six states added that provision after 2000.⁵⁵⁵ As many as three-fourths of Washington state voters use absentee ballots, according to the *Washington Post*.⁵⁵⁶

Applications for absentee ballots for the 2004 election were up by 500 percent in some states, wrote Palast—states where voters are wary of the electronic machines. Palast also foresaw that those fifty million ballots probably wouldn't even be counted: “[Y]our mail-in vote is an unprotected crapshoot. How do you know if your ballot was received? Was it tossed behind a file cabinet or tossed out because you did not include your middle initial? In many counties, you won't know.”⁵⁵⁷

The marked increase in demand for absentee ballots is attributed by Dr. Larry Ponemon of the Ponemon Institute, an independent think tank, to the widespread media publication of the manifold problems of e-voting, both built in and caused by human error or lack of training; and to some amount of panic about the approaching presidential election. A poll taken in early May 2004 showed that 77 percent of respondents were not worried about the security of electronic voting machinery. But by the end of July 2004, another study found that 25 percent of respondents had little or no confidence in the security and reliability of e-voting systems; 45 percent of respondents were either unfavorable toward the system or were undecided.⁵⁵⁸

During the first week of August, a survey of 780 likely voters revealed that:

. . . [J]ust under half of all respondents—44 percent—said they thought computerized voting systems are unreliable, up from

about one-fourth of respondents in other studies. And almost three-fourths said the systems should produce a paper record that the voter can review. Sixty percent said they would vote for a presidential candidate this year who supports requiring a paper trail.⁵⁵⁹

In a widely publicized scam in Broward County, Florida, officials failed to mail out nearly sixty thousand absentee ballots. The election supervisor there was a Bush appointee who replaced a Democrat whom Bush had ousted.⁵⁶⁰

In the four years that followed the 2000 presidential election, at least fifteen states experienced fraud in absentee voting.

One case resulted in the conviction of a voting-rights activist this year for forging absentee ballots in a Wisconsin county race. In another case, a Republican election worker in Ohio was charged with switching the votes of nursing-home residents in the 2000 presidential race. And last year in Michigan [2003], three city council members pleaded guilty in a vote-tampering case that included forged signatures and ballots altered by white-out.⁵⁶¹

Up to 25 percent of Americans were expected to vote by absentee ballot in the presidential race. This process, which would begin on September 13 [2004], represented a sizable increase in absentee voting nationwide. In the 2003 California recall election, “30% of voters used absentee ballots. Twenty-two states allowed absentee voting for any reason. And although the public’s shift to absentee voting is certainly not a good thing in terms of voting security, it is sending a message to election officials. . . .”⁵⁶² But many states had neglected to adopt the safeguards they would need to avoid the many possible varieties of fraud. Only six of the nineteen swing states required witness signatures, for example, and party operatives were even allowed to assist voters in filling out the ballots at home.⁵⁶³

The *New York Times* reported on September 13 that

In Arizona this month, a county judge ruled that a campaign consultant had improperly held on to more than 14,000 absentee ballot applications he collected this summer to help nearly a dozen Republican candidates in the primary. But holding on to such applications for at least a few days is now common practice

by both major parties in states like Arizona, which require only that they be turned in within a ‘reasonable’ period of time. This allows campaigns to bombard voters with mailings and house calls just as their ballots arrive.⁵⁶⁴

Absentee voting is inherently more prone to fraud than any other category, according to election officials, because it is done away from the polls and there is no official oversight. “[I]ntimidation and vote-buying would be more likely when someone votes away from a polling place,” according to an FEC official.⁵⁶⁵ Another drawback that apparently did not deter this category of voters, is that “voters tend to make more mistakes when they vote by mail-in absentee ballot, since they don’t have the benefit of error correction technology that’s available with in precinct voting.”⁵⁶⁶ Some officials have considered reinstating the requirement that absentee ballots be used for their original reason—only if a voter cannot be at the local polls on Election Day.

In Indiana, fraud investigations were in progress in at least five different municipalities. The secretary of state said that one candidate’s supporters in the 2003 Democratic mayoral primary race in East Chicago, begged for federal oversight over absentee voting because they had become aware of foul play associated with the election. No oversight was provided, and the challenger, George Pabey, was defeated.

But the election was subsequently nullified when officials visited some of the voters who had cast absentee ballots and received admissions of corruption, including bribery to vote for the opponent falsely awarded the victory. At least five guilty individuals were quickly rounded up.⁵⁶⁷

Within his own ideal voting scenario, Jim Condit Jr., founder of Citizens for a Fair Vote Count, calls absentee voting “the playground for elections crooks,” positing that a vote count will be more accurate if this category is eliminated altogether. There is “no assurance [an absentee ballot] is tabulated properly, because the votes disappear out of public sight,” he claims. Therefore, disenfranchising those voters unable to vote any other way [apart from the military] is equal to the disenfranchisement experienced by all voters when an inaccurate number of absentee ballots are factored into the total tallying process.⁵⁶⁸

Contrary to the above assertions that absentee balloting is the most corrupted category of the election process, at a Senate hearing on Voter Registration, “Assessing Current Problems,” on March 11, 2009, Jonah H. Goldman, director of the National Campaign for Fair Elections Lawyers’ Committee for Civil Rights under Law testified that “. . . the single largest cause of the problems on and before Election Day is our antiquated and cumbersome voter registration system.”

There are two primary culprits in our broken registration system: Paper and Timing. Each registration requires an individual paper form and the vast majority of these forms come in during the critical planning and implementation period just before an election. The inefficiency of the voter registration system has a domino effect, forcing election officials to divert their attention and resources from other critical election functions, causing confusion at the polls and infecting every aspect of the voting process. According to the Census Bureau’s post-election survey, in 2004, the last presidential election where figures are available, 9 million eligible Americans were not registered due to missed registration deadlines, lack of information about where or how to register, or permanent illness or disability. In addition, the Census reports that over 1 million people who were registered did not vote in 2004 because of problems with their registrations.⁵⁶⁹

In 2009, legislation was still being written to regulate registration and prevent the corruption that blocks and intimidates underprivileged and minority U.S. citizens from voting, and registration was still considered to be the most problematic aspect of voting.⁵⁷⁰ An MIT study found in 2008 that four to five million voters were prevented from voting by problems with registration or absentee balloting, and that “the most common registration problems involved clerical errors, like entering voter information incorrectly in statewide databases, or voters who changed their address but failed to inform election officials.⁵⁷¹ The U.S. Census Bureau had found that, in 2000, “problems with registration eliminated another 3 million (7.4 percent) and there were 150 million voter registrations.”⁵⁷²

Solutions to these vexing issues and many more are provided by Bob Fittrakis and Harvey Wasserman in *As Goes Ohio: Election Theft*

Since 2004. First, registration should be universal and automatic, with all U.S. citizens automatically placed on the voter rolls when they turn 18.

Absentee balloting should be no-excuse and ballots must be clearly designed and easy to use. Students attending college away from home should be automatically qualified to vote absentee or else be able to vote using their campus addresses.⁵⁷³

On October 26, the[Cincinnati] *Enquirer* reported that Blackwell had banned international observers, including those representing the United Nations, from all Ohio poll sites. Another group, the liberal Progressive Exchange, wanted to be able to inform the outside world that the Ohio 2004 election had been conducted fairly. A Blackwell spokesman said that, according to the law, “Only a few groups are allowed inside polling places, including poll workers, voters, vote challengers, witnesses and police. Anyone else must stay at least 100 feet away from the entrance.”⁵⁷⁴

Meanwhile, reported Palast, the night before Election Day, 309,000 voters were purged from the rolls.⁵⁷⁵

In Washington, DC, a man fasted for the fifty-five days preceding Election Day, ingesting only water, coffee, and juice with electrolytes. The Scripps Howard report explained that “He wants Congress to require paper ballots for the November election and improved methods for counting punch cards and other machine-read ballots.”⁵⁷⁶

On November 2, Election 2004 occurred and Ohio became its Florida.⁵⁷⁷ The largest number of Americans in history, 120 million, turned out to vote. Thanks to the machinations of the secretary of state/honorary co-chair of the Bush campaign J. Kenneth Blackwell, and Diebold’s president, Wally O’Dell, a whole new array of issues were claimed to have stolen the election from Kerry/Edwards. O’Dell’s promise to “deliver” the election triumphed.⁵⁷⁸ Among the alleged corruptions, Blackwell (who subsequently lost the race for governor of Ohio) ruled that all authentic voter registration must be on heavy-weight paper (80-pound bond). This absurd requirement was soon rescinded but not before disqualifying a sizeable number of would-be voters.⁵⁷⁹ Caging occurred, that is, among other things, sending absentee ballots by registered mail to lists of residents whose

addresses had changed, without forwarding requests.⁵⁸⁰ Among the targets were soldiers fighting in Iraq and homeless people. According to Greg Palast, thousands of black military were challenged—Republican lists were accidentally left on the Internet. According to the Voting Rights Act of 1965, that was a felony.⁵⁸¹

Brochures distributed in black neighborhoods informed residents that Election Day had been postponed until Wednesday; others scared them from voting with threats that they would be imprisoned at the polls if they had ever spent time in jail at all or had received traffic tickets; or even if they were receiving any category of public assistance, including welfare or food stamps.⁵⁸² In a year-long research project coauthored with Robert F. Kennedy Jr., Palast found that caging ultimately took away the rights of 1.1 million voters.⁵⁸³

Threatening or misinforming phone calls occurred. Congressman John Conyers (D-MI), then chairman of the House Judiciary Committee, in a study authored with his staff, reported on these issues and more in early January 2005 in *Preserving Democracy: What Went Wrong in Ohio: Status Report of the House Judiciary Committee Democratic Staff*. CNN reported that more than fifty-seven thousand complaints were received by the House Judiciary Committee in the wake of Election 2004.⁵⁸⁴

It rained in Ohio on Election Day. Voting machines were concentrated in affluent neighborhoods, so that those more likely to vote Democratic were granted fewer machines though their districts were more populous. And of course there were problems with the few machines that they had—booting up properly and then crashing or otherwise failing.⁵⁸⁵ Long lines stretched out of polling places as people stood for hours under umbrellas.⁵⁸⁶ Those in inner-city precincts in Columbus, Cleveland, and Toledo—which were voting for Kerry by margins of 90 percent or more—often waited up to seven hours.⁵⁸⁷ Those who worked or had other obligations were disadvantaged further. As a result, at least 350,000 voters were kept from voting that day, twice the margin of Bush's victory.⁵⁸⁸ Bob Fittrakis said that his first clue that the election would be stolen was that fewer voting machines had been supplied than for the most recent primaries.⁵⁸⁹

At Kenyon College, where students were largely liberal, two machines were supplied for thirteen hundred voters—more than three times the number of voters per machine recommended by federal

guidelines.⁵⁹⁰ Students waited in line for up to eleven hours.⁵⁹¹ According to Kennedy:

A five-month analysis of the Ohio vote conducted by the Democratic National Committee concluded in June 2005 that three percent of all Ohio voters who showed up to vote on Election Day were forced to leave without casting a ballot. That's more than 174,000 voters. "The vast majority of this lost vote," concluded the Conyers report, "was concentrated in urban, minority and Democratic-leaning areas."⁵⁹²

In another scenario there was a terrorist threat;⁵⁹³ at yet another, a vendor employee, before voting began, said he had to slip into the building to make adjustments on the machines before voting could take place.⁵⁹⁴ The forms of foul play were endless and continue to proliferate to this day (2012).

While the United States, headed by George Bush, heavily criticized disputed election results in Ukraine in 2004 as fixed, and two repeat elections were scheduled to resolve the impasse, no international observers were allowed at the polls in Ohio. But partisan challengers were most welcome, particularly those eager to intimidate blacks, college students, and senior citizens attempting to vote.⁵⁹⁵

Disputed election results were rampant and ubiquitous, as were an increasing number of court cases. Some 14.5 percent of Ohio's votes had been cast on touchscreen machines in 2004—that is, six hundred thousand votes in an election won by fewer than 120,000 votes.⁵⁹⁶

The press did little to alert the public⁵⁹⁷; grassroots nonpartisan organizations did most of the work. Democratic election-integrity activists like Mark Crispin Miller were dismissed by a team of progressives as conspiracy nuts⁵⁹⁸—people who categorically we would expect to support them, including Noam Chomsky, who circumvented the issue⁵⁹⁹; the *Nation*, Walter Mebane,⁶⁰⁰ Salon.com, *Mother Jones*, and *tompaine.com*. Conservatives one would have expected to speak out on this issue were strangely silent, including Bill O'Reilly, Pat Buchanan, David Brooks, George Will, Ann Coulter, *National Review*, and the *Washington Times*.⁶⁰¹

Warren County was one of the last districts in Ohio to submit its totals. The press had been locked out of the room where the votes were counted, due to the above-mentioned "terrorist threat" whose validity was later denied by both the Department of Homeland

Security and the FBI.⁶⁰²

A GAO report on the Ohio 2004 election commissioned by Representative John Conyers and House colleagues found that:

. . . electronic voting machines as deployed in 2004 were in fact perfectly engineered to allow a very small number of partisans with minimal computer skills and equipment to shift enough votes to put George W. Bush back in the White House. . . . [T]he electronic network on which 800,000 Ohio votes were cast was vulnerable enough to allow a [*sic*] tiny handful of operatives — or less — to turn the whole vote count using personal computers operating on relatively simple software. . . . The exit polls showed Kerry winning in Ohio, until an unexplained last minute shift gave the election to Bush. Similar definitive shifts also occurred in Iowa, Nevada and New Mexico, statistically improbable events. . . . In a conference call with Rev. Jackson, Attorney Cliff Arnebeck, Attorney Bob Fittrakis and others, John Kerry confirmed that he lost every precinct in New Mexico that had a touchscreen voting machine.⁶⁰³

The problems did not end there. In Mahoning County, Ohio, “a voting machine recorded a negative 25 million votes for Kerry. The problem was allegedly fixed.” The list goes on, decisively proving that Election 2004 was illegally stolen by Bush and his cohorts.⁶⁰⁴

Asked about the role of the media in this context, Harvey Wasserman said that a grand total of one reporter showed up to investigate Ohio 2004: Dan Rather. And what did Dan find? It will sound familiar. He found that an inferior quality of paper was used in the punch-card ballots distributed in indigent neighborhoods—something bound to distort election results as, Rather revealed, had occurred in Florida 2000. Ninety thousand votes in Ohio went uncounted; that, added to the number of uncounted provisional votes, practically adds up to the number of votes by which Bush was said to have won in that state, 118,775.⁶⁰⁵ The total number of voters in Ohio in 2004 was 5,625,632.⁶⁰⁶

According to Wasserman, “Fifty-six out of the eighty-eight counties of Ohio destroyed all or part of their election 2004 records, despite a federal injunction.”⁶⁰⁷

After promising that every vote would be counted, with Edwards urging him not to concede, Kerry abruptly conceded to his Skull and

Bones buddy from Yale in the early afternoon of November 5, and sent in lawyers a few month later to make sure that nothing amiss had occurred.⁶⁰⁸ As of November 10, 2005, there was no explanation for this premature flip-flop on his earlier promise that every vote would be counted.⁶⁰⁹ Wrote Sheila Samples bitterly on November 4, “Not that you lost the war, John, because nobody could possibly have waged a braver war nor a more heroic one—but that you surrendered rather than fight that last crucial battle. . . . If democracy is worth fighting for until the polls open, it’s a no-brainer that it’s even more so after they close.”⁶¹⁰

As went Ohio, so went the nation. Bush had done it again.⁶¹¹

The worst corruption of all, writes Mark Crispin Miller, who in *Fooled Again* chronicles scandals in many states during election 2004, involved those expatriates who were first provided with an Internet site on which they could register to vote in 2004.⁶¹² There was tremendous response from this largely liberal contingent of the U.S. population first permitted to vote in situ in 1975. But on August 23, the site suddenly shut down. The reason given by the Pentagon, in charge of the process as an extension of its oversight of the military abroad, was Internet hackers. An anonymous army officer called the pretense “patently absurd,” since far more sensitive Pentagon sites had not been hacked. The site was brought back up on September 22, six weeks before Election Day—a delay that would prevent many of the absentee ballots printed up from the Internet from arriving in time for Election Day. Miller emphasizes that the timing was crucial. Registration was at its height when the site went down.⁶¹³

Opponents of the election integrity movement will ask how it was that Kerry’s lawyers, when he sent in a team of them to investigate the causes of all the allegations of corruption, found insufficient evidence to prove that the Kerry-Edwards ticket had in fact won Ohio. The answer is not so simple. Statements released summarizing the Kerry-Edwards policy toward the recounts unambiguously asserted that Kerry’s concession held, while allowing for further investigation, at the same time not wanting to be directly part of it and averring that no endorsements will be forthcoming⁶¹⁴—a polite sort of doublespeak that may justify Kerry’s response when Miller attempted to quote him accurately—that he did believe that the election had been stolen in Ohio. As soon as Miller began to quote Kerry to this effect, Kerry’s office denied it.⁶¹⁵ I have read elsewhere that privately Kerry acknowledges that the 2004 election was stolen.⁶¹⁶ In an article

by Ronnie Dugger published on July 29, 2004, Kerry is quoted in a recent speech at the NAACP convention as saying that “a million African-Americans were disenfranchised in the last election.”⁶¹⁷ In the months before Election 2004, Kerry was also demanding “recountability.”⁶¹⁸

Kerry appointed election officials across the state to witness the Ohio recount; his reaction was that the Ohio election was “fraught with mistakes,”⁶¹⁹ but likely not conscious misconduct, and [Kerry] supported an investigation into the recount process and any alleged irregularities.⁶²⁰ He did want to make sure that these findings would be well publicized. Lawyer/academics Bob Fittrakis and Harvey Wasserman commented on Kerry’s response to the Ohio debacle: “John Kerry was unwilling to fight to protect the rights of American voters who were disenfranchised en masse.”⁶²¹

Fittrakis and Wasserman covered the Ohio election thoroughly and relentlessly and have since published their findings at their website Freepress.org and in several volumes, as they continued to investigate and litigate over the thousands of Democratic votes that had been spoiled, lost, discarded, or prevented—far more than the number needed to put Kerry over the top in their state. One of the spoilers who recurs in their accounts, Election Supervisor Matt Damschroder, complained that a Diebold official came into his office and offered him a generous check. He redirected the intruder to the Republican Party headquarters.⁶²² In that these activists’ work relates also to their heroic and tireless persistence after the election, much more information below will narrate their incredible achievements.

But Ohio was not the only state to experience severe problems on Election Day 2004. Throughout the country, according to New York University’s Brennan Center for Justice, margins were even more “razor-thin” than in Election 2000.⁶²³ Miller wrote that “the second race [2004] was far more broadly and explicitly subverted than the first [2000].”⁶²⁴ He continues that this synthetic victory was based on four million “phantom votes—a feat of national disenfranchisement unprecedented in the history of U.S. elections.”⁶²⁵ In state after state there were such large gaps between exit polls and final tallies that exit polling was discredited. Machines malfunctioned in forty-two states. Vote switching occurred in thirteen states.⁶²⁶ A nationwide study

found that Bush had lost in his pockets of large support—rural, small town, and suburban, but gained massively in the big cities—not among Jews, blacks, and other ethnics, who went overwhelmingly for Kerry, but among white males. In addition, Bush had concentrated his campaigning on his traditional constituencies, where Kerry scored more closely in them than expected. Much of Bush’s expected rural support stayed home from the polls. Official vote tallies contradicted the exit poll totals, which predicted a Kerry victory by 3 percent. Four million more new, big-city whites voted in 2004 than in 2000, a result that Michael Collins, author of this statistical study, finds preposterous.⁶²⁷

In seventeen states, voters who had been registered through the Motor-Voter program were kept off the poll list. If they complained, they were given a number to call. They would be told by the person at the other end of the line that the departments of motor vehicles were not good at sending in registration forms.⁶²⁸

As of early evening on Election Day, the Edison-Mitofsky exit polls showed Kerry ahead in ten out of the twelve swing states. Later that evening the exit-poll computers froze for a few hours. Then, in a dramatic shift, when the exit-poll computers booted up again, the polls became consistent with the vote tallies. Bush won the popular vote nationwide and victory was declared, although people were still lined up to vote.⁶²⁹

According to Thom Hartmann, “These [exit polls] had become increasingly more accurate until the 2004 election.” The national exit polls showed a Kerry victory (until the very last national poll was adjusted and coincided with the alleged official results). The state exit polls, conducted by the same poll takers, were not adjusted and also showed a clear Kerry victory. Why didn’t Americans react the same way the Ukrainians did? Hartmann asked. His point was particularly telling since the margin of difference between Ukraine exit polls and U.S. exits was only about one percent. The reaction by the voters was entirely different. The Ukraine had a revote and selected a different candidate for president.⁶³⁰

Howard Stanislevic had this to say:

But Mitofsky said they [the exit polls] didn’t prove fraud. It’s complicated, but the idea is that the precincts in which Bush did better in 2004 than he did in 2000 did NOT [Stanislevic’s emphasis] have larger exit poll discrepancies. If the exit polls

could show evidence of fraud, they should have larger discrepancies in precincts where Bush increased his vote share in 2004. This was the proof that Mitofsky said killed the fraud argument (as far as exit polls are concerned). Then he died. This doesn't mean there wasn't fraud; it just means the exit polls did not detect it. Unless one has that precinct-level data, they really can't make any claims to the contrary. As you said, the polls are not transparent. BTW, vote switching is physically impossible on lever machines, yet in NY, there were large exit poll discrepancies.⁶³¹

In Nevada, Secretary of State Dean Heller was proud of the Sequoia AVC EDGE Model II DREs with VVPAT the state had just purchased. Without ITA certification, they were used in the September primary and then again in November 2004. They were, after all, the first such system to be used in the country. But the printers fouled up during the testing process conducted by Wyle Laboratory in Huntsville, Alabama, and the DRE itself would also freeze or lock up when this happened. The system was tested several times before Wyle finally provided the paperwork that officially certified it on December 16, 2004. The report was filed with the office of the secretary of state on January 16, 2005.⁶³²

The people of Nevada nonetheless voted on the same system in November 2006, sending Dean Heller to the House of Representatives. They never knew about the "double ruse" he had accomplished in 2004.⁶³³

Unfortunately also, a May 2007 dissertation at Rice University revealed that: ". . . over 60% of voters did not notice if the votes shown on the review screen were different than the choices they had selected. In another study, test voters found only 3 of 106 errors in the VVPAT."⁶³⁴

Moreover, citing another study, the writer adds that:

Also shocking is that of those 101 participants 6% walked away from the voting machine without pushing the button to cast their ballot. Instead, they just left the voting process at the final review screen. Thus, had this been a real election, a full 6% of the voters would *not* have had their ballots counted at all.⁶³⁵

In North Carolina, Democratic precincts suffered from the most mechanical problems in the country.⁶³⁶ The Raleigh legislature recommended that the state go to all paper.⁶³⁷ In a notorious incident in Carteret County, evening election returns indicated the loss of more than 4,438 votes cast during the early voting period:

The manufacturers of Carteret County's electronic voting system, UniLect, admitted that the number of ballots cast exceeded the storage capacity of the unit. The county was told the limit was 10,500 votes when it was actually 3,005. There were 7,537 early votes cast in the county. "The technical people now admit that they were in error and that the accumulation and storing capacity is only 3,005 total votes, and that the additional votes of 4,530 are lost," according to the director of the board of elections. . . . However, election officials said they do not believe the lost votes affect[ed] the county races for Board of Commissioners.⁶³⁸

Additional posts on November 4 and 9, the latter quoting both Ed Felten and Peter Neumann, reported that

Officials said anyone who voted after 11 a.m. on Oct. 22 through Oct. 30 did not get their ballot counted. . . . Had these machines used a voter-verified paper ballot, the problem could have been rectified by counting the paper ballots. As it is, there is no backup to protect against software problems, so Carteret County voters will have to go to the polls again to vote in a new election. . . . "The company has admitted now that it was its error and that it was a simple keystroke that should have been applied to the system perhaps several years ago and was not ["a bug"]," said Ed Pond, of the Carteret County Board of Elections. . . . Apparently there was supposed to be a warning message that flashes when there is no more room for storing ballots. However, this is not adequate; we all know how easy it is to overlook warning messages. A voting machine should stop accepting votes when it is out of storage capacity.⁶³⁹

As of January 18, 2005, because the race for agriculture commissioner had been so close—a difference of only 2287 between

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the two candidates—a large and variegated dispute at partisan and municipal levels left the matter hanging. Ultimately there was no revote. Officials said that a paper record would have resolved the problem immediately, so that the county had learned a good lesson from the event. Ironically, Ohio Secretary of State Kenneth Blackwell was awarded kudos for having ordered that his entire state vote on machinery with VVPAT.⁶⁴⁰ Remarked Joyce McCloy two months later, “Thanks to the permanent loss of 4,438 votes on a paperless voting machine in Carteret County, we will never know if Britt Cobb or Steve Troxler won the contest.”⁶⁴¹ Cobb conceded the election.

But in an ultimate recap, the *New York Times* opined on January 18, 2000, that:

...[A]griculture commissioner may not be the loftiest of offices. But if the same glitch had occurred in Washington, where Christine Gregoire was just elected governor by 129 votes, it would have destabilized the entire state government. If it had occurred in Florida in 2000, where President Bush's margin was just 537 votes, it would have undermined an entire presidential election.⁶⁴²

In October 2004, in Raleigh, North Carolina, early voters had to try several times to record their votes on ES&S systems. Comparing the number of voters to the number of votes counted, officials realized that 294 votes had been lost.⁶⁴³

Further highlights of the state's disastrous election experience:

- An entire precinct of 1,209 votes in Gaston County was omitted;
- 12,000 more votes in Gaston County went missing; The election director had hired a voting machine technician to upload the county vote totals [who] was not supervised;
- The public presidential vote totals for Guilford County, which had purchased outdated vote-tabulating software that lacked sufficient storage space for votes, were off by 22,000 votes;
- Craven County, which had voted on the same software, reported 11,283 more votes for president than cast, and voters saw their selections changed right on the screen,⁶⁴⁴

- In Onslow County a software error changed the order of finish in the race for county commissioner;
- In Cleveland County precinct workers left 120 uncounted provisional ballots behind at the Cleveland County fire station.⁶⁴⁵

It is therefore not surprising that North Carolina thereafter drafted the toughest anti-DRE legislation in the country.⁶⁴⁶ At the end of December 2005, after several lawsuits, Diebold ceded the voting machine market in North Carolina to ES&S and withdrew its sales forces from the Tar Heel State.⁶⁴⁷

According to James Romoser of the *Winston-Salem Journal's* Raleigh Bureau:

The Carteret County episode cemented McCloy's support of "optical-scan" voting machines, which allow voters to fill out a paper ballot by hand, rather than electronic "touch-screen" machines, which she says are vulnerable to being hacked and are more difficult to verify. The episode also fueled her efforts the next year [2005] in fighting for the state law that required all machines to have a paper trail. On the last day of the legislative session, the law passed, causing an overhaul of election equipment across North Carolina.⁶⁴⁸

As of February 21, 2007, 76 out of 120 counties were voting on opscans, a result of grassroots efforts.⁶⁴⁹ The state was considered "one of the six states best prepared for the November 2008 Election."⁶⁵⁰

In Democratic New Orleans, 30 percent of the precincts reported machines breaking down.⁶⁵¹

Miller reports that that condition was epidemic throughout Democratic precincts in the country: "The machines were . . . freezing, turning off, changing Kerry votes to Bush votes—and the poll workers screwing up (or worse)."⁶⁵²

Problems even in blue states decreased Kerry's showing, especially in New Jersey. In New York, even in the city, reports came in of "voters turned away, machines malfunctioning, registration cards or polling information or, above all, absentee ballots not received."⁶⁵³ In Maryland, which used Diebold touchscreens

throughout, votes were lost, PC memory cards unreadable, machine failures ubiquitous. Nine percent of machines observed by a voting rights group broke down.⁶⁵⁴ Diebold could not come up with an explanation months later and had to send machines out of state for analysis.

Linda Schade, director of TrueVoteMD, commented: “Maryland was lucky the presidential election in Maryland was not close; otherwise we would be embroiled in scandal to this day. It is time to put in place a system that is reliable and that voters can trust.”⁶⁵⁵

Washington state experienced the closest election in its history, the race for governor. Democrat Christine Gregoire was declared the winner after eight months of litigation by her opponent, the Republican Dino Rossi, though Gregoire functioned as acting governor as of that January. Recounts conducted throughout the state had cost about \$200,000 for all thirty-nine counties and manual recounts cost approximately \$900,000, according to the office of the secretary of state.⁶⁵⁶

But this was far from the only issue that November 7. According to a Pew Charitable Trust report, the main problem was provisional ballots due to pollworker errors and accusations of illegal votes. In King County, “hundreds of unverified provisional ballots were improperly counted, scores of valid absentee ballots weren’t counted and a staff report to the canvassing board . . . incorrectly showed all ballots accounted [for].”

Lawsuits resulted amid partisan animosity. Reform followed, in the hands of the state legislature, which modified the state election code to improve future recounts. The secretary of state was given the prerogative to require recount results from all thirty-nine counties on the same day. At the statewide level, manual recounts would be required by disparities of one thousand votes or less, instead of the previous 150-vote parameter.⁶⁵⁷

New Mexico reported the largest number of undervotes of any state, 24,000, or nearly one out of twenty.⁶⁵⁸ For reasons no one but activists cared about, this represented six times the expected rate of undervotes in a presidential election and more than enough to change the results of Election 2004.⁶⁵⁹ Hence that mystery was never solved. A recount paid for by the Libertarian and Green Parties was prevented when government officials hoisted the price from \$100,000-some to more than \$1 million and then the secretary of state gave her election clerks permission to clear the memory logs of the voting

machines⁶⁶⁰ even though the third-party leaders were attempting to negotiate a compromise.

A further figure is more telling: statewide 77 percent of ballots with presidential undervotes were cast on paperless DRE voting machines,⁶⁶¹ thus rendering a meaningful recount impossible.⁶⁶²

Wrote Scoop.co.nz's Michael Collins:

In Hispanic and Native American precincts under votes range from 6% to as high as 49%. One poll worker described watching 141 voters come to the precinct, enter the polling booth where a voting machine awaited, stay for a short period, and leave. At the end of the day, there was only one vote counted for president. That's a 99% plus rate of under votes for that precinct.⁶⁶³

As for the optical scan tabulators used in New Mexico in Election 2004, John Kerry observed in a conference call with the Reverend Jesse Jackson and two Ohio election litigation attorneys that, despite the registration percentages in the state, he seemed to lose in every county where optical scanners were used, no matter what their demographic makeup or party history.⁶⁶⁴

In Anglo precincts, the rate of undervotes was a constant 3 percent wherever Sequoia or Danaher DRE systems were used. Remarkably, in Hispanic and Native American precincts, percentages rose to two and three times that maximum.⁶⁶⁵ According to Palast, thirty-five thousand votes were thrown out, most of them cast by Native Americans.⁶⁶⁶

According to the Help America Recount Fund, the total of undervotes in just the precincts that used Sequoia and Danaher systems may have decided the presidential race.⁶⁶⁷

Remarked journalist Lynn Landes [2005] in retrospect:

During the 2004 election, tens of thousands of voting rights activists worked the polls. They documented tens of thousands of election irregularities. But, all that documentation didn't provide any direct evidence of how people actually voted. Even when recounts were conducted, as in Ohio, election officials managed to sabotage the process.

The original goal of the secret ballot was to minimize vote selling and voter intimidation. It seemed like a good idea at the time. But, that time has passed. The secret ballot has become the

refuge of scoundrels and unscrupulous election officials. It provides perfect cover for vote fraud and system failure.⁶⁶⁸

See Chapter 6 for more on New Mexico.

But Mark Crispin Miller calls Florida, rather than any other, the state with the “most significant race,” the theft there “even more sophisticated. The felonies, anomalies, and improprieties . . . were more numerous than in any other state.”⁶⁶⁹

Democrats flooded Florida to register voters and get back at the state for what had occurred in 2000 while, as Miller describes them, Republicans were “*more* resolute and vigilant than any of [their] keenest adversaries, and also wealthier, more ruthless, and far more sophisticated.”⁶⁷⁰

Congressman Robert Wexler (D-Delray Beach) tried repeatedly, mostly in courts, to have paper trails required for elections, but repeatedly experienced failure and then defeat for re-election in the November 2004 election. Up against Glenda Hood and her Republican machinery, it was impossible to win because reason and the people’s benefit were not part of her agenda.

In a surprising twist, however, some Republicans figured out that at times the DREs could foul up even when they voted. A flyer sent out in July in Miami advised fellow partisans to vote absentee. But this move was quickly nullified. Jeb Bush, after all, was behind the machines, which worked largely in the Republicans’ favor. A few news sources covered the event, but the public was distracted by the Democratic National Convention in progress at the time.⁶⁷¹

Early voting provoked widespread controversy when, in Duval County, only one location was set up, inconvenient for black voters to get to. Finally, after adverse publicity, the county announced it would set up four more locations, one even convenient to the black neighborhoods. A similar situation existed in Volusia County. In this case, a lawsuit served to add more voting locations.⁶⁷²

Early voting thus became yet another scenario for discrimination and suppression of the people’s rights, wrote Miller.⁶⁷³

Throughout South Florida, he continues, every sort of intimidation and misinformation was ubiquitous: Republicans posing as election officials to collect absentee ballots from people’s homes, officials at the polls asking for Social Security cards, threats not to vote if there was any history of traffic violation. In one instance, stationed behind

a car with blackened windows, a Republican posing as a detective filmed the nervous voters entering the polling place. Misinformation was given out about polling place locations. Machinery was in insufficient supply, leading to long lines. And even where there were enough machines, a few would be reserved for Spanish speakers and several froze or otherwise malfunctioned, with volunteers not knowing how to address such problems.⁶⁷⁴

In another case, Republicans distributed pamphlets supposedly created by the progressive labor group Americans Coming Together (ACT) but supplying incorrect information to would-be voters. Polling places were closed or opened in secret locations. In Broward County, there was a sizeable police presence; cars were towed where not enough parking space was available; and challengers at the polls were ubiquitous. Republican poll watchers were found again and again in heavily Democratic precincts “to keep the Democrats from cheating,” and voter challenging largely concentrated on Hispanics and blacks.⁶⁷⁵

The county's supervisor of elections had mailed out seventy-six thousand absentee ballots. Fifty-eight thousand absentee votes disappeared and were never located by postal employees. Some voters were told when they came to the polls that they had already voted absentee. Another voter was sent to a distant precinct where he had never lived or even been. Despite record turnout and a “hugely successful” registration drive, Kerry won by fewer votes in this county than Gore had in 2000. Though Republicans had registered only seventeen thousand new voters, 66,772 new Republican votes were recorded. Again defying pollsters’ predictions, Bush also did remarkably well among absentee voters, who comprised 14 percent of the county’s voters.⁶⁷⁶

According to Blackboxvoting.org:

[I]n Nov. 2004, in Florida alone, the Diebold Precinct-Based Optical Scan 1.94w system, repeatedly found inaccurate and corruptible by test after test, counted approximately 2.5 million votes in 30 counties, or about one-third of all the votes in Florida. Nationwide, this version of Diebold voting machines counted approximately 25 million votes in Nov. 2004, or about 25 percent of the national election . . . [a machine found to contain] “the mother of security holes, and no apparent cure will produce infertility, or system safety.”⁶⁷⁷

According to Lynn Landes, in Florida 2004 “Bush posted vote totals of 200%, 300%, 400%, and in one county 600% over Republican registration.”⁶⁷⁸

As went Broward, so went Florida, after that the nation, and after that, the huge tide of votes from overseas. Republicans also won more seats in Congress, making 2004 the first time Republicans had controlled two [three, actually] branches of the government since the disastrous administration of Herbert Hoover.⁶⁷⁹

According to Robert F. Kennedy Jr., “The Ohio vote undermines the very foundation stone of American democracy.” [The Ohio debacle and particularly what came to be known as Cybergate were] [m]ore serious than Watergate.”⁶⁸⁰

The Ohio 2004 election made history for yet another reason—it was the first election for more than a century whose electoral votes were challenged. Congresswoman Stephanie Tubbs Jones (D-Ohio) and Senator Barbara Boxer (D-CA)⁶⁸¹ challenged the Ohio audit. Congressmen Tom Delay (R-TX) and Ray Blunt (R-MO) objected. After the legally required two hours of debate, the election was certified by Congress.⁶⁸² Significantly, Senator John Kerry did not attend. He had reportedly left the country to be with the troops in Iraq.⁶⁸³

According to a U.S. Census Bureau survey, 125 million votes were cast in 2004 but only 123.5 million counted, leaving a total of 1.5 million votes—spoiled, provisional, and absentee—uncounted. Of these, one-third or more provisional ballots, a total of one million, were thrown away. There were also reports of more votes tallied than voters, from individual districts.⁶⁸⁴

The activist website Votersunite.org released the following study of error rates of various voting machine systems during the 2004 presidential election. The problems characterize all of the Big Three vendors along with Hart InterCivic. “The list goes on and on,” the webpage adds—in all election years.

ES&S Optech IIP Eagle scanner error rates:	
Milwaukee City, WI, Ward 43. Nov. 2004	0.43%
Milwaukee City, WI, Ward 44. Nov. 2004	0.10%
Milwaukee City, WI, Ward 98. Nov. 2004	0.43%
Entire ballots uncounted in each case.	

GRASSROOTS, GEEKS, PROS, AND POLS

Diebold AccuVote OS scanner error rate: Germantown Village, WI, District 1. Nov. 2004 Eleven entire ballots uncounted.	0.11%
Hart InterCivic Ballot Now scanner error rate: Yakima County, WA. Precinct 3301. Nov. 2004 One machine, all five contests in one column uncounted on 24 ballots.	0.18%
Sequoia AVC Edge touch screen error rate: Bernalillo Co, NM. Precinct 558-early voting. Nov. 2004 More votes than voters (phantom votes) in all 37 contests.	29.49%
Sequoia Optech 4C scanner error rate: Dona Ana Co, NM. Precinct 106-absentee. Nov. 2004 More votes than absentee voters in 16 of the 22 contests on the ballot. (For the precinct as a whole, a total of 65 more presidential votes than the number of voters registered in the precinct.)	23.57%

In December 2004, congressional representatives met to study the election results. Computer programmer Clint Curtis testified that, because of his expertise, Congressman Tom Feeney (R-FL and former speaker of the Florida legislature) consulted him in October 2000 to create a prototype source code that would control vote totals in South Florida so that they would always turn out to be 51 percent to 49 percent. Curtis said that he assumed Feeney was worried about preventing dishonest elections rigged by Democrats—up to that point, he had been a staunch Republican. Representative Jerrold Nadler (D-NY) asked Curtis whether a bad code inserted into the programming of a central tabulator could control many votes. Curtis affirmed that it could.⁶⁸⁵

Curtis's boss at that time, Mrs. Li-Woan Yang, CEO at Yang Enterprises, Inc. (YEI), asked him if his programming could be hidden within a voting machine's source code as Feeney had requested. Curtis said no. Then, testified Curtis before the House Judiciary Committee, she told him that the purpose of the software

coding YEI had requested from him was “to rig the vote in South Florida.”

The story gets uglier. Curtis went from YEI to work for the Florida Department of Transportation (FDOT) but was fired shortly after YEI attempted to bribe him to return there. He ended up working as a stock clerk for a Dollar Store, still in good spirits as he was interviewed by Brad Friedman of Bradblog.com, who had broken the story in December 2004 (coverage continued until 2006) and disseminated it in the award-winning film *Murder, Spies, and Voting Lies*.⁶⁸⁶

In addition to his powerful political position, Feeny was also a registered lobbyist and worked as a general corporate counsel for YEI. Previously, he had been the running mate of Jeb Bush during his 1994 unsuccessful first bid for Florida’s governorship. During the Florida debacle in November 2000, Feeny defied the Florida Supreme Court by promising to choose pro-Bush Florida electors whether or not the court ruled that the Republican candidate won the election after the recount it ordered. The whole world was watching this paragon of democracy, who in 2002 won election to represent Florida’s twenty-fourth district in the U.S. Congress and was, subsequently, ironically, appointed to the House Judiciary Committee, before which Curtis had testified so recently (see above). In 2004 he regained the seat unopposed. Of course the results in 2002 originated from electronic voting systems.⁶⁸⁷

Curtis ran against Feeny in the next (2006) congressional race but did not win.⁶⁸⁸

To this day Feeny and YEI deny all of Curtis’s statements, though Curtis passed a lie-detector test in 2005 and all elements of his testimony fit together far better than did those of the opposition. There was little national press coverage of this scandal, though it made the headlines in local Florida papers.⁶⁸⁹

After he lost the election, Curtis became the first Democratic candidate to conduct a citizen audit. Lynn Landes, a strong advocate of hand-counted paper ballots and doing away with all voting machines, defines the citizen audit as “an effort by candidates and/or citizens groups to verify election results by asking citizens to sign affidavits stating for which candidates they voted.”⁶⁹⁰ After canvassing five precincts, Curtis found that the official results differed from his audit by 16 percent, on the average. When he reported this shocking discrepancy to the Committee on House

Administration, chaired by Philadelphia Representative Robert Brady, a Democrat, the bipartisan committee voted unanimously not to investigate.⁶⁹¹

Perhaps the most hair-raising news of all to emerge out of the 2004 race was that the Department of Homeland Security was already aware in 2004 that electronic voting systems were vulnerable to hacking.⁶⁹² The FBI corroborated this awareness early in 2009.

But meanwhile, from Day One (Election Day), the Ohio results were being dynamically dissected by *FreePress.org*—the state’s principal publicist for diverse and dedicated activist efforts by means of public hearings, lawsuits, and cooperation with sympathetic politicians such as Representative John Conyers. In December 2004, this ranking member of the House Judiciary Committee presided over two sessions of testimony by Reverend Jesse Jackson Sr.; the heads of the Green and Libertarian Parties, David Cobb and Michael Badnarik, respectively, who had raised more than \$100,000 for the recount—and EI attorneys including *CommonCause.org*’s Cliff Arnebeck, who contrasted far more than enough blatant, publicly documented abuses—to challenge and outnumber Bush’s supposed victory margin—with hidden ones accomplished by corrupted computer results—percentages shifted after hours to an extent ruled out by any feasible statistical probabilities.⁶⁹³

The recount was crucially hampered by Secretary of State Blackwell, who ordered in the weeks following the election that all 2004 election records, paper and electronic, were to be sealed from public access and inspection. Most of those records remain unobtainable—80 percent destroyed in the following months in a maze of different, creative, and preposterous fashions that could only have been purposeful.⁶⁹⁴

Fittrakis and Wasserman further reported that Blackwell “stonewalled and sabotaged all recount attempts, to the point that no credible accounting of the Ohio election has ever been done.”⁶⁹⁵

Because of this abysmal election, in which most of the HAVA provisions had not yet taken effect, and the 2011 downgrading of the U.S. credit rating by Standard & Poors, a report by the Organization for Security and Cooperation in Europe (OSCE), called “the world’s leading watchdog over global democratic procedures,” rated the U.S. presidential election of 2004 as far below “the desired standard for democratic elections as defined by the 1990 Copenhagen Document.” Reasons in support of that decision included “recurrent problems with

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voter registration, partisan election officials, gerrymandering, inconsistencies with provisional ballots and the flagrant circumvention of spending limits by independent “527” organizations.⁶⁹⁶

Another consequence of the outrageous corruption and incompetence apparent in Election 2004 was that this country’s rating by the *Economist*’s Democracy Index descended to seventeenth, far below the more advanced democracies in Sweden, Iceland, Canada, and Malta, where higher election standards are the norm. Unfortunately, aside from then Senator Obama’s (and other senators’) efforts to outlaw caging in 2006-2007, no major presidential candidate, or even Democratic president, has advocated significant reform of the electoral system in this country.⁶⁹⁷ In 2012, the press here is just beginning to notice that something is fishy about all of the legislation being passed all over the country requiring voter I.D.s, more and more of them with photos or even government-issued with photos. This has been called the “revival of Jim Crow” (see Chapter 6 for earlier conflict over this trend, before wider publicity was achieved after five years, in 2011).

Chapter 6

Reactions to Election 2004, the Scandalous Firing of the Federal Prosecutors, and the Hursti Hack

King marched across the south and the nation to guarantee all Americans, black and white, the right to vote. But in 2000 and again in 2004, that right was denied.—Bob Fittrakis, Steve Rosenfeld, and Harvey Wasserman

"Whenever there is electronic vote counting, there is no basis for confidence in the results of elections. You have no right to believe in those elections."—Paul Lehto

Forty-five years after his death, New Mexicans are still battling for the rights Dr. Martin Luther King, Jr., championed.—Lowell Finley

The security flaws of Diebold's voting equipment, which would make it a first choice for anyone who wanted to embezzle votes, have been widely reported since February 2003.—Kathy Dopp

Jim Condit, Jr. said that there appears to be a co-ordinated effort by the judiciary, news media, prosecutors, and the two major political parties to stop resistance to vote fraud.—Catholic Family News

There can be no public elections on privately controlled machines.—Jesse Jackson

Paper ballots counted in public the day they are cast is so simple and logical that it troubles me how we ended up with the will of the people being translated by proprietary technologies often behind closed doors.—William Dopp

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[M]any researchers believe it is not a coincidence that, of the thousands of voting machine irregularities reported over the years, the overwhelming majority of them benefited Republican candidates over Democrats.—Lynn Landes

But the notion of widespread voter fraud, as these prosecutors found out, is itself a fraud.—Michael Waldman and Justin Levitt

Responses to the Ohio debacle were prompt. On November 5, a two-page letter to David M. Walker, Comptroller General, US General Accountability Office [GAO] requested an [immediate] investigation into “the efficacy of voting machines and new technologies used in the 2004 election, how election officials responded to difficulties they encountered, and what we can do in the future to improve our election systems and administration.”⁶⁹⁸

After four more letters, signed by a growing team of interested members of Congress, Walker responded the following November 30 that the GAO would indeed address the overarching issues, but not the local incidents detailed in the letter of November 5.⁶⁹⁹

At the beginning of January 2005, the report *Preserving Democracy: What Went Wrong in Ohio*, commissioned by Chairman of the House Judiciary Committee John Conyers (D-MI),⁷⁰⁰ came out a day before the Electoral College met to pronounce Bush the forty-third president of the United States. The result of various hearings beginning the day after Election Day 2004 and convened by Conyers (see above, Chapter 5, toward end), the report meticulously dissected every aspect of the Ohio election and revealed that the state had violated Ohio law, federal standards, and the Constitution.⁷⁰¹ After promising to answer a letter filled with questions from Conyers, Kenneth Blackwell ignored it. What is worse, the corporate and liberal press ignored the Conyers report, almost completely⁷⁰²: Many publications grew out of Conyers’s findings,⁷⁰³ which were disgracefully ignored by:

- Most of the mainstream press
- *The New York Times*
- *The Nation* magazine, an outspoken Progressive vehicle
- Michael Moore

- Rachel Maddow
- Noam Chomsky⁷⁰⁴

The Conyers Report concluded that there was every reason to challenge the Ohio electors' decision in favor of Bush, to hold hearings, and to create legislation to prevent such crimes from polluting another election.⁷⁰⁵ The report was one of the key documents presented as evidence of massive corruption carried out in Ohio in Election 2004.⁷⁰⁶

Much progressive activism and writing both anticipated and postdated the January 6 Electoral College vote that certified Bush as reelected incumbent, including an article by Rev. Jesse Jackson, chair of the Rainbow/PUSH Coalition, "Seven Key Reasons Why the Vote Must Be Challenged at the Electoral College," published on January 3, 2005, by The Free Press,⁷⁰⁷ and picked up by Democratic Underground.com, Verified Voting.org, and the Norwegian site Astenposten.no. Reasons cited by Jackson largely centered around the Ohio debacle:

- 1) Exit polls did not match actual vote in Ohio,⁷⁰⁸ Pennsylvania, and Florida;
- 2) Voting machines owned by private, partisan companies were subject to manipulation;
- 3) Uncounted and provisional ballots disproportionately affected African American voters;
- 4) Inexplicable vote disparities became evident;
- 5) The Voting Rights Act was violated;
- 6) The recount did not recount the votes⁷⁰⁹; and
- 7) A challenge at the January 6 Joint Session of Congress was anticipated.⁷¹⁰

On the basis of the Conyers commission's findings, a single (in addition to the one mentioned below, which Blackwell did not attend) hearing was held in Columbus, Ohio, on March 21, 2005. It was led by Congressman Bob Ney, co-sponsor of HAVA in 2002 and thereafter chair of the U.S. House Committee on House Administration.⁷¹¹ The purpose of the hearing was to analyze what went wrong in Ohio during Election 2004 to occasion the thousands of reported incidents that fouled up the voting process. A welcome

guest was Ohio Secretary of State Kenneth Blackwell, who praised his state's most recent election as "one of the best election administration performances in the country." He was "welcome" because he had failed to show up at a hearing held in Washington, DC, in February, even though he was in the District at the time. John Conyers, ranking member of the House Judiciary Committee, had issued the "invitation." Even Ney was irked by his copartisan's behavior. Some insiders wondered if the Michigan Democrat would issue a subpoena instead of an invitation to oblige the secretary of state to attend a subsequent meeting. A majority of the committee would have to approve.⁷¹²

Ready to support Ney as an expert witness in this testimony was the head of the American Center for Voting Rights (ACVR). This very newly formed, supposedly nonpartisan, nonprofit organization, which had materialized on the Internet the previous week, was headed by Mark F. (Thor) Hearne.⁷¹³ Hearne "modestly" excluded his experience as national election counsel to Bush-Cheney '04 and Missouri counsel to Bush-Cheney '00, among other very Republican credentials,⁷¹⁴ from the now-defunct [as of May 2007] site, which turned out to be nothing more than a mailbox at a UPS Store in Dallas, Texas.⁷¹⁵ Hearne's was the only "voting rights group" represented at the hearing, despite the thousands of sincere grassroots organizations that filled the country.⁷¹⁶ Hearne, by the way, excluded the same professional credentials from his testimony at the March 21 hearing.⁷¹⁷

In his testimony, Hearne claimed that "there was [indeed] intimidation and voting disparities during the Ohio election . . . — caused by John Kerry and the Democrats."⁷¹⁸

Also on the House committee were Representative Stephanie Tubbs Jones (D-OH), who had dared to challenge the Electoral College's choice of Bush 43 on January 6, 2005, and Representative Juanita Millender-McDonald (D-CA). Visceral and emotional exchanges during the hearing were inevitable, especially between Tubbs Jones and Blackwell.

When confronted with the catastrophic information in John Conyers's recent report, Blackwell called it "fabrications and exaggerations . . . from disappointed partisans."⁷¹⁹

A report published by ACVR on the same day as the hearing concentrated with great concern on alleged cases of voter fraud, rather than on any of the issues in the Conyers report, though when asked

about the topic the day before, Hearne had replied, “It would be hard . . . to see that you could commit voter fraud on a level that you can influence an election.”⁷²⁰

Hearne tsk-tsked the news about the fraudulent phone calls [a form of caging] that told minority voters in Ohio that Election Day had been postponed until Wednesday. He then refocused on “special interest groups soliciting fraudulent votes with crack cocaine [who] determine the result of Ohio elections,” specifying NAACP, ACORN (Association of Community Organizations for Reform Now), AFL-CIO, and other groups as culprits in this scheme.⁷²¹

But did anyone explain the real reason the Democrats represented a threat in Ohio and elsewhere? There were simply so very many of them, as Paul Weyrich had noted as early as 1980 (see epigraph to Chapter 5; see also Chapter 8).

The increase in voter turnout in Ohio 2004 was the largest in the nation. It is unbelievable that the head of the voting section of the U.S. Department of Justice, John Tanner, in his report on his findings in Ohio, shifted the blame to the black voters: “[T]he reason for long lines in minority areas of Ohio was because minorities *chose* to vote late in the afternoon, instead of earlier in the day as White voters did.”⁷²² The sole official who accompanied Tanner to Ohio noted that the actual investigation in Ohio was shallow and confined to one county, Franklin, where a large number of voting machines were sent to the suburbs and of those that remained, a good percentage remained in storage. So Tanner and his team chose well to visit Franklin County, but came away with distortions that “flabbergasted” Conyers, according to a June 30, 2005, letter he sent to Attorney General Antonio Gonzales in response to the group’s alleged findings.⁷²³

Prior to Election 2008, a hearing was convened by the House Judiciary Committee’s Subcommittee on the Constitution, Civil Rights, and Civil Liberties, which Blackwell and Hans von Spakovsky [see below for more on his “voter fraud” obsession] were scheduled to attend. The only EI-sympathetic authorities to be invited were election law and voting rights professor Daniel Tokaji of Ohio State University’s Moritz College of Law and the Baltimore School of Law’s Gilda Daniels, formerly an attorney at both the DoJ’s Civil Rights Division, Voting Section, and at the Lawyers Committee for Civil Rights Under Law.

The title of this last hearing on this subject was “Lessons Learned

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from Election 2004.”

No one was invited to represent the many roadblocks that kept students from voting in 2004.⁷²⁴ Nor was the DoJ, Civil Rights Division, Voting Section represented.

One “lesson learned” at the hearing was ranking committee member Trent Franks’s (R-AZ) fawning praise of Blackwell: “I believe you’re an example of what an elected official should hold themselves to. So, in that sense, I’m very biased in your favor.”

Decidedly split along partisan lines, the hearing was dominated by propaganda about alleged voter fraud committed by ACORN and others, so that, as Brad Friedman reported, “In short, there is a Pandora’s Box of toxins here which one hearing is quite unlikely to even begin to disinfect.”⁷²⁵

Others in Ohio and throughout the country began to dread Election 2006—nonetheless daring to look ahead.

Wrote Bob Fittrakis and Harvey Wasserman:

. . . [U]nless there are armies of trained, dedicated citizens prepared to monitor this upcoming election, electronic and otherwise, the Holy Ghosts will vote, the loaves & fishes will multiply and be counted, and the GOP will once again emerge with total control of the checks and the balances—this time, perhaps, for all Eternity.⁷²⁶

and

Will the left follow mainstream Democrats with sheep-like acceptance as every election goes the same way from here on? And if so, why bother even staging more votes in this country at all?⁷²⁷

As if to corroborate this angst, Election 2005 in Ohio offered the public five initiatives to decide on. Four of them concerned election reform (an outgrowth of the 2004 tsunami) and all four were defeated under circumstances that screamed back to the corruption in Ohio 2004 and throughout the nation. Reversals from poll predictions to reported results were “staggering,” reported Fittrakis and Wasserman on November 11, 2005.⁷²⁸

Results on initiatives four and five were a bit less dramatic but, to add salt to that wound, on the following Sunday the Columbus

Dispatch reported that, out of forty-four counties in Ohio that ordered new voting machines, forty-one would be using machinery from Diebold.⁷²⁹

Despite his cynical title, *Fooled Again*, Mark Crispin Miller ended his detailed study of the atrocities of Election 2004 with recommendations and ended his book title with the encouraging words, *Unless We Stop Them*.

Just as Conyers's report came out the day before the Electoral College vote on January 6, 2005, so Miller's words proved prophetic, as Republican election fraud was stopped cold on the day before the 2008 election, November 3, 2008. More on this in Chapter 8.

Despite unpreparedness among many of the states, the HAVA January 1, 2006, deadline stuck. The Department of Justice was adamant about that. The Elections Assistance Committee [EAC], part of HAVA (remember, October 2002!), created to perform needed research and guide the states and municipalities in every step of updating from previous voting systems to the mandated ones, was not even staffed and housed until July 2004 and would not release guidelines until the end of 2005, about two years too late—HAVA's deadline for this had been the beginning of 2004.⁷³⁰ Only \$1.2 million of a HAVA-mandated allocation of \$50 million to support EAC's efforts had been distributed, though the states had received \$3.1 billion from Congress to purchase voting machines and peripherals. The newly formed EAC informed Congress of the problems that would continue as a result of this gap; they had not even developed the guidelines to support this process.

Reasoned Votersunite's Ellen Theisen, the states should also receive another two years to implement the HAVA mandates in an orderly and judicious manner:

Rather than holding the States to standards the federal government has repeatedly failed to meet, Congress should immediately extend the deadline for HAVA compliance, giving the EAC an opportunity to complete its research and develop strong standards, and giving the States breathing room to make wise decisions based on guidance from the EAC, as was the intent of HAVA.⁷³¹

As most of 2005 seemed to combine glum retrospective, lawsuits, and heightened resolve, a few more states purchased Diebold DREs

(including Utah and Mississippi),⁷³² even though, according to the late John Gideon, “[f]ew of the DREs presently on the market meet the standards outlined in the advisory (released by EAC in response to states’ queries).⁷³³ This advisory also clearly shows that proponents of DRE voting machines were incorrect in their arguments that DREs were the only accessible voting systems.”⁷³⁴

A passage from my blog Wordsunltd.com states:

The issues are many and I hope I can restate them clearly. Recall that resistance to the introduction and use of DREs extends far beyond Bucks County [PA]. At the state level, Connecticut and New York have organized to keep DREs out and hang on to their levers. At the Pennsylvania county level, in Beaver County, \$2 million worth of equipment was discarded because of malfunction. In Berks County, just above Bucks County, the Danaher touchscreens may be decertified. If so, Philadelphia and Harrisburg, which also use these machines, will also have to decertify, as will Bucks County.⁷³⁵

An editorial in the *New York Times* advocated optical scanners on March 9, 2005; one of the reasons given was that they were superior to VVPAT because “they produce a better paper record than touch-screen machines—this is the one the voter has actually filled out, not a receipt that the voter must check for accuracy.”⁷³⁶

The responses were telling. Here is an eloquent defense of DREs by long-time expert Michael Shamos, formerly a strong advocate of optical scanners:

. . . No machine has ever been built that can read a ballot the way a human eye does, and there is no assurance that the machine [opscan] will count the ballot the way it was marked by the voter.

Even if a manual recount is performed flawlessly (an impossibility considering the charged atmosphere under which such recounts occur), the mark made by a voter may not be counted because the states have developed different and obscure criteria for what constitutes a valid optical vote.

The fundamental problem is that a ballot offers only a finite number of candidate choices, but an optical-scan ballot can be marked by a voter in an infinite number of ways.

There is no consistent method of determining voter intent from an optical ballot, so some voters will necessarily be disenfranchised through their use.

Electronic machines do not suffer from this defect. They offer a finite number of yes-no choices, so there is no possibility of mistaking voter intent.⁷³⁷

Added Diebold president Thomas Swidarski on March 10, printed on March 14:

A recent Caltech-M.I.T. study clearly shows that touch-screens are the most accurate and efficient method of voting. The study recognizes Georgia, which uses touch-screens across the state, as making the greatest improvement in voting accuracy throughout the country.

Regarding the cost advantages of optical-scan machines, you do not mention the long-term costs related to printing ballots⁷³⁸ that are inevitably passed on to taxpayers. These costs, particularly in large cities that require many ballots in several languages, are one of the primary reasons most election officials prefer touch-screens to optical scanners.

Additionally, optical-scan machines are not “far cheaper than touch-screens.” Per unit, the cost of optical scanners is about \$1,000 more than a typical touch-screen machine. [Underlining done by author]

On March 20, 2005, one of many letters commending optical scanners accurately pinpointed a feature shared by the optical scanners Diebold also manufactured, more cheaply, reminding the company president that “Here in Rhode Island, a single optical scanner serves more than a dozen foldup paper-ballot voting booths at a single polling location.”

In June, another *New York Times* editorial took an even stronger stand: among the many problems associated with U.S. elections, paperless electronic voting was by far the most serious; [its] “results cannot be trusted.”⁷³⁹

By early 2005 in Ohio, two lawsuits challenging Bush's victory there had been dropped, but the will was not muted. Led by attorney Cliff Arnebeck of the Alliance for Democracy, *Moss v Bush*⁷⁴⁰ had challenged the legitimacy of the Republican electors to cast their votes for Bush at the Electoral College on January 6, 2005, and *Moss v Moyer* had challenged the legitimacy of Ohio Republican Chief Justice Thomas Moyer's reelection to that post. The contesters dropped the case on January 7. Blackwell had done all he could to obstruct the activists (see above, Chapter 5). Bush, Cheney, and Rove, who had met in Columbus on Election Day 2004, ignored subpoenas and Blackwell refused to testify as a "public official." Meanwhile, Blackwell announced his candidacy for governor of Ohio—without stepping down from his job of running the election he hoped to win.⁷⁴¹ He even sent out fund-raising letters on his professional stationery, which he later had to retract as illegal.

Charges against Moyer marked but one in a plethora of electoral train wrecks and violations in the Buckeye State—for example, the anomaly of a state-level Democratic candidate for Ohio chief justice of the Supreme Court having garnered far more votes than Kerry did in southern Ohio in 2004. But Chief Justice Moyer refused to recuse himself from participation in this case, thus rendering it useless.⁷⁴²

Plaintiff Cliff Arnebeck saw those outcomes as the first step in a long process. The Democrats supplied no help at any time, but rather "the most opposition we got to pointing out that the 2004 election was stolen has come from the Democrats," said Harvey Wasserman in a 2007 interview with Amy Goodman of *Democracy Now!*⁷⁴³

Arnebeck is also lead attorney in the *King-Lincoln Bronzeville Neighborhood Association v Blackwell* class action lawsuit directed at the alleged [blatant] theft of the 2004 presidential election in Ohio. Bob Fittrakis and Harvey Wasserman are co-counsel and plaintiff in this lawsuit, respectively.

Back again to January 2005, the Ohio legislature passed HB 262, a bill mandating a "voter verified paper audit trail" (VVPAT). Blackwell ordered optical scanners for all eighty-eight counties instead, citing the costs and uncertainty attending a VVPAT for electronic voting and at the same time "putting the entire state into paper ballots, a crucial step toward unifying procedures and facilitating recounts."⁷⁴⁴ But in April 2005, the secretary of state flipped back to allowing counties to choose between precinct-count optical scan or "voting technology," that is, Diebold electronic

machinery equipped with VVPAT.⁷⁴⁵ The new decision related to pending certification of a VVPAT system that Blackwell had bargained down to a lower price, \$2700 each, as opposed to \$2965. The deadline for certification was May 13, 2005, and then only eleven days were allowed to the counties to choose among the certified offerings.⁷⁴⁶

When Blackwell decided to purchase DREs for virtually the entire state based on the discount, activists stopped him. Diebold would have received a contract for \$100 million. It was not so easy to pay back Wally O'Dell for his "kept" promise to deliver his state to Bush (see above, Chapter 5).

Also in reaction to Election 2005, in mid-January 2005, in New Mexico, said to have elected Bush in 2004 by far fewer certified votes than the uncounted undervotes (see Chapter 5), eight New Mexico citizens filed a civil lawsuit, asserting that the certified results of the 2004 New Mexico general election provided proof enough that the voting systems used in Election 2004 functioned so badly that the outcome of the races was definitely questionable, including the race for president.

Lopategui et al. v the State of New Mexico referred to the New Mexico state constitution for proof that citizens' voting rights and civil rights had been violated. According to the statistics, electronic voting machines did not record a significant number of lawful votes, particularly in precincts inhabited by sizeable numbers of Native Americans and Hispanics. More than twenty-one thousand [total given in Chapter 5 by another source is twenty-four thousand] ballots across New Mexico went unrecorded in the presidential race. President Bush's certified margin of victory in the Land of Enchantment was six thousand votes, less than one percent of the total votes cast, 750,000.⁷⁴⁷

Lopategui et al. was filed in the Second Judicial District Court in Albuquerque by attorneys David Garcia of Santa Fe, John Boyd of Albuquerque, and Lowell Finley⁷⁴⁸ of Help America Recount. All three attorneys represented Libertarian Party presidential candidate Michael Badnarik and Green Party presidential candidate David Cobb in a separate recount request, which had not yet been decided in the New Mexico Court of Appeals. Though a recount request in Ohio had succeeded, illegal recounting methods were used in this process, including preselecting precincts for auditing, though the law requires that the process be random.⁷⁴⁹

Despite all the court proceedings in process, on January 12, Secretary of State Rebecca Vigil-Giron illegally gave her okay to county election directors to erase the voting machines even in locations where Election 2004 results were still being questioned. Law prohibits election officials from clearing voting machines if a recount request or other electoral contest is in progress.

Said Patricia Rosas Lopategui, a plaintiff in the civil suit, “The government of New Mexico keeps blocking us from finding out what happened to our votes. First they put up roadblocks to stall the recount request and now they want to destroy evidence vital to a voting rights suit filed by New Mexico voters.”

“Why they want to use these same voting machines after so many problems have been shown with them is beyond me,” said Aurora Sanchez of Santa Fe, another plaintiff in that suit.⁷⁵⁰

Attorney John Boyd offered this summary of *Lopategui et al v the State of New Mexico*: a case filed to determine “whether voters in New Mexico, and the United States for that matter, have the right to have their vote counted faithfully and properly.”⁷⁵¹

Lopategui et al. triumphed. Undaunted by the scandalous Hursti hacks into optical scanners (see below), in February 2006 Governor Bill Richardson introduced legislation to use optical scanners only, throughout New Mexico, thereby effectively banning DRE voting systems. The New Mexico legislature approved the proposed legislation, and November 2006 election results dramatically decreased New Mexico’s 2004 undervote rate.^{752,753} The Land of Enchantment became known as a pioneer as a result.⁷⁵⁴ The same machinery was now used throughout the state, ES&S M100.⁷⁵⁵

On March 7, 2005, because of legislative delay, New York, trying to learn from North Carolina’s misfortunes in 2004⁷⁵⁶ (see also Chapter 5), was lagging behind all other states and territories in seeking its share of \$3.1 billion in federal aid to modernize voting systems and other electoral technology, according to federal officials and state watchdog groups. New York’s share amounted to \$153 million. That money was supposed to be spent by 2006 to meet requirements under the federal Help America Vote Act, which included replacing the state’s punch-card and [twenty thousand] mechanical-lever voting machines with touchscreen or other forms of computerized balloting. The state also did not touch an additional \$66 million that had been available since 2003 for those purposes. With its third-highest number of voters of any state,⁷⁵⁷ New York risked

forfeiting at least some of that money if the huge overhaul of the state's voting system was not completed or substantially under way by a September 2006 deadline, federal officials said.⁷⁵⁸

Also in 2005, New York state passed legislation that would virtually guarantee the purchase of optical scanners rather than retaining its lever machines. The *Election Reform and Modernization Act of 2005* (ERMA), which mandated paper trails, thus eliminated the option that many New Yorkers, led by attorney Andi Novick, fought for until the bitter end.⁷⁵⁹

At the beginning of 2005, Alaska also lagged in replacing its voting machines, but said it would do so soon.

Pennsylvania and New York had to show intention of purchasing machinery by January 1, 2006—a terrible deadline actually, because “HAVA guidelines have just been completed in Congress and won't be activated until 2007; new guidelines will be produced in 2008, so that the purchase of machines now, according to 2002 (initial HAVA) guidelines makes no sense, . . .”⁷⁶⁰ Connecticut postponed purchase for another year, officially adopting opscans statewide in November 2007.⁷⁶¹ Pennsylvania wanted to follow suit: Chester County, after months of controversy, made the right choice for the majority, anyway, opscans, though they would purchase touchscreens for special-needs voters.⁷⁶²

By June 7, 2006, the public and the media were catching on that all was not as it should be with our “state of the art” voting machines—the *New York Times* had already begun coverage—as had Lou Dobbs (CNN), *Newsweek*, the *Wall Street Journal*, *USA Today*, *Rolling Stone*'s now-famous blockbuster by Robert F. Kennedy Jr. on the Ohio 2004 election, Chris Matthews, and MSNBC.

By August 17, 2006, twenty-eight states were already going with optical scanners. According to Bucks County, Pennsylvania, then Commissioner Jim Cawley, at a county commissioners' bimonthly meeting on August 23, 2006, thirty-five states in this country did not at that time allow direct-recording electronic machines (DREs). Swing states that did, included Pennsylvania, Texas, and thirteen others.⁷⁶³ New Jersey, way ahead of them, thought it would have voter-verifiable voting by November 2008.⁷⁶⁴ It is ironic that Governor Ed Rendell (D-PA), so outspokenly opposed to voter I.D. requirements, strongly favored DREs and would not listen to some members of the Bucks County Coalition for Voting Integrity trying to sway him toward optical scanners as preferable. At an autumn grange

fair in Wrightsville, Pennsylvania, he told us to go find something else to do.⁷⁶⁵

The Baker-Carter report, *Building Confidence in U.S. Elections*, published on September 19, 2005, included eighty-seven recommendations. The impetus for the report was dwindling public confidence in the electoral system; the text militated against the use of DREs (touchscreen [and a few push-button] voting machines) until such time in the future as they become tamper-proof. Will there come a time when the computer industry transcends the reach of hackers? Will there come a time when people are immune to the temptation of bribery, the seed of corruption that feeds the cynicism of the electorate (Remember that 50 percent of eligible voters don't register and around 50 percent of those registered didn't vote in the 2004 presidential election.)?⁷⁶⁶

Among other recommendations, the report warned against allowing "aggressive partisans" to have anything to do with running elections and said that all electronic voting machinery should be equipped with paper trails. Bob Fittrakis and Harvey Wasserman find the most "laughable" and self-contradictory line in the entire report to be "[H]ad the margin of victory for the [2004] election been narrower, the lengthy dispute that followed the 2000 election would have been repeated."⁷⁶⁷

It is ironic that Carter's foundation monitors elections all over the world, but finds those at "home" "too messy" to deal with.⁷⁶⁸

The report also recommended a photo I.D. system for voters.⁷⁶⁹ Twenty-four states, the large majority "red," already required voter I.D.s at that time (they do all over Europe). Thus, just about half of the states had imposed this inconvenience on those most likely to vote Democratic—according to Greg Palast and Robert F. Kennedy Jr.:

But many Americans lack easy access to official identification. According to a recent study for *the Election Law Journal*, young people, senior citizens and minorities—groups that traditionally vote Democratic—often have no driver's licenses or state ID cards. According to the study, one in 10 likely white voters do not possess the necessary identification. For African-Americans, the number lacking such ID is twice as high.⁷⁷⁰

Stanford professor Pam Karlan predicted that strict voter I.D. legislation would engender much litigation where election results are close and poor minorities have been prevented from voting.⁷⁷¹

Working with the Brennan Center for Justice, Governor Ed Rendell vetoed such legislation when it crossed his desk on February 20, 2006, on the grounds that it eliminated rather than encouraged voting and discriminated against the poor. He wrote that it violated both the U.S. and Pennsylvania constitutions—in the first instance, by impeding the right to vote and in the second, by contravening Article 1, Section 5, which states that elections “shall be free and equal. . .”⁷⁷²

All of this legislation requiring voter I.D.s could come into force despite the modest HAVA provision that only a first-time voter who registers by mail must show an I.D. at the polls. By the time HAVA was passed, approximately eighteen states had passed voter I.D. laws, but five more states passed new voter I.D. legislation the next year.^{773,774}

The relevant passage in the Baker-Carter report stated that there is no evidence of extensive voter fraud in this country, but enough could occur to affect the outcome of an election.⁷⁷⁵ Because no safeguard exists to deter or detect fraud, the report recommends a liberal system of voter identification that permits use of something as informal as a utility bill or other documentation not necessarily containing a photograph. Voter confidence would thereby increase, according to Carter and Baker.⁷⁷⁶

And how much influence did this report have on decisions to require or enhance requirements of voter I.D.s?⁷⁷⁷

It provided convincing justification for any state official pushing for the voter I.D. requirement. It was flexible on the subject of what could be used for the required identification. But the trend since then has been stricter, tending toward state-issued photo I.D. requirements, which of course handicaps the lower class, less likely to own a car or a passport, for example.⁷⁷⁸ It also influenced the Supreme Court decision in 2008 to allow Indiana to require state-issued photo I.D.s of all would-be voters.

At an early March 2008 hearing of the Senate Rules and Administration Committee, Chair Dianne Feinstein (D-CA) reported that the group had invited William Welch, chief of the Justice Department’s Public Integrity Section (PIN) to attend. This section is responsible for civil and criminal prosecution of such voter fraud, but the DoJ had refused to allow Welch to attend, saying only, after

prodding, that at some future time it would send a representative. Former federal prosecuting attorney Daniel Iglesias (see below) testified instead.

In a speech to the committee, the chair said, among other things:

But I think it's important that we be clear about the issue before us today—is voter fraud happening in person at the polls? [That form of voter fraud was the original motive for the legislation.] If it is, is photo-ID the right solution? If it is not, what do such laws accomplish?

We are not talking about absentee ballot fraud—because requiring voter photo-IDs at the polls will not stop this.

We are not talking about double voting—because *even with a photo-ID*, if one were registered to vote in separate counties, for instance, one could still vote twice.

And we're not talking about vote buying, fraudulent registration or ballot tampering. There are laws that deal with all of these, and photo-IDs [*sic*] laws do not address those problems.

A nation-wide survey conducted by the National Opinion Research Corporation showed 11% of voting age Americans do not have a current government-issued photo-ID.

This means that *approximately 21 million citizens*⁷⁷⁹ could be adversely impacted under a restrictive photo-ID requirement.

In recent years, we have seen how important every vote is—not just for local elections—but all the way up to the Presidency. I believe we should be doing everything possible to ensure that everyone who is entitled to vote should be able to vote—and not place insurmountable roadblocks in their way.⁷⁸⁰

In 2007, three new voter I.D. laws were passed in three different states, but Indiana's had already been passed on July 3, 2005⁷⁸¹ and Georgia's in March 2005,⁷⁸² New Mexico's in mid-October 2005,⁷⁸³ and Washington state's in July 2005,⁷⁸⁴ and I have no doubt that the Baker-Carter report came up countless times as dignified justification for passage of such legislation. The stimulus for the most voter I.D. laws passed in one year (2003, a few months after HAVA was passed in late 2002), five,⁷⁸⁵ was HAVA—actually used as an excuse more than a stimulus. (It was not until 2011 that much legislation requiring voter I.D.s passed, but the number of those favoring tighter requirements was just one more than those states opposing any

requirements beyond those already in force).⁷⁸⁶ It is no coincidence that the 2010 election swept a host of Republicans into Congress. That election was called by experts the most corrupt one yet.

Aside from the grassroots movement, the masses who would be most inconvenienced by such legislation have no voice, except through voting, which process was becoming more and more inconvenient for them. Indeed, most legislation requiring voter I.D.s that was passed last year [2011] was located in “red” states. Aside from Indiana’s law passed in 2005, which the Supreme Court upheld in 2008⁷⁸⁷ (it was then repealed and passed once more), the ones passed in 2011 were by far the strictest. Twenty states—most located, predictably, on the East and West coasts—do not yet require any form of voter I.D., though as of 2012 some states are considering it, including New York and Pennsylvania (where Rendell has been succeeded as governor by the Republican Tom Corbett).⁷⁸⁸

In other words, although conservatives (e.g., the Heritage Foundation and Karl Rove) claim that voter fraud is a serious issue, liberals say just the opposite, that it is provably a nonissue, and states line up consistently with this thorny dispute.⁷⁸⁹ An EAC project conducted at Rutgers University revealed that voter participation had dropped between 2004 and 2006 in two states that required voter I.D.s at that time, Indiana and Georgia.⁷⁹⁰

But what boggles the mind is that *only* four states in the whole country do not require voter I.D.s in any form⁷⁹¹: Oregon and Washington state (as of 2011) because voting is done by mail⁷⁹²; Vermont, where legislation on this issue has never been considered,⁷⁹³ and, oddly enough, the red state of Wyoming. Why? Perhaps because this controversial requirement grew up as small towns turned into complex and many-tiered metropolises where people did not know each other on a first-name basis. Vermont preserves this tradition⁷⁹⁴; I have certainly watched televised, brief prime-time Election Day scenarios in some parts of New Hampshire, which recall those days. In such communities, votes are cast on paper ballots and counted on the spot while the small, totally informal and laid-back community socializes. The setting is like an old-fashioned party (in the nonpolitical sense).⁷⁹⁵ In New Hampshire voter I.D. legislation was vetoed.⁷⁹⁶

Vermont is home to the popular Independent Bernie Sanders. One of the Senate’s most outspoken and progressive members, he regularly caucuses with the Democrats, along with the other

Independent senator, Joe Lieberman, arguably the most conservative member of the caucus.⁷⁹⁷ His state, Connecticut, is one of two in New England that now [2012] requires voter I.D.s. Rhode Island is the other. Both states are led by liberals (Rhode Island's Chaffee recently became an Independent),⁷⁹⁸ and one cannot help but wonder how such blue states could vote to require voter I.D.s, let alone require photo I.D.s. One answer is that in Rhode Island, a solidly blue state, there is no worry about partisan threats. The bill was passed by a coalition of Democrats and Republicans, including two African Americans and a Latino.⁷⁹⁹

In August 2005, Georgia passed a voter I.D. law requiring photo identification, even though Secretary of State Cathy Cox said that she could not recall any instance in which one voter attempted to impersonate another. The *New York Times's* response to such legislation, passed also in Indiana, was that it was “in violation of the Voting Rights Act of 1965, having ‘the effect of denying or abridging the right to vote on account of race,’” and further, that the laws being passed have “no place in a democracy.”⁸⁰⁰ In further opposition, civil rights attorneys submitted a fifty-one-page report recommending that Georgia's new photo I.D. law be blocked in accordance with the Voting Rights Act, because of the inevitable harm it would wreak on African Americans and other minorities. Very quickly—actually the next day—the recommendation was rejected by staff implementing the partisan reshaping of the Justice Department's Civil Rights Division, which Bradley Schlozman directed. Hence the photo I.D. requirement became law.⁸⁰¹

According to “Diebold Whistleblower” Stephen Heller:

Bradley Schlozman brought indictments for voter registration fraud just days before an election, thereby violating the Justice Department's own rules against filing election-related indictments close to an election. He later was forced to admit he could have waited until after the election, but instead chose to time the indictments in an attempt to influence voters away from the presumed winner, a Democrat.

Schlozman has also admitted that he'd once urged hiring certain prosecutors for his office based on their political affiliation. It's against civil service laws to do so.⁸⁰²

As to such conservative allegations of voter fraud at massive levels, President Bush 43 ordered a lengthy probe by the Justice Department between 2002 and 2007. Not a single person was apprehended for attempting to, or succeeding at, impersonating an eligible voter at the polls, the practice that the antifraud and voter I.D. laws allegedly targeted. Over a period when 300 million votes were cast, only eighty-six people were caught in the act of voter fraud—and many of them “immigrants and former felons who were simply unaware of their ineligibility.”⁸⁰³ In Wisconsin, an investigation found that only .0007 percent of the local electorate were guilty of alleged voter fraud, and they were prosecuted. “Our democracy is under siege from an enemy so small it could be hiding anywhere,” joked political satirist Stephen Colbert.⁸⁰⁴ In 2007, the Brennan Center for Justice, a leading advocate for voting rights, reported that “It is more likely that an individual will be struck by lightning than that he will impersonate another voter at the polls.”⁸⁰⁵

In a notorious blunder, in December 2006, the Justice Department fired three U.S. prosecutors who refused to pursue trumped-up cases of voter fraud in New Mexico (David Iglesias), western Washington state (John McKay), and Missouri (Todd Graves).⁸⁰⁶ “Round up as many ‘guilty parties,’ true or false, as they could,” they were told, to impede Democratic voters as much as possible before the November elections. Six others were also fired—most came from swing states.^{807,808}

According to McKay, Graves was forced to step down in March 2006 for refusing to file criminal charges of voter fraud against four employees of ACORN, a group that advocated on behalf of indigent minorities and in this process registered them to vote. They[naturally] tend largely to vote for Democrats. Moreover, Graves refused to file a civil suit against Robin Carnahan, Missouri's secretary of state, on charges that Carnahan failed to act on cases of voter fraud. In the latter case, pressure was being exerted on her by Thor Hearne. The Department of Justice filed a civil suit against Carnahan. It was dismissed by a federal district court judge, who was unimpressed by the arguments from both sides.⁸⁰⁹

In addition, McKay told progressive reporter Jason Leopold that Todd Graves's resignation was most likely motivated, at least in part, by Bradley Schlozman's ambition to replace him, which did indeed come true: “Schlozman himself was trying to push the prosecution of voter fraud cases.”⁸¹⁰ He came down hard on the few ACORN

workers caught filling out a total of six false registration forms, rushing them through four federal indictments right before the November senatorial election, throwing his weight around even though Justice Department regulations forbade most, if not all, investigation of an alleged election crime[, which] “must await the end of an election to which the allegation relates,”⁸¹¹ to avoid creating a last-minute campaign issue.⁸¹²

Others federal attorneys were fired for investigating and in some cases prosecuting prominent Republicans. And then there were “those partisan hacks waiting in the wings to replace them”—Karl Rove’s henchmen.⁸¹³

David Iglesias told coauthors Robert F. Kennedy Jr. and Greg Palast that “They wanted some splashy pre-election indictments that would scare these alleged hordes of illegal voters away. . . . We took over 100 complaints and investigated for almost two years—but I didn’t find one prosecutable case of voter fraud in the entire state of New Mexico.”⁸¹⁴ Naming Albuquerque attorney Patrick Rogers, at a congressional hearing, as the agent of this illegal pressuring, Iglesias later told *Newsweek* magazine that state officials pushed him to prosecute ACORN workers who were being paid to register voters.⁸¹⁵

In an interview released by House Democrats in May 2007, Iglesias said that between congressional investigators and Matthew Friedrich, one of Gonzales’s senior Justice Department officials, Rogers and Mickey Barnett [a Republican attorney and lobbyist] told him in November 2006 that “they were frustrated about Iglesias’s refusal to pursue cases of voter fraud and that they had spoken to Karl Rove and [Senator Pete] Domenici [(R-NM)] about having Iglesias fired.”⁸¹⁶

According to Jason Leopold, in the case of David McKay, “[the former federal prosecutor] believes his firing was due to the fact that Republicans were angry that he did not convene a federal grand jury to pursue allegations of voter fraud related to the 2004 governor’s election in . . . [Washington] state, in which Democrat Christine Gregoire defeated Republican Dino Rossi by a margin of 129 votes.”⁸¹⁷

[T]here were some Republicans in his district with close ties to the White House who demanded he launch an investigation into the election and bring charges against individuals—Democrats—for vote-rigging. He believes his refusal to haul “innocent people

before a grand jury” was the reason he was not selected for a federal judgeship by local Republicans in Washington state in 2006.⁸¹⁸

Investigations by Congress and the Justice Department found that the firings were arbitrary, flawed (did anyone add “politically motivated”?), and certainly not part of the job description of U.S. attorneys, even those appointed by George W. Bush. Similar projects, endorsed by the Bush administration, had been carried out in swing states Florida and Pennsylvania, as well as Virginia, Maryland, North Carolina, and Texas.⁸¹⁹

Curiously parallel to these events was a gag order imposed on a Heritage Foundation Democracy Fellow who had written a “Voter Fraud and Voter Intimidation Report” for the EAC, confirming the fired prosecutors’ findings that a “mere handful of voter fraud issues” existed—nothing more. Wrote John Gideon for Bradblog on July 12, 2007:

Tova [Wang, the above scholar] has now been un-gagged by the EAC and is free to speak about her Voter Fraud report that was commissioned and then hidden by the commission when it found the opposite of what they had hoped to find. As it turns out, the massive epidemic of voter fraud the Republicans had been claiming, didn’t actually exist.⁸²⁰

Wang had handed in her report in July 2006 and received no feedback.

The federal commission published an altered version of it, conclusion changed to validate suspicions of voter fraud, in December 2006 without requesting any input from Wang. She did inform the Bradblog of the order, but faced threats of “law suits and civil liability” if she told more. She could therefore not even testify before Congress, which was showing more and more of an interest in the situation.

“It has been my desire to participate in this discussion and share my experience as a researcher, expert and co-author of the report,” Wang said in a statement.⁸²¹

She wrote about the unchanged atmosphere three years later:

Activities that intimidate voters are against the law. This can include photographing or videotaping them in a way that intimidates. Using confrontational language, targeting voter challenges or poll monitoring operations at communities of color is also illegal. Asking for voter identification only from minority voters is illegal. Interfering with someone getting help at the polls, who is uncomfortable speaking English, could also be a legal violation.⁸²²

Wrote Bob Bauer about the EAC incident, “The EAC/Wang episode was a successful study all its own, a revealing look at how the case for ‘fraud’ is manufactured and, in light of its fundamental design, defended.”⁸²³

By mid-September 2007, after ludicrous investigations that were largely stonewalled, Attorney General Alberto Gonzales, along with eight other high-level DoJ officials, had resigned.⁸²⁴

All of these episodes, taken together and added to, ultimately involved Bush 43 and his machinery—including Gonzales as a star player—as guilty of politicizing the Justice Department in order to weed out the people who vote Democrats into office—indigent minorities—through the pseudo-goblin of voter fraud. Katrina van den Heuvel of the *Nation* referred to the debacle as “part of a much broader effort by the Bush Administration [*sic*] to use government institutions for partisan gain” and, more specifically, “[use of] federal agencies charged with protecting voters’ rights to promote voter suppression, influence voting rules, and gain advantage in battleground states.”⁸²⁵ In 2006 and 2007, then-Senator Barack Obama (D-IL) tried to pass legislation forbidding the intimidation of poor minorities. Neither bill passed.⁸²⁶

Amid congressional investigations, the name Hans von Spakovsky soon drew attention. As one “Publius,” he had published an article in the *Texas Review of Law & Politics* contending that “every voter should be required to produce a photo-identification card and that there was ‘no evidence’ that such restrictions burden minority voters disproportionately.”⁸²⁷ Joseph Rich, a former Justice Department voting rights chief, had worked under the subject, who had forcibly replaced him on a commission advisory panel in 2004. Rich charged that “Mr. von Spakovsky [at the time counsel to the assistant attorney general in the Civil Rights Division at Justice] was central to the administration’s pursuit of strategies that had the effect of suppressing

the minority vote."⁸²⁸

Federal officials and former civil rights leaders added that von Spakovsky:

Sped approval of tougher voter ID laws in Georgia and Arizona in 2005, joining decisions to override career lawyers who believed that Georgia's law would restrict voting by poor blacks and who felt that more analysis was needed on the Arizona law's impact on Native Americans and Latinos;

Tried to influence the federal Election Assistance Commission's research into the dimensions of voter fraud nationally and the impact of restrictive voter ID laws—research that could undermine a vote-suppression agenda; and

Allegedly engineered the ouster of the commission's chairman, Paul DeGregorio, whom von Spakovsky considered insufficiently partisan.⁸²⁹

A longtime “voting rights activist” and elections official in Georgia, where in 2008 he was still fighting for voter I.D. restrictions, against Democrats,⁸³⁰ von Spakovsky had, before joining the Justice Department, been a December 2005 presidential recess appointee to a Republican position on the Federal Election Commission. On June 13, 2006, he was scheduled for his first confirmation hearing before the Senate Rules and Administration Committee in order to retain his post. In May 2008, toward the end of the Bush 43's tenure, von Spakovsky's nomination was withdrawn and he instead joined the Heritage Foundation in Washington, DC, a conservative research institution.⁸³¹

In September 2007, Paul DeGregorio, the Republican chairman of the HAVA-generated Election Assistance Commission (EAC), von Spakovsky's principal adversary who refused to politicize his side of the controversy, was replaced by Caroline Hunter, a former deputy counsel to the Republican National Committee.

According to McClatchy reporter Greg Gordon:

DeGregorio confided to associates that he was told that von Spakovsky influenced the White House's decision not to reappoint him.

Asked about his ouster, DeGregorio said only that he “was

aware that Mr. von Spakovsky was not pleased with the bipartisan approaches that I took.”⁸³²

An investigation by major media that grew out of this fiasco—more than 55 percent of the attorneys had left the Voting Section of the Civil Rights division of the Justice Department between 2005 and 2007⁸³³—revealed that Karl Rove’s emails from this period as well as others sent via the Republican National Committee server were missing. The server was provided by SMARTech, a company based in a bank basement in Chattanooga, Tennessee, location of the man-in-the-middle structure that laundered votes sent from Ohio the evening of Election Day 2004 and then sent them back up to the office of the Ohio secretary of state in numbers that reflected a decisive Bush victory.⁸³⁴

According to the website Velvetrevolution.org (VR), “[A]ttorney Cliff Arnebeck, who leads the Ohio litigation looking into Rove’s criminal pattern of election manipulation, is planning to ask the United States Department of Justice to expand its investigation into the firing of US Attorneys to include that entire pattern of election manipulation. He believes that the US Attorney matter is but one part of the larger picture.”⁸³⁵

But back from the future (2007) to February 3, 2006, when, at the federal level, Justice Samuel L. Alito was confirmed in a Supreme Court post, in Ohio the repressive, Rove-engineered HB 3 passed into law against the will of the League of Women Voters, Common Cause, and other grassroots organizations. Only one Republican in the Ohio legislature opposed the bill, along with all of the Democrats.

Bob Fittrakis and Harvey Wasserman described HB 3 as “a repressive new law that will gut free elections here and is already surfacing elsewhere around the US. The bill will continue the process of installing the GOP as America’s permanent ruling party.”⁸³⁶ They wrote:

The law now demands discriminatory voter ID, severely cripples the possibility of statewide recounts and actually ends the process of state-based challenges to federal elections—most importantly for president—held within the state.⁸³⁷

The justification for the stringent I.D. requirement was the allegation that during the 2004 presidential campaign in Ohio the

NAACP paid people—with crack cocaine—to register voters. A court case based on this accusation was later withdrawn due to the discovery that the litigants were all connected to the highest echelons of the Republican Party.⁸³⁸

More horrifying details under HB 3:

- Slows down the voting process in inner city precincts;
- Permits Republican “challengers” to intimidate anyone who turns up to vote in heavily Democratic precincts;
- Virtually eliminates the homeless, elderly, and impoverished from the voting rolls—an estimated 100,000 to 200,000 voters in a typical statewide election;
- Ends the ability of the public to conduct meaningful audits of voting machines, making the paper trail virtually meaningless;
- Massively raises the cost of forcing a recount to \$50 per precinct, and thus the statewide charge to some \$568,300;
- Eliminates the state statutes that have allowed citizens to challenge the outcome of federal elections within the state.⁸³⁹

After eighteen months of active opposition to HB 3, on July 6, 2006, Common Cause Ohio; Project Vote; American Association of People with Disabilities; Association of Community Organizations for Reform Now (ACORN); People For the American Way Foundation; Community of Faith Assemblies Church; and individuals Mary Keith, John R. T. May, and Linda Scammicca filed suit in federal court in Cleveland, Ohio. The eight counts of *Project Vote v Blackwell* encompassed violations of the First and Fourteenth amendments, the National Voter Registration Act of 1993,⁸⁴⁰ and Section 2 of the Voting Rights Act.

The groups had all planned voter registration drives in coming months that Blackwell’s rules now threatened.⁸⁴¹ Initiated on July 6, 2005, the suit was decided in favor of the litigants on April 11, 2008, giving them scant time to prepare for the upcoming presidential election.

On September 21, 2005, the Government Accountability Office (GAO) issued a report *Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, but Key*

Activities Need to Be Completed. This report confirmed the fact that the machines were faulty in many ways.⁸⁴² “A powerful confirmation of key indicators that the election of 2004 could have been stolen,” nonetheless ignored by the media, it confirmed that electronic voting systems are vulnerable to tampering and that ambiguous ballots might not accurately reflect the voter’s choice; vendor use of altered memory cards to tamper with results could be undetectable; absence of passwords and resulting access to entire networks could facilitate massive vote alteration by a minimal number of agents; primitive networking might cause a power outage on an entire network if one machine lost power; and much more.⁸⁴³

Fittrakis and Wasserman summed up the essence of the study:

. . . [N]o bank, grocery store or mom & pop chop shop would dare operate its business on a computer system as flimsy, fragile and easily manipulated as the one on which the 2004 election turned.⁸⁴⁴

On November 25, 2006, the National Institute of Standards and Technology (NIST) announced the results of a new report recommending the decertification of all DREs in 2007, even those with VVPAT (voter-verified physical audit trails, the ones that attach to DREs), according to Bev Harris.⁸⁴⁵ The NIST report included a supplement with information that DREs can’t be made secure—their paper trails are inaccurate, often jammed or totally blank at the end of the day.⁸⁴⁶ NIST recommended that the 2007 version of the Voluntary Voting Systems Guidelines (VVSG) decertify all DREs and instead use SI (software independent) systems.⁸⁴⁷

If Diebold can manufacture ATMs that produce paper records as a matter of course, why cannot they apply the same technology to voting machines? asked Steve Freeman, co-author, with Joel Bleifuss, of the important 2005 book *Was the 2004 Presidential Election Stolen?* (called one of the three most important censored books of that year).⁸⁴⁸ Freeman was the first to compare the new voting machines with gambling machines. On all counts, the gambling machines emerged as far more secure, the certification process far more rigorous than those used on computerized voting machines.⁸⁴⁹

The authors’ focus was exit polls, which they regarded as far more accurate than the tallies of DREs, because they involve live interviews of voters coming out of the polls, even despite the 7

percent discrepancy rate in 2004 in how people voted and how they said they voted.⁸⁵⁰ Begun in 1964 when Louis Harris, “the father of exit polling in America,” was hired by CBS in the wake of the Kennedy assassination,⁸⁵¹ exit polls are taken by human beings from human beings according to strict statistical guidelines that pertain to both those who consent to fill out the pollsters’ forms and those who do not. Freeman and Bleifuss trust in the integrity of Warren Mitofsky’s participation since the sixties. His firm, Mitofsky International, as well as Edison Media Research, another respected firm, whose co-founder, Joe Lenski, oversees the process, work in concert with the news media consortium the National Election Pool (NEP), to do exit polling at federal elections. NEP consists of ABC, Associated Press, CBS, CNN, Fox News (!), and NBC. The “other” consortium, the Voter News Service (VNS), which consisted of the same members, did not employ Mitofsky and Lenski in collecting and compiling the data, and their [VNS’s] results proved to be inaccurate in Elections 2000 and 2002.⁸⁵²

Bev Harris dismissed exit polls as far from magisterial, in an interview conducted on *Voice of the Voters*, May 29, 2008: “[P]rojections based on exit polls [are not viable] when those who provide the figures are hidden from us, nor do we know how they arrive at their totals.”⁸⁵³ Freelance journalist Lynn Landes finds them totally superfluous and unreliable if not invalid.⁸⁵⁴ According to John Dean, they are a mixed bag: “While exit polls have strengths (they are directed at actual voters with fresh memories), they also have weaknesses (they do not always include sufficient absentee ballots, which must be accounted for based on samplings that can be flawed).”⁸⁵⁵ Michael Collins believes that exit polls in the 2004 presidential election were tweaked to reflect a Bush 43 victory—those released the morning after Election Day.⁸⁵⁶ Howard Stanislevic cautions against taking exit polls very seriously since they are nontransparent.

The largest discrepancies between exit polls and electronic counts in Election 2004 occurred in the battleground states, the highest in the three most controversial ones: Pennsylvania, Ohio, and Florida.⁸⁵⁷ In contrast, in the one percent of districts that used paper ballots, there was no discrepancy at all between the paper count and the exit polls.⁸⁵⁸

Said Bruce O’Dell in 2006, “[E]xit poll data is slipping as a control vehicle in elections simply because the actual results differ

ridiculously from those provided by the electronic machinery. In 2006 the data were so shoved aside that they were forced to conform with the computer tabulations . . . by the next day. Harvest the stats sooner than that and they will diverge still.” Republicans claim that exit polls favor Democrats, in that they tend to be more communicative than Republicans. The opposite, in fact, is true.

“Three million more Democrats voted than the tallies revealed in 2006,” said O’Dell on *Voice of the Voters*.⁸⁵⁹ The opposite is actually more possible, wrote Freeman and Bleifuss:

Republican voters tend to be educated and middle class and thus, in many cases, more cooperative than the more numerous Democrats who are often lower-class, not as well educated, or non-native speakers of a limited amount of English, among other descriptors.⁸⁶⁰

In July 2007, Mary Ann Gould said that “. . .without exit polls as a check and balance to the machine tallies, where are we to go but to optical scanners?”⁸⁶¹

Bev Harris’s organization, Black Box Voting, was invited by Ion Sancho, Leon County(Florida) Supervisor of Elections, along with renowned Finnish securities expert Harri Hursti, to test Diebold’s GEMS central tabulator and Diebold’s optical-scan voting machines. The tests took place on February 14, 2005; May 2, 2005; May 26, 2005; and December 13, 2005, and succeeded in proving that Diebold optical scanners were not secure and could be hacked and results could be altered.⁸⁶² According to Saviourvotes.org:

Hursti I Report (July 2005), “The Hursti Hack,” called “the mother of all security holes” was first exposed in a formal report on July 4, 2005. This report concerned the memory cards of the Diebold Precinct-Based Optical Scan 1.94w system, the same one that is used in Maryland for absentee and provisional votes. In response, Diebold insisted to election officials across the country that changing votes on the memory cards was impossible. Then, in December of 2005, Ion Sancho, election director of Leon County, Fla., asked Finnish security expert Harri Hursti, together with Black Box Voting, to test the hack in a mock election.^{863, 864}

Susan Pynchon, founder and director of the Florida Fair Election Coalition, observed the December test hack and wrote that before the group went to the warehouse where the machine was to be tested (a Diebold AccuVote optical scanner had been chosen), Hursti programmed the card. Then Hursti waited outside while the rest of the group conducted a mock vote using the same card. Nothing in the machine's behavior indicated any sort of tampering. When each participant had "voted," the machine tallied the results for both sides of the issue. The machine total differed completely from the way the participants had voted. Here is a description taken from the HBO film *Hacking Democracy*⁸⁶⁵:

In the film, Finnish computer security expert Harri Hursti exploited the Diebold system's vulnerability by way of a minor change in its memory card's programming instructions. A mock election was then conducted in which the question was posed as to whether Diebold's machines could be hacked. Two paper ballots were marked "yes," six "no," as seen during the taping of the live, on-camera test. All eight ballots were fed into the Diebold system. The "election" was then closed and machine-tabulated. A paper receipt was spewed out bearing stunning results: Yes 7, No 1, the inverse of what we had all expected them to be. To insure this was not just a number fed onto the paper receipt, the optical scanner's memory card was uploaded into the voting systems central tabulator (in Diebold's case, it's called GEMS). The result, once again: Yes 7; No 1.⁸⁶⁶

As noted by Brad Friedman and by Nathan Barker in the right-leaning *Gouverneur Times*, "... the Hursti hack sent shockwaves throughout the e-voting industry, and among state and federal election officials. But the federally certified machines were never decertified by the U.S. Election Assistance Commission [EAC],⁸⁶⁷ despite the discovery of the code in violation of federal standards. That code, allowing this simple exploitation, was still in place during the January 19, 2010, Massachusetts special election for the US Senate."⁸⁶⁸

Pynchon described her reaction to the soon-to-be-notorious hack:

I cried because it was so clear that Diebold had been lying. I cried because there was proof, before my very eyes, that these machines were every bit as bad as we all had feared. I cried

because we have been so unjustly attacked as “conspiracy theorists” and “technophobes” when Diebold knew full well that its voting system could alter election results. More than that, that Diebold *planned* to have a voting system that could alter results. And I cried because it suddenly hit me, like a Mack truck, that this was proof positive that our democracy is and **has been**, as we have all feared, truly at the mercy of unscrupulous vendors who are producing electronic voting machines that can change election results *without detection*.⁸⁶⁹

The conclusions follow [all emphasis is by Pynchon]:

First of all, the Hursti hack reveals only *one* vulnerability in an almost unlimited number of potential flaws or vulnerabilities in electronic voting systems (both op-scans and DREs). However, the Hursti hack is *individually significant* because the flaw it exposed is a *planned* vulnerability in the system, not something that is accidentally there. It had to be PUT there (programmed) *on purpose*. For Diebold to claim innocence about this would be absurd.

. . . [T]he Hursti hack shows, above all, THE IMPORTANCE OF HAVING PAPER BALLOTS for an independent confirmation of machine results. The beauty of paper ballots is that they are *completely independent of any machine*, unlike the printer paper trail.

Harri told me, and Dr. Thompson [unidentified by Pynchon] confirmed, that Harri’s hack was Level One (the first, primitive level), and could have been done by an 8th grader with some basic information. They explained to me that the voting machines in this country are so vulnerable that they cannot even withstand a Level One attack, much less a Level Two or a Nation-State attack.⁸⁷⁰

(Sancho) finding “a number of security flaws,” . . . has been fighting legal “breach of contract” battles ever since. Now none of the Big Three will sell voting machines to Leon County and Sancho is in trouble with Jeb Bush and his friends and Diebold will do further business with Leon only if Sancho is fired.⁸⁷¹

Released to the public in early July, the news reached Professor Michael Shamos, Carnegie Mellon University professor of computer

science and [Pennsylvania] state consultant on computerized voting; elections had been scheduled in three weeks.

“This one is so bad, that we can't do just nothing,” Shamos told the state's election officials at the time. “Any losing candidate could challenge the election by saying, ‘How do I know that the software on the machine is the software certified by the state?’”⁸⁷² States and lower levels of municipality continued to vote on Diebold/Premier machinery. It was so bad that, according to Daniel Turner of *Technology Review*, an MIT publication, “. . . the previous reports (BlackBoxVoting.org, Open Voting Foundation, and Avi Rubin) simply highlighted potential holes in the Diebold machines’ security.”⁸⁷³

Said Rubin, the first to discover severe security flaws with the source codes of Diebold DREs in 2003: “I almost had a heart attack. The implications of this are pretty astounding.”⁸⁷⁴ He also said that this development dwarfs the findings that shook even the mainstream media in 2003: the Hopkins-Rice, RABA, and SAIC studies (see Chapter 3, above).⁸⁷⁵

Added Securityfocus.com, “The incident represents the most major failure of the federal process to create secure election technology to date.”⁸⁷⁶

Ergo, sprinkle dust on the haloes of optical scanners.⁸⁷⁷

Diebold reacted responsibly, writing to those who had purchased thousands of its machines, about the “theoretical security vulnerability” that “could potentially allow unauthorized software to be loaded onto the system”; however, the company continued, “The probability for exploiting this vulnerability to install unauthorized software that could affect an election is considered low.”

A spokesman for Diebold, David Bear, offered an explanation for the “potential risk”: “the company's technicians had intentionally built the machines in such a way that election officials would be able to update their systems in years ahead.”

Bear wryly dismissed the notion of “evil and nefarious election officials who would sneak in and introduce a piece of software.” Such people, of course, did not exist, he said.

Diebold would attend to Hursti's revelation, he continued, but not before most primary elections were held.⁸⁷⁸

In the second week of December 2005, right around the time of the fourth Hursti hack, on December 13 Walden O'Dell resigned as chief executive of Diebold. As for Ion Sancho, who had initiated the series

of tests, none of the “Big Three” voting machine manufacturers (Diebold, ES&S, and Sequoia) would do business with him after that, claiming that they were the ones who should do the testing, until Leon County missed the HAVA January 1, 2006, deadline for acquiring machinery appropriate for handicapped voters. Diebold finally consented to deal with the brave election officer in April, after forcing Sancho to sign a contract pledging that he wouldn’t invite any further outsiders to test their machinery without their permission. The vendors gained \$691,373 in that process. Sancho called that decision “responsible.” After all, ES&S, and Sequoia (which in 2010 was absorbed by Dominion Voting, which also absorbed Premier) were still in business,⁸⁷⁹ despite all the testing and proofs of hackability that date back to . . . the 1960s. Sancho subsequently turned down an invitation by California to conduct the same sort of testing on their machines and uttered words that might give us all pause: “The larger issue in my mind is: Since we’ve all been asleep at the wheel, there maybe should have been more effective tests on the machines than we’ve run. So there’s a lot we still don’t know about.”⁸⁸⁰

On September 13, 2006, Princeton University’s Center for Information Technology Policy (CITP) published an account of its successful hack into a Diebold AccuVote-TS, a DRE touchscreen, one of the most widely used voting machines in the United States, and at least close to the one initially and detrimentally analyzed by Rubin and colleagues back in 2003.

The researchers, Ariel J. Feldman, J. Alex Halderman, and Edward W. Felten, proved⁸⁸¹ that “entire voting systems could be not just rendered inoperable, but deliberately hacked to rig an election. CITP developed a simple software virus to do just that, along with a method of deploying it.”

There were three principal findings: “First, not only could malicious code be installed on the voting machine, but it also could easily be configured to “disappear” once its work was done, leaving no trace of tampering; the electronic and paper records produced by the voting machine would agree—and both be wrong.”

Second, “physically hacking into the machine and its memory card was easy, as BlackBoxVoting.org had also discovered.⁸⁸² The Diebold AccuVote and similar machines rely on a removable memory card for storing vote counts and uploading new system software. The CITP team was able to remove the card, replace it with one of their own, and reboot the machine, causing it to automatically install the

software they had placed on the memory card—the software that could fix election results.”

Third and finally, “the virus code could spread. An infected machine could infect its original memory card, once the card was returned to the machine. Furthermore, the infected memory card, inserted into another voting machine, would infect that machine and then its memory card, and so on. In normal election procedures, memory cards are taken out of all voting machines and placed into one machine, which acts as an ‘accumulator’ for tallying the total votes in a precinct. ‘By planting a virus far enough in advance, [a hacker] can ensure that a significant number of machines can steal votes on election day’ even if the criminal had access to only one voting machine,” says the narrator of the demonstration video.^{883,884}

At the end of 2005, Riverside County, California, Supervisor Jeff Stone challenged Election Integrity advocates in public, in the midst of a videotaped public meeting, to import an expert to attempt to hack into the county’s Sequoia voting systems. The odds were one thousand to one that the system would be hacked, he said. Riverside was the first county in the country to move to touchscreen voting in the late 1990s.⁸⁸⁵

Harri Hursti, the famous hacker into Florida Diebold optical scanners (see above), was ready and willing to comply. The results were predictably grim, turning Stone into stone if such a thing were possible.⁸⁸⁶

In March 2006, a similar event occurred. Ten-year-old Sequoia Advantage systems that Allegheny County, Pennsylvania, planned to purchase from Nevada—which was moving to another variety of Sequoia machinery—were tested and found totally unacceptable in a huge number of categories. Michael Shamos, a long-time advocate of DREs, was in the midst of a demonstration of the machinery when the problem became apparent and the demo turned into an unwitting hack.⁸⁸⁷ According to the March 19, issue of the *PittsburghPost-Gazette*, “. . .In an instant, [Shamos] said, he was able to transform a handful of votes into thousands” [through pressing a yellow button on the back of the machine].

“Developers quickly fixed the problem by replacing a file in the tabulation software, but that didn’t alleviate Dr. Shamos’ concerns. ‘A malicious hacker could easily make the same switch, allowing votes to be changed,’ he said.”

“‘What control is there over the software package if different files

can be swapped in and out?’ he asked.”⁸⁸⁸

Brad Friedman raised the question of what sort of testing had been done in Nevada over the preceding ten years if such problems existed.

Sequoia officials called the problem “no big deal” in addition to attempting to shift the blame to election officials. Meanwhile, new Sequoia Edge systems purchased by Nevada and loaned one-time to Clark County, Illinois, failed miserably.

Most preposterous of all, the Quaker State was willing to retest the machinery in a few weeks, giving Sequoia time to remedy the defective system.⁸⁸⁹

In February 2007, in another scandal, Princeton’s Professor Andrew Appel proved that the new Sequoia AVC Advantage DRE could be hacked into in a matter of seconds. He was able to acquire five Sequoia voting machines for only \$86, from an online government equipment clearinghouse, GovDeals.com, though Essex County, New Jersey, had just bought them in 2005 for \$8,000 apiece! Appel gave the machines to his students to hack into.^{890,891}

It is beyond reprehensible that even today, both DREs and optical scanners are still in active and widespread use, even despite a recent finding (late September 2011) that both types of system can be hacked into from distances with cheap remotes and primitive electronics.⁸⁹² This vulnerability is also referred to as “man in the middle”—terminology used in the deposition of IT guru Mike Connell to describe the round-about route taken by Ohio votes from central tabulators to the Tennessee web system he designed, back to the office of the SoS after a bit of laundering to adjust results. See Chapter 8.

Other electronic voting models have been proposed (see Chapter 5, beginning, for one).⁸⁹³ But the majority of the Election Integrity movement half a decade later is championing paper ballots. Harri Hursti, at a panel event in the wake of the Felten fiasco, told me that he believed that the future of voting was still electronic.⁸⁹⁴ He recommended digital scanners, which not only are based on paper ballots but photograph them, so that copies of all ballots in a precinct can be downloaded onto an inexpensive CD and distributed to the public⁸⁹⁵—we all can count the vote. Imagine.

Surprisingly, just when HR 811 was about to come to the floor for a vote, Timothy Ryan, a research assistant with the AEI-Brookings Election Reform Project, came up with this surprising judgment:

Also, the counting of paper ballots, if required by a close election, could prove an unwieldy task and take tens of thousands of hours of work. Further, the printers that produce paper ballots are especially susceptible to mechanical failure; as many as 20 percent fail on Election Day, according to Senate testimony this summer by election expert Michael Shamos.⁸⁹⁶

“Unfortunately,” however, Ryan continues:

[T]he language in the Ballot Integrity Act and the Voter Confidence and Increased Accessibility Act, the latter of which is likely to move to the floor before the end of the month, would prohibit the use of both Prime III and Punchscan—Prime III because it does not produce a paper record and Punchscan because the paper record is not preserved by election officials. Given time and the right market incentives, alternatives such as these can be developed, perfected and implemented. On the other hand, mandating a paper record will commit American democracy to an antiquated alternative for the foreseeable future.⁸⁹⁷

Another controversy concerning paper voting revolved around the vote-by-mail (VBM) system. Paul R. Taylor calls it “a change that simultaneously increases voter participation, saves millions of dollars and makes the postal service relevant again” and the “promise of saving \$2 million each election cycle by eliminating polling places and poll workers—while also enhancing voter protection and participation.”⁸⁹⁸

VBM saves the countless problems and red tape that attends voting at the polls. Certainly tampering is possible, but at the level of one ballot at a time, writes Taylor. According to the Center for Democracy and Election Management at American University, “37 states allow some form of convenience balloting (no-excuse absentee and early voting).” Taylor also cites Phil Keisling, director of the Center for Public Service at Portland State University’s Mark O. Hatfield School of Government, who notes that the dearth of further research is mysterious. Authentication of ballots is done by comparison of signatures on ballots and registration lists. According to another study, “voter participation in Washington and Oregon ranks near or at the top among eligible voters and registered voters.”

But, writes Keisling, the key objection seems to be voters' attachment to the social/civic ritual of going to the polls in late autumn, though with all the mishaps associated with inner-city voting and other locales inhabited by Democratic-leaning minorities, the VBM alternative seems promising. Other rituals could evolve around VBM, he believes.⁸⁹⁹ According to Votescam.org, contra Common Cause, VBM is "another way to conceal how ballots are handled and prevent citizen oversight."⁹⁰⁰ More transparency can easily be arranged, in my humble opinion, and trumps privacy by a long shot.

A Brennan Center report came out in June 2006 with the news that all voting systems are vulnerable to hacking, especially those with wireless capabilities.⁹⁰¹

In the November 29, 2006, edition of *Voice of the Voters*,⁹⁰² "Bev Harris pointed out [the] many problems with the optical scanners that the Bucks County Coalition for Voting Integrity had been championing. She said that machines misread ballots if the circles are not perfectly filled in; that the ballots jam during the scanning process.

Bev personally favors hand counting at the precinct level and shrinking precincts to the point where the voting process becomes as transparent as possible. She said that township-based states tend to vote 'the old-fashioned way,' conservatively, including Vermont, New Hampshire, Wisconsin, and Minnesota—there is lots more hand counting and more attention to citizen activism.⁹⁰³

She said that the key to voting integrity is to work from the grassroots on up and to draw inspiration from successful examples including the citizens' actions in Sarasota County, Florida, which fought for and won a citizens' referendum that mandated a return to paper ballots.⁹⁰⁴ In Cuyahoga County, Ohio, scene of so much controversy in recent elections, the commissioners were considering discarding their \$17 million worth of new DREs after having discovered that the 2007 election would cost them another \$14 million.

'What a colossal waste of money,' said Bev. And [I add] it will spread throughout the country as we toss out the DREs the way that the colonists filled Boston Harbor with British tea.⁹⁰⁵

Senator Bill Nelson (D-FL) and Senator Sheldon Whitehouse (D-RI) offered legislation that would prohibit touch-screen machines nationwide by 2012.⁹⁰⁶ At the end of January 2007, used Sequoia DREs were being sold to just anyone with the money. They're so . . . protective of their proprietary codes that no outsider can know them, but step right up for your complete machine. Members of the Bucks County Coalition for Voting Integrity drove down to Tennessee to purchase some of those abominations for around \$30 each for expert consultant and computer scientist Rebecca Mercuri, who lived nearby.^{907, 908}

Harris called Rush Holt's HR 550 "dangerous,"⁹⁰⁹ one reason being that the minimum audit required was only 2 percent, later raised to 3 percent. At the time, minimum levels in Ohio were 10 percent and in Connecticut 20 percent.⁹¹⁰ Bev referred instead to a House bill introduced by Dennis Kucinich that would mandate a hand count of presidential votes in 2008.

"Are we worse off than in 2000?" asked Michelle Mulder, counsel to Rush Holt. "Without a doubt. At least then we knew what we don't know," she said, parodying Rumsfeld's notorious conundrum rationalizing the quagmire in Iraq. "HAVA solved the problem of ambiguity," she said. "Now there is no evidence at all of voter intent." She was referring, of course, to the quizzical hanging chads that kept stoic souls in Florida up many nights attempting decipherment of the voters' choices. At least at that time, voter intent was evident in a large portion of the punch cards.⁹¹¹

A tongue-in-cheek column in the November 29, 2006, South Florida *Sun-Sentinel* suggested that all votes cast should be write-ins.⁹¹²

Chapter 7

The Tides Begin to Turn, but Paper Can't Cover Silicon

Election 2006, Brunner's EVEREST Report, and Bowen's Top-to-Bottom Review

The short and disastrous era of electronic voting machines in Florida has come to an end.—Rep. Robert Wexler (D-FL)

When I finally saw the results of our [EVEREST] tests, I thought I was going to throw up.—Jennifer Brunner

Have we forgotten the days when ballot boxes could be discovered floating in nearby rivers shortly after an election?—Timothy Ryan

When it comes to computerized elections, there are no safeguards. It's not a door without locks, it's a house without doors.—Howard J. Strauss

The mid-term election revealed that the promise of easier voting, more accurate tallies, and faster results with electronic systems has not been fulfilled.—

<http://www.wheresthepaper.org/E-VotingIn2006Mid-Term.pdf>

Throughout the 157 years of California's statehood, people have been voting on paper for all but a handful of years. Two-thirds to three-quarters of Californians are already voting on paper ballots, over half on paper ballots put in the mail—Debra Bowen

Regarding the low voter turnout in 2006—only 40 percent of those registered⁹¹³—Bev Harris called that figure good. She said that the standard rate for presidential elections is 45 to 55 percent and, for

midterm elections, 35 to 45 percent. In Australia voting is mandatory, she added, though this law isn't enforced. Throughout Europe voter identification is required."⁹¹⁴ In Germany, close to 90 percent of the people vote. Exit polls are always within 1 to 2 percent of the official count. The United States ranks 239th in the world in terms of voter turnout—this bastion of democracy.⁹¹⁵

"The legitimacy of democracy depends on the confidence of the people," said Steve Freeman, the "outrageous" exit poll researcher and author (see Chapter 6). The voting rate in the United States is the lowest among industrialized nations.⁹¹⁶ Could the reason be that one-half of the voting population in this country lacks a college education? Studies would contradict this conclusion. Other socioeconomic factors, such as income and station in life, do influence voting rates, however. To put it more simply, working poor people are less likely to be able to take the time off from work on a Tuesday to vote, for example.⁹¹⁷ And many factors abet this process, thus barring lower classes from the polls, as is discussed throughout this volume.⁹¹⁸

There is even a prize-winning website called *Why Tuesday?* It was founded in 2005 to counter this obsolete convention, among its many other missions.⁹¹⁹

When Bev Harris's *Hacking Democracy* was aired at the end of November 2006 (soon thereafter to be released as a DVD), it "rocked the nation." According to a recent Zogby poll, it resonated with an audience that already was very largely opposed to electronic voting.⁹²⁰ The HBO film chronicled electoral reform as a detective story, tracing how we figured out what was going very, very wrong. The Diebold people fought hard to prevent the film's release. Various scenarios proving the electronic voting machinery's vulnerability to tampering are, of course, featured, among other unconstitutional outrages.

After election 2004, many states (including Florida, which purchased ES&S optical scanners⁹²¹) decided to ditch the touchscreens. Lawsuits demanded money back from vendors and many bemoan all those millions, if not billions of dollars wasted.⁹²² Ohio had kept its Diebold AccuVote optical scanners despite the December "Hursti hack" (see above).⁹²³ In the most notorious of the 2006 congressional elections, eighteen thousand votes went missing in Sarasota County, Florida. The Republican candidate, Vern Buchanan, who was ahead by 368 votes,⁹²⁴ took the oath and sits in

Congress. Democrat Christine Jennings, who never conceded the election (she ran again for this office in 2008 and was soundly defeated), gave up on her lawsuit disputing this placement,^{925,926} yielding ground to GAO research that delivered what turned out to be a disappointing report.⁹²⁷ It is disgraceful that when Jennings filed a motion in court to allow review of the software code for the DRE/touchscreen machines used in the context, presiding Florida Circuit Court Judge William L. Gary denied it, on the grounds that all sourceware used by every variety of voting machinery used in this country is proprietary.⁹²⁸ Moreover, it is utterly ironic that in this instance the voting machine manufacturer, ES&S, had warned several months ago about problems with the machines that could be fixed with a patch. County officials ignored the ignominious company, which this time was right.⁹²⁹ The machines had been in use since the state's primary in 2002 (see Chapter 3 for more on that event).⁹³⁰ But Jennings's ordeal did not sink into oblivion; it engendered such alienation that the Sunshine State would soon enough dispense with all DREs and replace them with optical scanners.⁹³¹

Another downside to Election 2006 was that exit poll results were impounded, not shared with the public until all votes had been counted and results doctored to be consistent with the vote tallies. Meanwhile polls that so contradicted tally results in Ohio 2004 were still being kept from the public as of November 2006.⁹³² According to Wheresthepaper.org:

If we isolate problems experienced with voting machines, reported in a study done by a consortium of EI advocacy groups, 'such widespread election problems of so many different types that they cannot be ignored or considered anomalies, [t]he evidence . . . indicates that electronic voting in its current form is systemically flawed and will require significant corrective measures to remedy the problems that have been exposed.'
DREs far and away caused the most problems, 760, compared with 209 caused by opscans, and 57 caused by electronic ballot markers (EBMs).⁹³³

As a result of this outrage, Florida's governor decided to replace all DREs with optical scanners by the time of the next major election, 2008. Miami-Dade County alone would dispose of \$250 million worth of DREs, replacing them with optical scanners, and still come

out ahead by \$13 million after five years, according to Fred Thiele Jr., a ranking member of the Election Law Committee in the New York State Assembly.⁹³⁴

But back to Florida, in domains other than its decision to discard its DREs, problems persisted, labeled by the *New York Times* “synonymous with badly run and undemocratic elections” since 2000. . . . with state election officials and legislators toiling diligently to keep eligible (read: “poor minority”) voters from exercising their right to vote.⁹³⁵ Anticipating more havoc within the Sunshine State in Election 2008, the NAACP joined with the Haitian-American Grassroots Coalition, along with other groups, to file a federal lawsuit to overturn a voter registration law (grimly reminiscent of the voter purge of at least 91,000 leading up to Election 2000⁹³⁶) that prevented voters from voting if their legal identification did not word-for-word match the form of their names written on the registration form.

An Associated Press story published in the *New York Times* reported that similar laws in other states had also caused havoc at the polls in 2006 and earlier, notoriously in Ohio: “Legitimate voters have been thwarted for having a maiden name on a driver’s license instead of a married name, or because of database input errors that make one digit wrong in a birth date. . . .”⁹³⁷

Back to 2006, in anticipation of the November elections, in May the League of Women Voters (LWV) of Florida filed the lawsuit *League of Women Voters v Cobb*, which demanded that another new state law be overturned—one with a “punishing and complicated tier of deadlines and fines—after this organization and so many other volunteer groups all over the country had successfully labored to add thousands of new (especially indigent minority) voters to the rolls.⁹³⁸

On August 28, 2006, the judge ruled in favor of LWV and the other groups that had joined the suit, finding legislation that fined organizations for every “flawed” registration—up to \$5,000 per name—unconstitutional.⁹³⁹ A preliminary injunction reassured the groups sufficiently to resume their efforts—it was the first time in sixty-seven years that LWV’s registration drives had been halted. So were those of SEIU and AFL-CIO. The state of Florida vowed to continue its efforts to save the “chilling” legislation, first passed at the beginning of the year, from ultimate defeat. A stay of the injunction was quickly requested but it was not until 2007 that the state passed a new law that was almost as repressive as its predecessor.⁹⁴⁰

Despite all of these brick walls⁹⁴¹ and countless more desperately

erected by their opponents, Democrats won both houses in 2006—a certain mandate for change in many arenas the Democrats have yet to live up to, but if faulty machines awarded the trophy to them, a landslide was probably camouflaged.⁹⁴² According to the Election Defense Alliance,

Based on the official margins of House races, the authors . . . concluded that, accurately tabulated, E[lection] 2006 would have been an epic landslide, netting the Democrats a very substantial number of additional seats in Congress.⁹⁴³

Democrats held the Senate by a plurality of one, and not enough to vote in representation in Congress for the District of Columbia, though the House of Representatives did—but 233 Democratic representatives then dominated the House (total membership 435) by about 54 percent. The one representative that would represent the district would inevitably be a Democrat, given the population that is 58 percent black [down to 50 percent in 2011 due to gentrification—au].

Bob Fittrakis and Harvey Wasserman assign the credit for this victory to the “thousands of volunteer grassroots activists who left no stone unturned to expose rigged voting machines, Jim Crow registration roadblocks, trashed provisional ballots, manipulated absentee voting processes, and much more.”⁹⁴⁴ After six close studies of Elections 2000, 2002, and 2004 had been publicized, 90 percent of the public were concerned about the reliability of its voting system, undoubtedly due also to conscientious grassroots efforts and outreach.⁹⁴⁵ “There is no way the 2006 election would not have been stolen without a concerted 50-state effort to guarantee otherwise,” the Ohio attorneys wrote.⁹⁴⁶ Even then, with all the vigilance, the attorneys wrote that the Republicans stole more than 6 percent of Ohio’s votes but still lost the election.⁹⁴⁷ Nationwide, fewer than one percent of voters had used hand-counted paper ballots. Eighty percent voted electronically, on DREs with or without VVPAT or optical scanners.⁹⁴⁸ One percent voted on provisional ballots.⁹⁴⁹

Ellen Theisen, founder of VotersUnite.org, put it this way: “What if voting machines failed at thousands of polling places in over half the states, and the problems caused such severe delays in eight states that voting hours were extended? Is that ‘just a few glitches’?”⁹⁵⁰

According to the meticulous reports compiled by the consortium of Election Integrity websites, led by Theisen (see note 941):

Voters in some jurisdictions waited in line for hours to cast their ballots. Others cast their ballots accidentally before they were done because they pressed the wrong button or left without casting their ballots because they didn't press the right button. Many voters watched the machine highlight a candidate they didn't select or fail to indicate a vote for a candidate they did select and were then blamed for not being able to use a computer correctly. [Manifold other machine malfunctions occurred, which occupy the rest of the lengthy report.]

Many polling places couldn't open on time because of machine failures, and complex procedures often left pollworkers frustrated and reluctant to serve again. Election directors were often forced to rely on voting equipment vendors to set up the election, administer it, and tally the votes because it was too complicated for their personnel to handle. Others blamed themselves for not following the poorly documented, non-intuitive procedures required to collect and tally the votes.

After the polls closed, pollworkers and election officials struggled with a myriad of reporting problems. Many couldn't retrieve data from memory cards or couldn't get the tally software to combine totals from different computerized systems, while others couldn't figure out why the software was subtracting votes instead of adding them, or adding them two and three times instead of only once; couldn't determine for sure whether the first set of results was correct, or the second set, or the third; couldn't explain why one out of every six voters didn't have an electronic vote recorded for a hotly contested race; or why the machines recorded more ballots than the number of voters who signed in to vote.⁹⁵¹

Even more categories are enumerated in the report—for example, inadequate facilities and dysfunctional machinery hampered poll workers as well. One of the most telling foci is the “human error” factor, which is taken care of when the vendor controls the entire election, as happens in New England with Diebold's agent LHS in control, which sacrifices transparency and risks fraud. Should such complex machinery be used if election officials and poll workers

understand so little about it? And must resort to measures like handing out provisional ballots in the event of machine breakdowns? Where this category of ballot is meant to be used by voters whose names, for reasons fair or foul, fail to appear on registration lists or fail to produce required identification?⁹⁵² As mentioned elsewhere, in general these ballots are counted at the whim of whoever is in charge, not taken seriously, disposed of one way or another or magically reappearing in the event of a tie or extremely close race. Another source, a recent [2007] government report, revealed that between two-thirds and one-half of the ballots mailed to overseas voters [military, expatriates, and others] were not returned in time to be counted for the 2006 election . . . due to inconsistent processes and requirements of Americans overseas”⁹⁵³—“red tape, complex regulations and outdated ballot delivery methods routinely disenfranchise[d] tens of thousands of service members deployed overseas [and undoubtedly others].”⁹⁵⁴ As one result, fewer than 48 percent of overseas military voters’ ballots in the 2006 midterm elections were counted.⁹⁵⁵

We were so used to pre-election polls being contradicted by reported results; exit poll results inconsistent with electronic machine tallies—or withheld from the public or fixed to match electronic totals—outrageous tampering with voting machines and such other aspects of the voting experience for the Democratic minorities as [listed by ACLU] “photo I.D. requirements; proof of citizenship requirements for registration; reduction of the number of days for early voting; restrictions on third-party voter registration activities; limited opportunity to make an address change at the polls on election day; systematic purges of registered voters; challenges to student voters as non-residents; unfounded allegations of voter fraud; and moving or closing precincts in minority communities.”⁹⁵⁶

Another report by VotersUnite hits the ball squarely into the court of the Election Assistance Commission’s [EAC’s] failure to live up to the mandate for its establishment in HAVA:

The U.S. Election Assistance Commission—an independent bipartisan agency—is charged with disbursing payments to states for replacement of voting systems and election administration improvements, adopting voluntary voting system guidelines, and serving as a national clearinghouse and resource of information regarding election administration.⁹⁵⁷

Granted, it had been established at the end of 2002 and was not up and running, through no fault of its own, until January 2004 (see Chapter 4). But after that, exigent shortcomings were first noticed and remedial suggestions made by GAO in 2005; in the follow-up GAO report in 2007, according to the VotersUnite report, less than one of the suggestions had been implemented. The report recommended that the present [2007] team of four EAC commissioners be retired and replaced.

In Colorado, since 2005, the entire state had been required to use machinery that included VVPAT. Many of the state's voters used electronic machinery for the first time in 2006, with mixed results.⁹⁵⁸

The new Republican secretary of state, Mike Coffman, elected in November 2006, immediately got to work putting together new testing procedures, known as *Rule 45*, which included 437 functional tests. This hasty process, spurred in response to a court order, *Conroy v Dennis*, included forty-six pages of requirements for certification, with detailed security standards. The recertification process produced two thousand-page reports for each system.⁹⁵⁹

As a result of *Rule 45*, Coffman had all the machines tested and then announced that he and his team were “decertifying all voting machines and peripherals from ES&S as well as the Sequoia Edge II and Edge II Plus, and optical scan systems provided by Hart Intercivic.”⁹⁶⁰ A furor arose over the decertification of both DRE and optical scanning systems. Two of the most compelling questions asked by the grassroots group Colorado Voters were “What are the implications for other states that are using this equipment?” and “What does this decertification mean for the results of past elections that used this unreliable and insecure equipment?”⁹⁶¹ In the “Security Testing Review: Colorado Evoting Systems,” done by Mike Weber of Colorado’s Office of Cyber Security, “political activists” are classified as “adversaries” under the “human” category of Threat Agents:

This group is composed of organizations that are opposed to electronic voting in general or are specifically targeting an elected official to either discredit them or to have them removed from office. This group is external to the voting process and their actions are deemed to be external and organizational. An example might include calling for a recount or audit or filing

some sort of litigation regarding the integrity of the voting system.⁹⁶²

Coffman appealed to voters to switch to paper ballot counts exclusively, supported soon after by Governor Bill Ritter Jr.⁹⁶³ The now-decertified machines had been used in some of Colorado's largest districts, including Denver. Coffman's decision (as of January 4, 2008) was to require statewide mail-in voting.⁹⁶⁴ But the ultimate form of voting used that November was up to the citizens, with mail-in ballots one option. Governor Ritter said, on January 24, 2008, that emergency legislation would also provide the option of electronic voting and that machinery would be "up and running" by November.⁹⁶⁵ Election officials refused to switch uniformly to hand-counted paper ballots, because they said they were not given enough time; "a system for expedited retesting and conditional recertification of the voting and vote-counting machinery" was quickly assembled—including Premier's voting and counting equipment as well as Hart DREs and Sequoia optical scanners⁹⁶⁶—and in this process Coffman abandoned his allegiance to all-paper voting, which was opposed by the legislature. The process was riddled with controversy, but ultimately, it was said, localities had trumped the state.⁹⁶⁷ The state ended up voting on "pretty much all of the machinery" on Election Day 2008.⁹⁶⁸

In California Debra Bowen, a former Democratic state senator narrowly elected to the position of secretary of state in November 2006, witnessed soon after proof of the dysfunctionality of the touchscreens widespread in her state. In quick response, she commissioned her August 2007 "Top-to-Bottom Review" (TTBR) (addressed to the EAC) of all the voting machinery used in her state and took action to make sure votes would be counted correctly in the future. Bowen, who had campaigned for tougher standards for electronic voting machines, decertified ("unplugged") all electronic machines used in California as one of her first steps in cleaning up the voting process⁹⁶⁹ once her review was completed. Among its findings was that:

[Researchers were] surprised by how easy it was not only to pick the physical locks on the machines, but also to break through the software defenses meant to block intruders [and] . . . that all the machines had problems and that one of the biggest was that the

manufacturers appeared to have added the security measures after the basic systems had been designed. . . . [T]he best way to create strong defenses is “to build security in from the design, in Phase 1.” Recertification was granted once the machinery was sufficiently improved to comply with all of the requirements and corrections determined by the appointed teams.⁹⁷⁰

Manufacturers’ initial response to the findings, which they said would be followed with more, was that “the tests had not been conducted in a realistic environment and that no machine was known to have been hacked in an election,”⁹⁷¹ so that the circumstances were “not a security risk evaluation but an unrealistic worst case scenario.”⁹⁷² In an article, Brad Friedman noted that “this was a ‘Top-to-Bottom Review’ of *previously certified voting systems* in CA. Your ‘enhanced security features’ were not a part of that . . . system.”⁹⁷³

New conditions were imposed by California’s SoS, whose most important criteria were specified as *transparency* and *auditability*. She said that she was surprised at the low level of confidence Californians had in their voting systems: according to a Field Poll of 402 voters, “less than half (44%) of the likely voters surveyed have a ‘great deal of confidence that their votes are being accurately counted.’ Another 52% of the likely voters surveyed have only ‘some confidence’ or ‘only a little confidence’ that their votes are being accurately counted.”⁹⁷⁴

Researchers for Bowen’s TTBR, which took two months to complete, all hailed from campuses of the University of California. Three different teams were appointed to study the systems’ documents and source codes and to perform penetration attacks. A separate team assessed the systems’ accessibility. The first discovery, in July, was that all systems in the state were vulnerable to easy hacking. More problems would have been discovered were more time allotted, the study said.⁹⁷⁵

Allowing only one DRE system in the state, eSlate, to remain the primary voting machinery in the state, Bowen otherwise allowed only one DRE per precinct, limited to voters with special needs. All votes cast on these machines were to be hand-recounted after the election.⁹⁷⁶ DREs were also allowed in Early Voting, though 100 percent of their “Voter Verified Physical Audit Trails” (VVPAT) had to be manually counted.⁹⁷⁷

Summarizing their findings in an important article, Matt Bishop and David Wagner wrote:

The results showed that the systems appeared not to be designed or implemented with security in mind. The design and implementation ignored basic security principles, and we found serious security vulnerabilities in all three vendors' systems. The security flaws were systemic and surprisingly similar across the three systems. [recall that ES&S machinery was not tested until later.]⁹⁷⁸

As mentioned above, all three system brands tested—Diebold/Premier, Sequoia, and Hart InterCivic—proved to be hackable in any number of ways. However, another landmark was also reached: The latest in a two-year sequence of computer hacks⁹⁷⁹ that embarrassed vendors overwhelmingly but somehow did not persuade citizens to dump electronic voting entirely, was the invasion of a Sequoia Edge. This had been accomplished by the TTBR team but not released on video until September 2008. In this case, University of California experts had “developed a virus-like software that can spread across the voting system, modifying the firmware of the voting machines. . . . The modified firmware is able to steal votes even in the presence of a Voter-Verified Paper Audit Trail (VVPAT) without a trace.” Called “chilling,” the hack was done during pre-election programming of the systems in an entire county, in approximately three seconds, by a single person with simple insider access and a \$10 USB thumb drive.⁹⁸⁰ Even after the pre-programming was done, when plastic seals were applied to prevent tampering, the experts were able to hack into the machinery without a trace. According to the narrative that accompanies the video demonstrations, “A number of recent studies have shown that most (if not all) of the electronic voting systems being used today are fatally flawed, and that their quality does not match the importance of the task that they are supposed to carry out.”

Inevitably, Bowen was criticized by election integrity activists for allowing any continued use of DREs and not requiring universal use of hand-counted paper ballots, minus any electronic machinery.⁹⁸¹ However, Kentucky’s attorney general demanded that the same security features in the ES&S machines in his state be updated and improved. The secretary of state disagreed.⁹⁸² In the footsteps of this

strong reaction in Kentucky, Bowen's banning of most of her state's touchscreen voting machines could become more contagious, spreading throughout the country, some election experts opined. [This was already in progress; see preceding chapters!]⁹⁸³ Washington, DC, was one of these, and EI activist Nancy Tobi wrote an article championing a review of New Hampshire's Diebold opscans.⁹⁸⁴ In Alaska the attorney general requested a review of voting machines in that state.⁹⁸⁵ According to Bill Ainsworth:

California isn't the first state to severely restrict electronic voting machines, but the extensive tests done by the University of California provide a higher level of scrutiny of machines used throughout the nation. The tests showed the machines could be breached by hackers.

It's easily the most aggressive, public and wide-ranging example of a buyer telling a vendor, "We need to have voting equipment that works," said Doug Chapin, director of Electionline.org, which monitors election reform measures.⁹⁸⁶

Bowen's directives were also saluted by Stanford Professor David Dill of VerifiedVoting.org and Dan Ashby of the Election Defense Alliance. Alan Breslauer, guest blogging for The Bradblog.com, added a telling contribution: "[V]oting machines have led to a vast public distrust of elections. According to Bowen, the lack of trust in voting machines has caused people to 'check out and not participate' and is thus, 'a major threat to democracy.'"⁹⁸⁷

Three of the election machinery vendors spoke up in self-defense (ES&S did not submit the needed information in time to undergo the testing).⁹⁸⁸ The following are excerpts, not full statements or full testimony. All of course stated that they would follow up on the suggestions published:

Diebold: "One hundred and twenty six thousand DESI touch screen voting solutions were used successfully across the country in November 2006. DESI's [Diebold Election Systems Inc.] touch screen voting solutions have been proven 100 percent accurate in tests conducted on Election Day in California and across the country."⁹⁸⁹

Hart InterCivic: "We have found several inconsistencies, alternate conclusions, omissions and errors in the report. It is

critical that these items be addressed before any action is taken based on the report. It was disappointing, and a disservice to the public, that none of the well-designed security aspects of the Hart Voting System were acknowledged in the report.”⁹⁹⁰

Sequoia: “[This evaluation] did not represent a security risk analysis and as such does not measure the severity of the actual threats in any meaningful way. The evaluation was limited to malicious tests, studies and analysis performed in a laboratory environment by computer security experts with unfettered access to the machines and software over several weeks. None of the traditional, statutory, or recommended security procedures were in place. This situation is unrealistic.”⁹⁹¹

Senator Dianne Feinstein (D-CA) expressed surprise at the findings, even though she was head of the Senate Rules and Administration Committee and had sponsored legislation corresponding to Representative Rush Holt’s *Voter Confidence and Increased Accessibility Act of 2007* in the House.⁹⁹²

Bowen then turned to the truant, ES&S, and sued the company for breaking California law, which required that all voting machinery used in her state be first tested by her office. ES&S distributed updated AutoMARK devices to five counties, who paid millions for them, not realizing that the machines were uncertified. Bowen sued for damages as well as the cost of the machinery, at least \$15 million. The vendor protested that the changes between the two models in question were minor. The testing had lasted four months and no doubt cost the counties another fortune.⁹⁹³

Two years after the Hursti hack, another new secretary of state also saw that this disgrace required immediate attention. At the time, 2007, fifty-two of Florida’s sixty-seven counties used optical scanners. The others used paperless touchscreen voting machines.⁹⁹⁴ Touchscreen machines were being scrapped because of a newly signed state law that required a verifiable paper trail for all voting machines. Secretary of State Kurt Browning ordered a study, which was conducted by Florida State University. The results confirmed those revealed by Harri Hursti in Leon County:

Insider computer hackers can change votes without a trace on Diebold optical-scan machines, [and] ...despite recent software fixes, an “adversary” could use a pre-programmed computer

card to swap one candidate's votes for another or create a "ballot-stuffing attack" that multiplies votes for a candidate or issue.⁹⁹⁵

Diebold's reaction was reassurance that the minor "glitch" would be attended to by the deadline imposed, August 17.⁹⁹⁶ But the source of Browning's decisive actions, Ion Sancho, said that Christine Jennings's experience highlighted another, even more telling issue: "Their [the municipality's] software is run and owned by private companies."⁹⁹⁷ The targeted date for completing the entire certification process, theoretically with a passing grade, was to be in time for the primaries to be held in 2008.

The newly elected (November 2006) secretary of state in Ohio, Jennifer Brunner, was the first Democrat to occupy that office in the Buckeye State in sixteen years. After "two troubled elections and several voting system risk assessment reports [after 2000],"⁹⁹⁸ she suggested offering voters the option of either paper ballots or electronic voting. She decertified DREs in her state, with some few exceptions,⁹⁹⁹ and in December 2007 released the \$1.9 million report *Project EVEREST* (Evaluation and Validation of Election-Related Equipment, Standards and Testing), which proved that numerous "critical security failures" were disabling the integrity of the electronic portion of the electoral process in her state—in both DREs and optical scanners. Brunner's specific references were machinery produced by ES&S, Hart InterCivic, and Diebold/Premier (formerly Diebold) and her security experts included Battelle Memorial Institute, an international science and technology think tank. "Misapplication" of security technology was also cited as a major problem, along with severe flaws in auditing capabilities and software maintenance. Another crucial finding was the possibility of subversion of all three systems studied "in ways that would often lead to undetectable manipulation of election results." What familiar findings again confirmed! The report concluded by enumerating critical changes necessary [including ditching all DREs and offering the option of paper ballots at every polling place] to move forward with an effective mechanism that would truly reflect and accurately report the will of the people in Ohio.

This marked the first acknowledgment by a secretary of state that the results of Election 2004 in Ohio were disgracefully inaccurate, down to the ludicrous statement that "the tools needed to compromise

an accurate vote count could be as simple as tampering with the paper audit trail connector or using a magnet and a personal digital assistant [or driving by with a Wi-Fi].”

Harvey Wasserman summed up the findings in an interview with Amy Goodman in December 2007: “[The study found that] every single method of voting, pretty much, except for . . . marking paper ballots, was corrupted in the 2004 election.”¹⁰⁰⁰

Fittrakis and Wasserman called these findings “stunning.”¹⁰⁰¹

Unfortunately, teams who carried out the study, from the University of Pennsylvania, Pennsylvania State University, and WebWise Security, Inc., concluded that they didn’t have the answers to all the problems they discovered; rather, “such flaws mandate fundamental and broad reengineering” before voters can be assured that their elections are “trustworthy.”¹⁰⁰² Don’t underestimate the technical know-how of those hacking into the machines, the report warned, nor assume that those who conducted the studies were more knowledgeable than the hackers in any way. Many were the ingenious methods used, but the same end was always achieved—election corruption.¹⁰⁰³

Up against a Republican-dominated legislature and state supreme court, Brunner also had the courage to remove from office—with disciplinary actions or imprisonment—many of the corrupt political officials aided and abetted under Kenneth Blackwell’s tenure as secretary of state. As soon as she took office, Brunner “fired the entire Cuyahoga County (Cleveland) Election Board, headed by state GOP Boss Bob Bennett and, in March of 2007, two Cuyahoga Election Officials were sentenced to 18 months in prison for having rigged the 2004 Presidential recount in the county.”¹⁰⁰⁴

And the list goes on. Matt Damschroder, the head of the Franklin County board of elections was docked for thirty days for having accepted a \$10,000 donation from Diebold and passing it on to the Republican Party (as of 2012, Damschroder is the director of elections in Ohio). His deputy pled guilty “to personally profiting from a contract for county voting machine equipment” and then resigned; he was sentenced to 180 days in jail, but received a suspended sentence.

Lawrence D. Norden of the Brennan Center for Justice advised caution in many of the decisions outlined in EVEREST and emphasized that consultation with experts was mandatory, to avoid “chaos and disenfranchisement” in the upcoming presidential

election. Specifically, he recommended “1) adequate study, 2) input from experts, 3) meaningful public education campaigns, and 4) the development of entirely new election procedures.”¹⁰⁰⁵ “None [of Brunner’s recommendations] should be implemented unless they are first pilot-tested to be sure that they do not inadvertently create new problems,” Norden continued.¹⁰⁰⁶

As to Brunner’s recommendation that precinct-based vote counting be replaced by counting in central locations, where more than five polling centers were involved, Norden pointed out that precinct-based DREs and optical scanners rescue voters from overvoting, having added, for example, one million more votes to Ohio’s total than central counting would have accomplished and benefiting in particular those most likely to overvote, the poor and elderly populations.¹⁰⁰⁷ To put this in a more general context, Dan Tokaji, also writing about EVEREST, said that “the transition to newer technology, along with better procedures, is estimated to have saved one million votes in the 2004 election.”¹⁰⁰⁸ Moreover, it is much easier to attack large-scale vote-counting centers; that is, totals are massively larger and much easier to manipulate in that scenario.¹⁰⁰⁹

Brunner’s recommendations of mail-in ballots in an upcoming special election and the option of paper ballots without optical scanning at polling places that use DREs¹⁰¹⁰ were also criticized by Norden as disadvantaging already-disadvantaged populations, as above. In the first case, there was not adequate time to prepare at any level of the election process and, in the other, there was always the risk of paper ballots being mistaken for provisional ballots with the attendant abuses heaped on that category.¹⁰¹¹

Norden cautioned that the EVEREST recommendations be treated as just that and not as mandates. He ended his brief review with four “alternate” bullet points: first, taking care that voters be reminded to verify their votes before finalizing them; second, providing paper ballots in the event of electronic breakdowns; third, “[c]onduct[ing] pilot post-election audits of the voter-verified paper trail”—Norden wrote that Brunner did not take auditing into consideration where it was needed—and finally, conducting parallel testing of DREs; that is, having election officials test-vote on DREs while voters are also voting, to be sure that they don’t come upon any glitches, large or small, that require immediate attention.¹⁰¹²

“In the end,” wrote Ohio attorney Dan Tokaji,

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[T]he success of Ohio's 2008 election is likely to hinge more on procedures and people than on technology. In the few months that remain between now and the election, Ohio and other states would do better to focus on those issues than to attempt a hasty overhaul of its voting technology.¹⁰¹³

In 2008, though Brunner received a great deal of criticism for a process that she consciously modeled after Bowen's work, both Brunner and Bowen received the prestigious John F. Kennedy Profile in Courage award.

Chapter 8

Victory of the People's Choice

The excruciating and nonstop ladder of efforts that finally delivered the people's choice to victory and the heroes who brought this about

Ballots are discarded, poll workers are poorly trained, registration lists work badly, lines can be too long, machines malfunction, partisan officials change the rules of the game to help themselves and hurt their enemies, election administrators cannot agree on what constitutes a best practice or even whether there is any such thing. Efforts to remedy these flaws have had some successes over the last 8 years, but I think it's fair to say that every one of the problems that emerged out of the 2000 election is still very much with us and in most cases frustrated by intense partisanship.—Heather Gerken

A large, passionate citizens [sic] movement is growing around the issue of fair elections—thank God. We also need to turn our attention toward relevant elections.—Robert Koehler

There are five ways to hack the paper ballot system versus 120 ways to hack e-voting systems.—Tom Courbat

The registration laws in force throughout the United States are among the world's most demanding . . . [and are] one reason why voter turnout in the United States is near the bottom of the developed world.—Jimmy Carter and Gerald Ford

It is possible to change one hundred thousand votes in a milli-second without a trace. —Tom Courbat

Imagine what it would be like to have those people governing us whom we the people actually voted for. I M A G I N E.—Marta Steele

We have a very, very big challenge in 2008. We're in a crisis. We must educate the public.—Rosabeth M. Kanter

The way to be sure that your vote goes uncounted is not to vote.—Rebecca Wilson

[T]he battle has been fought and won by activists.—L.A. Times

MARTA STEELE

Some counties [in the U.S.] have had four different electoral systems in the last ten years.—Alysoun McLaughlin

...[T]hese stolen elections mean nothing less than the death of what's left of American democracy, and the permanent enthronement of the Rovian GOP. . . And until the left faces the rot that defines the Democratic Party, there is no hope for a fair election in this country.—Bob Fittrakis and Harvey Wasserman

[T]he integrity of voting systems—which are but one variable in the successful election process equation—depends on effective system life cycle management, which includes systems definition, development, acquisition, operations, testing, and management. It also depends on measuring actual voting system performance in terms of security, reliability, ease of use, and cost effectiveness, so that any needed corrective actions can be taken. Unless voting systems are properly managed throughout their life cycle, this one facet of the election process can significantly undermine the integrity of the whole.—Randolph C. Hite

[N]o voting technology, however well designed, can be a magic bullet that will solve all election problems.— Randolph C. Hite

Of course, there is no evidence that any vote has ever been fraudulently cast in any election in any state at any time via an improper registration by an ACORN worker.—Brad Friedman

Premier inherits a very strong reputation for service that is unmatched in the election system industry.—PremierElections.com

To ensure democracy, the people must take responsibility for the one institution that renders all other institutions subservient, our elections.—WheresthePaper.org

To date, the Kansas GOP has identified and caged more voters in the last 11 months than the previous two years!— Kris Kobach

What . . . has rarely been mentioned throughout this presidential election season [2008], is the issue of election integrity.—Cynthia McKinney

But voting rolls, which are maintained by local election officials, are one of the weakest links in American democracy and problems are growing.—New York Times

[T]he front-end voter suppression issues and the back-end voting machine failures are two sides of the same coin.—Anonymous

In response to the horrendous and huge bundle of corrupt and corrupting practices in Ohio and elsewhere in Election 2004,¹⁰¹⁴ and in Election 2006 (many opine that they camouflaged a huge landslide), all over the country the majority of election integrity (EI) grassroots responses sprang up in outspoken opposition to this would-be replay of Florida 2000.

Nominally bipartisan, the EI community was largely Democratic, though there were outstanding exceptions. See Chapter 2B for the most recent rebirth of this amazing saga. It is ongoing to this day [2012], though I cover the years 2000–2008.

Using the Web as their principal mouthpiece, the grassroots groups listed abuses at the human and machine level and rallied against them in public places, in newspapers, on radio and television where possible (remember: the mainstream media, in the initial years, ignored the events as much as possible and actually still do). Activists sued, wrote to, and visited political officials at every level; and worked hard to educate the vast majority of the public who didn't know what was going on. They spoke at town meetings and distributed printed literature that was clear and accessible to a public so caught up with subsistence as the economy nationwide deteriorated largely due to neoconservative and Wall Street economic agendas too blatant not to blame. They organized events around experts in the field often accompanied by supportive public officials (where they were to be found).

And the experts demonstrated time and again how easy it was to corrupt and manipulate DREs. In September 2006, as mentioned above, Professor Ed Felten of Princeton University repeatedly showed the public how a Diebold AccuVote-TS voting machine black box could be virused in ten seconds by even a rooky programmer.¹⁰¹⁵ It was just a matter of opening the black box, accessible with a standard (not even customized) bar key, and switching chips. Not to oversimplify, but if you knew anything about computers, you could

manipulate elections, especially in concert with the manufacturers. In February 2007, Princeton's Professor Andrew Appel proved that the Sequoia counterpart could be hacked into in a matter of seconds.¹⁰¹⁶

On the basis of Appel's findings, a coalition of EI advocacy groups represented by New Jersey attorney Penny Venetis requested that the Sequoia machinery used in eighteen of the Garden State's twenty-one counties be decommissioned. The groups claimed that the machinery would never have passed any certification tests—it would have quickly revealed itself as a “hacker's dream.”¹⁰¹⁷

Venetis further asserted that “There is zero documentation—no proof whatsoever—that any state official has ever reviewed Sequoia machines.”¹⁰¹⁸ And the manufacturers routinely resisted attempts by academics to obtain their machinery, which always seemed to flunk their expert explorations. Sequoia threatened to sue to prevent the Princeton academics from analyzing any more of its machinery.¹⁰¹⁹ The Garden State had been in the midst of plans to retrofit its ten thousand benighted Sequoias with VVPAT printers¹⁰²⁰; if Appel's findings appeared to throw a monkey wrench into this process, attorney Penny Venetis was glad the printers would not be purchased, since their functionality had been found faulty and their price would have been \$40 million. In 2009, however, in nineteen out of the Garden State's twenty-one counties, the Sequoias were retrofitted successfully with cash-register-sized printers, but these peripherals were never purchased.

According to a February 27, 2009, news release from Sequoia published at Blackboxvoting.org:

Sequoia's VVPAT retrofit unit and accompanying software for the Advantage [*sic*] was certified for use in the state by the New Jersey Secretary of State's office earlier this year after a lengthy and rigorous state testing program administered over several months in 2008 by the New Jersey Institute of Technology (NJIT).¹⁰²¹

At least sixty Sequoia machines failed in six counties during the 2008 New Jersey primaries—the internal and external (end-of-the-day paper tape) tallies did not match.

Little progress has been made some three years later [2012], as litigation continues and most of cash-strapped New Jersey continues

to vote on Sequoia DREs, with EI advocates' eyes now on acquiring optical scanners or hand-counted paper ballots.¹⁰²²

At the conclusion of a highly supervised and limited month-long study of the Sequoia machines—allowed by the court (after months of litigation)—with Harri Hursti one of the pro bono experts retained, Appel wrote: “Our study of the AVC Advantage is legally significant because it is the first court-ordered study of voting-machine hardware and source code by plaintiffs’ experts. It established a legal precedent for other similar cases ongoing in other states (e.g., Pennsylvania).”¹⁰²³

DREs designated for use in 2008 elections by fully one-third of the population had received certification in 2002, before the Election Assistance Commission (EAC) took over this function in 2004 and issued new (2005) guidelines. The 2007 guidelines would be released too late to have any effect at all on the 2008 elections. The EAC, the federal agency set up by HAVA but late to set up shop, designated four private-sector firms to certify machines (one of which was temporarily disqualified), according to this process:

They subject them [the machines] to environmental pressures like heat and vibration to ensure they won’t break down on Election Day; and they run mock elections, to verify that the machines can count correctly. In almost all cases, if a vendor updates the software or hardware, it must be tested all over again, which can take months. “It’s an extremely rigorous process,” says Ken Fields, a spokesman for the voting-machine company ES&S. . . . [Y]ou might wonder why machines with so many flaws and bugs have gotten through. It is, critics insist, because the testing is nowhere near dilligent [*sic*] enough, and the federal regulators are too sympathetic and cozy with the vendors. The 2002 federal guidelines . . . were vague about how much security testing the labs ought to do. The labs were also not required to test any machine’s underlying operating system, like Windows, for weaknesses.¹⁰²⁴

On January 4, 2007, the *New York Times* reported that Ciber, the largest independent testing authority (ITA), had been temporarily decommissioned “after federal officials [EAC] found that it was not following its quality-control procedures and could not document that it was conducting all the required tests.”¹⁰²⁵ The ITA’s CEO blamed

this on “lax oversight” by the federal government.¹⁰²⁶ Ciber had tested 70 percent of the machines being used in this country.¹⁰²⁷ Repetition of this process would be costly and time-consuming.

The *Times*'s front-page blockbuster quoted Avi Rubin of Johns Hopkins as disgusted and disillusioned: “What’s scary is that we’ve been using systems in elections that Ciber had certified, and this calls into question those systems that they tested.”¹⁰²⁸

“The machine manufacturers have always paid for the tests that assess how well they work, and little has been disclosed about any flaws that were discovered,” continued the *Times*. “We have been told by vendors that ITAs have certified their machines, but that information has been kept as proprietary as source codes.”¹⁰²⁹

EAC’s 2005 Voluntary Voting System Guidelines (VVSG) made it possible to access the results of ITA certification testing, which was not possible under NASED. SysTest’s recommendation for certification of a Diebold/Premier system that had violated seventy-nine regulations was mind-boggling for John Washburn, who is highly critical of both sets of standards. SysTest or any NIST-accredited ITA could justify its recommendation on the basis of a loophole in the 2002 Voting System Standards (VSS) and the VVSG, the first line of which reads, “Of note, any uncorrected deficiency that does not involve the loss or corruption of voting data shall not necessarily be cause for rejection.”¹⁰³⁰ On this basis, just about any system can be certified. Washburn calls the guidelines “weak.” In the case of the Diebold/Premier Assure 1.2 voting system, despite the final two enforceable violations, certification—mistakenly—was still recommended. Among the seventy-nine violations, SysTest even found that eighteen of the seventy-nine regulations also violated federal law, but the VVSG took precedence even then.

Washburn agonized about all the systems that got under the wire before the National Association of State Election Directors (NASED) was replaced by the EAC. “[I]t should come as no surprise to anyone that we read about failure after failure, in election after election, by voting systems “certified” by the NASED Voting Systems Board,” he wrote.¹⁰³¹

[P]aragraph B.5 [which contains the loophole] provides no meaningful guidelines on when to enforce and when not to enforce a system requirement found in the standard. It is possible

the same problem may be found in two different systems and one system is certified and the other is not.¹⁰³²

Two and one-half months before Election Day 2008, EAC had been unable to certify any of the new machinery it was testing because of one defect after another. One of the commissioners, Gracia Hillman, suggested emergency certification of modifications and waving EAC certification altogether. The GEMS tabulating software was defective and had been for years, the vendor admitted—“no software is defect-free,” wrote Ellen Theisen, who suggested that tabulating be done on spreadsheets, the old-fashioned way. As far as waving EAC certification, Theisen strongly advised against this dangerous slippery slope, as if the machinery weren’t defective enough already.¹⁰³³

New York state, the last state to decommission its (pre-HAVA, used since 1890) lever machines after opposition from prominent EI advocates, enacted some of the most stringent standards in the country for certifying the optical scanners it had planned as replacements¹⁰³⁴ and had narrowed potential vendors down to two manufacturers, ES&S and Sequoia.¹⁰³⁵ Federal guidelines established by EAC had been voluntary. Most of the states had voted to make them mandatory, though “many do NOT require that voting systems be federally certified.”¹⁰³⁶ In 2008, a lawsuit was in progress, filed by the DoJ against New York state for not yet having exchanged its lever machines for electronic ones.

Continued the *Times* report:

Michael I. Shamos, a computer scientist who examines voting machines for Pennsylvania, said about half had significant defects that the laboratories should have caught.

Besides certifying the laboratories, the Election Assistance Commission will have three staff members and eight part-time technicians to approve test plans for each system and check the results. The manufacturers will be required to report mechanical breakdowns and botched tallies, and Mr. DeGregorio [then chair of the EAC] said those reports would be on the agency’s Web site.¹⁰³⁷

What had seemed to be a meticulous and fail-safe process just had not translated into functionality. Disillusioned municipalities threw out

the useless DREs by the thousands. Five states changed their systems for the second time since 2000.¹⁰³⁸

One of these, as mentioned above, was Florida. In February 2007, the state retained eight experts to study the source code of the malfunctioning DRE system in Sarasota, who isolated the bug (or “worm”—see Chapter 7, note 932) and announced that it was present in all three ES&S iVotronic electronic voting systems (software version 8) and posed a severe threat to the systems’ security.¹⁰³⁹ These systems had been tested and approved by NASED, federal predecessor to EAC, which was then in charge of election system testing countrywide. And so responsibility extended beyond Ciber, as that humiliated company had asserted. EAC nonetheless refused to publicize the results nationwide, though one of its functions was to be a clearinghouse in such situations. Nor did it move to decertify the systems, according to John Gideon’s testimony at a field congressional hearing of the House Rules and Administration Committee held in New York on May 7, 2007.¹⁰⁴⁰ Granted, EAC had just assumed NASED’s certification responsibilities in January 2007, but NASED officials had earlier stated that it would step down when it felt that EAC was in a position to take over.

The advent of this desideratum, an actual clearinghouse, occupied a new section of EAC’s homepage, <http://www.eac.gov>, on November 8, 2007, less than a year away from the crucial presidential election in 2008. Then-Chair Donetta Davidson heralded this as “an important first step in building a national clearinghouse of voting system reports that have been conducted by states and counties.” As of 2007, five reported problems were listed at the site—but the guidelines say that such filings are voluntary at the level of both states and other municipalities, and any individual or group who needs or would benefit from the information must visit the site. Noting the progress EAC has made since criticism from the GAO for lax compliance with HAVA, a spokesperson recently suggested that HAVA’s intervention capacity in systematic problems be expanded by Congress.¹⁰⁴¹

And so the blame for EAC’s slow progress toward compliance with HAVA, if “blame” is what it is to be called, accrues to both EAC and NASED. Wrote Gideon: “EAC refuses to take any responsibility for decertifying or re-evaluating equipment that was qualified by NASED, regardless of the flaws found in the system, unless the system is resubmitted for certification under the EAC’s program.”¹⁰⁴²

Because of this strong association with NASED and ITAs, I will digress for a moment to a key figure in the certification process, the executive director of the Election Center. This nonprofit, nongovernment organization, founded in 1984, with a membership of one thousand, “serves the elections and voter registration profession” by sponsoring training and certification programs for election administrators and vendors.” Two of its members sit on the EAC board of advisors, an honor no member of the EI movement has enjoyed. Members of the Election Center include “state and county election officials and ‘suppliers of election products and services.’”¹⁰⁴³ They also encompass ITAs, which have been such a bone of contention.

R. Doug Lewis, founder and organizer of NASED, has been in charge of the center since 1994. He “sees ‘no conflict of interest or breach of ethics’ in accepting donations from manufacturers at the same time that he plays a crucial role in training election workers and certifying voting equipment.” Lewis regularly promotes the interests of the electronic voting machine industry. . . . [His] “speeches and writings aim to encourage ‘faith in the process’ of American elections in a way that encourages unquestioning trust in the voting machine industry.”¹⁰⁴⁴

A conflict of interest is likely and EI activists are justifiably disturbed by the amount of power Lewis wields over the U.S. elections system, that strange conglomeration of public and private institutions whose duties overlap frequently and often awkwardly if not irresolvably. The Election Center was nonetheless unable to curb the huge nationwide defenestration of DREs in time for Election 2008, though one-third of the nation still used them. Lewis did state in 2007 that he found Representative Rush Holt’s HR 811, which required paper ballot voting throughout the country, so reprehensible that “if [it was] passed, he would recommend that state and local election officials refuse to run future federal elections,” and further, that “there is nothing in the marketplace today that will do what they want to do”—surmising that the new equipment implicit in Holt’s bill would cost \$3 billion to \$4 billion.¹⁰⁴⁵ Holt argued that HR 811 would directly impact the voting habits of only six states and partially, those of another fourteen—anywhere that DREs were used for purposes other than accommodation of handicapped voters. Other opponents objected that far too little time remained before Election 2008, to which Holt replied that far more drastic changes had been

accomplished after HAVA was passed in October 2002 (e.g., in New Mexico).¹⁰⁴⁶

I have briefly introduced this powerful organization and its director because of its strong influence over the certification process, which is still proprietary.¹⁰⁴⁷

Teresa Hommel's testimony to the field congressional committee in March 2007 in New York (see note 1064 and elsewhere) castigated the entire testing process as hopelessly ineffective because its subject is computers, and therefore the following assumptions it rests on are groundless:

If a computer works today, it will work tomorrow;
If a computer works today, it will work the same way tomorrow;
If one computer works, another computer of the same make and model will also work; and
If you buy a large number of computers, they will all work the same and none of them will be lemons.¹⁰⁴⁸

In other words, unlike lever machines, which are “stable”—Hommel had been a robust champion of keeping lever voting machines in New York State—computers are “volatile.” The federal agencies were picturing one category of system while spelling out standards for another.¹⁰⁴⁹ Add the notion of “security” to this mix? Wrote Hommel, “[T]he idea that standards and certification testing can guarantee computer security is bizarrely inaccurate, yet widely held by public officials and election administrators.”¹⁰⁵⁰

Turning to the concept of *transparency*, Hommel urged that the expression “understandable and observable” be used instead, because the citizenry, polls staff, and most election officials understand so little about the electronic systems they are supposedly running, observing, and verifying.¹⁰⁵¹ Such complex machinery can be transparent only to experts like Hommel and others who have studied and worked in computer science for years and understand every aspect of the computerized electoral system that rests so uneasily at the base of our democracy. Writes Hommel: “[C]omputers place an insurmountable barrier between observers and the handling of votes and ballots.”¹⁰⁵²

The use of computers as the basis of our electoral system seems indefensible, she continues, given that:

72% of [all categories of computer] software projects in a typical year, 2000, were complete or partial failures, including 23% that were completely abandoned after huge expenditures (and waste) of time and money. Regarding partial failures, if a computer system “partially” doesn’t work, that means it doesn’t work.¹⁰⁵³

And further, given that, “Computerized election errors and fraud cannot be prevented, detected, or corrected by standards and testing ... the use of computers in elections has shifted the focus of discourse away from votes, voters, ballots, observers, poll workers, and candidates.”¹⁰⁵⁴

Along with others, Florida and the four states that had changed computer types twice since 2000 went for optical scanners¹⁰⁵⁵: New Mexico bought them statewide after a sea of tribulations (see Chapter 6). Though, as computers, optical scanners suffer from drawbacks similar to those associated with DREs, they provided the advantage of the paper ballots that could be resorted to in case of a snafu or ambiguity. The only problem was that the paper ballots were rarely used as a backup when the computerized results occasioned doubt or uncertainty.¹⁰⁵⁶ Local election officials and volunteers either didn’t want to know the truth and opted to support the candidate who seemed to have won or whom they wanted to win, or else found the process of going through all those paper ballots too arduous, exhausted as they were by the 24/7 labor they wanted to be over with after Election Day.¹⁰⁵⁷

In other words, experts who testified at the May 7, 2007, congressional hearing agreed that the NASED certification process is meaningless and then left and went back to work. Clearly both NASED and EAC were too politicized to do more than they were doing. And yet, less than a year prior to the 2012 presidential election, EAC has finally released a report that ES&S optical scanners in several large swing states freeze during elections, fail to log system events correctly, and—worst of all—misread or even lose ballots.¹⁰⁵⁸ No machines were decertified by what Brad Friedman refers to as a “toothless and compromised” agency.¹⁰⁵⁹

HR 811, Rush Holt’s updated version of his 2006 election-related bill, HR 550, *Voter Confidence and Increased Accessibility Act*, contained

a provision to eliminate paperless voting and to fund all efforts to replace it with legal equivalents.¹⁰⁶⁰

However, the legislation was highly controversial for many reasons, splintering the movement and labeled jokingly by Mary Ann Gould as “Microsoft 811.”

According to Nancy Tobi, an outspoken opponent of the legislation, “HR 811 [was] created by computer-oriented groups and is opposed by election officials, state legislatures, voting-integrity groups, and others who should be closest to the process.”¹⁰⁶¹ Tobi summarized 811 (sixty-two pages as opposed to the six pages of the original version, HR 2239):

- 1) It codifies secret vote counting; 2) It hands control over secret vote counting to the Election Assistance Commission (EAC), which consists of four officials appointed by the chief executive; 3) It is vastly underfunded. A total of \$1 billion has been allocated, where New Hampshire alone will require \$40 million in the next twenty years, \$17 million of it in the next five; 4) The interpretation of regulations is so complex; anyone who disagrees with an outcome can sue the state. Elections will be thrown to the courts as occurred with the infamous election 2000.¹⁰⁶²

Ultimately, she continued, “the point we must make when we contact our representatives is that the key stakeholders, specified above, are shut out of the process and must be brought back into the discussion.” In her opinion, the legislation, “too controversial,” would not pass anyway.¹⁰⁶³

As for the *Voluntary Voter Systems Guidelines* (VVSG) published by EAC, Nancy Tobi, wary of the additional power that HR 811 would grant to that commission, introduced a colorful and striking simile: “It’s kind of like if a bunch of bureaucrats on the FDA sat around designing aspirin and said, this is the only FDA-approved aspirin now. What would American drug stores stock and sell? Federally-designed [*sic*]drugs.”¹⁰⁶⁴

In November 2007, the Senate Rules and Administration Committee introduced its equivalent. Sponsored by Senators Bill Nelson (D-FL) and Sheldon Whitehouse (D-RI), it was also called the Voter Confidence and Increased Accessibility Act of 2007. As described on Nelson’s webpage, the bill: “[W]ould require all voting

machines to produce a voter-verified paper trail by next year's presidential election and provides up to \$1 billion for states to use for new voting equipment. The bill would phase out the use of touch-screen voting machines in federal elections by 2012."¹⁰⁶⁵

Late in 2007, when Holt realized that his bill would not pass in time for Election 2008, he wrote new, emergency legislation, HR 5036, which "will give states with paperless machines [DREs] the option to vote on a paper ballot [optical scanners], funded by the federal government. Though provisional ballots are usually tossed out as irrelevant to the final outcome, the paper ballots will be counted."¹⁰⁶⁶ Moreover, the Emergency Assistance for Secure Elections Act of 2008, "a purposely short, concise document, calls for paper ballots in every election as well as audits (3 percent or thereabouts—'several'), to set a standard countrywide."¹⁰⁶⁷

Holt's emergency bill was submitted to the House on January 17, 2008, and vote on it occurred on April 15 as a "suspension" bill (limited debate is permitted and the bill requires a two-thirds majority to pass). Unlike previous non-emergency legislation, it was not framed as an amendment to HAVA. It did not pass.¹⁰⁶⁸

The last part of Holt's response (in boldface) has been quoted often since then:

I'd like to ask the opponents how much spending is too much to have verifiable elections in the United States," he said. "I note that many people who opposed this legislation supported spending almost \$330 million in recent years to provide election assistance in Iraq, Afghanistan, and Pakistan. **I would have hoped those who supported efforts to export democracy abroad would be equally committed to strengthening democracy here at home.**"¹⁰⁶⁹

And speaking of needed improvements to the U.S. electoral system, in January 2008, the Pew Charitable Trust—specifically its Center on the States—in concert with the JEHT ("Justice, Equality, Human Dignity and Tolerance") Foundation, a grant-making nonprofit foundation in New York, put together a grant to be distributed to chosen areas in this country. According to a Pew press release, it:

[A]ward[ed] \$2.5 million in funding to 16 projects that advance innovative solutions to critical flaws in our elections system and improve accuracy, convenience, efficiency and security for voters. An additional \$1 million in funding will be awarded over the next six months. The projects were selected from 183 proposals submitted to Pew in 2007 from state and local governments and election experts.¹⁰⁷⁰

The five categories isolated as most crucial included 1) Voter Registration System Assessment (\$669,000); 2) Vote Centers (\$568,000); 3) Audits of Elections (\$467,000); 4) Online Training for Poll Workers (\$318,000); and 5) Election Performance Assessment (\$465,000).¹⁰⁷¹

By 2008, approximately two-thirds of the country were voting on optical scanners. Thirty-eight percent still used DREs, but uneasily, aware that recounts are impossible with many of them.¹⁰⁷² Five years after HAVA was passed to “help America vote,” hindrances persisted. Said Doug Chapin, director of Pew’s Center on the States’s Electionline.org. “. . . [T]he public’s lingering concerns over electronic voting, partisan disputes over voter I.D. and other issues continue to plague America’s election system.”¹⁰⁷³ One can only imagine the pollution caused by the discarded DREs.

Bob Fittrakis and Harvey Wasserman offered a system to prevent election fraud, which they published in January 2008 in “Bob and Harvey’s 3-Step ‘Ohio Plan’ for Fair and Reliable Voting and Vote Counts”: 1) “Automatic voter registration with signature verification,” a time-honored, time-saving way to make sure lines at the polls progress quickly and efficiently; 2) “Universal, hand-counted paper ballots”—the instant gratification afforded by computerized voting tallies can give way to a more accurate count, even if it takes more time to deliver the decisions; and 3) “A three-day national voting holiday, with ballots hand-counted by students”—voting from Saturday to Tuesday, with votes counted on Wednesday.¹⁰⁷⁴

The last chapter of their book *As Goes Ohio* proposes a fifty-six-step agenda to A) Prevent theft, B) Reform elections, and C) Enact long-term reforms—this last consists of fifty separate actions.¹⁰⁷⁵ As one might expect, this set of guidelines subsumes the three-step Ohio Plan. It should be published as a separate document, an official report,

especially since electronics—mainly DREs and optical scanners—still dominates the spectrum of voting options in this country.

VotersUnite’s Ellen Theisen singled out the importance of declaring as much independence from vendors as possible, through citizen and public officials’ involvement instead, and insisting on transparency in each step of the election through as much public observation as possible; see “Vendors Are Undermining the Structure of U.S. Elections,” August 18, 2008, “Recommendations for Reversing the Direction in 2008 and Beyond [pp. 50–53 of the above].”¹⁰⁷⁶

Meanwhile, Bobby Kennedy and Greg Palast were working to spread the word about voter disenfranchisement, intimidation, caging, purging of voter registration lists, and all the visible ways of suppressing the Democratic vote.¹⁰⁷⁷ Fortunately, this would reach the public via *Rolling Stone* before the election, which was crucial to awakening the electorate as much as possible. On the other hand, Velvet Revolution, a coalition of one hundred activist organizations, was pursuing the invisible corruption—the election tabulation fraud—and so the only publication among the mainstream media to spread that news was the February 2008 issue of *Maxim*.¹⁰⁷⁸

In spring 2007, in what was projected to be a scam to lower the number of Democratic voters, John Tanner, DoJ voting section chief, sent out letters to ten states telling them that voter rolls of about 10 percent or more of their voter jurisdictions were too large and that purging was necessary to eliminate those who were unqualified to vote for one reason or another.¹⁰⁷⁹ Purportedly to enforce HAVA, Tanner backed up this assertion with statistics and other methods, which were found by several experts to be flawed.¹⁰⁸⁰

Drawing on an antiquated clause of the National Voter Registration Act (NVRA), nicknamed the “Motor Voter law,” Tanner let the states know he expected to receive proof that they had followed this directive.

Working on the same data from which the DoJ had drawn the ten worst voter rolls, according to Steve Rosenfeld, Altnet found that:

[S]ome states facing Justice Department pressure to purge voters have long been targeted by GOP “voter fraud” activists, especially where concentrations of minority voters have historically elected Democrats—such as St. Louis, Philadelphia and South Dakota’s Indian reservations.¹⁰⁸¹

Rosenfeld wrote that such devices are habitually aimed at areas where tight races were expected. The ten states to which the letter was sent were Iowa, Massachusetts, Mississippi, Nebraska, North Carolina, Rhode Island, South Dakota, Texas, Utah, and Vermont. The project subverted NVRA's basic principle—to register, not purge voters, especially those less likely to take the initiative to register, which would encompass Democrats more than Republicans.¹⁰⁸²

Rosenfeld quoted a former lawyer in Tanner's division that "They are saying the data shows the 10 worst voter rolls," but other DoJ Voting Section attorneys said that statistics offered to prove the assertion were flawed. According to David Becker, a former DoJ attorney of the same department, and later an attorney for People For the American Way's Democracy Campaign:

There are eligible voters who will be removed. There is no evidence that rolls need to be cleaned up to this degree. This will make things more chaotic on Election Day. People will be given provisional ballots that won't get counted.¹⁰⁸³

Brad Friedman remarked that it's no wonder that ACVR is no longer around.¹⁰⁸⁴ (see Chapter 6 on ACVR.) If activated, the process would muddle the election in countless more ways than people were already anticipating.

Tanner was subjected to a lengthy congressional investigation into "his stewardship of the unit that was established to protect minority-voting rights"—he had been made section chief in 2005 but had worked in the department for "three decades," he said. He was also guilty of discriminating against two African American employees by depriving them of bonuses.¹⁰⁸⁵ Tanner resigned on December 14, 2007.

Remarked Representative John Conyers (D-MI), chair of the House Judiciary Committee, [the DoJ had a] "remarkably poor record of protecting voting rights" [and expressed hope that Tanner's successor's policy] "will mark a departure from efforts to limit the participation of elderly and minority voters."¹⁰⁸⁶

The DoJ, when contacted about this, refused to comment.

On February 8, 2008, Lynn Landes asked why the Department of Justice didn't investigate electronic vote fraud, considering that in the

late 1970s and 1980s testimony was given that the FBI assisted telephone companies with hacking into mainframe election computers in cities across the country. Was the DoJ complicit? she asked. The testimony had been given by a longtime Cincinnati Bell Telephone Company employee, Leonard Gates, who first performed hacks for his employer and its comrades in 1979.¹⁰⁸⁷

As of May 14, 2008, 25 percent of all paperless voting machines were in Pennsylvania, which therefore boasted the highest number of DREs in the country. Activists there worried that the Quaker State—swing state that it also was—would become the next Ohio in Election 2008.¹⁰⁸⁸

In addition to the legislation sweeping the country requiring voter I.D.s and then photo I.D.s and finally government-issued photo I.D.s, another modern reincarnation of Jim Crow was the more than 2.7 million U.S. citizens who had their registrations *rejected* under new procedures signed into law by President George W. Bush.¹⁰⁸⁹ It gave the secretary of state the right to arbitrarily reject any voter's application to register, an "unwritten" prerogative Florida's Katherine Harris and her successor Glenda Hood either leaned on or attempted to, respectively, in 2000 and 2002.¹⁰⁹⁰

Since Election 2004, "States [had] used dubious 'list management' rules to scrub at least 10 million voters from their rolls."¹⁰⁹¹

Among voters scrubbed was Paul Maez of Las Vegas, New Mexico—a victim of an unreported but devastating purge of voters in that state that left as many as one in nine Democrats without a vote on Super Tuesday. For Maez, the state's purging of his registration was particularly shocking—he was a county elections supervisor.¹⁰⁹²

Moreover, Palast and Kennedy found that "more than half of all provisional ballots cast were thrown out statewide."¹⁰⁹³

Wrote Palast and Kennedy, "If Democrats are to win the 2008 election, they must not simply beat McCain at the polls—they must beat him by a margin that exceeds the level of GOP vote tampering."¹⁰⁹⁴

And according to Fittrakis and Wasserman, "The lessons of 2000 and 2004 are in the terror imposed on the registration process and the error perpetrated in the vote count. Only by saying 'never again' can Americans hope to see a return to actual democracy."¹⁰⁹⁵

The blogosphere was gripped by paranoia. What if Bush used an executive order to cancel the election by faking another 9/11? Writing for *Slate* magazine, Ron Rosenbaum filled in some of the specifics of

this supposition with a definite directive issued by Bush 43 on May 9, 2007, NSPD-51—National Security Presidential Directive 51, a “blueprint for a coup in the guise of plans for ‘continuity of government’ in the event of a national emergency.”¹⁰⁹⁶

The same sort of paranoia had gripped the antiwar activist community in and around 1970, wrote Rosenbaum, as the 1972 presidential election was anticipated, “before Watergate was a gleam in Gordon Liddy’s eyes.”¹⁰⁹⁷ A Republican backlash had yanked Washington back from the radical, revisionist idealism of the sixties, well personified, to an extent, by Hubert Humphrey’s naïve exhilaration. The rumor, first generated by mainstream press, was that Richard Nixon, as incumbent, planned to cancel the 1972 election. Polls in that case might have indicated that such a move wasn’t needed. The challenger, Senator George McGovern (D-SD), didn’t even win in his home state, though he did take Massachusetts.

In 2008, because of a vaguely worded “matter of comity” among the three branches of government that was supposed to reign in the event of a “catastrophic emergency”—which could be construed quite flexibly—with the executive branch at the top of the heap, and because of NSPD-51 “annexes” that were so classified that even members of Congress couldn’t access them, panic reigned.¹⁰⁹⁸ Neither Congress nor the Supreme Court had publically examined the executive fiat. Rosenbaum illustrates the anxiety that spanned the political spectrum, quoting from Wikipedia (entry on NSPD-51):

Conservative activist Jerome Corsi and Marjorie Cohn of the [left wing] National Lawyers Guild have interpreted this as a break from Constitutional law in that the three branches of government are equal, with no single branch coordinating the others. . . . The directive does not specify whose responsibility it would be to either declare a catastrophic emergency or declare it over.¹⁰⁹⁹

Moreover:

The fact that Congress has not scrutinized and challenged the potential here for an emergency-situation power grab is scandalous, unacceptable. . . . Let Congress pass a law posthaste nullifying the directive, and then when the executive nullifies the nullification, challenge it in the courts. I can’t believe even this

Supreme Court, with its deference to executive power, could take this clownishly drafted document seriously.¹¹⁰⁰

Rosenbaum called NSPD-51 “dangerously Orwellian,” “the creation of irresponsible incompetents, bulls in the china shop of our constitutional framework,” and “a recipe for disaster.” Here we owe a debt of gratitude to some smaller representatives of the mainstream press for spreading the word.¹¹⁰¹ Rosenbaum also mentions publicity in the *Boston Globe*. His article ends with a call to action: notify our representatives in Congress to call an emergency joint session. Was anything ever done to counter this catalyst of fear and anger? Another source reminds us that similar documents have been released by every administration since FDR’s.¹¹⁰²

Election 2008 awarded the victory to the Democratic candidate, thanks to some very last-minute squelching of other sorts of Orwellianism—see below. It happened in Ohio but turned out well for a change.

The Republicans couldn’t even block the vote that November 4—the massive tidal wave of anger and suppression had broken through the levee, with indispensable help in Ohio from the attorneys who succeeded, at the eleventh hour, in blocking Karl Rove’s “man-in-the-middle” contraption from stealing those crucial twenty electoral votes, and who knows how many more? Remember that no Republican had ever won a presidential election without winning Ohio, and 2008 was no exception. They lost Ohio.

Back to earlier in 2008, in New Hampshire’s Democratic presidential primary in 2008, all districts using electronic machinery (60 percent of voting, per Brad Friedman; the self-same Diebold optical scanners that had been hacked in Leon County, Florida, at Election Supervisor Ion Sancho’s invitation) reported victories for Hillary Clinton, while all those using paper ballots reported Barack Obama as victor.^{1103,1104,1105} Steve Freeman reported that Obama was ahead by six to fourteen points, and climbing, on the day of the election, in addition to drawing enthusiastic crowds wherever he went,¹¹⁰⁶ but Hillary won. “And so, absent a miracle, we had a harbinger of what to expect next November.” What good are optical scanners if they are so programmable?¹¹⁰⁷ According to Nancy Tobi, “We had an election in which 81% of our ballots were counted in secret by a private corporation, and this resulted in an outcome that is called into question. . . .” No recount can rectify that, she added,

because it would be controlled by LHS Associates, Diebold's sole agent in New England who orchestrates most of the elections there (see Chapter 6, note 797 for more). There would be no transparency in that process.¹¹⁰⁸

Wrote Brad Friedman:

Due to extraordinary complexities in the ever more complicated computer systems, scanners, tabulators, record sets, databases, and proprietary programming that have now been employed by election administrators across the country, the once-simple task of examining and recounting paper ballots—where they still exist, as they do in New Hampshire—has grown exponentially more technical and confusing.¹¹⁰⁹

Senator John Sununu (R-NH) had predicted a nine-point victory for Bush 43 in the Republican primary in 2004, which came true to the letter. Was he clairvoyant? asked Lynn Landes. The final results were “38% for Bush, 29% for Dole, 13% for Kemp, 10% for DuPont, and 9% for Robertson.”¹¹¹⁰ Upon Bush's victory in November, Sununu was appointed White House chief of staff for his “clairvoyance,” among other “qualifications.” Sadly and despite her opposition to voting machines, Landes admitted to a long history of ballot-box stuffing in New Hampshire.¹¹¹¹ Would the citizen audit be the solution to the Election Integrity question? See Chapter 5 for a description of the citizen audit process.

Susan Pynchon, a Florida activist who came up to New Hampshire to witness the primaries, along with Bev Harris, California SoS Debra Bowen, and others, said she never dreamed she'd see what she saw—ballot swapping as if those in charge were part of organized crime. She referred listeners to Blackboxvoting.org for film clips and narratives. There was a road chase after a vehicle carrying paper ballots that took the activists over icy, winding roads in the dark at seventy-five miles per hour. The elections in most of New England, and 87 percent of New Hampshire, are controlled by a small firm, LHS, that has secret [proprietary] programming for counting ballots.¹¹¹²

Added Bev Harris, interviewed by Mary Ann Gould on *Voice of the Voters*:

In New Hampshire the polls are located in 239 different towns. The ballots have to be brought to one central location. This year the primary ballots arrived “in a mess.” Boxes had been opened and those in charge refused to lock them into a vault overnight, so the ballots were left out—what Bev called a “breakdown in the chain of custody.” Tracking the votes from the polls to the central tabulation point is also crucial.¹¹¹³

Brad Friedman remarked that “New Hampshire reportedly reaps \$3 billion from its ‘first in the nation’ Primary Election privilege. In the bargain, they have demonstrated to the rest of the nation how *not* to hold an election.”¹¹¹⁴

Super Tuesday in Los Angeles has been enshrined in the annals of election history for its signature “double bubble trouble.” The *bubbles* refer to the ovals meant to be filled in with pencil to indicate a voter’s choice on opscan ballots. But these primary ballots were designed unclearly, harkening back to the “butterfly ballot” scam in Florida 2000, when several thousand elderly voters were misled by the ballot design into voting for Pat Buchanan when they really intended to vote for Al Gore.

Had those ballots been counted correctly, as in the event of the falsified list of “felons” kept from voting in the Sunshine State, Al Gore would surely have won the presidency.

The debacle victimized Independent voters, classified as “Declined to State,” or DTS. Fully 20 percent of California voters fell into this category. In many instances, they were confused with American Independent Party voters (AI), who were obliged to identify their party affiliation at the top of the ballot. DTS voters had to indicate that they were voting Democratic by filling in the other of the two bubbles. Except that due to mistake, misinformation, or lack of information, they failed to fill in the “Democratic” bubble at the top of the ballot. The Associated Press (AP) reported that

The Democratic and American Independent party ballots given to independent voters who request them include an extra bubble specifying that the ballot is for that party’s primary. The bubble appears before the list of presidential candidates. If voters fail to mark that spot, the county’s scanning machines will not read the selection for president.¹¹¹⁵

Friedman worried, logically, that if the race were at all close the recount would be troublesome and problematic because of uncounted votes missing the penciled-in top bubble and related problems. In Los Angeles County alone, the largest county in the country, and larger than many states, 776,000 votes went uncounted.¹¹¹⁶

A rasher of provisional ballots was discovered, after Election Day, and counted. That was encouraging news.¹¹¹⁷

But this “butterfly” snafu was not an isolated event. It had baffled voters for the preceding six years in the Golden State, according to Friedman: “44 percent of nonpartisan cross-over ballots went uncounted in March ’04, 42 percent uncounted in June ’06, before same ballot design was used again for the February 2008 Super Tuesday Primary [*sic*].”¹¹¹⁸

Thus far, there had been no intervention to remedy the situation. But the problem had been publicized prior to Super Tuesday, resulting in the mass confusion predicted by Max Follmer of Huffpost on February 4, 2008.¹¹¹⁹ After that primary, discord impeded progress as the day of required certification edged closer. One argument against recounting was that voter intent would be unclear—not so. See the illustration of the ballot in the brief YouTube interview by Jake Soboroff of the website “Why Tuesday?”¹¹²⁰

Ultimately, in Los Angeles, between forty and ninety thousand votes were lost because of young voters’ misunderstanding of the ballot format, according to activist and founder of Progressive Democrats of America (PDA) Mimi Kennedy.¹¹²¹

On Super Tuesday, New York City’s lever machines may have malfunctioned, but human error is another possible explanation for that city’s unofficial results on February 25(?): According to Brad Friedman:

[A] review by The New York Times of the unofficial results reported on primary night found about 80 election districts among the city’s 6,106 where Mr. Obama supposedly did not receive even one vote, including cases where he ran a respectable race in a nearby district.¹¹²²

In Harlem’s ninety-fourth district, not one vote was cast for Obama. Friedman noted that in the *Times* original there seemed to be

a plug for electronic machinery as a more accurate alternative. Consider that:

In the Harlem district, for instance, where the primary night returns suggested a 141 to 0 sweep by Senator Hillary Rodham Clinton, the vote now stands at 261 to 136. In an even more heavily black district in Brooklyn—where the vote on primary night was recorded as 118 to 0 for Mrs. Clinton— she now barely leads, 118 to 116.¹¹²³

The *Times* also reported that other districts reported zero returns for Hillary.¹¹²⁴ It then alludes to the old moniker “conspiracy theorist,” for whom “the[se] figures provided plenty of grist.”¹¹²⁵

For us theorists, there was, in fact, a computer involved. Unofficial tallies collected from the boroughs are all fed into a computer that adds them all up and then feeds them to the Associated Press, which spreads the word around to colleagues. Sometimes the official totals don’t jibe with the unofficial ones. Perhaps that computer was at fault? Lever machines, human error, computers . . . that invokes a dispute in progress between lever-machine advocates, paper-systems advocates, and the state. The “paper” advocates ultimately won, again despite the Hursti hack that should have persuaded all of us to return to HCPB, which just did not happen.¹¹²⁶

In Louisiana on Super Tuesday, Obama won, but amid the anomaly of hundreds of Democratic voters being switched over to the category “Independent” or “Unaffiliated.”¹¹²⁷

In New Mexico, on Super Tuesday, seventeen thousand (11 percent of) voters were forced to vote on provisional ballots in the Democratic caucus when previously registered Democrats found their names missing from voter rolls recently turned over to voting machine vendor ES&S. Said VotersUnite’s Ellen Theisen:

The New Mexico problem reveals again the danger of jobbing out what should be transparent, public functions, to private companies [a category of caging, in that it is proprietary and thus many voters are never notified until they reach the polls on Election Day, and in places where same-day registration is not legal, they are forced to vote on provisional ballots.] [It] underscores that all election functions need to be run by the public sector.¹¹²⁸

As in New Mexico, in Diebold-loyal Georgia, notorious as one of the first states to institute voter I.D. requirements and then stiffen the law in 2006, long lines of voters were forced to wait because of difficulties with their prized vendor's new pollbook system [the first year HAVA's statewide registration mandate was enforced; see below—the Brennan Center called this problem “the issue of the year”] and the state's new, more stringent photo I.D. restrictions. Voters waited in line for up to two hours in some places.¹¹²⁹

In Arizona on Super Tuesday, voters and local officials reported that polling places were requiring some 40 percent of voters to vote on provisional ballots, after the state handed over its registration system to ES&S. One pollworker reported that out of 1291 ballots cast where she was working, 540 voters, or around 41 percent, were forced to vote provisionally.¹¹³⁰

Yet another “miracle” benefited presidential candidate and then-Senator Clinton, who was about to drop out of the primaries. Just like New Hampshire (see above), the Quaker State came through for her on April 22. Experts said that she had to win by a double-digit number to continue, and when the 85 percent-DRE state delivered her score as 54.6 percent to Obama's 45.4 percent, she came close enough to that goal to hang in there!¹¹³¹

The primary itself was fraught with problems that arose that same day instead of later, as is the norm for even problematic elections, wrote Brad Friedman. Thirty percent of phoned-in problems pertained to machinery identical to the problematic Sequoia systems that New Jersey activists had been laboring for years to replace. A law was broken when a woman at one precinct was not offered a provisional ballot after her name was not found on the registration list. At another precinct that opened two and one-half hours late because of machinery issues, a judge ruled that hours could not be extended, even though many voters would thereby be eliminated. The director of voter services for Montgomery County, Pennsylvania, said he'd never experienced a primary that busy. Said Votersunite.org's John Gideon:

I find it amazing that only two machines are in each Philadelphia precinct and voters can only get a paper ballot, no matter how long the lines get, if both machines are broken. Then, the paper ballots are provisional ballots and won't be counted until after the initial count is made this evening and tomorrow.¹¹³²

The Bradblog singled out Philadelphia's head of elections, Marge Tartaglione, for thwarting the last-minute legislation requiring an increased number of paper ballots at each precinct in the state with ridiculous defenses like: "[L]ong lines are not a problem. . . . Long lines are no justification for any thing [*sic*] but waiting . . . people wait in long lines overnight for baseball tickets . . . people wait in line all night for a new Ipod."¹¹³³

Especially handicapped and senior populations, Marge?QED.

Other "givens" that Friedman had predicted the day before?:

Aside from the Sequoia AVC Advantage touch-screen which failed recently in NJ, set for use by 750,000 voters in two Pennsylvania counties (including Montgomery, one of the state's largest), 51 counties will use the same ES&S iVotronic touch-screens which failed so spectacularly in Florida's 2006 13th Congressional district election in Sarasota County, resulting in the loss of some 18,000 votes, despite a margin of "victory" for the "winner" of just 369 votes. That notorious failure helped lead the state of Florida to ban that system, and all touch-screen voting machines, entirely.

Sixteen PA counties would use the same Diebold Accuvote TS touch-screen systems found easily susceptible to a viral hack by a team at Princeton University in the Summer [*sic*]of 2006. They found that an entire county election could be flipped, undetected, if inappropriate access is gained to just one single voting machine. That system, the ES&S system and touchscreens made by Sequoia were banned entirely for regular use in California after such vulnerabilities were confirmed by a team of computer scientists and security experts commissioned by the state.¹¹³⁴

There is no way to prove that any vote was counted on any DRE, let alone all of those cast, and the list goes from there.¹¹³⁵ One point I have tried to make clear in this volume is the brazen unreliability of this genre of voting equipment. Its explosion onto the marketplace contributed to making the years between 2000 and 2008 the worst in election history, which has been tumultuous at best.¹¹³⁶

The day before the Indiana primary was scheduled, in the wake of the recent SCOTUS affirmation of the Hoosier State's draconian

voter I.D. laws, Secretary of State Todd Rokita announced that 2008 voter rolls had reached a record high of 4.3 million voters. Left unsaid but decidedly picked up by Bev Harris, was another figure, the 1,134,427 voters who had been purged. They hailed from one county whose majority was African American and another that was white but filled with college students. Ditto for Bloomington, the site of Indiana University, and Marion County, site of the state capital Indianapolis, and so on.¹¹³⁷

But none of the paperless electronic voting machinery throughout the state was purged. Bev Harris noted that one of the most widely used brands across the state, the MicroVote system, was grandfathered in even though it had been decertified for use, and even though the same system had failed spectacularly in other states such as Tennessee and Pennsylvania. MicroVote's own insurance company alleged that the machines were defective.¹¹³⁸

Other indefensible monstrosities slated for use on May 6, as mentioned above, were the ES&S iVotronic, the type of DRE (touchscreen) voting system infamous for losing eighteen thousand votes in Sarasota County, Florida, in the 2006 midterm election there. More problems with the latter were subsequently found—it was vulnerable to the same type of undetectable vote-flipping virus that Princeton University successfully embedded in a Diebold AccuVote TS, another machine that would be used by the Hoosiers.¹¹³⁹

The office of SoS Rokita explained the large number of purged votes, which comprised sizable percentages of the several counties measured,¹¹⁴⁰ in terms of the code word *canceled*. This ambiguous term referred to several categories of voter, not just those unqualified to vote. It meant simply that a change had been made in the voter's record, be it the fact that he/she was deceased or had moved elsewhere and re-registered, for example.¹¹⁴¹

Even more problems surfaced in this midwestern state that had just seen its harsh Voter I.D. requirement corroborated by SCOTUS. A number of retired nuns were kept from voting, for example, because they did not have state-issued voter I.D.s. One can't be too careful. The overall statistics, for all those kept from voting, had to be estimated because vital data were withheld by the Department of Motor Vehicles, but one figure was 620,000, versus a more conservative forty-three thousand claimed by the state. Even forty-three thousand is a very high number.¹¹⁴²

A brief article at the website “The Week,” entitled “Bracing for Another Election Day Mess,” summed up the 2008 primaries scene:

If the primaries this year were a dry run for the general election, they were not reassuring. With a record 56 million voters participating in the primaries, many polling places were overwhelmed. Several California counties ran out of ballots, and in Ohio, Maryland, and other states, judges had to order polling places to stay open later to accommodate voters who were stuck in line for hours. An estimated 2 million poll workers—twice the number who worked in 2004—will be needed to handle what could be a record turnout in November. While states have been scrambling to hire and train more poll workers, it’s far from clear they’ll have enough to handle the influx of voters. Workers who are hired, moreover, will find the job more difficult than ever.¹¹⁴³

The outlook for Election 2008 was glum. People feared another Florida 2000 or Ohio 2004—swing states with high Electoral College scores had been determining elections for at least a decade. “At first glance, next year’s Presidential [*sic*]election looks like a blowout,” wrote Hendrik Hertzberg in the *New Yorker*.¹¹⁴⁴ A cynical article in *Scientific American*, titled “Planning to E-Vote? Read This First,” quoted Stanford professor and EI activist David Dill, whose AttackDog software “can examine more than 9,000 ways a voting system can be attacked, including computer hacking, ballot tampering and voter impersonation,”¹¹⁴⁵ that: “Nothing we do now will affect the November election. We don’t know how to make secure paperless voting.”¹¹⁴⁶

In an “October surprise,” the *New York Times* reported that “Tens of thousands of eligible voters in at least six swing states [Colorado, Indiana, Ohio, Michigan, Nevada, and North Carolina] have been removed from the rolls or have been blocked from registering in ways that appear to violate federal law.”¹¹⁴⁷

The Gray Lady attributed the problems to typos: “apparently the result of mistakes in the handling of the registrations and voter files as the states tried to comply with a 2002 federal law, intended to overhaul the way elections are run.”¹¹⁴⁸ But Democratic voters would be impacted the most, since so many had been registered for the November election, in record numbers [millions] in states with high

percentages of minorities.¹¹⁴⁹

The outrageous statistic quoted was that for every voter added to the rolls, two were removed. In violation of the National Voting Rights Act, Michigan and Colorado voters were being removed, within ninety days of an election, for reasons other than death, relocation, or mental incompetence. Other states, most red, were matching up voter names to Social Security numbers—legal only as a last resort. The astronomical number of Social Security numbers checked¹¹⁵⁰ was explained as a result of “county clerks” entering Social Security numbers and driver’s license numbers in the wrong fields before records were sent to the state.¹¹⁵¹

In Pennsylvania, a lawsuit was filed against Secretary of the Commonwealth Pedro Cortés because he had recently ruled that emergency paper ballots could be offered at polling places only if all voting machines were down and not functioning. The coalition, sponsored by the EI group Voter Action and led by the NAACP, sued, on the basis of long lines and inconvenienced voters, asserting that the ballots should be offered to voters if half the machinery at a site malfunctions. Said their attorney, John Bonifaz, legal director for Voter Action:

Voters should not be forced to wait hours in line in order to exercise their fundamental right to vote. . . . While the use of electronic voting machines continues to pose a separate threat to the integrity of the vote-counting process, federal court intervention is necessary to ensure that voters will not be disenfranchised by long lines on Election Day in Pennsylvania, when these machines become inoperable.¹¹⁵²

Pennsylvania election law allowed that paper ballots may be offered if even one voting machine breaks down and immediate repairs or replacement are not possible. Moreover, the statute continues, “the county board of elections may purchase as many extra systems or system components as it may deem necessary.” Cortés refused even to have enough paper ballots printed up to accommodate the entire voting population. Given the untold voting-machine malfunctions and long lines during the April 2008 primaries, one would have thought that Cortés, a Democrat, might have been more accommodating. But perhaps Governor Ed Rendell’s previously demonstrated (see Chapter 6) indifference to most voting issues had

something to do with this negligence. Plaintiffs expected a “perfect storm” in their state on Election Day, reported Brad Friedman.¹¹⁵³

Amazed at the lack of intervention by either the Obama campaign or the Democratic National Committee, Friedman nonetheless reported a week later that the federal judge had ruled for the plaintiffs.¹¹⁵⁴ Unfortunately, at least one episode implies that it was too late for 80 percent of the Quaker State’s counties to print up the needed extra ballots.¹¹⁵⁵

Counties in Pennsylvania added a significant number of voting machines to accommodate the huge increase in voter turnout expected.

The *New York Times* reported that Colorado’s voter roll was down by two hundred thousand even though the state’s population had increased substantially since 2004. Lawsuits were being filed in three states because of unrealistic reductions in voter rolls, intentional or otherwise. Even Rosemary Rodriguez, head commissioner of the EAC, worried that the bundle of incompetence and discriminatory actions could create problems in November.¹¹⁵⁶

ACLU’s quoted reaction to the *Times* story was that

The Justice Department must prosecute these states for being overly aggressive in purging voter rolls and blocking people from registering to vote. It is vital that the DOJ return to its historic role of expanding access to the polls for all voters regardless of race, national origin, language proficiency or disability.¹¹⁵⁷

Wrote Alternet’s Steven Rosenfeld:

The scenario of post-Election Day litigation is not speculation. Across the country, GOP partisans already have filed lawsuits over voter registration issues or said they planned to pursue polling place challenges of individual voter registrations in states such as Ohio, Wisconsin, and Michigan. In federal court in Ohio, a hearing was held Thursday on a GOP suit seeking to force the state to use the Social Security data to vet new voters.¹¹⁵⁸

In the face of all the forms of both pre-voting discrimination and voter suppression, Michael Collins’s statistics are surprising but not

unprecedented: “But when you add up all of these [Republican] strategies, based on past performance, they work at the margins—maybe a 3–4% shift in votes to the Republican candidate.”¹¹⁵⁹

Applying further statistical analysis of voter turnout in 2008 in the mid-Atlantic and southeastern states, Collins introduced his “net new” statistic: measurement of the difference in voter turnout at presidential primaries in 2004 and 2008. He found that:

There were 4.9 million voters in the 2008 Democratic Primary and 2.6 million in 2004. That’s 2.3 million “net new” Democratic primary voters for 2008. + North Carolina had state caucuses in 2004. The 2004 Democratic primary figure is an estimate.¹¹⁶⁰

Among key swing states [Florida, Missouri, Ohio, Virginia], he found that

These four critical swing states all went Republican in the last two presidential elections. But they show a pattern similar to the trend begun in the mid and southeastern Atlantic states. These primaries saw 5.8 million Democratic primary voters compared to 3.9 million Republicans. The Democrats more than doubled their 2004 primary voter total, 2.7 million voters, to 5.8 million in 2008. That’s a 3.1 million increase in Democratic primary voters.¹¹⁶¹

The meme of “net new” is that voters who show up for presidential primaries (“elections normally ignored by large numbers of voters”) are bound to come to the actual election.¹¹⁶² But one of the warnings circulated among EI activists was that even those who voted in the primary should recheck, well ahead of time, whether they are still registered for Election Day in November.¹¹⁶³ They were supposed to be notified by election officials if their names were flagged for any reason—most likely mailed notices returned or mismatches with outside databases, but the systems in many states were still new, and other considerations also intervened between citizens and their right to vote. But Collins’s point is nonetheless significant. One of his conclusions is that:

The only fraud strategies available are through electronic voting machines and outright changes in vote totals. Thus, with fewer tools (disenfranchisement and suppression are out for this group); election fraud would need to wipe out 14% of the estimated vote.¹¹⁶⁴

Mainly, he shows great optimism, based on his “net new” studies, that Obama would triumph. And he did.

But back to the preceding months, one overriding question, concerning all states, or at least urban areas, was whether enough machines would be made available to the huge number of voters expected in November, given the greatly increased voter turnout for the presidential primaries. Palast said that the 2008 election had already been stolen—words pronounced May 22, 2007.¹¹⁶⁵ Agreed Brad Friedman on February 10, 2008, just after Super Tuesday, which had for the first time been moved up from early March, “This could be a very ugly year for voters. Again.”¹¹⁶⁶

The *New York Times* observed that

Republicans have been pressing for sweeping voter purges in many states. They have also fought to make it harder to enroll new voters. Voting experts say there could be serious problems at the polls on Nov. 4.¹¹⁶⁷

Because swing states Colorado and Virginia were among the ten states that received the poorest ranking in three out of four categories, Lawrence Norden, director of the Brennan Center’s Voting Technology Project, had other worries:

It’s the small scale troubles that I’m more concerned with. If you’re not doing good checking after the election, it’s easy to lose 100 or 200 votes here and there. . . .

All these problems are always more serious when the election is close. If you have close races in Virginia and Colorado, the problems could potentially be very big.¹¹⁶⁸

“It is imperative that every state prepare for system failures,” Norden continued.¹¹⁶⁹ He specified three other categories of preparedness: “ballot accounting and vote reconciliation” to identify

inconsistencies; “voter verifiable paper records”; and [use of] that paper record for a post-election audit.¹¹⁷⁰

Security experts predicted that Election 2008 would be “hackable.” “The question before officials [was] not how to fix known bugs in their e-voting systems, but rather, how best to check them for fraud,” according to Professor David Wagner of the computer science department at the University of California, Berkeley.¹¹⁷¹

A member of the team that audited California’s electronic voting systems during Secretary of State Debra Bowen’s 2007 “Top-to-Bottom” review, Wagner said that counties all over the country would be affected: “The three systems we looked at [Diebold/Premier, Sequoia/Dominion, and Hart InterCivic] are three of the most widely used around the nation,” he said. “They’re going to be using them in the 2008 elections; they’re still going to have the same vulnerabilities we found.”¹¹⁷²

California permitted use of the flawed machinery under conditions set by Bowen. But during the review she ordered, Wagner and his team found it possible to virus all three systems contagiously enough to infect an entire county and hence the vote count. Though only 25 percent [a rough figure elsewhere estimated to be as high as 38 percent] of states would vote on paperless machinery, another key issue was how many would consistently refer to the paper trails that they did have. “Only about a third of all states ha[d] records that are regularly audited,” according to *Computer World*.¹¹⁷³

Congress threw a monkey wrench at any progress toward the spread of optical scanners to states and municipalities using DREs—lobbyists for numerous organizations advocating for handicapped populations still favored DREs, unaware of the existence of ballot marking devices or not sold on them¹¹⁷⁴—see above, Chapter 4, for details concerning the corruption of a few of these groups.

Blocking Rush Holt’s latest election-reform bill, which mandated optical scanners in most cases, Congress recommended that DREs be retrofitted with cash register-sized printers that could produce a paper trail (quality of the thermal paper had improved since it was first used), at a price of around \$1,000 apiece. It’s as if our legislators were unaware of the many problems associated with this sort of VVPAT and also ignorant of the ballot-marking devices already available for purchase¹¹⁷⁵—one point put forth was that if opscans could be made more accessible to handicapped voters, then they could

dominate the voting landscape.

Congress advocated for later substitution by optical scanners, claiming that it was too late to install them in time for the 2008 elections and recommending that the plan look toward 2012—this delay tactic was reported in July 2007, nearly a year and a half before November 2008.¹¹⁷⁶ Democrats and Republicans agreed on this, given that 2008 primaries would be held earlier than in the past, and with Democrats claiming that it would take a while to persuade Republicans toward this better path. Many states were weary of changing election systems. Only five, as a whole, did (see above and below, this chapter), and the expense involved in changing systems twice in the following four years, especially considering the recession beginning to plague this country, was frightful.¹¹⁷⁷

Journalist Robert Koehler, who remembers “the waning days of the Daley (Senior) Machine, when precinct captains didn’t need no [*sic*]conspiracy to know they needed to deliver their precinct, or else,” remarked that:

[T]he call for paper ballots and hand counting—however jarring and quaint it may sound in the 21st century—comes most urgently not from Luddites or flat-Earthers but the technophiles and self-proclaimed geeks who understand computers most intimately, and know their vulnerabilities [emphasis mine].¹¹⁷⁸

Koehler added that “speed of tabulation appears to be the only benefit”¹¹⁷⁹ of DREs—instant gratification for the press and “TV Land,” when more time for counting all varieties of ballot would deliver more credible tallies. Consider the postponement that provisional ballots entail, military and other overseas ballots that miss the deadline even when sent weeks in advance, and so on.

Five major swing states—Florida, Ohio, New Mexico, Colorado, and California—were studied by Electionline.org, because all had opted to replace their DREs with optical scanners by 2008. In April 2007, Maryland unanimously passed legislation requiring “voter-verifiable paper records.” But as of 2012 the state still uses DREs—its many activist groups call its equipment “the least secure and least transparent” election system in the country,¹¹⁸⁰ but there was no money to alter the situation, and New York replaced its controversial lever machines with opscans in 2009.¹¹⁸¹

What events or elements were common to all five states?
According to the Electionline study:

[A] top-ranking state official—the governor or secretary of state—raised security and accuracy concerns about DRE systems. Advocates were active as well, questioning the integrity and auditability of DRE voting. Lawmakers from both parties eventually embraced change, though frequently concerns about the replacement cost of purchasing yet another voting system came from both sides of the aisle.¹¹⁸²

Florida's Governor Charlie Crist and liberal Congressman Robert Wexler lauded legislation passed to replace all of their state's DREs with optical scanners in 2007, nearly six years to the day since the Sunshine State had acquired DREs that had created far more problems than they had solved.¹¹⁸³ Problems during the days of early voting were inevitable, between the new machinery and the record turnout of voters.

Electionline.org studied the country's readiness early in 2008 and reported the following (I have updated some entries to 2012 where necessary):

Delaware, Georgia, Louisiana, Maryland, and South Carolina use[d] DRE systems statewide for all polling place voters. All other states with DREs use them in some, not all jurisdictions.

Arkansas: Used DREs both with and without VVPAT.

Florida: State law allowed voters with disabilities to use touch-screen systems until 2012.

Idaho: Some counties still used punch-card voting systems.

Iowa: Some jurisdictions employ[ed] DREs without VVPAT. State lawmakers are debating how to meet the paper trail requirement.

Maryland: State law required voter-verifiable paper records by 2010 (which did not come about because of recession).

New Jersey: The state's initial deadline for DREs to have VVPAT by January 1, 2008, was delayed by six months (As of 2012, despite years of litigation, the Garden State still votes largely on Sequoia paperless DREs; only one county uses the "Edge" model, which can be fitted with a printer).¹¹⁸⁴

New York: The state had a VVPAT requirement but lever voting machines were still in place. Almost all counties [one exception is Columbia *[sic]*, which votes on HCPB and a 100 percent audit!]¹¹⁸⁵ adopted paper-based voting systems in 2009.

Oregon: Holds all vote-by-mail elections.

Washington: as of 2011, all counties vote by mail.¹¹⁸⁶

At the conclusion of its report, Electionline quoted Ohio State University Moritz Law School's Dan Tokaji, that the general direction of states is toward paper voting, though DREs are still preferred by handicapped populations as well as non-English-proficient voters. Some ordinary citizens as well as election officials also prefer them.¹¹⁸⁷

If anyone associates Diebold/Premier DREs with corruption, I hope that this volume has corroborated that connection. Fueling this association is a \$55.6 million contract Diebold/Premier signed in 2003 with a private trucking company in Maryland to haul DREs from warehouses to voting locations and back again for the February 12, 2008, primary and the November 4 presidential election. Both chain-of-custody and conflict-of-interest issues became apparent. The contractor, The Kane Company of Elkridge, Maryland, was owned by a former chairman of the Maryland Republican Party, John Kane, who presided over it from the end of 2002 until December 2006. This active partisan also sat on the statewide steering committee supporting the presidential candidacy of former Massachusetts governor Mitt Romney.¹¹⁸⁸

In December 2007, Kane was recruited as a fundraiser for Romney in the Old Line State, a blue stronghold. His wife, also an active Republican, was appointed as a delegate on the Republican primary ballot for former New York mayor Rudy Giuliani, another contender for the GOP presidential nomination.¹¹⁸⁹

Local EI activists like Mary Kiraly of the Maryland Election Integrity Coalition worried about DRE precedents in the state, namely that in-state voters:

[H]ave experienced glitches that have invited close scrutiny after previous elections. A report compiled by the elections office in Montgomery County, Maryland, [a DC suburb, the most populous in the state] . . . after the 2004 presidential election revealed that 189 machines (7 percent) there failed on election

day. Of these machines, 58 wouldn't boot up and were taken out of service, and another 106 experienced frozen screens. Other counties have experienced problems with the machines as well.¹¹⁹⁰

“The integrity of elections is at risk if machines are transported by a company whose owner is so closely aligned with a party and candidate,” said Kiraly, whose group is composed of branches of Common Cause and the ACLU.¹¹⁹¹

Kiraly claimed a chain-of-custody issue—in Maryland, twenty thousand units were handed over to a private company commissioned by the vendor and not the state. “How was this company chosen, and who vetted the employees who handle and deliver these vulnerable voting units?” she asked.¹¹⁹²

Kane's company first did the trucking for Diebold in 2004. At the time, a former Diebold employee recalled that partisans wanted to withhold this news from the press. This time, when the news did leak, Kane dismissed it as irrelevant—they just recruited him for the “gravitas” it would lend to Romney's efforts, he said, and claimed that the only money he had raised for the former governor was the \$2,000 he himself had donated to the campaign.¹¹⁹³

Conflict of interest if not chain of custody? No sweat. Other worries about Election 2008 were many. Would there be enough machines in Cleveland? Manhattan? New Jersey, bulging at the seams with this country's greatest population density? Ohio? Florida? Los Angeles, where the number of voters hit a record high?¹¹⁹⁴

Would everyone vote who wanted to vote? Even if this outcome miraculously occurred, would the vote count be accurate? A true expression of democracy, in which the will of the people prevails? The landslide for Obama would be expressed as a significant victory, uncontended because we all knew the scenario, a replay of 2006 only with more people involved and, inevitably, more problems.¹¹⁹⁵ In this era of increasingly frequent “razor-thin margins,” every vote is crucial.¹¹⁹⁶ The higher the turnout, even now [2012], the more likely a Democratic victory becomes. For that reason, I concluded years ago that “if everyone who could vote did vote, there would never be a Republican president again.”

Contrast with this what could be read as an old corroborating saw:

Now many of our Christians have what I call the goo-goo syndrome—good government. They want everybody to vote. **I don't want everybody to vote.** Elections are not won by a majority of people, they never have been from the beginning of our country and they are not now. As a matter of fact, **our leverage in the elections quite candidly goes up as the voting populace goes down.** [emphasis Weyrich's]

These words were spoken by the late Paul Weyrich in 1980 to fifteen thousand preachers at a convention in Dallas, also attended by Ronald Reagan and Jerry Falwell.¹¹⁹⁷

A 2006 Brennan Center report found that “Most of the voter disenfranchisement . . . happens long before Election Day, in the halls of state legislatures, election officials’ offices, and even in the federal government”¹¹⁹⁸

Activists had recruited record numbers of voters for Election 2004.¹¹⁹⁹ Thwarting registration—most notoriously in the case of the League of Women Voters in Florida (see Chapters 5 and 6), was successfully litigated against by the Brennan Center in 2006 in both Florida and Ohio.¹²⁰⁰—the two states were the most notorious of electoral “hotspots” in Elections 2000 and 2004. A federal judge also blocked this practice in Georgia. Other states where registration by civic groups and nonprofits was blocked included New Mexico, Colorado, Missouri, Maryland, and Georgia. Washington state and California already had such suppression on the books well before Election 2004.¹²⁰¹

Next focusing on voter rolls, the Brennan report found that potential voters in several states were blocked from the state rolls mandated by HAVA if their names did not match letter for letter their names listed in other municipal records—eerily reminiscent of the tactics by which Katherine Harris and her cronies blocked registered voters in Florida if their names happened to match those of felons on lists in other states. John Jones, a solid citizen in Florida, was blocked because Jon Jones or even John Jones somewhere else was a felon. Immigrants with exotic names suffered worst, because of human and mechanical errors.¹²⁰²

The same draconian process occurred as a result of another discriminatory practice, purging voter rolls due to supposed felonies, relocations, and deaths. The use of statewide computerized lists has facilitated the purging process, which, incidentally, is conducted

secretly so that many a voter doesn't know he/she will be denied a legal right until Election Day, and there is no time for justifiable adjustments. As mentioned above, thousands of voters have been denied their right to vote by means of such clandestine purging.

The voter I.D. issue, discussed above in Chapter 6, rose to the level of the Supreme Court when *Crawford v Marion County Election Board* challenged Indiana's right to insist exclusively on one form of government-issued photo I.D. Constitutionality was the issue; fully 13 percent of the Hoosier State's population lacks this form of I.D.,¹²⁰³ which has an expiration date—the strictest voter I.D. requirement in the country in one of the first two states to require voter I.D.s. The other was Georgia. Well, said the defendants, any citizen can vote by means of an absentee ballot, which requires no I.D. presentation.¹²⁰⁴

There are problems with being painted into this corner, which mandates early voting. A voter may change his/her mind if new controversies surface after a vote has been mailed in. A chosen candidate may drop out of the race at the last minute. Will the rural, most poverty-stricken voters ever find out about this option? Absentee votes are frequently misplaced or disqualified on the basis of errors like absence of official initials from a received ballot. They could be lost in the mail or be improperly filled out or misunderstood by handicapped or non-native speakers of English.¹²⁰⁵

And validation of this legislation by the Supreme Court would ripple across the continent, where fully half the states in this country were engaged in disputes over the issue of voter identification.¹²⁰⁶ According to Wendy Weiser of the Brennan Center:

Studies show that roughly twenty one million [*sic*] Americans don't have government-issued photo IDs. The voters blocked by photo ID requirements are not evenly spread. Senior citizens, young people, people with low incomes, and people of color are far less likely than other citizens to have the kinds of IDs required by Indian's law. For some groups, the effects would be devastating. A 2005 study found that 78% of African-American men aged 18–24 in Wisconsin don't have driver's licenses.¹²⁰⁷

This unfair and stringent requirement would do nothing to interfere with the other forms of voter corruption, including vote-buying, ballot tampering, absentee ballot fraud, or even voting by non-citizens which, by the way, can occur in non-electronic voting scenarios as well.¹²⁰⁸

In a SCOTUS decision released April 28, 2008, the plaintiffs lost: “Three Justices said the evidence offered against the requirement in Indiana did not support a challenge to the law as written—that is, a “facial” challenge—and three others said the law only imposed a minimal and justified burden on voters. Three Justices dissented.”¹²⁰⁹

This compost heap that is left of the bottom line of democracy is, in 2012, finally reaching the mainstream, called “the revival of Jim Crow and poll taxes,” which were outlawed by the Voting Rights Act of 1965. The *New York Times* has objected to it more than once¹²¹⁰ and many states still resist the discriminatory practice of requiring *photo* I.D.s, and in some cases government-issued photo I.D.s. As discussed above, requiring such identification at the American polls eliminates many from the process, largely Democrats who comprise most of the lower class.

According to an ABC blog published in September 2011, “as many as 11 percent of the voting population, or about 21 million people, do not have access to a government-issued I.D., according to the Brennan Center for Justice at the New York University School of Law.”¹²¹¹ Still, studies highlighted by the Heritage Foundation [a conservative research institution] show that photo I.D. laws have no effect on minority voter turnout!¹²¹²

The point here is that, since 2011 anyway, some publicity has accrued. The president has lifted his eyes up from his to-do list long enough to hand the issues over to the Justice Department, which is good news since it has the right to “approve, deny or modify these laws.” Congressman John Lewis (D-GA, who marched with MLK and worked with him in the sixties) told Mark Crispin Miller that “The Justice Department should be much more aggressive in areas covered by the Voting Rights Act.” Targeted, of course, will be those requirements that discriminate against the tormented lower class. President Obama no doubt also lifted his eyebrows on being told that such suppressive measures could subtract as many as five million votes from his side of the ballot.¹²¹³

I anticipate that in reaction other reactionary forms of illegal and unethical corrupt voter suppression and vote fraud will surface. This is what the mainstream does best and most creatively, and untold and

massive amounts of damage to society are surfacing. Read the Progressive webpages to count the ways.¹²¹⁴

But four years ago and thereabouts, the period that is my main focus, another scandal surfaced. It involved ACORN (Association of Community Organizations for Reform), a group that had registered more voters than anyone short of the Democratic Party itself. Nearly forty years old, this now-defunct group advocated on behalf of indigent minorities. It had registered an amazing 1.3 million voters in the years 2006–2008.¹²¹⁵

A few of ACORN's thirteen thousand employees, mainly street people in Nevada being paid about \$8 an hour, had handed in some falsified material. ACORN promptly reported this and fired those responsible. Nonetheless, headquarters were rudely invaded without warning in what was referred to as a "fraud probe" early in October by members of the secretary of state's office, who hauled off records, twenty boxes of documents, and ten computer hard drives relevant to the group's Project Vote, which worked to register voters. The office was vacant at the time.¹²¹⁶

In Indiana, so centered on voter fraud, CNN reported that in Lake County, five thousand false registration forms were handed in; this fact was surmised after the first twenty-one hundred forms were found to be bogus.¹²¹⁷ The truth turned out to be that the ACORN office had sorted registration forms into three categories, which were labeled according to degree of acceptability. The first category was fine; the second included incomplete forms; and the third category was bogus forms, which the group was legally obliged to hand in.¹²¹⁸ Meanwhile, the *New York Post* reported that:

A man at the center of a voter-registration scandal told The Post yesterday he was given cash and cigarettes by aggressive ACORN activists in exchange for registering an astonishing 72 times, in apparent violation of Ohio laws.¹²¹⁹

Brad Friedman helped clarify the issue. He wrote that the same address was registered seventy-two times, which would have resulted in only one registration.¹²²⁰

The same error had occurred in California when the GOP found some lemons among 750,000 registrations and blamed it on its use of hired contractors rather than its own insiders.¹²²¹

Even John McCain, who had been the keynote speaker at an ACORN rally in 2006, saw the 2008 scandal as a Democratic attempt to hijack the upcoming presidential election. Those arrested for this pathetic form of fraud could not afford the slick lawyers who had rescued the California Republicans two years earlier. Obama had worked with the group in 1995.

Statistically, the figures boil down to 99 percent accurate registrations by ACORN (ten thousand invalid registrations), as opposed to accuracy in the ninetieth percentile in the case of the California GOP.¹²²²

Dahlia Lithwick of *Slate* saw the attack on ACORN in these terms: “The object here is not criminal indictments. It’s to undermine voter confidence in the elections system as a whole. John McCain wants to build a better bogeyman, and he needs your help to do it.”¹²²³

Thousands of people vote illegally, but the hugely overblown focus here is on impersonation—especially in presidential elections. A five-year investigation initiated by the Bush 43 administration in 2002 came up with 120 people charged with and eighty-six convicted of impersonating someone else as of 2006, most of them Democrats.¹²²⁴ Some voters in rural areas were caught selling votes for as much as \$100 apiece.¹²²⁵ The rest slip through the holes due to administrative gaffs or human error or computer error or any number of other problems.¹²²⁶

But in a surprising turnaround the day before Election 2008, “a member of McCain’s own (amusingly named) ‘Honest and Open Election Committee’ admitted that Republicans are unable to cite a single ‘documented instance of voting fraud that resulted from a phony registration form.’”¹²²⁷ To claim otherwise is harmful, undermining public trust in the electoral process, especially in such a flammable period as the beginning 2000s.

The real scandal occurred not with ACORN’s honest divulgence of wrongdoing, but with the Republicans’ attempt to depict the event as “one of the greatest frauds in voter history,” in the words of Citizen McCain.¹²²⁸ According to Friedman, such inflation succeeds by supplying the “*impression* of voter fraud that the Supreme Court has said undermines public confidence enough to allow for disenfranchising Photo ID restrictions at the polling place, and other anti-voter laws and measures.”¹²²⁹

How many molecules of this myth had pervaded the voter-sphere in the month before Election Day 2008? Not enough to put McCain into office. Not even close.

So desperate was the press for vestiges of voter fraud that, Friedman also reports, in a small town in New Hampshire during the 2008 primaries, Matthew Drudge reported that in the first municipality of the Granite State to report vote tallies, Dixville Notch, a bit after midnight, “there were only 16 registered voters in the tiny voting precinct, yet 17 votes had been cast—suggesting that somehow, paper ballot ‘voter fraud’ skullduggery was afoot.” The press came alive with this report of supposed voter fraud, and Friedman concluded that the main damage was corroboration of the myth that paper ballots create problems and facilitate voter fraud.¹²³⁰

The reason for the discrepancy became clear when Friedman phoned the people in charge in Dixville Notch, who told him that:

We had a gentleman who lived here, who moved away and came back—the grandson of the man who started the tradition [of voting at midnight in Dixville Notch], incidentally—he moved back, but missed the cut-off date for getting onto the registration rolls.¹²³¹

And so, he completed a same-day registration, as was legal in New Hampshire at the time.

Reports of voter purges, from late September to mid-October, were roughly simultaneous with the ACORN publicity concerning *registration fraud*, not voter fraud. As Friedman asks, how many times have you seen Mickey Mouse show up at the polls?¹²³²

And how often does the press throw red herrings in the face of dire issues?

Amid the public reaction to continuing mainstream media (MSM) coverage of the ACORN outrage, and not very publicized if at all, were the McCain-Palin team’s collection of lists of foreclosed homes, largely the former addresses of many who would vote Democratic, and elimination of the former owners from the voter rolls for not having an address—a form of caging.¹²³³ To counter this outrage, Obama-Biden supporters filed a lawsuit that was swiftly elevated to the U.S. Supreme Court, which ruled against the caging of voters—a severe blow to the McCain-Palin campaign’s ruthless drive to prevent underprivileged citizens from voting.¹²³⁴

In another optimistic development for the Democratic ticket, the moderate Republican Charlie Crist, governor of Florida, reacted positively to the success of early voting. Instead of caging, he worked with his secretary of state to extend the schedule by four hours each day to allow even more voting time for all those whom the practice of caging would eliminate (and did in the past in the Sunshine State): working people, newly registered youth, and disadvantaged voters.¹²³⁵

Back to the subject of voter purges: some were related to the HAVA-imposed requirement of statewide voter databases.¹²³⁶ Inconsistencies already plagued the voter lists, causing both justifiable and unjustifiable purges, but names often appear differently on driver's license lists than on Social Security lists, to give just two examples, boiling down to middle initials and typos in birthdates (among other issues, including exotic names; the problem is called "no match-no vote"). The new HAVA requirement just threw another monkey wrench into the process. The resulting confusion left more room for corrupt purges, which did occur.¹²³⁷

Wrote John Gideon:

'No match, no vote' essentially says that if a voters [*sic*]name or information on their registration does not exactly match their name or information on their ID they cannot vote or they can vote a provisional ballot and take the same ID to the county election office after the election to prove they are who they say they are.¹²³⁸

During this time of year (September 8 in this case), when the largest number of voters register, California Secretary of State Kurt Browning chose to enforce no match-no vote in his Sunshine State. The law was already on the books, but there was no time to "troubleshoot it," said one attorney. Several minority activist organizations, including NAACP, strongly objected. Myrna Pérez, counsel at the Brennan Center for Justice, wrote that:

Voters who do everything right, who submit forms that are complete, timely, and accurate, will suddenly find themselves unregistered when they go to vote, just because someone somewhere punched the wrong letter on a keyboard.¹²³⁹

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A Brennan Center column added that: “State officials admitted in a recent challenge to the law, *Florida NAACP v. Browning*, that typographical errors by election workers are responsible for most of the failures.”¹²⁴⁰

Thousands of voters were affected by this attempt to eliminate yet more underprivileged voters from the rolls.

According to Mary Pat Flaherty of the *Washington Post* on October 18, 2008:

Thousands of voters across the country must reestablish their eligibility in the next three weeks in order for their votes to count on Nov. 4, a result of new state registration systems that are incorrectly rejecting them. The challenges have led to a dozen lawsuits, testy arguments among state officials and escalating partisan battles. Because many voters may not know that their names have been flagged, eligibility questions could cause added confusion on Election Day, beyond the delays that may come with a huge turnout.¹²⁴¹

Flaherty provided examples from across the country, one of which had ascended to the Supreme Court—two hundred thousand Ohio voters challenged because their registration data showed up inconsistent with other state records. The Justices blocked the challenge and the DoJ refused to get involved, despite a request from the White House.¹²⁴²

In another ruling, Michigan was required to reinstate thousands of names that had been illegally removed from voter rolls due to foreclosure and other residency questions. Six members of Wisconsin’s state elections board, which was composed entirely of retired judges, checked into the system and found that four of them had been purged because of mismatches. In all, thirty-one states were using this HAVA-imposed system for the first time. The list goes on.¹²⁴³

Wendy Weiser of the Brennan Center for Justice called such new registration lists “this season’s big issue.”¹²⁴⁴ Others pin this status on voter I.D. requirements; still others, on provisional ballots or the secrecy inherent in so many parts of the entire voting process—“propriety.”¹²⁴⁵ Opinions vary, obviously (see below, on “pre-voting” vs. “voting”) but, as Josef Stalin is often quoted among EI activists, “the people who cast the votes decide nothing. The people who count

the votes decide everything,”¹²⁴⁶ And the plentiful Diebold/Premier and ES&S blunders and scams so evident in the first decade of the new millennium certainly bear this out. Diebold became Premier in 2007 after the owners tried unsuccessfully to sell that notorious branch of what was otherwise a reputable vendor [of their popular brand of ATMs, *inter alia*]. Its stocks had just plummeted after a spectacular breakdown of the company’s machinery in a July 2007 Republican straw poll in Iowa.¹²⁴⁷ Diebold’s reputation suffered further when its promise—that its machinery scrambles the order of voter names so that vote and identity cannot be matched up by poll workers—turned out to be fraudulent. Its rating was cut by KeyBanc around the same time, due to concern with the electronic voting machine market in general,¹²⁴⁸ and SEC had been investigating Diebold for the preceding year.¹²⁴⁹

Caving in to this avalanche of misfortune [payback?], the two giants merged in 2009, ES&S having paid a paltry \$5 million (plus all payments outstanding) for the unprofitable “brother” enterprise.¹²⁵⁰ Diebold/Premier expected to claim a pretax loss of \$45 million to \$55 million.¹²⁵¹ ES&S, for all intents and purposes, now held a near-monopoly over the voting-systems market.

Taken as a whole, the voter-repressing practices enumerated above, among many more, including caging (see Chapter 5 and above, this chapter, on Brennan Center report), are classified by Mark Crispin Miller as “voter suppression (pre-voting).”¹²⁵² Once you get past the lists and into the polls, a whole new adventure awaits—election fraud (voting), the many ways in which the machinery lies to voters or malfunctions or is insufficiently supplied, corrupts vote tallies, transmits them to central locations that trifle further with them, and so on—a huge variety of processes described repeatedly in the preceding chapters.

And electronic election fraud is extremely difficult to detect. As mentioned above, according to the Election Transparency Coalition:

Some e-voting systems run on 150,000 lines of code and to uncover whether fraud has occurred, or by whom and how, requires an army of programmers, a number of years, and millions of dollars. Even then, there is no guarantee that their examination will produce results.¹²⁵³

Electronic election fraud should require no further discussion at this point. But early voting had already begun in several states in October 2008, and the usual technological problems were surfacing. Brad Friedman listed the following:

[T]ouch-screen votes flipping, paper ballot electronic tabulators that can't count correctly or that add thousands of "phantom votes" or that drop thousands of real ones etc.¹²⁵⁴

The EI advocacy group Election Protection compiled a list of problems beating against the door of November 4 and the election of the people's choice. Registration issues, quantitatively, carried the day, with thousands across states still unprocessed and others called incomplete because one box remained unchecked at the top of forms.¹²⁵⁵

Other problem issues listed included various forms of caging, other forms of misinformation, and poorly designed application forms.¹²⁵⁶ Purging was still in full force. Voters were again warned to make sure their registrations were still valid and up to date. The swing state of Wisconsin was singled out for its faulty voter database. Online just since August 2008, it listed incorrect ages for ninety-five thousand voters, all of whom were assigned the birthdate of January 1, 1900. This information had been missing from the forms.¹²⁵⁷

"Election Problem Log—2004 to Date, the ultimate holistic collection of anything that can go wrong and has, from 2004 to 2009," has been donated to the EI public by VotersUnite.¹²⁵⁸ Brad Friedman offers "SPECIAL COVERAGE: Touch-Screen Vote-Flipping 2008," pre-Election Day and throughout it.¹²⁵⁹

Predictions about a "perfect storm" in Pennsylvania actually came true countrywide, in a huge quantity during the early voting period, offered in about twenty-nine states. ACVR "ghosts"—including a lawyer who had harassed David Iglesias before his termination in 2006 and even an FBI investigation (another was aimed at ACORN just days before the election)—came alive again to bully minority voters at polls in New Mexico. Florida experienced a huge voter turnout that reminded Democratic Representative Kendra Meek of "a hurricane on the way"; the Sunshine State was flooded with attorneys representing both political parties to guard against all categories of impropriety. In Georgia, thousands of absentee ballots had to be reprinted because one of the circles was too dark to be read by an

optical scanner; computers in Atlanta lost connection to the state's database for hours; and by Republicans at the national level, "attempts . . . to disqualify legal voter registrations, unlawfully purge voters, threaten individual voters with polling place challenges, fabricate barriers to student voting and abuse prosecutorial authority by investigating 2008's early voters."¹²⁶⁰

In an outstanding example of common sense, officials in San Diego County, California, with a voting population of 1.4 million registered voters, had about 620,000 voting by mail for Election 2008—that is, nearly half of all voters. Seventy-six percent had turned out for the 2004 presidential election. The GOP chairman was going to keep a careful eye on sharp fluctuation in the number of votes, a precaution against any deceptive practices by ACORN (!), which had submitted 26,513 registration cards between January and September. About 7 percent were invalid. Because of an increase in the length of the ballot, the county wisely increased the number of voting precincts by fifty to 1697 and upped the roster of poll workers to nearly eight thousand. In a decision the EI movement might question, the county—for security reasons—would transfer all the ballots back to a central location before the counting began instead of having them automatically counted by each precinct.¹²⁶¹

In Florida, both Democrats and Republicans planned to station thousands of poll watchers at voting sites to guard against possible irregularities in the presidential election.

In an interview in early 2008, groping for some reason for optimism for the EI movement, Brad Friedman remarked that:

Here's the good news: More people understand the threat and are concerned. More citizens are watching, more are paying attention, working at polls, asking questions. That makes it harder and harder for bad guys to mess with elections or for errors to go undetected. The answer is not to rely on media, not to relay [*sic*] on government because it will fail us, but to rely on people. People are really, really concerned about the issue and are paying attention.¹²⁶²

Ohio attorney Dan Tokaji of Ohio State University's Moritz School of Law corroborates this with his perspective on the 2008 election, albeit at the level of his home state:

[T]he success of Ohio's 2008 election is likely to hinge more on procedures and people than on technology. In the few months that remain between now and the election, Ohio and other states would do better to focus on those issues than to attempt a hasty overhaul of its voting technology (also quoted above, pp. 195-96).¹²⁶³

Instead, the focus should be on teaching poll workers and government officials about the systems that we have, to avoid that “human error” piece of tape that is placed by corporations over accusations of slipshod quality, corruption, and corruptibility. Poll workers need to teach the people how to vote.¹²⁶⁴

Speaking of restoring the focus to the people who vote, Friedman berated local municipalities and states for outsourcing more and more management of their elections to vendors, even though, as he points out, such relegation “puts our democracy at risk.”¹²⁶⁵ Could it be a coincidence that New Hampshire, the state considered to be the mecca for hand-counted paper ballots, ranked highest in a survey of states on the belief that “most people can be trusted,” at 60 percent of those surveyed?¹²⁶⁶ Testifying before the House Rules and Administration Committee on the importance of “citizen-led monitoring of our elections,” John Bonifaz of VoterAction.org told legislators:

When private companies deny independent investigation and review of their voting systems—as they’ve recently done in New Jersey and in Florida—the integrity of the election process is undermined. When voting systems, including privatized voter registration databases and electronic poll books, are found to be unreliable, election officials ought to discontinue their use and employ safer and more accurate systems. When questions repeatedly emerge every election as to whether votes are being properly counted—as they have in the past several election cycles—rigorous and mandatory audits ought to be required with voter-marked paper ballot systems that are, in fact, auditable.¹²⁶⁷

When ballots are invisible, counting is unverifiable, auditing is not mandatory, and source code is proprietary, citizens are not voting—even those who think they are and who go through the motions. We

are wearing “new clothes” donated by the upper class while they walk away with our human rights. In league with other activist groups, VoterAction.org organized a “Watch the Vote” program in 2006—beginning with the primaries, and with citizens monitoring every step of the voting process as well as participating in education and outreach programs. This report by Ellen Theisen was the result: “Vendors Are Undermining the Structure of U.S. Elections.”¹²⁶⁸ In other words, vendor dependency at the expense of citizen participation, first discussed in Chapter 3, was a growing problem.

Voting system vendors’ contracts, communications, and histories explored in the report reveal that vendors exploit the local jurisdictions’ dependency by charging exorbitant fees, violating laws and ethics, exerting proprietary control over the machinery of elections, and disclaiming unaccountability.¹²⁶⁹

According to election attorney Robert F. Kennedy Jr., this country is one of very few that entrusts the majority of its electoral processes to private vendors.

Assertive intervention by the people in 2008 took control away from the technocrats, creating a flood that the highest, widest levee could not hold back.

To understand how this dovetails with the past and to account for it, we must backtrack.

To begin with, in Ohio, on top of everything else that happened in Election 2004, extensive research by the attorneys still prosecuting the *King-Lincoln Bronzeville v Brunner* lawsuit—Cliff Arnebeck and Bob Fitrakis, along with Harvey Wasserman, an author, college instructor, and activist—focused on a shift in the vote count late on November 7. Suddenly Kerry’s lead of three hundred thousand votes morphed into his trailing by one hundred thousand votes (that is, four hundred thousand votes were suddenly added to Bush’s total¹²⁷⁰). Working with world-class computer scientist Stephen Spoonamore, the attorneys traced the shift to the Ohio Secretary of State Blackwell’s office, ground zero of the man-in-the-middle machinery (remember that Bush and Rove made an unplanned Election Day visit to Columbus and met with Secretary of State Blackwell). The marionetteers in charge emerged as Karl Rove; his computer IT operative, Mike Connell¹²⁷¹; Jack Abramoff; Susan Ralston¹²⁷²; and Ken Blackwell. According to Harriet Crosby:

[U]sing computer networks like SMARTech.com, GovTechSolutions.com, gwb43.com, New Media Communications and GOP.com, . . . late on election night in 2004—at 11:13 p.m., to be precise—Blackwell shunted the vote tally from Ohio to GOP servers in Chattanooga, Tennessee, [where the party’s servers were in the same basement in Tennessee as the Ohio election servers] where they were changed just enough to give the election to Bush. We have evidence, from the Ohio Secretary of State’s Office, of the election architecture that shows exactly when the vote tally was sent to Connell’s company SMARTech at GOP headquarters in Tennessee, and when it came back. This is how Bush got a second term—and Karl Rove was behind it.¹²⁷³

For two flowcharts of this complex process, see <http://freepress.org/images/departments/4237/ClevExIArchMap2004Ohioelection.pdf> (the entire process) and <http://freepress.org/images/departments/4237/SmartechRoutingOH04.pdf> (the configuration at the secretary of state’s branch of operations), both used as exhibits in the court filing of July 20, 2011.¹²⁷⁴ Additionally, the filing contains the contract signed between Ohio then-Secretary of State J. Kenneth Blackwell and Connell’s company, GovTech Solutions. Connell subcontracted to SMARTech, located in Chattanooga.

In connection with the firing of the nine federal prosecutors by then-Attorney General Alberto Gonzales in 2006–7, the finding surfaced that among missing emails sent by the Republican Party and Karl Rove, sought as evidence, some had been sent during the ninety-minute November 4 (that is, Election Night 2004) late-night hiatus—all official communications concerning election tallies mysteriously stopped around 11:13—and did not start up again for an hour and a half. The Republican National Committee and Rove’s emails from that time period had gone missing,¹²⁷⁵ as if to corroborate the evidence from the flowchart that mapped the course of the votes shunted down to the Tennessee server from Columbus (see quote above from Harriet Crosby). Attempts to subpoena Rove and Blackwell had failed as of April 2007, but the effort is ongoing.¹²⁷⁶

Exit poll results announced on television at 12:20 a.m. on November 5, 2004, showed that Kerry had a commanding lead in the

swing states of Ohio, Iowa, Nevada, and New Mexico. Despite all of the conspiratorial activity, he was ahead of Bush by 4.2 percent, or well over two hundred thousand votes. But all four states' results had inexplicably shifted to Bush's column by morning.¹²⁷⁷

In September 2008, Spoonamore entered the fray, a founder and former CEO of a company whose computer experts serve major credit card companies and banks to detect fraud,¹²⁷⁸ and also a lifelong Republican and McCain supporter.¹²⁷⁹ This well-respected, deeply experienced computer security expert became an unlikely ally.

Spoonamore assured the EI activists that there was no comparison between ATM machines and voting machines as inaccurate and vulnerable to tampering as the DREs and opscans that comprise most of the election machinery used in this country.¹²⁸⁰ The ATMs [some of them manufactured by Diebold (!)] were virtually tamper-proof and produced reliable and accurate paper records. Diebold once explained that it was too expensive to manufacture voting machines as reliable as ATMs.¹²⁸¹

Said Bev Harris in late May of 2008, "No greater gesture of contempt for the people is there than the sad state of the voting process in its every aspect."¹²⁸²

According to Cliff Arnebeck, lead attorney for the plaintiffs in the class-action lawsuit *King-Lincoln Bronzeville Neighborhood Association v Blackwell*, "[Spoonamore is] really one of the top, and in fact the top private cop in the world on the subject of data security."¹²⁸³

Spoonamore agreed with the EI movement that Bush did not win Ohio in 2004; his corrupt machinery did, "voting machine irregularities favoring Republicans."¹²⁸⁴ He became principal expert witness for *King-Lincoln Bronzeville*, still in process in 2012.¹²⁸⁵

King-Lincoln Bronzeville is a neighborhood in the inner city of Columbus, Ohio. The suit was first filed on August 31, 2006, with the U.S. District Court for the Southern District of Ohio. At issue was "whether the rights, privileges, and immunities guaranteed to Plaintiffs by the Civil Rights Act, and the First, Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution have been violated by the past and ongoing conduct of Secretary of State J. Kenneth Blackwell in connection with past elections in Ohio"¹²⁸⁶; or, in more condensed form, "Improper Election Administration."¹²⁸⁷ Sadly, the suit was initiated with the hope of sanitizing Election 2006; instead it was protracted, seemingly ad infinitum. The 2006 election

successfully created a Democratic majority in the House of Representatives and a slim Democratic plurality of one [Independent] in the Senate. Results would have weighed far more heavily on the Democratic side had the case been prosecuted successfully before this election.¹²⁸⁸

Among its many accomplishments, *King-Lincoln Bronzeville* successfully won assurance that all ballots cast in Ohio for Election 2004 would be preserved until the conclusion of the suit. This action drew national attention and publicity, even in the *New York Times*.¹²⁸⁹ Unfortunately, however, as mentioned above, in 2007 the team of heroic attorneys learned that “56 of the 88 counties in Ohio violated federal law by destroying election records, thus preventing a definitive historical recount.”¹²⁹⁰

After winning the office of secretary of state vacated by Kenneth Blackwell, Jennifer Brunner, along with Attorney General Marc Dann, also newly elected in November 2006, expressed an interest in settling lawsuits of merit left over from Blackwell’s tenure.

In the plaintiffs’ brief filed by the *King-Lincoln Bronzeville* team, a stay was requested. In that the defendants also requested a stay, the proceedings were drawn out, but this is no surprise.

The settlement concept included a consent order correcting a long list of Ohioelection administrative practices that discriminated against the plaintiffs, and also launching an investigation under the attorney general’s new power to investigate election fraud in the 2004 election. The idea of the attorney general’s office exercising its new power granted by House Bill 3, to investigate and prosecute election fraud, was in recognition of the major scale of such an investigation and its importance to deter future attempts to steal Ohio elections. As a candidate, Marc Dann had specifically referred to this provision as the one good thing about House Bill 3.¹²⁹¹

According to Arnebeck in 2008, “This case has the potential to put some of the most powerful people in the country in jail,”¹²⁹² most notably Karl Rove,¹²⁹³ and Blackwell, the principal architect of this heist as well as much other interference with the rights of the minorities attempting to vote Democratic, in most instances.

The voluminous research carried out by Velvet Revolution (VR), “a network of more than 100 progressive organizations reaching millions of people demanding progressive change through our various campaigns”¹²⁹⁴ and by the *King-Lincoln Bronzeville* team (Bob Fitrakis, Cliff Arnebeck, Harvey Wasserman, and others—I call them

“the Ohio heroes” and thanked co-counsel Bob Fittrakis in an interview for saving our democracy), was submitted and successfully obliged Mr. Connell, long-time, outspokenly loyal associate of the Bush family, as well as prodigious IT expert Spoonamore,¹²⁹⁵ to appear before a federal judge in Ohio. They were subpoenaed on Friday, October 24, 2008, with the agreement of then-Secretary of State Jennifer Brunner. Connell was deposed in federal court on the following November 3, the night before Election Day, in a federal lawsuit investigating the rigging of the 2004 election. Though Rove’s defense lawyers objected to nearly every question asked in the November 3 hearing, enough information was extracted from Connell, testifying under oath, to corroborate the key role of SMARTech, an Internet service company, and Triad Governmental Systems in the theft of Election 2004.¹²⁹⁶ Judge Solomon Oliver presided and ruled against the highly skilled IT operative.

Rove, expected to be subpoenaed next, has never been, to date. According to VR, if Connell had revealed more, Karl Rove would certainly have been subpoenaed because of his role as mastermind. He had already ducked two subpoenas by then-House Judiciary Chairman Congressman John Conyers, to testify, on the basis of findings in Conyers’s 2005 report *Preserving Democracy: What Went Wrong in Ohio* (see above, Chapters 5 and 6). The grounds of the successful avoidance? “According to Bob Fittrakis, “He’s hired high price law firms to get out of taking a deposition.”¹²⁹⁷

The week preceding Election Day 2008, Republican presidential candidate John McCain had predicted his own victory in the wee hours of the night of Election Day (when the “man in the middle” process had been activated on Election Day 2004). A week before then, Rove had predicted confidently that McCain would win the ten key battleground states and thus sweep the election. On October 30, he published an op-ed in the *Wall Street Journal*, telling voters that polls were meaningless, that McCain could win. On the evening of November 3, after the hearing won by the Ohio heroes, Rove about-faced and, in his blog, predicted Obama’s victory.¹²⁹⁸

The election tabulation fraud accomplished by the man-in-the-middlestructure was referred to, first by insiders, as Rove’s “Cybergate.”

Mark Crispin Miller, author of two books and numerous articles on the election theft in 2004 and other related incidents and issues, said that

Personally, I believe that a miracle happened. I had given up hope of anything coming of this lawsuit before the election because I was told that newspapers don't do stories until after a judge rules on a case and that these things take forever. But my colleagues at VR [Velvet Revolution] persevered. I was totally surprised last week (just a week ago) to learn that the Judge had ruled against Connell's attempt to quash the subpoena. . . .¹²⁹⁹

And also:

[November 3] may be one of the most important things to happen in this whole election and may be one of the most important things to happen in American history.¹³⁰⁰

According to Robert F. Kennedy Jr., "The Ohio vote undermines the very foundation stone of American democracy." [The Ohio debacle and particularly what came to be known as Cybergate were] "[m]ore serious than Watergate."¹³⁰¹

Perhaps the tragedy of Connell's death in a single-engine plane crash the following December 19 was further proof of his key role in the planned replay of the 2004 election theft. The Ohio attorneys had requested protection from the federal government for this key witness, and Connell had been warned against flying his personal plane, which had indeed been sabotaged. But he flew anyway and crashed in the backyard of an abandoned home three miles short of his destination, Akron, Ohio. Connell, a religious man and a family man,¹³⁰² had planned to tell all and had confided this to a VR investigator and then told a friend he was afraid that, in this process, "the George Bush and Dick Cheney machine would "throw [him] under the bus."¹³⁰³

VR honed in on conditions surrounding the crash:

[T]his story will inevitably lead to greater coverage of the facts outlined by author/journalist Simon Worrall. There are new twists to the story that have previously gone unreported including the fact that Connell's Blackberry with lots of Bush/Rove info on it disappeared at the crash site; that the site was cleaned up under the cover of night after a lockdown on information about the crash; that the "after action report"

detailing the sabotage of Connell’s plane has been received by the NTSB and reviewed by intelligence officials who have indicated that it is genuine; that Connell’s last words were captured on tape and showed extreme surprise at something that happened in the cockpit; that a contract between Connell and the OH SOS shows that they had a subcontract with SMARTech to reroute the 2004 election results through GOP servers with remote access, mirroring capabilities, and a Virtual Private Network accessible by anyone with a password. . . .¹³⁰⁴

And so, on Tuesday, November 4, when the returns from the West Coast streamed in to CNN, like a tidal wave, I leaned back on my living room couch and sighed. Eight years of fighting punctuated by a few years in the early 2000s protesting the Iraq war before and after it began. Now everything we worked so hard for during the Obama campaign would go on as it needed to.

For a change the abrupt “flip” had been in Karl Rove’s prognostications as much as from Democrat to Republican on touchscreen machines. Election 2008, the most “technologically advanced” in history, which attracted more voters than any other since 1960 (Kennedy-Nixon), was proclaimed a decisive victory for Obama that camouflaged what may have been one of the greatest landslides in U.S. history.

More than that, the impossible had happened: a Democratic sweep of two branches of the federal government.¹³⁰⁵ A significant portion of the machinery that horded votes for the Republicans had been thwarted, thanks to the dedicated, nonstop, pro bono efforts of a group of progressive attorney/activists in Columbus, Ohio, ground zero for the notorious man-in-the-middle system developed by Mike Connell at the behest of Karl Rove.¹³⁰⁶ The *King-Lincoln Bronzeville* suit persisted—unresolved, in a snarl of technicalities, fine print, and legal manipulations—wending its shrewd and cautious way toward its ultimate quarry, a man who controlled the tragic destinies of millions of victims worldwide through his puppet, George W. Bush, among others, from 2000 to the present—Karl Rove and his henchmen. A deposition was all the Ohio attorneys expected to win, and the rest depended on the judgments of Solomons and Ahabs, but that is another book we can look forward to.—whenever the next milestone

occurs.

History had stopped briefly for me between the massive surge of victory provided by the “Left Coast” and the speech itself, when I wondered about how muted Obama’s “yes, we can”’s had become, like a refrain to a ballad. No-Drama Obama had suddenly stepped in to replace Fourth-of-July sparkling, vibrant, cheerleading campaigner Obama. That began the next chapter of Obama’s Teflon but conflict-ridden first term—after day one when, thrilling his progressive contingent, he announced the closing of “Gitmo” but then later changed his mind.

And then, quickly, the glitches all over the country planted to stave off a Democratic victory began to cover progressive webpages.

First, . . . ¹³⁰⁷

CONCLUSION

Our nation's soul is bleeding, its future up for grabs.—Robert Koehler

Trying to defend electronic voting machines is becoming harder and harder. Election administrators see the tea leaves and recognize the battle has been fought and won by the activists.—Kimball Brace

You only have one chance to get an election right.—Debra Bowen.

With secret voting, the government must know who voted but cannot know how they voted. As a result, it is impossible to prove that any individual's vote was actually counted.—David Jefferson

Our mission is to encourage citizen ownership of transparent, participatory democracy.—Creekside Declaration

The nasty little secret of American democracy is that not all the votes get counted.—Greg Palast

There are now 50,100 ways that the state government in a close election can throw the election in the direction of the party that that state government reflects.—Ralph Nader

24 lines of code can flip an election.—Clint Curtis

Continuous, year-round public participation is necessary to make government work in a democratic society.—Teresa Hommel

MARTA STEELE

It's ironic, at the same time I'm about to return to Iraq to help build a democracy, that my own right to vote is being challenged at home for partisan purposes.—Kevin Furey

The voting industry sells crap.— Doug Kellner

We live in a country that can send a guy to the moon, but they can't get the computers up, so it's very discouraging for me.— Quentin Cottrell

The electoral system subsumes a wide range of actors, from corporations, computer professionals, attorneys, and academics to governments and politics at every level, to activists and poll workers, to the maintenance employee who accidentally pulled out the plug of a voting machine in the Hollywood film *Swing Vote*, which was produced to stress the importance of one vote. That pulled plug gave birth to the plot and ultimately remade another man from lower than a steady maintenance worker to a suited white-collar desk jobber of some description, all because of his power to vote.

As the herm of democracy, voting is the most important right we have. This has been maintained by many since the eighteenth century. Since 2008, the focus of the electoral battle, which falls along partisan lines for the most part, consists of corruption at the registration level, the expanding plague of voter I.D. and provisional ballot requirements, and the proprietary nature of so much of the electoral process, which amounts to depriving the most vulnerable elements of society of voting. The concept “vote” is the most frequent specific, concrete focus of the twenty-seven amendments to the U.S. Constitution—a subject of Amendments 12, 14, 15, 17, 19, 23, and 26. Voting is the people’s greatest, most important, and often only power in a peaceful and orderly society.

U.S., largely liberal voters bear the additional onus imposed by provisional ballots, which by definition cannot be counted the same day as are other forms of voting—by their nature contentious, then, and largely crippling would-be Democratic voters once again. Anger these same people enough—for instance one minority group, our youth—and we will hear about something more important to them than voting: according to a comment on a YouTube video, presumably from a young adult, titled “Protesting is more important

than Voting,” protesting and fighting the powers that be does a lot more to further ones [*sic*]cause than a simple vote.¹³⁰⁸

If demanding voter I.D. did not disenfranchise, then it would not be used—in Germany voter I.D. is required, but in that technologically advanced country, voters use hand-counted paper ballots.¹³⁰⁹ In 2010 the U.S. Supreme Court ruled in favor of the super-rich in an immense power grab, the *Citizens United v FEC*, which took the lid off of how much a corporation or union can spend for political purposes, giving rise to the super-PACs. According to Wikipedia.org, “The case did not involve the federal ban on direct contributions from corporations or unions to candidate campaigns or political parties, which remain illegal in races for federal office, a common misreading of the SOTUS [*sic*]decision. A corporation or union can run a film or other politically related medium within sixty days of a presidential election or thirty days of a primary.”¹³¹⁰

Federal elections, at least, are becoming more and more simply money battles, as those who gain political offices become wealthier and wealthier, and hence more and more removed from the people they are supposed to govern, whose power diminishes every day as a result. Dollar bills are replacing ballots as the bottom line of our governmental system. Photo I.D.s cost money. And if the name on one of them differs at all from the referent on the registration roll, then the would-be voter can be forced to use a provisional ballot, with its 1-in-3 chance of being counted, at least as of November 2008.

Down the drain with the vote goes its counterpart, democracy. We must fight to keep the vote as the primary unit of power in this country.

Why 2000–2008? It is well documented in this volume that election corruption and manipulable technology have infested this country since the 1960s, starting with punch cards and optical scanners.¹³¹¹

But in the preceding decade in this country, paper was overthrown by “plastic” and all hell broke loose, because the plastic was an instrument of the super-rich to “high-tech” their voyage to the top of the economy and government. The idea to save paper and trees, on the face of it, makes sense. But what has happened is infinitely worse, because we can grow more trees but we can’t fight the symbiotic technology-money-politics-media behemoth. Wrote Bob Koehler, whom I have quoted above about how voters are enduring the worst era in election history¹³¹²:

Having a fair election—all votes counted, all who are eligible and want to vote allowed to vote—is far, far more important, even in 2008, than who wins.

. . . [and] Fair elections are not a given. They never have been, but *things are worse now than ever before* because of . . . officialdom's seduction by unsafe, high-tech voting systems; the seizure of power by a party of ruthless true believers who feel entitled to rule and will do anything to win; a polite, confused opposition party that won't make a stink about raw injustice; and an arrogantly complacent media embedded in the political and economic status quo.¹³¹³

Hand-counted paper ballots (HCPB) harken back to the era before 1890, when lever machines came into use to combat the corrupt practice of ballot-box stuffing, also exemplified within this volume (see Chapter 8 on the corruption of the 2008 New Hampshire primary). Prior to ballot box stuffing, there was oral voting, aye or nay, but even such complete transparency cannot camouflage backstage acts of bribery or blackmail. Originally, in ancient Greece, if not by voice (rarely) or show of hands (more common), then citizens of the city-states voted with *psêphoi*, pebbles. Voters would scratch a pebble with the name of their chosen candidate and put it into a large, sealed container, which would be broken after the election to count the votes. Or, for a “yes” or “no” vote, there were white pebbles for one category and black for the other. Or, in the case of possible ostracism, there would be one vessel and pottery shards (*ostraka*) would be scratched with the name[s] of those under consideration. The subject with the largest number of votes would be exiled.

Of course it all boils down to human nature. Analyze our litigious society—what is not here to bring out the best in culture is here to protect us from ourselves, from the deception words can weave, the horrendous structures they build—out of the control of the majority but then again untamable by the minority, devouring all of us, rich and poor, into the same vessel, the same whale's stomach.

The activists between 2000 and 2008 fought for paper, for the cleaner past. They were the conservatives, not the complacent silk ties seated on velvet cushions who now seem to be on the ascent with Barack Obama a very slender and erudite warrior up against the corpulence and hypocrisy of his opponents, who are stripping our

culture of all pretenses of morality.

Simplify, simplify. Those DREs will become more and more complex (see Chapter 6), but why? All we need is a pencil, a slip of paper, and honesty.¹³¹⁴ When the day arrives, and experts promise that it will, when we can vote on computerized machines that are beyond any form of corruptibility, we will be where we need to be. The people, not the corporations will triumph. We cannot have honest voting machinery produced by corrupt plutocrats.

We *need* election integrity. We *need* 100 percent transparency in this venue.¹³¹⁵

Let us look forward to that day and fight for it. By the time we choose “plastic,” it will have become as sustainable as paper.

If the grassroots are not evident enough in the narrative, please look to the URLs in the endnotes—nearly all refer back to their amazing organizations.

Afterword

In my adult life, history has stopped at least twice: first, when the Soviet Union broke up; and second, at 11 pm on November 4, 2008, when the votes from the Left Coast put Obama over the top decisively. For about an hour I was living happily ever after, until, as mentioned above, Obama removed all of the drama from the “Yes, we can’s” that occurred like a monotonous refrain to his acceptance speech.

I’d like for that near-hour of perfection to endure, to be suspended there ad infinitum, but life goes on.

The most corrupt election in history, according to Mark Crispin Miller, the 2010 midterm election, sealed the first decade of the new millennium as the worst in voting history in this country. Presidential election 2012, between Barack Obama and Mitt Romney; that is, substance versus child’s play (Etch-a-Sketch?) is, according to polls, statistically extremely tight close to the midyear, and so I anticipate much emotional bloodshed as electronic machinery determines the fate of yet another four years, here and throughout the world.

The second decade of the new millennium has given us even more voter I.D. laws and an absurd push toward Internet voting. Hasn’t anyone yet caught on that computers are not up to the task of counting votes reliably, transparently, and minus any external interference, electronic or otherwise?

As Alexander Keyssar wrote, democracy has never been real democracy but we must work nonstop to make this system as democratic as possible. The curve rises and dips. Part of this work will eliminate, for now, the instant gratification afforded by computerized elections, as thousands of humans agree to work thanklessly backstage hand-counting paper ballots, and they will. Exit polls, despite their ambiguous reputation for accuracy, can generate projections if complete transparency is added to the process from beginning to end.

Every vote must be counted, as John Kerry promised in 2004, a bit too fervently in comparison with the actual outcome, his concession less than twenty-four hours after the polls closed on one of the most disputed elections in U.S. history, where the situation in Ohio so mirrored what had happened in Florida in 2000.

And when we reach the day that every vote is fairly counted, at

least at the presidential level, with immigrants streaming in to join the ethnic lower classes for better or for worse, even every dime in the Fed or all the walls of Fort Knox won't be able to withstand the rush toward democracy. As of 2008, the U.S. census counted approximately 228 million adults. There are approximately 3.5 million active members of the U.S. military and a bit more than 8.5 hundred thousand members in the reserves, according to U.S. Defense Department statistics released in 2010.

Now add to those numbers a figure between 700 thousand and 8.5 hundred thousand members of the various government-level police forces (according to WikiAnswers). So the total units of defense to ward off the hordes number about 12 million, or one for every 19 adult Americans. Can one armed individual gun down nineteen others? Possibly, but then there would be no one left, except perhaps for the one percent of Americans who refused to join the 99 percent in standing up to abuse like the *Citizens United* decision and other manifestations of the emerging plutocracy in this country. And they can't live without us, any more than a parasite can live without a host.

So, minus the one percent, the ratio between we the people and all possible adversaries is even lower than 1:19.

Statistics are only part of every story and, as Keyssar pointed out, a fair vote won't fix everything wrong with our democracy. But what I'm leading up to is an affirmation of my claim earlier in this volume that if everyone who could vote did vote, there would never be another Republican president.

I'm leaning on the somewhat wobbly assumption that our political system will always be bipartisan, but in the preceding fifty years several third-party figures have challenged this tradition from the right and the left, including George Wallace, John Anderson, Ralph Nader, and Ross Perot. If everyone's vote must not only be counted but really represent the people's choice, then alternatives to the Elephant and the Donkey are key to the future of the United States.

A fair vote will express the people's will and put into office those they choose. It is up to both these representatives and the people who elected them to take it from there. The more participation there is, the more likely the democracy curve will rise. This is a conclusion I tried to reach at the end of Chapter 8—people more than anything else, we the people, steer our future.

Progress in democracy is supposed to be what we all want. If those of us who really want this, work toward it, then that imperfect, elitist

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phenomenon—dominated by white and propertied, but voting white males—donated to the world by ancient Greece, will survive, persist, and improve.

An unfair vote will aid and abet the downward curve that frightens all but the one percent.

And so the hard work is up to us. Let's do it.

Appendix 1: Types of Voting Machine and Ballot-Marking Devices

Optical Scanners (opscans, or Marksense)

An optical scanner, or opscan, works by scanning paper ballots that look like standardized test answer sheets, that is, with ovals next to each candidate's name to be filled in with a ballpoint pen or lead pencil. These paper sheets are inserted into scanners that read them and then tabulate the results electronically. In the event of questionable results, ideally the results evident from the paper ballots are hand counted as the ultimate criterion for determining the election outcome. Auditing is possible by means of the same ballots. Precinct-based, as opposed to centrally tabulated opscans, are the most often-used variety of the system. The centrally tabulating machine, as the name implies, transmits totals from each machine to a central server, while precinct-based machine totals are tallied on site and then sent on to the next highest level.¹³¹⁶

Optical scanners cost less per unit than do DREs (see below) and one or two can do the work of a roomful of these touchscreen or push-button disasters. Opscans last from fifteen to twenty years, as opposed to the DREs' life expectancy of less than ten years. They are far easier to store; DREs require special climate settings and other parameters unnecessary in the case of opscans and are astronomically more expensive to maintain.¹³¹⁷ In a March 2004 analysis of the presidential primary, the *Sun-Sentinel* of Fort Lauderdale, Florida, reported that voters using touchscreen machines were six times as likely not to have their vote recorded or counted as were voters using optical-scan machines, which read markings on paper ballots.¹³¹⁸

The main problem with optical scanners is that, as computers, they too are hackable.¹³¹⁹ There are also problems when a penciled choice goes out of the bounds of the circle or stray marks occur on any part of the ballot. In these instances, because the machine won't count them, the ballots must be considered individually to determine the voter's intent. Moreover, wrote Michael Shamos, a diehard advocate of DREs (though previously opposed to them):

[W]ith mark-sense ballots it is known that if the areas for marking the ballots are printed improperly or the timing marks at the side of the ballot are skewed, votes that are cast will not be read properly by the scanning machine. More tampering is possible through the selective application of inks that appear white but absorb the infrared light that is used in the reading process. An answer, one might think, is that we always have the original ballots around to recount by hand, but mark-sense ballots are just as susceptible to loss, substitution or augmentation as Australian ones.

In general, the rampant problems with paper ballots are neither acknowledged nor addressed by opponents of electronic voting, who seem oblivious to the fact that their opposition to new technology, if successful, will compel us to retain something that is much worse.¹³²⁰

During the 2004 presidential election, 46 percent of counties, 36 percent of precincts, and 35 percent of voters used optical scanners in the United States, and the large majority of users held on to them despite the mad dash toward DREs elsewhere. States praised their opscans for lasting well for twenty years. According to Election Data Services:

State after state currently using optical scanners are planning to keep them or expand their usage as they move towards full HAVA compliance in 2006. Michigan, Arizona,¹³²¹ Oklahoma, South Dakota, North Dakota, Rhode Island, and West Virginia, among others are going 100% optical scan in 2006.¹³²²

The following cynical precautions were written to the *New York Times* by a knowledgeable citizen:

While optical-scan voting is superior, there must be safeguards. Initial scanning should be done on the precinct level to minimize error before results are sent to the local board of elections. Results should then be tabulated county by county and transmitted to the final tabulating location. There should not be a central, politically motivated state bureaucracy in charge of the process. Vote counting should be from the bottom up. Paper ballots, after they have been scanned, should be guarded like

gold in Fort Knox. A security system must be in place that will prevent the lifeblood of a democracy from being lost, strayed or stolen.¹³²³

The cover photo of Richard Hayes Phillips's intricate audit of Election 2004 in Ohio shows an adulterated opscan ballot: a sticker is placed over the filled-in oval for Kerry and on the other side of the ballot the oval next to Bush 43's name is filled in.¹³²⁴

Wrote Bob Fittrakis and Harvey Wasserman, "Overall, our nation's history has been filled with stolen elections. Most have been robbed with paper ballots and stuffed ballot boxes. But under Bush/Rove, electronics are at center stage."¹³²⁵

By 2008, two-thirds (66 percent) of the country voted on opscans.¹³²⁶
A total of 92 percent voted electronically.¹³²⁷

Direct Recording Electronic Systems (DREs)

A DRE (Direct Recording Electronic) voting system consists of a computer with a touchscreen monitor (or occasionally a push-button interface), a permanent storage medium such as a write-once memory card, software, and, in some systems, a ballot printer.^{1328,1329}

The computer is much like a home computer. A touchscreen monitor allows the user to touch a marked spot on the monitor surface with his finger, thus entering data as if the screen were a keyboard; the format is reminiscent of an automatic teller machine.

The *software* consists of two parts:

- 1) *An Operating System* that supports the voting software and directly controls the monitor, the permanent storage, and any other device that forms part of the computer system.
- 2) *The voting system* itself, which runs as an application on the operating system. It manages the user interface, guards against certain user errors—that is, it refuses to accept a vote if the user votes for more candidates than there are offices to be filled—and records the vote of each user on the user's command. The voting system also counts the votes and records the counts, or else cooperates with a central computer to produce these results.

The ballot printer, if there is one, produces a document that may look like a ballot; it shows the choices made by the user. After the

user has examined it, he may direct the system to record his vote or he may ask for another chance to vote. When the voter has made his choice, the system retains the record, most often on what looks like a cash register tape. Most of the DRE systems installed in the United States today do not have these printers. Where they are present, problems often arise (more on this below).

When a paper record is produced by a DRE, it is called a “voter-verified physical audit trail (VVPAT).”¹³³⁰ The alternative in Hommel’s illustration (the “fraud-o-matic”) mechanically deposits the paper ballot in a receptacle once the voter has approved it.¹³³¹

A variation on this system, developed by Rebecca Mercuri ten years ago, the Mercuri method, is described below by the inventor:

A method of voting described by this author over a decade ago, referred to as the Mercuri Method, requires that the voting system print a paper ballot containing the selections made on the computer. . . . This ballot is then examined for correctness by the voter through a glass or screen, and deposited mechanically into a ballot box, eliminating the chance of accidental removal from the premises. If, for some reason, the paper does not match the intended choices on the computer, a poll worker can be shown the problem, the ballot can be voided, and another opportunity to vote provided.

At the end of the election, electronic tallies produced by the machine can be used to provide preliminary results, but official certification of the election must come from the paper records. Since the ballots are prepared by computer in machine- and human-readable format, they can be optically scanned for a tally, or hand-tabulated for a recount.

After the election, yet other entities (such as the League of Women Voters or a news organization like Reuters) can verify the ballots using their own scanning equipment, if the format is produced in a generic way. This type of system is cost-effective. No longer must blank ballots be prepared in advance, as with Mark-Sense or other paper-based voting systems.¹³³²

With paper ballot voting, the ballot is filled out in and of itself as a form of voting or for use with optical scanners, which also tally votes electronically. Veteran New York activist Teresa Hommel illustrates these

distinctions at her website “Where’s the Paper?”¹³³³

By the end of 2002, 19.6 percent of votes in this country were recorded on touchscreen equipment, up from 3.9 percent in 1992, according to the Federal Election Commission. Optical scanning equipment recorded another 31.6 percent. Georgia had already voted on all new machines for its elections in 2002. Maryland had just placed a \$55 million order with Diebold for eleven thousand machines so that the entire state would soon vote on new machines.¹³³⁴

By February 2003, paperless, touchscreen voting machines were used by nearly one in five U.S. voting precincts.¹³³⁵ By November 2004, one-third of the country voted on paperless DREs. By May 2007, seven states used paperless DREs exclusively: Delaware, Georgia, Louisiana, Maryland, New Jersey, South Carolina, and Tennessee. In another ten states (plus the District of Columbia), at least some counties or precincts used paperless DREs: Florida, Indiana, Iowa, Kansas, Kentucky, Pennsylvania, Texas, Virginia, Arkansas, and Mississippi.¹³³⁶

If we consider electronic voting as a whole, including DREs and opscans, then in 2000 40 percent of the country voted electronically, followed by 70 percent in 2004 and 80 percent in 2006.¹³³⁷

Do DREs save money, considering the expense of all the paper needed nationwide for the alternative? Journalist Lynn Landes answers, Quite to the contrary: “[R]eports filter in that some communities already [2004] need to replace their three-year-old touchscreen voting machines due to rampant equipment malfunctions, costly [*sic*] millions more in taxpayer dollars.”¹³³⁸ Optical scanners have been known to last twenty years or longer, with maintenance and storage expenses light years lower.

If we compare the performance of the two machines, according to Greg Palast, “Florida counties using touch-screens have reported a known error rate 600% greater than the alternative, paper ballots read by optical scanners. And those errors have occurred—surprise!—overwhelmingly in African-American precincts.”¹³³⁹

Said grassroots EI advocate Matthew Segal, among many others, “[I]t’s strictly impossible to know if *any* vote *ever* cast on a touchscreen (DRE) voting machine—in the past or in the future—has been recorded accurately, as per the voter’s intent.”¹³⁴⁰

Added Teresa Hommel, though paperless DREs had been in use for twenty years [by 2004], “there has not been a single verified

election using this equipment.”¹³⁴¹

By definition, these DREs actually violated HAVA, Section 301: Manual audits must be on paper.¹³⁴² Pennsylvania maintained that lever machines must be disposed of because they don't meet this requirement,¹³⁴³ New Jersey has a law requiring paper trails but votes on Sequoia DREs. The law mandating this passed in 2005, requiring implementation by 2008. However, in 2009, retrofitting the Sequoias with printers, the state's solution to the requirements of the 2005 legislation, was postponed indefinitely by Gov. John Corzine because of the deep recession that gripped the country. In January 2009, State Senator Nina Gill introduced a new bill into the state legislature requiring replacement of the Sequoias with optical scanners, a far cheaper and wiser alternative.¹³⁴⁴

Lever Machines

New York Attorney Andi Novick describes the lever machines she and Teresa Hommel and others fought to keep at New York state polls:

Voter pulls lever for candidate of her choice; gears increment a mechanical counter by one and only one vote—only for the desired candidate. No vote switching or overvoting is possible! (Some machines increment the counters as the big lever is pulled, but unlike software, either method of operation can be observed and thoroughly tested before and after each election and both have been completely disclosed in the machines' patents.) Rinse and repeat for the entire ballot, which takes less than a minute for most voters. Change or correct your votes as many times as you like—not just three. When you're done, just pull the big lever that casts the ballot, locks in all your votes, opens the privacy curtain, and repositions the candidate levers for the next voter, leaving the locked immutable mechanical counters as the durable record of all the votes cast on the machine—until after the election is certified. On election night, a permanent paper record of the vote tallies on each machine is produced by the machine, and/or by bi-partisan teams of poll workers, before the machine is moved and the poll workers are permitted to leave.¹³⁴⁵

Interviewed by the *Trenton Times* in November 2000, the day before she testified for a South Florida hearing that the state's recount should continue, Rebecca Mercuri, a New Jersey resident, told reporter Joseph Dee that "the technology [of lever machines] is antiquated, but it works. She continues: "It's actually a really good system. You hear those levers go, "ka-chunk," you know your vote went into that machine. It's a psychological thing.

Moreover, wrote Dee, "She said some criticize the machines as 'being similar to machines Thomas Edison invented in the 1880s'. So what? Our phones are 1880s technology, too, especially the earpiece. So I don't like to hear criticism of good technology."¹³⁴⁶

Added Professor Bryan Pfaffenberger, recipient of a Scholar's Award from the National Science Foundation to study the history of lever voting machines:

In New York, the people, in their wisdom, created a system of election administration AND a technology that solved the characteristic problems of American elections; to abandon lever machines for new technologies that will not gain voter confidence and, at the same time, re-introduce paper audit trails or paper ballots which have long proven to be prone to election fraud, amounts in my opinion to a potentially disastrous mistake.¹³⁴⁷

Jim Condit Jr., founder of Citizens for a Fair Vote Count, told this story about the hackability of lever machines, a diluted version of the Hursti hacks that would happen later:

. . . When they want to count your votes in secret, they are up to no good. In 1964, early vote-fraud [*sic*] investigator Ron Keller along with the late (murdered) Louisiana candidate for Sheriff, Joe Cooper, proved before all three local television stations in Houston, Texas that the Shoup machine was easily riggable. With Mr. Shoup and TV reporters from all three local stations present, Keller and Cooper rigged a machine, followed by the reporters being instructed [*sic*] to vote for Kennedy; when the machines were opened, there [*sic*] votes had been recorded for Nixon! The room erupted with questions, and Mr. Shoup beat a hasty retreat for his car. This story was told by Ron Keller at our

Citizens for a Fair Vote Count Convention in August, 2000—and it is preserved on videotape.)¹³⁴⁸

Moreover, according to Lynn Landes: “[A]nyone with the keys to the county warehouse where the machines are stored could rig the machines. Labels can be switched, gears shaved, odometers preset, or printouts preprinted.”¹³⁴⁹

According to the MIT-CalTech Voting Technology Project, “Lever machines have the highest rate of unmarked, uncounted, and spoiled ballots in Senate and governor elections over the last 12 years [dating from 2001 back]. The most popular choice for voting in 1980 suffered declining sales after that.”¹³⁵⁰

Finally, according to a staff report, “Trust but Verify: Increasing Voter Confidence in Election Results,” done for the Tennessee Advisory Commission on Intergovernmental Relations: “These machines [levers] could be easily manipulated by turning dials in the back, and their vote records were notoriously unreliable even when used correctly. With years of storage between uses, the gears that counted the votes could become sticky and rusted and affect the vote count.”¹³⁵¹

Nonetheless, New Yorkers are still fighting the fight to keep their levers. According to prominent EI activist Howard Stanislevic:

. . . Legislation was passed to allow the continued use of levers for village and school board elections—that sort of thing. This may expire this year, or it may be extended indefinitely.

There is also a large county (Nassau) that will have to appeal a negative decision about using levers for state and federal elections. They won in federal court, but lost in NY State court.

There were two conflicting federal decisions that prompted the federal appeal: one pro lever, the other anti lever. Nassau appealed to the US Court of Appeals 2nd Circuit, who said they should proceed with their state case for levers because federal law does not necessarily ban their use—but NYS law clearly does so.

So the door is still open for using levers in state and federal elections if NY State law can be overturned. After that, it’s up to the US DoJ if they want to take their federal case (against levers) to either the US Court of Appeals or to SCOTUS.

The problem for Nassau is that a county may not have standing to sue the State, even though the “county” is really Election Commissioners of both major parties who are filing the suit. That’s why there has to be an appeal in the NY State courts now, or better yet a lawsuit against the state by VOTERS represented by council.¹³⁵²

According to Stanislevic, twenty counties (out of New York’s sixty-two), four towns, and two NGOs have signed resolutions in support of bringing lever machines back to New York and overturning ERMA in this process, which prohibits levers.¹³⁵³

On April 13, 2009, Pennsylvania State Rep. James E. Casorio Jr. re-introduced legislation in the assembly that would petition Congress to allow counties in his state to revert to using lever machines if they chose to. Today (2012) the entire state still votes on various brands of DRE. The resolution, HR 176, as of January 2012, has been referred for consideration to the House State Government Committee.¹³⁵⁴

Hand-Counted Paper Ballots (HCPB)

Lever machines replaced paper-ballot voting because of all of the corrupt ballot-box stuffing that plagued the veracity of election results. It still occurs in the few places where it is used, as of 2008: 0.6 percent of voters (parts of New Hampshire, for example—see Chapter 8 for more on this). Nonetheless, the election integrity movement by and large champions a return to this form of voting, given the massive corruption evident among the electronic systems most widely used in the present. According to the distinguished election scholar Alexander Keyssar:

[R]ecent studies have found that claims of widespread corruption were grounded almost entirely in sweeping, highly emotional allegations backed by anecdotes and little systematic investigation or evidence. Paul Kleppner, among others, has concluded that what is most striking is not how many, but how few documented cases of electoral fraud can be found. Most elections appear to have been honestly conducted: ballot-box stuffing, bribery, and intimidation were the exception, not the rule.¹³⁵⁵

Lynn Landes, who quotes him, defends ballot-box stuffing as a “detectable” form of election fraud.¹³⁵⁶

Punch-Card Machines

The punch[ed]-card systems [Both “punch card” and “punched card” refer to the same system; I use the former throughout this volume] . . . employ a card (or cards) and a small clipboard-sized device for recording votes.¹³⁵⁷ Voters punch holes in the cards (with a supplied punch device) opposite their candidate or ballot issue choice. After voting, the voter may place the ballot in a ballot box, or the ballot may be fed into a computer vote-tabulating device at the precinct.

The idea of voting by punching holes on paper or cards is said to have originated in the 1890s, and inventors continued to explore this in the years that followed. The first major success for punch-card voting came in 1965, with Joseph P. Harris’s development of the Votomatic punch-card system. This was based on IBM’s Port-a-Punch technology. Harris licensed the Votomatic to IBM. William Rouverol built the prototype system.

The Votomatic system was very successful. By the 1996 presidential election, some variation of the punch-card system was used by 37.3 percent of registered voters in the United States. Today [2012], according to Verifiedvoting.org, 69,379 registered voters, or .04 percent of all registered voters in this country, still vote on punch-card machines.¹³⁵⁸

Votomatic-style systems and punch cards received considerable notoriety in 2000 when their uneven use in Florida was alleged to have affected the outcome of the U.S. presidential election (see Chapter 1 above).

Ballot-Marking Devices (BMDs) for Special-Needs Voters

By late 2005, despite the touting of DREs by many as the most handicapped-accessible and therefore HAVA-compliant tools for special-needs voters, at least three ballot-marking devices (BMDs), including the AutoMARK Technical Systems Voter Assist Terminal (AutoMARK) and the Voting-on-Paper Assistive Device (Vote-PAD), were on the market, to be used in conjunction with optical scanners or hand-countable paper ballots. Both of the above are far

more accessible to special-needs populations than DREs, in that they allow for independence and privacy for people with visual or dexterity problems as well as for those who aren't fluent in English, though conversant enough to have become citizens.¹³⁵⁹

A BMD, by the way, is a device that “make[s] optical scan ballots fully accessible to voters with disabilities.”¹³⁶⁰

Vote-PAD, invented by EI activist Ellen Theisen of VotersUnite.org, is described in her brochure as “(A)n inexpensive, non-electronic, voter assist alternative that helps most people with visual or dexterity impairments to vote independently.”¹³⁶¹

In addition, with Vote-PAD, poll workers fit specially designed sleeves over paper ballots. Audio instructions guide visually impaired voters to bumps on the plastic next to each race. Holes in the sleeve corresponding to ovals on the ballot allow voters to mark the ballot with a pencil or pen without going outside the oval. Afterward, voters can run a specially designed LED wand over the ovals to verify their choices. . . . [Vote-PAD] costs \$2,000 per polling precinct, which includes software to create audio instructions and enough sleeves to last a precinct five years.¹³⁶²

Theisen said that she “invented the system with input and cooperation from people with disabilities and people interested in transparent elections.”¹³⁶³

I met Ms. Theisen at a time when she was traveling the country to introduce Vote-PAD to election officials and activists. My colleagues and I tried out the device and explained to a group of vision-impaired and blind men how to use them. Reactions were many. We volunteers were enthused. One client told me that his wife always helps him to vote and he held no secrets from her and therefore had no use for a BMD. Among other devices being certified, AutoMARK, by far the most popular¹³⁶⁴ which, unlike Vote-PAD, is electronic, is described as:

. . . very well designed. It tells you if you put your ballot in upside-down, and the keys are easy to read. AutoMARK allows audio voting. It gives you audio prompts for each race, and audio verification of the candidate for which you voted. AutoMARK seems to have thought of anything that can happen and has a solution.¹³⁶⁵

Key features of AutoMARK include:

- A sip/puff tube for voters who are not able to use the touch screen or touch pad;
- An audio function that allows voters with impaired vision to listen to choices;
- Protection of legacy systems by allowing jurisdictions to use existing optical scanner hardware/software solutions;
- A zoom feature that enables the voter to increase the font size of each race listed on the optical scan ballot;
- Multiple-language capability that helps ensure that all citizens in a diverse population can exercise their privilege to vote; and
- The ability to support write-in candidates.¹³⁶⁶

Vote-PAD looks like a thick, cardboard spiral notebook; it is far less expensive than AutoMARK, which costs \$5,000 per polling place. According to Representative Billy Hilty (D-MN), who considers voter verifiability crucial (and not provided by the DREs' "invisible ballots") and whose district was testing the Vote-PAD in January 2006:

Both Vote-PAD and AutoMARK comply with HAVA's mandate for a paper trail enabling [post-election] audits. Furthermore, both systems use a paper ballot that is manually marked by the voter, and can be verified before being optically scanned into an electronic vote tabulator.¹³⁶⁷

The ES&S versions of AutoMARK received certification in 2005; it had been used experimentally in November 2004. VotePAD was used solely in several municipalities in Minnesota.

Mark-Sense

This noncomputerized device, which accommodates multiple categories of handicap, was completed in 2002 and patented in 2006 by Douglas Jones of the University of Iowa, an early and distinguished proponent of EI. It excels the other BMD described above in price, at \$500 apiece, but consists of several parts that may be combined with the actual ballot-holding device. It is therefore meant to be kept at the front desk of the polls rather than in an

individual booth for handicapped voters, because some may be in wheelchairs while others stand; some who are hearing impaired will need the headphones and ballot marking device while others may need the pencil and others the ruler in combination with the magnifying glass, and so on. So this device is not as efficient and self-contained as the others described above.¹³⁶⁸

Voting by Phone

The Inspire Vote-by-Phone System (IVS—“accessible voting made easy”) is a paper ballot marking system for voting by means of a standard touch-tone telephone, located at the polling site, to either select candidates or respond to ballot initiatives. Ballots produced by this system are printed at a secure central location (*Central Print*) or via a fax at the polling site (*Fax Print*)—both configurations are offered. The ballots are subsequently hand counted according to methods designed by the particular precincts or districts.¹³⁶⁹

In a “top to bottom” report published in California in 2007 at the behest of new SoS Debra Bowen, one of the findings was that “ballot-marking devices used with the optical scanning systems have to be changed to feed ballots automatically.”¹³⁷⁰

Appendix 2: Backgrounding Election 2008

On November 4, 2008, a country filled to overflowing with disgruntled, miserably betrayed U.S. citizens turned out to elect Barack Obama, the candidate of change, as the new president after the two-term Bush administration had plunged this country into astronomical debt at home and widespread hostility overseas.

The economy was in fragments, drowning both the middle and lower classes with mortgage foreclosures and joblessness, drowning Wall Street with financial ruin because of the countless subprime loans it had allowed to bankrupt gullible buyers by appealing to the moribund American dream. Big-box banks dropped from their heights like swatted flies.

The upper class suffered at this level when the stock market plunged and the bad debts bundled and sold here and abroad tanked. It suffered, too, from the Ponzi scheme of Bernard Madoff, which bankrupted many a benevolent foundation as well as life savings of both the rich and middle classes. \$50 billion was lost in that heist alone.

And the effects of this were chain reactive. The U.S. economy was in ruins.

Overseas the catastrophic U.S. presence in Iraq was protracted for another three years; our country's presence in Afghanistan required far more troops with the Taliban's aggression back into the country; Russia turned back to the worst aspects of the Soviet regime, with Putin reaching out to socialist countries in South America also alienated by the Neoconservative imperialistic agenda and the Bush administration's wanton greed and power push. India and Pakistan, both with nuclear capabilities, were on the verge of war, partly because the Bush administration was supporting India's nuclear capabilities and adding to them.

The economic situation in China, the principal mainstay of the United States's hugely indebted, teetering economy was deteriorating because of reduced demand for its exports and the ripple effect of its financial blunders; Iran's hostility was exacerbated by the world's opposition to its climb toward what it called a new source of clean energy, nuclear power. The Bush administration was sure that the real purpose was to destroy Israel.

In the Middle East tensions between Israel and Palestine were aflame as the rest of the world refused to recognize the democratically elected Hamas government and Gaza was in shambles from Israeli aggression, with more than 700 citizens, mostly civilians, killed. As the U.S. economy eroded in the direction of favoring the top .5 percent over the rest of the drained population, as the trickle-down, unregulated standard wrought ruin on the millions supporting it, the people became furious and found the only way to combat this naked, destructive greed that was ruining countless lives.

They could vote against this administration. Fully 30 percent of the 100 million people who had sat out many elections came out in droves, resorting to this foundation of democracy to avoid total ruin.

But the system was so corrupt that the right-wing Republican presidential candidate, John McCain, predicted his victory the week before November 4 to a skeptical audience. The polls, after all, were unanimous in predicting an Obama landslide.

The public ignored McCain's prophecy, but the election integrity (EI) movement was tense, as it had been since Election 2004, fearing another upheaval of the people's will by the spectrum of tactics used to defeat Democratic presidential candidates in 2000 and 2004. They knew that both elections had been stolen through corruption of electronic machines, minority voter intimidation and harassment, caging, manipulating the counting of absentee and expatriate ballots—the list goes on, to the extent that, despite the polls, we feared another Neoconservative victory.

But in Ohio, two longtime leaders of the EI movement, attorneys Bob Fittrakis and Cliff Arnebeck, had been battling in the courts of this state key to presidential victory, to prevent the corrupt package of deceit from triumphing yet again.

Those heroic, pro bono efforts led to the court hearing on November 3 that stayed the hand of Karl Rove's brilliant operative, Mike Connell, from controlling the results, by tampering with and controlling electronic voting machines throughout the country.¹³⁷¹

That evening, Rove predicted Obama's victory, and he was right.

The EI movement had succeeded at last in its efforts to provide a fair vote. The people's will prevailed due in no small part to their incessant, unyielding crusade. I believe that Obama owes his victory to the EI movement.

Appendix 3: How I Got into the Election Integrity Movement

“To err is machine.” . . . Some miscounts are ridiculous (i.e. Allamakee County Iowa, 2000 national election, counted 4 million votes though just 300 voters showed up to vote).—Bev Harris

There was slow rain one April 6, 2001, afternoon in Manhattan in front of the Fox News building on Sixth Avenue. A few stalwart souls stood with signs accusing “Faux” (French for “false”) News of hiding important material from the public for its own gain.

The specific issue was media suppression of important, election-related events that followed Election Day 2000—the numerous problems in Florida, the state that supposedly won the election for George W. Bush by a margin of 537 votes. With this synthetic margin, the state’s entire allotment of electoral votes went into Bush’s column, thereby determining the administration of the U.S. government for the next four years.

Nothing could have been farther from the truth.

So much had gone against a valid ballot count in the Sunshine State: the hanging chads, the butterfly ballots, the blatant, intimidating racism, and the list of so-called felons that had illegally eliminated thousands of blacks and other minorities from voting. Moreover, the fact that the election was called for Bush by his brother and then immediately picked up by five other stations, and that Gore conceded so quickly, obviously stained the venue that resulted. The Republicans were quick to call Gore a sore loser when he rescinded his concession and the thirty-six-day period of indecision followed.¹³⁷²

Only Progressives cared about this. According to Lance de Haven-Smith, the general public assumed that Bush had obtained the presidency by a fluke.¹³⁷³ The mainstream media (MSM) virtually ignored the “stolen” aspect of the election once Bush “won” (except for overseas media).

And who had been the first to call the election for G. W. Bush at 2 a.m. in the morning after Election Day? His brother, Gov. Jeb Bush of Florida, who persuaded his cousin John Ellis, a consultant for Fox

News, to publicize a fact that was becoming increasingly debatable.¹³⁷⁴ Conflict of interest was blatant. Others managed to put off that ill-omened outcome until mid-December.

So there we stood, signs getting soggy, up against Fox employees and the entire MSM establishment, up against smooth, self-assured suits with loud, authoritative voices. An older woman among us screamed hysterically about Rupert Murdoch, the Australian tycoon who owns that company along with many other corporate behemoths.

Standing there with my daughter, a freshman at Columbia, I wondered who Rupert Murdoch was and made a mental note to find out. I was new to activism, new since the late sixties, anyway. I had a lot to catch up with.

I was happy to hear Bob Fertik speak, since I'd been reading his web page, Democrats.com (not to be confused with that of the Democratic Party, democrats.org), since the bad outcome in November.

In the course of his speech he mentioned another strange name, of a BBC reporter who had published an article about the illegal list of so-called "felons" in Florida that eliminated fully 94,000 U.S. citizens from the voter rolls. The only vehicle in this country that would accept it was the reputable but little-known (that is, non-mainstream) site Salon.com. Publication occurred on December 4, well before the ominous Supreme Court takeover on December 12, asserting, with evidence, that Gore had actually won Florida by a substantial margin.

The latent journalist in me perked up. Who is this brave voice squelched by the MSM wilderness?

After the rally, smug with having shoved my homemade, waterproofed sign "Faux News" at the Fox employees, I went over to the table where our literature was melting in the rain. I asked for more about Greg Palast. The hippyish man sitting at the table groaned for some reason. My daughter and I did, after all, represent a small limb of the MSM, the Columbia *Spectator*, and he knew it. Grudgingly he handed me a soggy photocopied news article.

Was I interfering with his martyrdom, pulling away at his self-righteousness, giving him less to complain about?

I went home to read it. The story detailed the discovery that should have rocked the nation. As a popular underground [at the time, in this country] reporter, Palast received all sorts of "classified" documents from silent whistle blowers.

In the midst of the attempted, never-completed Florida recount,

Palast had received, from an anonymous source, a list of supposed felons illegally eliminated from the voter rolls in Florida. In many states felons, even ex-felons, are barred from voting. In Florida this was the situation unless you had migrated in from another state and had served your prison term and been given back your right to vote. But I don't think Gov. Jeb Bush or his secretary of state who doubled as chair of the Bush Reelection Committee, Katherine Harris, cared about such technicalities.

With the help of Database Technologies (DBT), later ChoicePoint, a data aggregation firm retained for \$2.3 million of Florida taxpayers' money, voter lists were generated in which 91,000 voters, 54 percent of them African American, were kept from voting.¹³⁷⁵ Palast found that very few of these people were felons, hardly any. He wrote that many of them were "guilty of voting while being black."

Briefly, if the system found anyone on a list of Texax felons convicted nationwidewhose name (loosely) and race matched yours and happened to be a felon, off you went from the Florida polling list and onto the other list of disenfranchised voters. The use of an outside firm to determine voter eligibility rather than professionals employed by the state was unprecedented, but anticipated the control over elections by the large voting machine manufacturers that in 2004 helped to hand the presidency to Bush again illegally, another Republican-generated flouting of the people's will.

The specification of race, also present on the DBT voter lists, violated the 1965 Civil Rights Act; pity the people with names like John Jones, who could be paired up with a felon in any part of the country named Johnny H. Jones or H. John Jones if the other criteria matched.¹³⁷⁶ Smiths could match Smythes and Smitt, Schmidt. Wrote Palast, "The legacy of slavery commonality of black names aided the racial bias of the 'scrub list.'" ¹³⁷⁷ It is incredible but true that tens of thousands of Floridians were force-fitted to these loose, nationwide criteria.¹³⁷⁸

So there went 91,000 Democratic votes, more or less. Thomas Alvin Cooper, twenty-eight, was flagged because of a crime for which he was to be convicted in the year 2007. *Harper's Magazine* found 325 names on the list with conviction dates in the future. The one county that checked each of the 694 names on its local list could verify only thirty-four as actual felony convicts.¹³⁷⁹ Felons, as well as most minorities, tend to vote Democratic, prompting Republicans to

label the other party as “the party of felons.” According to Truthout.org, “in 2000, Florida denied the vote to 6 percent of its voting age citizens, 16 percent of its black voting age citizens, and 31 percent of its black citizen voting age men.”¹³⁸⁰ Palast toured the country with his laptop, attracting sizable audiences in liberal areas. He had Database Technologies files to support his conclusions.

Also on Election Day in Florida, other Floridians were handed the poorly designed butterfly ballots, mostly senior citizens, who became confused. Many ended up voting for the conservative candidate Pat Buchanan, hardly a logical choice. The book *Jews for Buchanan* documents and details this foul-up. The ballot designer, supposedly a Democrat, Theresa Lepore, no longer holds the office.¹³⁸¹

The hanging chads generated by the punch-card voting machines were even more of a catalyst, as I have discussed above. In Florida’s Palm Beach County, many of the punch cards were not counted initially because of hanging chads, which occur when the hole created by the voter’s punching device does not completely dislodge the paper from the ballot. Cards even more damaged were either dimpled—only a concave bump was made on the ballot by the vote, or pregnant, disabled by a convex bump. Such undervotes were not counted by the machinery and had to be considered, one by one, in recounts. But what would have really put Gore over the top, according to Lance deHaven Smith, was the large quantity of overvotes that definitely favored Gore—ballots where the chad was punched out and the name the candidate also written in, something the machinery would also reject.¹³⁸²

Evidence unearthed years later, 2007, revealed that the foul-up was purposeful. As proved by former CBS anchor Dan Rather, reporting for HDTV, the quality of the paper used for the ballots was inferior. Several whistle blowers who had worked for the manufacturer testified that this defective paper abetted the wide-ranging defect that required many man hours for a recount—the intentions of the voters were so unclear. Many of those votes were simply discarded as unreadable.¹³⁸³ A further problem with these machines was that “nobody had bothered to clean the punch card machines in years in this major urban area. The net result was confusion in the recount and lost votes for Gore.”¹³⁸⁴

Of course the above scenarios all occurred in Democratic-leaning counties.

After the “Faux News” rally, with my facts straight, focusing on the story of Palast and his story about Florida, My daughter and I wrote an op-ed for the *Columbia Spectator*.

Liza got the op ed published on April 11, 2001.¹³⁸⁵ Our motive was simple: not only to get the truth out to a wider, more mainstream public, but to reach Al Gore, who was teaching at Columbia that term, with this news, or at least the fact that we were aware of the debacle and fighting back.

We never heard back from Gore.¹³⁸⁶ But I had begun my shadowing of Mr. Palast, called even then the finest investigative reporter in the country. He worked out of England, having immigrated there sick and tired of having his news squelched in this country.

Europeans and particularly the British knew what had happened and would stop Palast in the streets to ask him whether Bush had resigned yet. I commuted from Lower Bucks County, Pennsylvania, to report on Palast’s appearances in New York for various Progressive websites, including, first among all, Lou Posner’s site *Votermarch.org*, where I worked to make Palast famous. Other sites like *Buzzflash.org* and *Legitgov.org* had also caught on that early.

The journalist in me, reborn after years, the day Bush declared his candidacy in the wake of my horror at the Clinton impeachment, took over relentlessly. And now I had discovered a subject, a most fruitful one.

Beginning with that ugly moment on December 12, 2000, when the Supreme Court voted five to four to select Bush for president, the movement grew slowly. Among the small crowd of protesters in front of the Court that day was Lou Posner, a full-time New York attorney, who began his webpage soon after and was the first to publish my EI-relevant articles there.

I regretted not having been among those brave people protesting in front of SCOTUS on December 12, 2000, in such cold weather. At that point I was not yet mobile. Not yet angry enough to travel to Washington, DC.

Following Palast, on January 28 and February 4, the *Washington Post* published a series of articles analyzing Florida 2000 and concluding that collusion among prominent Republicans had certainly worked in Bush’s favor.¹³⁸⁷ In February 2001, *The Nation*, a progressive online and paper publication, reported the Florida debacle

in a seminal article “None Dare Call It Treason,” by the famous Los Angeles prosecutor and author (*Helter-Skelter*) Vincent Bugliosi.¹³⁸⁸ His book *The Betrayal of America* followed soon thereafter, an enlarged narrative backgrounding and harshly criticizing the Supreme Court decision of December 12. It took him one morning to write it, he said (about one hundred pages in a slim mass-market paperback). Some hair-raising facts emerged. Sandra Day O’Connor’s husband was overheard at a cocktail party explaining that his wife could not retire unless a Republican was elected.

Her colleague Antonin Scalia said that if the recount was not stopped, it would do irreparable harm to Bush, Bugliosi also reported.

He called December 12, 2000, the darkest day in Supreme Court history.¹³⁸⁹

I heard Bugliosi speak a few months later. His remarks related directly to the book he was signing that evening. He had huge trouble condemning Scalia—the way he referred to him with reluctant affection as Antonin made me uneasy.

As I reached him with his book later, I begged, “Please don’t ever stop.” He promised that he wouldn’t.

After the far-reaching (among activists at least) *Nation* article, the *New York Times* surprised me—who else reads the op-eds on a Saturday when the Sunday special sections have already come out—on March 17 with a piece I almost did not read. It was entitled “Slumber Party.” That sort of camouflage was probably the only way the veteran columnist Frank Rich could have betrayed his true feelings about Florida 2000.¹³⁹⁰

“There, splashed over most of the front page of Sunday’s *Palm Beach Post* [March 11, 2001) was the paper’s investigative scoop: Palm Beach County’s butterfly ballot cost Al Gore ‘about 6,600 votes, more than 10 times what he needed to overcome George W. Bush’s slim lead in Florida,’” he wrote, to my amazement, an isolated corroboration from a most unexpected source.

In April Liza’s and my op-ed appeared in the *Columbia Spectator*. In May, in rapid sequence, both the *San Francisco Chronicle* and the *Washington Post* reported on the Florida fiasco (May 30 and 31, respectively).¹³⁹¹ On July 15, 2001, the *New York Times* published a study that concentrated on a small portion of the total, those absentee ballots mailed from overseas by the military whose postmark passed the deadline imposed or which simply arrived beyond the deadline.^{1392, 1393} These largely Republican ballots were nonetheless

counted. *Consortium News* in November 2001 referred to “George W. Bush’s windfall of about 290 votes from improperly counted military absentee ballots, where lax standards were applied to Republican counties and strict standards to Democratic ones, a violation of fairness reported earlier by the *Washington Post* and the *New York Times*.”

I don’t claim that my history of media coverage of the serious flaws with Election 2000 is exhaustive. But these were the MSM benchmarks I had access to from December 2000 through July 2001. So I can actually count six relevant MSM events before July 2001: the *Washington Post* series in January, Rich’s *New York Times* journal, our op-ed in the *Spec*, and then the contributions by the *Post*, *Chronicle*, and *Times*. No one among the MSM reacted close enough to the Supreme Court decision to keep the issue alive. The Progressive Internet was, of course, abuzz with these events and what we could do about them. The vast majority of U.S. citizens remained uninformed that the wrong candidate had ascended to the White House.¹³⁹⁴

On September 21, 2003, in an article entitled “Election Theft 2000! A New Bombshell!” a Diebold internal support memo was found that questions why Al Gore’s total in Volusia County, Florida, was reported as -16,022. The positive version of this quantity was the total number of votes cast for candidates from parties other than the Big Two—the biggest such vote in the county’s history. The anomaly of such a large number of negative votes has never been explained, according to blogger Brad Friedman.¹³⁹⁵

When the Volusia County official sent the inquiry to Diebold’s vice president of research and development, Talbot Iredale, he sent back a list of four possible technical foul-ups. The fourth one is crucial, containing the possibility of a “second memory card” or “second upload” from an “**unauthorized source**.”¹³⁹⁶

But back in 2001, in response to our vociferous protests, various groups conducted retrospective studies, too late to accomplish much, of course. What would have happened if the MSM had decisively proclaimed to the entire nation, in accessible language and at tabloid level, that the wrong candidate had moved into the White House?

The End Notes for this book are available on the Accompanying CD or at: <http://freepress.org/GGPPEndnotes.pdf>

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(*Note:* acronyms appear in rubrics where they have been defined in headings. USPS abbreviations for states appear within rubrics. An abbreviated phrase like “Florida 2004” always refers to a presidential race, unless a comma is added between the two terms. Endnotes are not indexed.)

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