

**Transcript of the Public Meeting
of the Board of Advisors to the
United States Election Assistance Commission**

Held at
The Sphinx Club
Oasis Room
1315 K Street, N.W.
Washington, DC 20005

Held on Tuesday, June 2, 2009

VERBATIM TRANSCRIPT

The following is the verbatim transcript of the Public Meeting of the Board of Advisors to the United States Election Assistance Commission ("EAC") held on Tuesday, June 2, 2009. The meeting convened at 9:16 a.m., EDT. The meeting was recessed at 5:48 p.m., EDT.

PUBLIC MEETING

CHAIR THOMAS:

I'd like to call the Board of Advisors to order and thank you all for coming. Glad you all made it in good shape and our first order of business, we will Pledge Allegiance to the Flag. If you would please stand.

ALL PARTICIPANTS:

I pledge allegiance to the flag of the United States of America and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CHAIR THOMAS:

I'm Chris Thomas, the Chair of the Board. I'm the Director of Elections from Michigan and represent NASED here. And I would, at this time, ask the Secretary, Terri Hegarty, to call the roll.

MS. HEGARTY:

LuAnn Adams?

MS. ADAMS:

Here.

MS. HEGARTY:

Thomas Bush?

MR. BUSH:

Here.

MS. HEGARTY:

Robert, excuse me, Robin Carnahan?

[No response.]

MS. HEGARTY:

Pedro Cortès?

SECRETARY CORTES:

Here.

MS. HEGARTY:

Bill Cowles?

MR. COWLES:

Here.

MS. HEGARTY:

Joseph Crangle?

MR. CRANGLE:

Here.

MS. HEGARTY:

Keith Cunningham?

MR. CUNNINGHAM:

Present.

MS. HEGARTY:

James Dickson?

MR. DICKSON:

Here.

MS. HEGARTY:

Craig Donsanto?

MR. DONSANTO:

Here.

MS. HEGARTY:

Libby Ensley?

MS. ENSLEY:

Here.

MS. HEGARTY:

Tom Fuentes?

MR. FUENTES:

Here.

MS. HEGARTY:

Ron Gardner?

MR. GARDNER:

Here.

MS. HEGARTY:

Ernie Hawkins?

MR. LEWIS:

Here by proxy.

MS. HEGARTY:

Here by proxy? Terri Hegarty is here. Gary Herbert?

MR. HERBERT:

Here.

MS. HEGARTY:

Mary Herrera?

SECRETARY HERRERA:

Here.

MS. HEGARTY:

Philip Jenkins?

MR. JENKINS:

Here.

MS. HEGARTY:

Sarah Ball Johnson?

MS. JOHNSON:

Here.

MS. HEGARTY:

Donald Jones?

MR. JONES:

Here.

MS. HEGARTY:

Neal Kelley?

MR. KELLEY:

Here.

MS. HEGARTY:

Linda Lamone?

MS. LAMONE:

Here.

MS. HEGARTY:

Sue Landske?

SENATOR LANDSKE:

Present.

MS. HEGARTY:

Doug Lewis?

MR. LEWIS:

Here.

MS. HEGARTY:

Rhine McLin?

[No response.]

MS. HEGARTY:

Arlan Melendez?

MR. MELENDEZ:

Here.

MS. HEGARTY:

Chris Nelson?

SECRETARY NELSON:

Here.

MS. HEGARTY:

Wendy Noren?

[No response.]

MS. HEGARTY:

David Orr?

[No response.]

MS. HEGARTY:

Frank Ortis?

[No response.]

MS. HEGARTY:

Helen Purcell?

MS. PURCELL:

Here.

MS. HEGARTY:

Thomas Upton Reynolds?

REPRESENTATIVE REYNOLDS:

Here.

MS. HEGARTY:

Todd Rokita?

SECRETARY ROKITA:

Here.

MS. HEGARTY:

Barbara Simons?

DR. SIMONS:

Here.

MS. HEGARTY:

Abigail Thernstrom?

MS. THERNSTROM:

Here.

MS. HEGARTY:

And Chair Chris Thomas?

CHAIR THOMAS:

Here.

COMMISSIONER HILLMAN:

Mr. Chair, if I might, Robin Carnahan has assigned a proxy to Wendy Noren, but Wendy won't be here until tomorrow.

CHAIR THOMAS:

Okay, and the number?

MS. HEGARTY:

We have one, two, three, four, five, six, six absent, but two by proxy. So, four absent, two by proxy and of the 35 people, 29 present, sir.

CHAIR THOMAS:

Okay, we do have a quorum and my Robert's Rules of Order tells me that's when I should call this to order, not prior to having a quorum. We do have a quorum, so we will continue on.

I would ask you to review the agenda that's in your packet. The only change that I'm aware of in the agenda is the Board photo, so all of you who primped for today, you're actually going to have that photo tomorrow. We've got a couple members who are coming in that will be in tomorrow, and I think all of you will continue to be with us tomorrow. So, that's the only substantive change to the agenda. Do I have a motion on adoption?

MR. DONSANTO:

So moved.

CHAIR THOMAS:

If you would say your name before you speak or beginning your remarks.

MR. DONSANTO:

Craig Donsanto, so moved.

CHAIR THOMAS:

A second please?

MR. GARDNER:

Ron Gardner, second.

CHAIR THOMAS:

Thank you Ron. All in favor?

[Multiple responses in affirmation.]

CHAIR THOMAS:

Opposed?

[No response.]

CHAIR THOMAS:

Okay, the agenda is adopted. At this point, I'm going to call on Secretary Herrera to give a report from a special committee that

she chaired that is looking at the structure of our meetings. And you can find the report on Tab 8 in your agenda, or pardon me, in your notebook. This, like all our committees, were very hard working and I very much appreciate the efforts of each of the members to take time to look at the meetings. I found that after our last couple meetings that we really needed to take another look at exactly how we handle resolutions and handle the meeting itself. We found that on the last day there's a lot of wordsmithing going on with resolutions, people trying to get to airports, and it just, it got a little unruly, if you will. So we have a committee which Secretary Herrera chaired, Jim Dickson is on it, Elizabeth Ensley, Ron Gardner and Ernie Hawkins and Terri Hegarty, along with Gracia Hillman. So, at this point, Secretary?

SECRETARY HERRERA:

Mr. Chair, members of the committee, the committee was asked to review the structure and proceedings of the EAC Board of Advisors meetings and to develop recommendations for the Chair's consideration. The Chair was interested in suggestions as to how the consideration of resolutions should be interwoven throughout the meeting agenda in a manner that will be more efficient than in the past. The committee met by telephone conference calls on February 24th, March 11th, March 25th and April 29th. Summary notes were recorded at the meetings and distributed to all the members.

The committee developed a set of recommendations which are contained in the April 29th memo to Chris Thomas, Chair

Thomas, excuse me. Attached is the report. Recommendations are as follows:

1. The annual board meeting should be 2-1/2 days in length, beginning at 9:00 a.m. on Day 1 and ending at 12:00 noon on Day 3.
2. Board members should be encouraged to make their travel plans such that they will be present for the entire meeting.
3. Motions from the floor. The committee recommends and strongly urges that board members be encouraged to offer motions from the floor in lieu of resolutions. The committee believes this will streamline and expedite consideration of matters and allow for more efficient use of time at the board meetings.

This is really new. This is different from the past, what we've been doing in the past, we've been required to submit resolutions if we wanted any changes. So the committee felt real strongly on this for motions from the floor.

4. With respect to the submission of resolutions, the committee recognizes that members may want to introduce a resolution. To that end, the committee

considered the variations of resolutions that could be presented to the board and offers the following recommendations:

- Resolutions are to be submitted according to the standard format.
- Resolutions being offered by standing, ad hoc and special committees should be submitted to the DFO at least 25 days before the meeting so that they can be included in the board member briefing books, which are sent to you about two weeks before the meeting.
- Resolutions offered by individual members should be submitted to the DFO
 - 25 days before the meeting if possible.
 - In advance of the meeting, if possible.
 - Once the meeting begins, resolutions would be submitted to the Chair of the Resolutions Committee, but no later than the end of the lunch break on Day 2.
 - Resolutions presented after the deadline should not be considered for the meeting.

5. With respect to the Consideration of Resolutions, the committee recommends the following timelines to provide ample time for board members to fully

consider the resolution and work out proposed amendments directly with the maker of the resolutions before it is brought to the body for a vote.

- Committee Resolutions should be discussed at the time the committees make their reports to the board. For Day 1 and 2 of the meeting, if the committee report is made in the morning, then the resolutions should be voted on in the afternoon. If the committee report is made in the afternoon, then the resolutions should be voted on the next morning.
- Individual Resolutions should be considered at regular intervals throughout the meeting agenda, following the same timeline above. If a resolution is discussed in the morning, then it should be voted that afternoon. If a resolution is discussed in the afternoon, then it should be voted on the following morning.

So, those are our recommendations.

CHAIR THOMAS:

Thank you very much. This committee brought some very interesting ideas to the table, one of which, that I'm very pleased with, is the 2-1/2 day meeting. That really will give us time to do our work. As I indicated before, it was quite clear that we really didn't have enough time, and as people, again, dash for afternoon flights, it started to affect our quorum. And we certainly wouldn't

want to leave a meeting sort of in a lurch, so I think the 2-1/2 days, we'll see how this works. It seems like a good way to go.

One of the major things that the Secretary's committee has put together is this idea of using motions. You will see, when we get into the presentation by the Election Assistance Commission, and look at our resolutions from the past, that we've done very formal resolutions with all the "whereas clauses" and whatnot. By going the motion route, we again are able to maintain resolutions for those that want to do something more formal, but also to take motions under consideration, generally when we're on the topic. As the Secretary indicated, when we are dealing with a committee report, you may not have come prepared with resolutions or motions prepared, but if something moves you, and it's an issue you want to bring up, that motion option is available to each of you.

So that, thank you very much. We will definitely incorporate these recommendations into the conduct of this meeting today.

At this point, I want to formally welcome you all and I'm very pleased that you all were able to travel and make it here. This is the first time the Board of Advisors has met since the 2008 election, which I think was a successfully conducted election. It load tested our system in ways that we had not seen before and it may be some time before we see that again. I'm sure each State, and each of you that participate in the election process have observations on the enormity of the task that election officials faced. And we certainly relied on assistance from the Election Assistance Commission as we went through this process. We understand the election process is not perfect, but we do think it's a well-run

operation in terms of how the States conducted elections along with local election officials during this past year.

The Board role is primarily to advise the EAC in the various programs that they've undertaken. They understand that we cannot stand still. They are moving forward with a number of initiatives which we will be hearing about from Commissioners and the Executive Director this morning. So with that I welcome you. I'm glad you're here. I think we have a lot of work to do. We began a committee structure a few years ago of using committees during the period between meetings as a way to look at various topics that would be on the agenda as a way to prepare for our meetings. I think it's critical that we come to you with an agenda with enough people that have worked the issue that can lead discussion. So we're very pleased with that. It's worked over the last two meetings of this Board. We began it back in 2007 with special committees looking at the voluntary voting system guidelines and carried it through our meeting last spring dealing with the studies that the EAC is undertaking. So you will see, as we go through the agenda, that there are a number of committees that have been working during the past year to prepare for this meeting and I think that it will be a good agenda – lots of substance. And we will continue to move the ball forward, if you will, in the election community. There's a lot of work to be done and I'm very appreciative of each of you who have volunteered, if you will, to serve on these committees.

[Laughter]

Volunteer work is very important and it's been well-attended, and lots of good discussion, some very good debate, some of which I think we'll hear during the meeting. Everything in the world of elections is not cut and dry. There are opinions, and I welcome you and urge you all to express your opinions here.

MR. LEWIS:

Mr. Chairman?

CHAIR THOMAS:

Yes, Mr. Lewis?

MR. LEWIS:

Is it appropriate at this point, and maybe you had planned to do this at some other time, but wouldn't it be appropriate to move adoption of the committee's report so it becomes an official action of this Board?

CHAIR THOMAS:

We can do that, yes. It was initially, I think, just a memo to me on how to run the meeting, but I would, if you would like to move adoption...

MR. LEWIS:

I would move adoption...

CHAIR THOMAS:

...I have no problem with that. They did an excellent job.

COMMISSIONER HILLMAN:

Would you state your name for the record.

MR. LEWIS:

Doug Lewis. I move adoption of the Committee's Report as presented to the Board.

CHAIR THOMAS:

Do I have a second on that?

MR. CRANGLE:

Second.

CHAIR THOMAS:

All in favor?

[Multiple responses in affirmation.]

CHAIR THOMAS:

Opposed?

[No responses.]

CHAIR THOMAS:

Thank you.

Secretary Herrera, thank you very much for your leadership on that.

So, in any event, I'm glad you're here Mr. Lewis. He definitely volunteers, every opportunity he gets.

So let's, at this point, I would like to turn it over to Secretary Hillman. She's our Designated Federal Officer. She's done a tremendous job of organizing volunteers, which is no mean task let me tell you. And she's done a great job of keeping us focused on target. And the books you see before you, it's certainly not an easy task to put together. And she's ensured that the substance of this meeting has been put into a form and presented to you in advance of these meetings so you're not necessarily walking in the door reading it for the first time. So, Commissioner?

COMMISSIONER HILLMAN:

Thank you. Let me say welcome and thank you all very much. EAC depends on you for your advice and guidance and we look forward to these meetings. There's going to be a round of introductions and you'll meet some of the EAC staff who are here.

Just a couple of logistic items. There will be a number of EAC staff here during the next 2-1/2 days. Anything you need, please don't hesitate to ask. If they're not the person who can help you, they will certainly point you in the right direction. Or feel free to ask me.

Please, when you do speak, make sure that your microphone is on. If you hit the button, and we'll make sure that Mr. Gardner and Jim Dickson get assistance with that, but please state your name. And even if after the 10th time you figure well everybody knows me by now, it's not so much for the Board members as it is for the people who are doing the transcription of this meeting, so that our records will accurately reflect who is speaking and who is responding. So even if there is a back and forth between two people, we do really need for you to say your name, and that's why we've got these blue reminder papers although I'm sure they're covered by now with lots of the papers we've given you.

So I hope that we have done a decent job of preparing you for the meeting. There are, we have a large class of new members. I believe we have 12 new members, and we did an orientation, conference call orientation for the new members. I'm sure it was a lot to absorb in one hour but at least, to give the new members an introduction to the Board of Advisors.

And with that, I will turn it back over to our Chair.

CHAIR THOMAS:

Thank you very much. At this point, we will go around the room asking for introductions. If you would indicate who your appointing party is and give a little bit about yourself in terms of your involvement in the election process we would appreciate it. And we will start with Mr. Cunningham.

MR. CUNNINGHAM:

Oh great, thanks. My name is Keith Cunningham. I'm the Director of Elections in Allen County, Ohio. I'm a Buckeyes fan. That's first and foremost, just so you know that, for Doug's pleasure. This is my 12th year in the election's business, my 5th year on the EAC Board of Advisors and I'm glad to be here.

MR. DICKSON:

And your appointing authority?

MR. CUNNINGHAM:

Oh, my appointing authority is the House Administration Committee, Minority Chair, at this point.

SECRETARY HERRERA:

I'm Mary Herrera, New Mexico Secretary of State. I've served on the EAC, this is my 3rd term. I've been appointed by the Association of Governors representing, of course they appoint a D and an R and I represent the D for the Association of Governors.

COMMISSIONER DAVIDSON:

My name is Donetta Davidson and I'm one of the Election Assistance Commissioners. So, welcome everybody, glad to have you here.

MS. MILLER:

I'm Alice Miller, Chief Operating Officer for the Election Assistance Commission. I've actually been here one year today, and I'm still trying to find out what key opens what lock.

MR. GILMOUR:

I'm Gavin Gilmour, also with the Election Assistance Commission, Deputy General Counsel.

MR. CRANGLE:

Joseph Crangle, Attorney, and appointed by the Chairman of the House Administration Committee. I used to be Democratic leader of the State, State Chairman, and so forth, and to give the staff of the Speaker of the New York State Assembly, and gave Tom Wilkey his first job at the Board of Elections in Erie County.

MR. WILKEY:

I won't tell them how long ago.

MR. LEWIS:

I'm Doug Lewis, Executive Director of The Election Center in Houston and a member of the Board since it first started.

MS. PURCELL:

I'm Helen Purcell. I'm the Maricopa County Recorder from Phoenix, Arizona. My appointing authority is the National Association of Counties. I also serve on the Technical Guidelines Development Committee.

SECRETARY CORTÈS:

I'm Pedro Cortès, Pennsylvania Secretary of State, and also President of the National Association of Secretaries of State. This is my first meeting of the Board of Advisors. I serve on the

Standards Board since its inception and my appointing authority is the National Association of Secretaries of State.

MR. BUSH:

I'm Tom Bush from the Federal Voting Assistance Program. I'm the Interim Director. I was appointed as the Director on the 1st of February, we anticipate having the permanent Director on board I optimistically believe by the end of the month, who will serve long term. I'm just here temporarily.

REPRESENTATIVE REYNOLDS:

I'm Tommy Reynolds. I was appointed, I'm a Legislator, was appointed by the National Conference of State Legislatures. This is my first meeting to attend. I have been in the Mississippi House of Representatives for 30 years. I was elected at a young age and, but I'm Chairman of our Apportionment and Elections Committee in the House.

SECRETARY NELSON:

I'm Chris Nelson. I'm Secretary of State in South Dakota. I'm appointed by National Governors Association. I began with elections in 1989 as a State Elections Supervisor and then got elected Secretary of State in 2002, and I love this business.

MS. ADAMS:

I'm LuAnn Adams. I'm the Recorder Clerk of Box Elder County, Utah. I've been in this business for a long time, and I also love elections. I'm appointed, this is my first time, by the Senate Rules and Administration ranking member.

MS. LAMONE:

Hi everyone. I'm Linda Lamone. I'm the Administrator of Elections for the State of Maryland and have been since 1997. It seems like just yesterday. I was appointed by the National Association of State Election Directors to represent them on this august body. And I'm also a member of the TGDC, Technical Guidelines Development Committee.

MR. FUENTES:

Good morning. My name is Tom Fuentes from California. I'm a Senior Fellow with The Claremont Institute for the Study of Statesmanship and Political Philosophy. I've been a member of this body for some few years. I was not with you at last meeting, because I was in the hospital getting a new liver. So my new liver and I are here with you at this meeting. I'm the appointee of the House Minority Leader.

SENATOR LANDSKE:

Well, we welcome your new liver and we're glad you're here.

[Laughter.]

MR. FUENTES:

I do too.

SENATOR LANDSKE:

I'm Sue Landske. I am from Indiana. I serve as the Assistant President Pro Tempore of the Senate there. I also serve as Chairman of the Senate Elections Committee. I'm an appointee of the National Conference of State Legislatures. I've been in the General Assembly for 25 years.

MR. HERBERT:

Good morning. My name is Gary Herbert. I'm the Lieutenant Governor of the State of Utah. And, as such, I'm the Chief Elections Officer for our State. I work with LuAnn in our State, and we were both appointed by Senator Bob Bennett on the Senate Rules and Administration Committee. A funny thing happened to me on the way to Washington, D.C. Our Governor, Governor Jon Huntsman, was just tagged by President Barack Obama to be the Ambassador to China. So, by Constitution, I will become the 17th Governor of the State of Utah, shortly.

[Applause.]

MR. HERBERT:

Thank you, thank you. To say that my head is spinning just a little bit is an understatement of the day. And, I'm excited about the opportunity, but recognize some of the challenges that going from the number two chair to the number one chair presents for me. But I'm honored to be here. We really do take elections seriously in Utah. And with the Help America Vote Act, something that I had to implement as I came into office here four years ago, and with the help of good Clerks like LuAnn in the State of Utah, we've done a pretty good job of adapting. And our last election, by actual exit polling, showed a 98% plus approval rating of our procedures and processes in the State of Utah in elections. So, I'm proud of what we've been able to accomplish and I'm honored to be able to be here with you today. So, thank you.

MR. GARDNER:

Thank you Governor Herbert. It is an honor for me to be here. My name is Ron Gardner. I'm the, I'm an attorney and I

serve with the National Federation of the Blind. I currently serve as President of the National Federation of the Blind of Utah. Let's see, the appointing authority is, and I'm still a very proud American that can say this, George W. Bush, he appointed me to serve on the United States Access Board and is, I think, it's one of the Boards that designates two members to this Board. So it's an honor for me to be here. I have but one request, and that is that sometime during this meeting we have somebody that would take a picture of me sitting next to the Governor of the State of Utah. I don't know if it will ever happen again, but I'm a very proud citizen of the State of Utah, proud of Governor Huntsman, and now today, proud of Governor Herbert. So, thank you very much.

MS. WINSLOW:

I'm Leslye Winslow. I'm a member of the Executive Board of the Standards Board and I'm here representing Missouri Secretary of State Robin Carnahan, as well.

MR. JONES:

Good morning. My name is Don Jones. I'm from the City of Philadelphia, formerly Deputy Commissioner of Elections of the City of Philadelphia, and then Acting Commissioner of the City of Philadelphia of Elections. And now, presently, a political activist/consultant. And I also would like to get my picture with the new Governor of Utah. And I was appointed by the Chair of the House of Administrations.

MS. BALL:

Hi, I'm Sarah Ball Johnson. This is my first meeting here, so hello to everybody. I have 15 years of experience in elections and

I'm the Executive Director of the Kentucky Board of Elections. My appointing authority was the Senate Minority Leader. And I've served on the Standards Board since its inception. Also, was on the Executive Board. And some of you I remember meeting when I was Chair of the Standards Board in 2007 in Austin when we, I think, had a joint meeting at that period.

MR. KELLEY:

Good morning. I'm Neal Kelley, Registrar of Voters of Orange County, California, the 5th largest voting jurisdiction in the Country. And in my five years that I've been doing this, I've overseen 22 elections and about 8 million ballots cast in that County. In election years, that's about 35 years, and so, it seems like a long time. My appointing authority is the National Association of Clerks and Recorders, and it's my first meeting. Happy to be here.

SECRETARY ROKITA:

Hi, I'm Todd Rokita, Secretary of State of the State of Indiana. It's good to see so many friends and colleagues again. This is my last meeting. The National Association has a policy where we rotate through the leadership of the Secretaries of State organization to sit on this Board. So, I came in as the President Elect. I'm leaving as the immediate Past President. Of course, Pedro's running our organization now doing a great job. At our next meeting, you'll get to meet our President Elect, who Pedro will have a hand in appointing. So, it's been great to work with you all. Heretofore, I haven't had another Hoosier serve on this Board, so it changed my behavior pattern completely...

[Laughter.]

SECRETARY ROKITA:

...especially since Senator Landske is the one that receives many of my lamebrain election reform ideas and tries to get them passed, or not. So, you'll see some difference in behavior this time around. Thank you very much.

MR. JENKINS:

Good morning. Phillip Jenkins. I come from Austin, Texas, although I was born in the great State of Utah, so I'll have to join you Ron and get a picture over there. I was appointed by the President to be on the U. S. Access Board and I'm representing that Board along with Ron Gardner here in this meeting. I work, my day job is to work for IBM. I'm in the Research Division there, I'm a technologist. Thank you.

MS. SIMONS:

My name is Barbara Simons. I'm new to this Board and I'm really thrilled to be here. And somehow, the two people from IBM got seated next to each other. I'm retired from IBM Research, Almaden Research Center. I'm a computer scientist. I've been involved with election related issues for, since around the turn of the century I think I can say. One of the areas where I did some work was in evaluating SERVE, which some of you might recall, was a DOD proposal for internet voting for the military. So I was one of the computer scientists who looked at that system. And I'm just very pleased to be here. Thank you.

MR. DONSANTO:

Good morning everybody. I'm Craig Donsanto. I'm the Director of the Election Crimes Branch of the U.S. Department of Justice. I have been involved in elections since 1972 and my appointing authority is the Criminal Division of the Justice Department.

MS. ENSLEY:

Good morning. I'm Elizabeth, or Libby, Ensley. Most people call me Libby, but I'll answer to either one. My appointing authority is IACREOT, the International Association of Clerks, Recorders, Election Officials and Treasurers. I'm from Topeka, Kansas. I'm an election official there. I've been serving as the Election Commissioner for the last 18 years. And I'm a big fan of the Fighting Ichabods.

MR. COWLES:

Good morning. I'm Bill Cowles, the Orange County, Florida, Supervisor of Elections, which is in Orlando, Florida, former member of the Standards Board. I'm appointed by IACREOT, which I serve as President this year for IACREOT. And lastly, go Magic.

[Laughter.]

MS. THERNSTROM

I am Abigail Thernstrom. I am the Vice-Chair of the U.S. Commission for Civil Rights, and that is my appointing authority. I am also an Adjunct Scholar at The American Enterprise Institute. And, last week my new book was released. It's called Voting Rights -- and Wrongs: The Elusive Quest for Racially Fair

Elections, and it is published by AEI Press and it is on Amazon.

Thanks.

MR. MELENDEZ:

Good morning. My name is Arlan Melendez. I'm Chairman of a federally recognized Indian Tribe - Washoe, Paiute, Shoshone Tribes located in Reno, Nevada. I was appointed to the U.S. Commission on Civil Rights five years ago, so I'm in my 5th year. So this is my first meeting here, so I'm glad to be here this morning.

MR. WILKEY:

Good morning. Tom Wilkey, EAC Executive Director.

MR. DICKSON:

Good morning. I'm Jim Dickson. I'm Vice President of the American Association of People with Disabilities. I have three addictions – elections, sailing, and exercise. I've been involved with elections, as my job, for 27 years. For truth in advertising, I co-chaired, during the legislative process of passing the Help America Vote Act, I co-chaired the Disability and Civil Rights Coalition that worked on the legislation. I've been on the Board since its first meeting and my appointing authority is the Chair of the Senate Rules Committee.

MS. HEGARTY:

Good morning. My name is Terri Hegarty. I'm the former City Clerk for the City of Grand Rapids in Michigan. I retired from the City last year with 30 years and I have been, my appointing authority is the House Administration. And this is my third term on this Commission, on this Board. Thank you.

CHAIR THOMAS:

Thank you. I would also like to have folks along the back there stand and introduce yourselves. We'll start with you Matt I believe.

MR. MASTERSON:

I'm Matt Masterson. I'm the Attorney/Advisor to the Testing and Certification Program for the Election Assistance Commission.

MS. LYNN-DYSON:

And I'm Karen Lynn-Dyson. I'm the Director of our newly formed Research, Policy and Programs Division.

MR. BRACE:

I'm Kim Brace, Head of Election Data Services here in Washington, D.C.

MS. LEEK:

I'm Maisha Leek. I serve as Special Assistant to Commissioner Gracia Hillman.

MR. SCHMECHEL:

My name is Richard Schmechel. I'm the Special Assistant for Commissioner Arlan Melendez, here, one of the Board members.

MS. ROSENTHAL:

Lynne Rosenthal from the National Institute of Standards and Technology, and at NIST I'm in charge of and direct the voting program.

MR. DURBIN:

My name is Mike Durbin. I am a summer intern at EAC this summer.

MR. HANCOCK:

Brian Hancock. I'm Director of the EAC's Testing and Certification Division.

MR. CRAGUN:

I'm Michael Cragun. I'm the Deputy Chief of Staff to Lieutenant Governor Herbert and serve as a member of the Standards Board.

MS. LAYSON:

Jeannie Layson, Spokesperson for the Election Assistance Commission.

MR. STEWART:

I'm Warren Stewart. I'm the Legislative Policy Director for Verified Voting Foundation.

MS. TRELLA:

I'm Nikki Trella. I'm from Maryland and I'm a member of the Standards Board.

MS. LITTON:

I'm Sarah Litton and I'm Deputy Director of Communications at the EAC.

MR. WHITENER:

I'm Bryan Whitener, Deputy Director of Communications, EAC.

CHAIR THOMAS:

Thank you. Well, my observations are, Utah is well represented. And Secretaries of State are well represented, as well. And you will all get an opportunity to have your picture taken with the Governor tomorrow afternoon, so be prepared. Okay, well thank you all. We've got a great group here.

I want to talk about our election process. And we have three officers, which is Chair, Secretary and Vice-Chair. And Jim Dickson is Vice-Chair, Interim Vice-Chair, and Terri is Interim Secretary. We had two members that were not reappointed that created vacancies in those offices. So, pursuant to the Bylaws, I was able to make these appointments during the past year and our election is up at the end of this meeting in any event. I will not be seeking election because I have served two terms, or perhaps a few more, it depends how you count, as Chair and we will hold the elections on Thursday morning just near the end of the meeting. In your Bylaws under your Tab 7, the election of officers is spelled out. Basically we'll take nominations from the floor. I've noticed from the e-mails that there are some people who have been, who have expressed interest. If you are interested, please let that be known to your fellow members. There's certainly lots of time to campaign between now and Thursday morning. We do run elections by ballot unless there's only one person nominated. At such time we do a voice vote. And there will be an Election Certification Committee that I'll talk about in just a moment. And we do have processes for recounts and all that. So, we will be well served by this Committee that I will appoint shortly to handle any issues that come up during the election process. So, again, the elections, Thursday. All three offices are up for election and I urge you to, if you have an interest, to let that be known to your fellow members. And there will be nominations from the floor prior to the election itself.

Okay, various other offices and committees -- I would defer to my friend Craig Donsanto to serve as Parliamentarian. If you

would do that, I would be pleased. Thank you. And Committees, I have a Proxy Committee that Doug Lewis will run along with Donald Jones and Joe Crangle. Thank you. The Resolutions Committee – Jim Dickson is the Chair of the Resolutions Committee. Terri Hegarty will be joining him along with Helen Purcell and Rhine McLin when she, we do still expect her to join us. And the all important Elections Certification Committee, Secretary Chris Nelson has volunteered to Chair that. Linda Lamone has also volunteered to serve on that Committee. Thank you Linda. And Thomas Bush has also agreed to serve on it. So thank you for doing that.

And, at this point, I think we move to a review of materials by Commissioner Hillman.

COMMISSIONER HILLMAN:

Okay, I'm just going to walk through the materials that you have for the meeting. If you don't have copies, just let us know and we'll make sure that you get what you need. Tab 1 is the agenda that you've already adopted. Tab 2 is the membership roster containing all the contact information for your fellow Board members. This is not the roster that we publish publicly, as we do not take it upon ourselves to publish phone numbers and e-mail addresses. We leave that up to you, but for the Board you have this full information. Tab 3 – Committee Rosters. These are the various Committees that have met between the June 2008 and this Board meeting. There were four Committees. You heard from Secretary Herrera for the Special Committee to Review the Structure of Board Meetings. Terri Hegarty chaired Special

Committee, no, I'm sorry, this Special Committee for the Review of EAC Strategic Plan, there was really no Committee Chair. These five people just worked together to give EAC feedback on the Strategic Plan. The Strategic Plan is in your binder and I'll point that out to you when we get to that section. Special Committee on EAC Election Day Data Grants, Terri Hegarty chaired that Special Committee and you'll be hearing a report from them. And then, the Voting System Standards Committee, that is a standing Committee of the Board provided for in the Bylaws. You'll be hearing a lot from them during this meeting. The other standing Committee is the Bylaws Committee. There were no Bylaws Amendments proposed during the past year. The Bylaws Committee did an awful lot of work in preparing for the 2008 meeting, and the Bylaws were substantially revised at that time and remain intact since they were adopted at the June 2008 meeting. Tab 4 – Minutes from the June 2008 meeting. They've been available since about August of 2008. We've sent them out to you a few times along the way. They do tend to be lengthy, but we are talking about two days of meetings. We do have verbatim transcription going on and that is why we ask that you always identify your name and use the microphone. And we use the transcription to put the Minutes together. We usually get the transcription in about two weeks from the day of the meeting and we post the verbatim transcription on our website. So, anybody who wants to paw through the verbatim transcription can have access to it through the EAC's website. Tab 5 – You heard the Chair refer earlier to Resolutions. These are the Resolutions that were passed at the December 2007 meeting of this Board and

at the June 2008 meeting. And all of these Resolutions will be addressed under the Executive Director's Report. Tab 6 – The Charter of the Board of Advisors. Under Federal Advisory Committee Act Rules, every advisory board has to have a Charter. This is the Charter for the Board of Advisors. And then, right behind that Charter, still under Tab 6, we just put excerpts from the Help America Vote Act that established the Board of Advisors and assigned the basic duties, for your information. Tab 7 are the Bylaws that we referred to earlier. And, as you will see on the last page of the Bylaws, they were signed into effect September 2008, but they were adopted on June 18 of 2008. Tab 8 – Committee Report. You've already heard from Secretary Herrera on the Review of the Structure of Board Meetings. Tab 9 – This is the Report from the Special Committee that reviewed the draft EAC Strategic Plan, and that was done back in September of 2008. Tab 10 – You will find a Report from the Special Committee on the Election Day Data Collection Program under Tab 17. We just put everything together under Tab 17. Report from the Voting Systems Standards Committee is on Tab 11. Tab 12 – This is the Recommendation from the Special Committee on the Data Grants Program, and you will hear a presentation about the Program from the Committee, from the EAC staff and from the consultants. You will have time for observations and questions and answers before you have to undertake action on the Committee's Recommendation. Under Tab 13 – These are the Recommendations for the proposed upgrades to the Voluntary Voting System Guidelines that were adopted by EAC in 2005.

Now, in your binder you received a CD and the CD was labeled VVSG 2.0. Not to confuse you, from that time to now, that document has been relabeled VVSG 1.1. You'll hear more about that in the presentation. It is the same document. They changed the name. And I guess, that was to see if I was on my toes and paying attention. You should also have, to accommodate the presentation, a May 26th memo from the Committee, the Voting System Standards Committee, and this is under Tab 13, with recommendations about the proposed updates to the VVSG. And you will receive recommendations about accessibility. The Committee is still working on recommendations concerning accessibility. The Committee met this morning. It will meet again this afternoon at the conclusion of today's Board meeting to try to finish up what those recommendations are. You also received, I believe, at your place, we pulled out the pages from the Voluntary Voting System Guidelines that referred directly to the recommendations the Committee is making. The VVSG is about that thick and there are two volumes. They are about three inches thick -- Volume 1 and Volume 2. Rather than give you the whole Volume, we pulled out the pages for you, and we did electronically send them to Mr. Dickson and Mr. Gardner. And when the presentation is made you will be able to see it up on the screen, highlighted, and we will make the appropriate references so that Mr. Gardner and Mr. Dickson can follow along with us. The presentation of that will be done by Keith Cunningham and his Committee. And we are going to Tab 12 now, I believe we are on, 14, I am so sorry. Okay, Tab 14. So, you received information

about a virtual meeting that the Board of Advisors held a couple of weeks ago. It was to take a look at a draft Election Operations Assessment, Phase I document. The recommendations from the Committee about that document have been provided to you, and a Summary Notes of that virtual meeting are also provided for you in Tab 14. And again, you will get a presentation about that document, should you have any questions or want further discussion before considering the Committee's recommendations. Tab 15 – This will be the Executive Director's Report. It's fairly long, there are three sections – a PowerPoint presentation, which Mr. Wilkey will be doing. Behind his PowerPoint there is a PowerPoint presentation from the National Institute of Standards and Technology. And then, the very last document under Tab 15, you will see the EAC's Strategic Plan, which will cover fiscal years 2009 through 2014. This is the document that that Special Committee looked at, the Committee under the Committee Rosters that I explained to you. Tab 16 – Following lunch today, the second half of lunch, will be a presentation by Dr. Juan Gilbert on his Prime III Research Project. And the information about Dr. Gilbert and the Project is behind Tab 16. Tab 17 is the information about the Election Day Data Grants Program. It includes a report and recommendations from the Committee. It includes the summary notes of the virtual meeting that was held back in September of 2008, before this Project began. In the appropriation, in EAC's appropriation providing money for this Grants Program, Congress specifically said that EAC should consult with the Board of Advisors on the evaluation report that will be sent to Congress at the end of

June. So the purpose of your discussion today is to see if you concur with the evaluation report that is being presented, and offer whatever suggestions you might want to offer. The Committee will speak to it but the Committee did yeoman's work, working with the staff and the consultants to get through the earlier drafts. And I believe what the Committee's recommendation is, is that the Board should concur with the Report. Karen Lynn-Dyson, I just have one quick question for you. Behind the draft Report there is, it looks like a PowerPoint presentation by ICF. Is that a part of the Report or not?

MS. LYNN-DYSON:

It will be a part of their presentation tomorrow. That will be the basis of the...

COMMISSIONER HILLMAN:

Of the presentation, but it's not a part of the Report that's going to Congress?

MS. LYNN-DYSON:

No.

COMMISSIONER HILLMAN:

Okay, so behind the Report you'll see a page that's, and unfortunately, it's not divided out, but it's after, page 76 is the last page of the draft Report. Behind page 76 is the PowerPoint presentation about the Project that will be presented to you. And then, behind Tab 18 there's information if you have a proposed Bylaw amendment you want to offer for the Board to consider at its next meeting. There is the form for Proxy. And then, behind that

would be the Proposed Resolution form, if anybody has a Resolution that they want to author.

So, you know that the goal in life is to reduce the amount of paper we deal with and the Federal Government has something called the Paperwork Reduction Act. I haven't figured out how to do business at Federal Government without generating lots of paper. So, I apologize for that, but there it is.

CHAIR THOMAS:

Thank you very much. Questions on the materials, in terms of what you have before you? Okay, hearing none, I would at this point ask Secretary Hegarty to address the Minutes from the June meeting please.

MS. HEGARTY:

Under Tab 4 you have the Minutes from our last Annual Meeting, which was June 17 and 18, 2008. Hopefully, you've had a chance to read them over. And I would make a motion to approve the Minutes of the meeting for June 2008.

MR. COWLES:

Bill Cowles, second.

CHAIR THOMAS:

Okay, discussion? You've all had an opportunity to review.

Hearing none, all in favor?

[[Multiple responses in affirmation]

CHAIR THOMAS:

Opposed?

[No response]

CHAIR THOMAS:

Motion carried. Thank you.

At this time we will move to Old Business. No pun intended.

[Laughter]

CHAIR THOMAS:

Mr. Wilkey, are you going to present from here or the table? As Mr. Wilkey makes his way to the presenter's table, by way of introduction, he is my brother of years. We were Election Directors together for numerous years. Tom was the Executive Director of the New York Board of Elections for, how many years sir? A number of years. And he retired. Having not had enough fun in elections, decided he'd try his hand at the Federal level, has been hired by the, appointed by the Election Assistance Commission. We've been very pleased to have him as the Executive Director. He brings a wealth of knowledge in elections and interactions of Federal, State and local officials. And we welcome you here today, sir, and look forward to your presentation. I will note that as he speaks to Resolutions, you will find those, I believe, in Tab 5, is where those Resolutions are located. So, thank you for joining us today, and have at it.

MR. WILKEY:

Thank you Mr. Chairman, and payback will be fun, but you're supposed to be kind to the elderly and, you know. First of all, let me say how pleased I am to be with you this morning. I was one of the original members of this Advisory Board, back when the Commission was first created. I understand, therefore, your significance and the advice that you give us is very valuable. And we have a lot to go through this morning. I think we're going to take

a break so, Mr. Chairman, when you've heard enough and you're ready to take a break, just give me the high sign. I'd like to do two things first before we begin going over the Resolutions. We had a couple of arrivals after the introductions were made, staff of the EAC, and I'd like to introduce them. First, someone who keeps me focused on a daily basis, and that's my Special Assistant, Bert Benevides. Our new Director of Grants, who is overwhelmed already, Mark Abbott. The woman who organizes all of our meetings -- our public meetings, our special meetings, our Advisory Board meetings, our Standards Board meetings, -- and does a fantastic job, Emily Jones. Emily is outside, but you will get to see her. Mary Ann Bradfield, who is the new, Em where are you?

MS. JONES:

Oh, sorry.

MR. WILKEY:

Okay, say hello. Mary Ann Bradfield who is the Special Assistant to Commissioner Davidson. And Sierra Morton, who is a new intern for the summer for Commissioner Hillman.

COMMISSIONER HILLMAN:

She's out in the hall.

MR. WILKEY:

She's out in the hall, also. Okay. Governor, I'd like to also say that, welcome and congratulations and you follow in the footsteps of someone who has worked very closely with the EAC, former Governor Olene Walker, who is presently co-chairing a very, very important committee of the EAC working with the National Academy of Science, on our voter registration project that we are

doing. And Olene has been a friend for many years, and we are happy for you and wish you much luck in your new role.

Okay, we're going to go to the Resolutions. And to assist me in going through these, since a number of them deal with the Voting System Guidelines and with our Research and Program areas, I have asked two of the staff of the EAC to join me in responding to these Resolutions, Matt Masterson, who is the Attorney/Advisor to our Certification and Testing Division, and Karen Lynn-Dyson, who is the Director of our new Division of Research, Program and Policy. Once we've gone through the Resolutions, if you have any questions I'll be glad to answer them at that time. And then, I will go through and update on all of the activities that have gone on at the EAC since I was with you last year. That will be followed by an update on our Certification Program, as well as the Voting System Guidelines Program, and by the activities of the National Institute of Standards and Technology are doing for us in that area. They have been our partner in working on these Guidelines from the very beginning, and Lynne Rosenthal is here to give that presentation, as well.

So, the first few Resolutions from 2007, a number of them deal with our VVSG and our Testing and Certification Division, and I'm going to have Matt go over those with you. And then we'll go to our research issues. Matt.

MR. MASTERSON:

Thanks Tom. Again, my name is Matt Masterson. I'm the Attorney/Advisor to our Testing and Certification Program and my primary function, I'm kind of scared to say this, because you have

me to thank a little bit for the work here today, is working with the VVSG, both the revision and what we've called in the past, the next iteration. So, I appreciate the opportunity to address some of your Resolutions and talk to you about what we've done and where we're headed with those. To start I'm actually going to ask Lynne to talk about a document that answers several of your Resolutions, and it's a document that's up on the EAC website. I'm not sure if it's in your binder. I didn't hear Commissioner Hillman call it out, but it's entitled "EAC Research Areas for the TGDC VVSG Recommendations." This document was created by NIST at the EAC's request in response to a variety of Resolutions from, not only the Board of Advisors, but the Standards Board, to address some research areas that the Boards had asked us to look into. So, Lynne will kind of just overview, briefly overview, the document. Again, it is up on our website and it does address some of those and will inform our work with the VVSG. So, Lynne.

MS. ROSENTHAL:

Again, I'm Lynne Rosenthal from the National Institute of Standards and Technology, or NIST. And I don't have the corresponding Resolution number for some of these items that I'm going to mention, so bear with me. I believe it's Resolution 1 that asks us to look at alternatives to Software Independence. And that's probably the only Resolution number I know. So, as part of our research areas, one of the first things we looked at was alternatives to SI, Software Independence. And basically, we focused on looking at auditability as a replacement for Software Independence, and focusing on different methods to achieve better

auditability. One of those would be Software Independence. Another way of achieving better auditability would be using end-to-end cryptographic systems. And yet, another way we were exploring was something we called Independent Verification Systems, or systems that pretty much have two devices checking each other. Those were some of the areas that we explored with respect to giving you alternatives to SI.

Another area, in one of the Resolutions, was to look at Ballot-on-Demand. Our research into Ballot on Demand brought big -- the first question was, "How do you define it?" "What are we describing here?" And when we asked various election officials and other people in the community, we got different answers. So, before we can do much more work, we need to come up with a consistent definition of what is meant by Ballot on Demand. We realize we need more research to be done in this to understand what is required, what is needed, how will it be used. And from that we can come together with possibly more requirements or better requirements to enable Ballot on Demand.

Another Resolution addressed Vote-by-Phone. This one we looked at carefully. We need to re-work some of the VVSG device class structure in order to accommodate a Vote-by-Phone system. We would need to add additional and stronger cryptographic and communication security requirements, and there is possibly a need for an interpretation of the HAVA accessibility requirements, or definition of an accessibility, of an accessible vote station, in that Vote-by-Phone handles the audio, but it doesn't handle the visual

aspects of a voting station. So there possibly are some consequences there.

Another area that we were asked to look into was the ability to separately certify components and, with that, common data interchange format. Changing the structure, or looking at certification is really an EAC area, but it would change the EAC's philosophy of certifying an entire system. Certifying separate components has consequences and many issues that we discovered, starting with, what components are we going to be looking at and certifying, individually. It's also the case that when you test an individual component, it is not necessarily the case that when you put all the components together that the whole system will work properly. So, even if separate components are certified, there is still the essential need to look at and test the entire system. With the question of interoperability, we have our own questions as to what are we talking about. Interoperability means a lot of different things to a lot of different people, and we would need to have more information as to what information is being exchanged, and in what manner, and for what purpose. It's often the case that we need to understand the purpose behind, or what is trying to be achieved, rather than "here's my solution." With respect to a common data format, I'm sure many of you may have heard of a standard called EML. That is just one way to represent data information. We've looked into EML, and we are currently looking at it again as it has evolved over the last two years since the initial release of the VVSG next iteration. With respect to data formats, we want to engage in a discussion with the community regarding

what information are we talking about, how is that information being used, what are the requirements for representing and using that information? That all helps us understand what a common data format would need to do. We do know that the common data format, that a data format would have to support all the voter variations in the United States. Currently what we have looked at with respect to EML, going back to that OASIS standard, is it doesn't handle everything.

And finally, early voting and vote centers. There are already requirements in the VVSG that handle this. I think, you know, as we are looking at it and updating the VVSG next iteration, we need to ensure that everything is covered appropriately. And where there may be a gap that we missed, we look at including additional requirements.

Thank you. Matt.

MR. MASTERSON:

Thank you, Lynne. So now, you know, with that overview of the research areas document, what I'd like to do is, hopefully, quickly and briefly, work through each Resolution from 2007 that applies to the next iteration, so that you all can hear which ones were responded to in this research area document, and which ones will be looked at and responded to as we continue our work with the next iteration of the Standards. So hopefully, I can do this quickly, and I'm happy to take questions as we go.

So, as Lynne mentioned, Resolution 2007-[D1] deals with the EAC looking at alternatives to Software Independence. As Lynne mentioned, that's in the research task document and that will

help inform our work with the next iteration of the Standards, as we continue forward with that.

2007-[D2] talks about the readability of the VVSG, of the next iteration of the VVSG, for non-technical people. In response to that, NIST had issued a companion document that basically explained the various sections of the next iteration and the implications of it. That is posted on our website, as well, to respond to that. In addition, NIST did do usability work with the next iteration of the document. And that's something we'll continue to look at. As we've stated several times, it's also important to remember that the VVSG is a technical document that needs to be specific in order to be tested to. So, that's sort of the struggle that we've all heard argued out, and it's something we're looking at to make it as understandable as we can.

2007-[D3] deals with Ballot on Demand. That was researched as part of the research area's document. In addition, this is something we'll look at as we continue our work with the next iteration of the Standards, ensuring that that can be tested as part of our Standards, and how to deal with that. Yes, Jim?

MR. DICKSON:

Jim Dickson. When you say "next iteration of the Standards," are you talking about what we will be discussing in this meeting, or are you talking about something that we will be discussing in the future?

MR. MASTERSON:

I appreciate the question and I think that's an important clarification. And so, perhaps, now is a good time to sort of smooth

out the vocabulary of this, so that we all know that we're talking on the same terms. And this was part of my presentation tomorrow. So, they'll go hand-in-hand. The Standards that we'll be talking about over the next two days, there's three of them that we'll be talking about primarily over the next three days. The first is what's called the 2005 VVSG Version 1.0. That's the Standard that was adopted by the Commission in 2005, and systems are currently being tested to as part of our certification program. So again, that's 2005 VVSG Version 1.0. The Standard that we will be discussing, I think, all day tomorrow, which has been called the Update or Revision to the 2005 VVSG is what we're calling VVSG 1.1. Whereas, indicated in your folder it was 2.0, and we changed it, just for proper versioning. And I apologize because it created confusion. But again, the Standard that's the Revised 2005 VVSG, the update and revision is known as the VVSG 1.1. Then, there's the next iteration of the Standards, or what we're now calling VVSG 2.0. These represent the Standards that were submitted to the EAC by our Technical Guidelines Development Committee in August of 2007, that were commented on by the Board of Advisors and the Standards Board in December of 2007 in Austin, Texas. This EAC Research Task Document that NIST provided talks to this VVSG 2.0, or the next iteration of the Standards. And it's important to know that in revising and creating VVSG 1.1, or the revision to the 2005 VVSG, we took sections or portions of the next iteration, or VVSG 2.0, and put them in to revise the document. So, I know it's confusing, but we're going to talk a lot about why we did that, why that made sense, and the clarification there. So, the three

versions we're dealing with, again, are the 2005 VVSG, which is VVSG 1.0; the revision or update to the 2005 VVSG, which is VVSG 1.1; and then the next iteration, or the TGDC Recommendations, which is VVSG 2.0.

COMMISSIONER HILLMAN:

Gracia Hillman here. I just want to re-clarify and restate something, so people will not be confused. In your Board briefing binder, you received a disk that says VVSG 2.0. That is not the next iteration. That is the document that will be discussed, what he is now referring to as 1.1. So, even though it says 2.0, your disk is VVSG 1.1 proposed updates to the 2005. And, we gave you two handouts with pages that were taken from the document, and those handouts are labeled "Draft Voluntary Voting System Guidelines Version 2.0." That is version, what he's referring to as 1.1. So, I don't, please work with us through this. If I could have had a clue before yesterday afternoon this was coming at me, I would have left town...

[Laughter]

COMMISSIONER HILLMAN:

...and let somebody else figure it out. So, all your materials say 2.0 – that's 1.1. You don't have anything here that is the 2.0 Matt Masterson refers to. Is that confusing enough for you? Thank you.

MR. JENKINS:

Is everybody clear on this? This is Phil Jenkins. I have one other question. There was, just released, a public comments document.

COMMISSIONER HILLMAN:

That's what they're calling 1.1. It's the 2.0 that you have.

MR. MASTERSON:

And you have my sincere apologies for the confusion. That was a versioning decision that we should have, I guess, considered.

MR. LEWIS:

Well, Keith Cunningham's going to save us tomorrow, because we even have a clearer way of handling this. Secretary Rokita...

SECRETARY ROKITA:

Okay, so just to answer Jim's question, what we're talking about, now, with these Resolutions is about...

MR. LEWIS:

Resolutions.

SECRETARY ROKITA:

...Resolutions.

MR. LEWIS:

In the past?

SECRETARY ROKITA:

Right. They're about the set of documents, set of guidelines, that were to be discussed at this meeting. Yes or no?

MR. MASTERSON:

No.

CHAIR THOMAS:

When he says "next iteration," that is down the road and, really, not on the table for this meeting. So, the issues that we raised in Resolutions in Austin to deal with Software Independence

and those types of things are still under study for the next iteration.

And that's what these Resolutions addressed. Right?

MR. MASTERSON:

Correct.

CHAIR THOMAS:

Okay. Anyone else? Jim did you have anything further?

MR. DICKSON:

Jim Dickson. I know this is very confusing. We get -- you have three documents. Basically, the first document, which is 2.1, no, the first document is what is in effect now. The second document is proposed amendments to what is in effect now. And the third document, which Matt is now talking about, is, deals with researching questions that will be applied to the VVSG at some point in the future.

MR. MASTERSON:

That's correct. That's a much better summary than I offered.

CHAIR THOMAS:

Okay, thank you.

MR. MASTERSON:

Thank you. So, Resolution 2007-[D3], dealing with the next iteration of the Standards, asked us to look at Ballot on Demand, and the Standards impact on Ballot on Demand. As I mentioned, the research areas, prepared by NIST, deal with this and we're continuing to look at the proper way to create standards for Ballot on Demand.

Resolution 2007-[D4] dealt with the question of early voting and vote centers, and the impact of the next iteration of the

Standards on that. Again, NIST prepared research information on that, and that's something that we will also continue to look at as we develop our version of the next iteration.

Resolution 2007-[D5] deals with the Standards needs, not only to look at the usability of the system from the voters' perspective and the poll workers' perspective, but as well for the election officials, and asking the EAC to make sure that the usability standards apply for the election officials. And that's something we're taking under advisement as we continue our work with the next iteration.

Resolution 2007-[D6] deals with Vote-by-Phone and the impact of the Standards on Vote-by-Phone. And that is dealt with in the NIST prepared research areas document.

Resolution 2007-[D7] deals with the concept of open-ended vulnerability testing and a risk assessment and looking at the cost and impact of open-ended vulnerability testing on the EAC's process. Currently, the EAC has a contract, and they are working, and you all have commented on Phase I of the Elections Operations Assessment, which is looking into risks in voting, in the voting technology. That's the first step in this process. As we get that information we are going to use it to help inform our decisions on things like open-ended vulnerability testing, as well as other requirements in the next iteration of the Standards. So, work is underway, in looking at these items identified in this Resolution.

Resolution 2007-[D8] – I would just say I appreciate the support. This was a Resolution supporting the EAC's ban on wireless interaction with voting systems.

Resolution 2007-[D9] recommends that the VVSG, the next iteration of VVSG, not interfere with the continuing development of technology for overseas and military voters. So basically, encouraging the EAC to continue to foster innovation in those areas. The EAC is doing work on UOCAVA. Lynne Rosenthal is going to talk about some of the work that NIST and the EAC are doing with UOCAVA voting and technology. So, that will be addressed a little bit later on in the meeting, and it's something we'll look at as we continue our work with the next iteration.

Yes, Secretary Rokita?

SECRETARY ROKITA:

Thank you Matt. In the last "whereas", it talks about assessing the impact that the Guidelines may have on the development of alternative voting methods. Are you doing any kind of formal assessment?

MR. MASTERSON:

On the impact of, that the Guidelines...

SECRETARY ROKITA:

Or informal assessment?

MR. MASTERSON:

A formal assessment – not specifically to UOCAVA are you speaking? Or, specifically to UOCAVA? The EAC is, and NIST, are doing an assessment of, basically, technologies that are being used to serve UOCAVA voters, and looking at best practices and the way to do that. And then, with the VVSG, we're looking at, we recently had an internet voting company register with us, so we're

looking at possible ways to test a system like that. Does that answer your question Secretary?

SECRETARY ROKITA:

Well, the way I take the spirit of this Resolution, maybe in the plain language, is that, you know, as we're developing these Guidelines we don't want to negatively impact the creativity and ideas of everything else that could go into moving the ball down the field, in terms of new types of technology and alternative voting methods. How are you measuring whether or not you're impacting that negatively, as you produce these Guidelines?

MR. MASTERSON:

Sure, that's a great question, thank you. The answer is that, in our work with the next iteration of the Guidelines there is a recommendation for this item called the Innovation Class, which was basically the TGDC's way of trying to encourage our certification of innovation and, you know, encouraging innovation in the development of new voting technologies. One of the things that we're looking at, and we need further research on while we're working with the next iteration of the Standards, is the best way to promote innovation in that way. And so that, a formal, no, a formal study is not underway. But promotion of innovation is certainly one of the things that we're looking at as we continue our work with the next iteration.

CHAIR THOMAS:

Barbara Simons.

DR. SIMONS:

I just have a question about the internet voting part of the UOCAVA thing. When you are looking, when you're examining this, are you also taking into consideration the risks of having the voters computer or voting station infected with a virus or a malicious worm? I mean, how are you doing to deal with that?

MR. MASTERSON:

Sure, thank you Dr. Simons. Lynne Rosenthal from NIST, a little bit later, is going to talk about sort of the overall view of what they're looking at in their UOCAVA work. And I think we'll address that a little bit. So, I defer it, I guess.

MR. KELLEY:

Hi, Neal Kelley. Maybe you could clarify for me – the certification of separate components – is that tied to a specific Resolution, and am I missing that?

MS. ROSENTHAL:

I thought it was, but perhaps it's not.

MR. MASTERSON:

It is in 2007-[D11].

MS. ROSENTHAL:

The standardized data elements. I apologize. I didn't match the Report to the Resolutions.

MR. KELLEY:

That's okay. My clarifying question is, is it off the table completely, or are you still exploring the possibility of certifying separate components down the road?

MS. ROSENTHAL:

It's, I would say, in a, sort of, hiatus state at this point. We have not done additional research into that.

MR. KELLEY:

Are you planning to do that?

MS. ROSENTHAL:

We work with the EAC, and it's really up to them if they want us to do additional research in that area.

MR. MASTERSON:

To, I guess, further answer your question, the certification of components was something that was commented on a great deal at our roundtable discussions that we had discussing the next iteration. There were also comments received publicly as part of our public comment process, so I think it's something that we have to look at further than this and just see what the challenges are. So I don't think, unless I'm not understanding correctly, I don't think it's anything that's off the table, simply because it's something that was commented on and we need to look at that as we continue our work. Thank you.

CHAIR THOMAS:

Sarah Ball Johnson.

MS. JOHNSON:

I just wanted to let you all know, coming from the Standards Board, and we met in February, and one of our goals was to comment on this VVSG whatever iteration. And I'll let, just to put it in perspective for you all, I'll let you know that when we met in February, for example, we didn't have Version 1.1 or Version 2.0. We just had the next iteration and some other version. So, I mean,

just to let you know you're not confused, alone, you have the full 110 members of the Standards Board that were completely out of the dark about where this is going, and just, if it makes you feel any better, we were utterly confused, because we didn't even have versions. And that is something going forward in the future, I don't know if this is the right time or not, necessarily, but, if our Board, the 110-member Board was confused, and this Board is confused on what the version is, could we establish some titles, name them that and...

CHAIR THOMAS:

We'll have answers for you tomorrow...

MS. JOHNSON:

...quit referring to different things.

CHAIR THOMAS:

...or maybe, later today. There is an answer on the horizon.

[Laughter]

MR. MASTERSON:

So, we were on 2007-[D10], which asked the EAC to provide a fiscal analysis for the next iteration of the Voting Systems Guidelines and that Congress appropriate sufficient funding to do so. I'll address the second part in saying, you know, we can't lobby Congress for that, but certainly the Resolution is out there for consideration. The first part of that we, actually, started by starting this Election Operations Assessment. The first step in being able to look at a cost-benefit analysis is to understand the risks implied in the standards and what we're looking at. So we, we hope and expect that this Election Operations Assessment will help us do a

more informed cost-benefit analysis when we're looking at the standards and the requirements. So, that was the first step in that, and hopefully, we can follow-up in looking at the costs.

2007-[D11], as I mentioned, deals with standardized data elements and ensuring interoperability and component development. This is dealt with in two ways in the NIST research document, both the feasibility study of the ramifications of separately testing and certifying components, and then, requirements for interoperability in system communications. So, that's something we're going to continue to look at, and I think NIST would agree that this initial crack at this was simply that, an initial look at research. And there's a lot more research to be done. I can tell you that outside of Software Independence, the most commented on item not in the Standards was this idea of common data formats or election mark-up language. So, it's something that we have to look at based on the number of comments that we received.

CHAIR THOMAS:

Secretary Nelson?

SECRETARY NELSON:

Chris Nelson. If I could just go back quickly to D10. Would it be your intention to have the fiscal analysis completed before requests for final approval of the 2.0?

MR. MASTERSON:

That is a great question, Secretary. I mean, I would think that would only make sense, I mean, to pass the Standard before looking at the fiscal implications. Right now, there's no formal study

underway to look at the fiscal implications. Like I said, we want to look at the Election Operations Assessment first. But I would think, at the very least, we have to look at the cost implications before, that's something I would think that needs to inform the Commissioners' policy decisions in several areas.

SECRETARY NELSON:

That would certainly be my opinion, also. Thank you.

MR. MASTERSON:

Resolution 2007, oh.

DR. SIMONS:

I just had a follow-up to that last question. If you're looking at fiscal implications, are you considering trade-offs? So, for example, I know one concern that people had is the cost of a lot of testing, and it might be possible to reduce the amount of testing if you actually do audits. So, do you know what I'm saying? So, are you contemplating trying to, I know you can't do this totally rigorously, there would have to be a bit of assumptions going on. It's a hard question, but have you thought about looking at trade-offs, and maybe, giving up this in exchange for that, so that you achieve ultimate goal?

MR. MASTERSON:

I would say the answer to that is we haven't thought about any of it yet, because we haven't started it yet. But certainly, that seems a reasonable approach to looking at something like that.

MR. JENKINS:

Phil Jenkins. A question on the Statute. In my experience with the U.S. Access Board, when we do rulemaking, we have to go

through OMB, which does a fiscal analysis. Is there any process similar to that for our Guidelines, even though they're voluntary and apply to the States?

MR. MASTERSON:

I'd appeal to our Deputy General Counsel on that. Sorry. I think I know the answer.

MR. GILMOUR:

You're asking, specifically, about OMB, or the process by which they're adopted?

MR. JENKINS:

OMB was the example. What is the process?

MR. GILMOUR:

HAVA, actually, specifies the process in great detail and that is what we follow. I would, actually, go further and say that we, actually, do a bit more in the process where we're going through the rules required by HAVA. HAVA, essentially, mimics a process that's in rulemaking. It requires publication in the Federal Register, public comment, a hearing, and then final publication. The EAC, in an attempt to provide clarity, actually does two publication cycles. One, it publishes the Recommendations, which has been done for the next iteration, and that's sort of where we are now. And then, we publish EAC's Recommendations. So, we sort of added a step there. But I certainly can, at a break, show you the place where that's...

MR. JENKINS:

No step to go through OMB?

MR. GILMOUR:

We do not go through OMB, as an independent Agency on this particular matter, and, to my knowledge, they have not expressed interest in that participation.

COMMISSIONER HILLMAN:

It's an interesting question. Commissioner Hillman here, thank you. It's an interesting question, and heretofore, I don't know that anybody has said whether EAC could request it, could request OMB. Now I don't know what it would do to the process, but it just has not been an issue. We are not required to do it, so the question is, is it an option for us even though the Law does not require it? And I don't know the answer to that question, but it might be worth looking into, to see if that's something that we can, assistance that we can get from the Office of Management and Budget.

CHAIR THOMAS:

Secretary Rokita?

SECRETARY ROKITA:

I'm sorry, I can't leave this, yet, because it's center on my mind as to what job I'm supposed to be doing as a member of this body, in terms of the VVSGs. And that is, I guess I'd like to know if the Commissioners intend, as the policymakers with regard to the VVSGs, if they're going to put a fiscal filter on what finally comes out of the EAC or not. And, recognizing that Resolution 2007, although I certainly agree with Secretary Nelson, it's the common sense thing to do, Resolution 2007 just says apply the fiscal analysis to the new VVSG – it doesn't say take fiscal concerns into account when producing the VVSGs. There's a difference there.

And for me, if you are or are not taking into account fiscal analysis, it might change what I'm supposed to do, in terms of advising you. As we make comments about the VVSG, should be taking into account what these things cost? Sorry.

COMMISSIONER HILLMAN:

Well, I will just respond to say that while I, Commissioner Hillman here, while I hear you make the separation for me, I don't know that piecemealing a fiscal implication would be beneficial. It seems to me, we need to start with a base, and then, as revisions and updates are made, we don't have a base for the 2005. So, to isolate, for me, to isolate a fiscal cost isn't going to help the bigger picture. So, I'm going to go back by being intrigued by, and I'm looking at the staff and they're looking like deer in the headlights, so I'm going to go back to whether EAC can pursue that assistance from the Office of Management and Budget, or from somebody, or will we have to find a way to get to it internally? And I just don't recall, and Commissioner Davidson correct me, I don't recall recent conversations. We talked about this in 2005, and admitted we had, we did not have the resources.

SECRETARY ROKITA:

One quick follow-up Mr. Chairman?

CHAIR THOMAS:

Yes, please.

SECRETARY ROKITA:

I think some of this centers on whether or not you, the EAC intends to take a fiscal analysis into account before you finalize the

Guidelines, or just report out what the fiscal analysis is going to be after the Guidelines are adopted. Thank you.

COMMISSIONER HILLMAN:

Sounds like a good recommendation from the Board to me.

CHAIR THOMAS:

Yeah, we will definitely move forward with that. At this point Mr. Wilkey could we stand down for break? We're just a few minutes past our 10:45 break.

[The meeting took a break from 10:51 a.m. until 11:15 a.m.]

CHAIR THOMAS:

Okay, before we get started, I'd like to acknowledge that the Chair of the EAC, Gineen Beach, is here. Thank you for joining us. And Mr. Wilkey?

MR. WILKEY:

Thank you Mr. Chairman. I think Matt is going to continue where we left off.

MR. MASTERSON:

Thank you. I think we are on 2007-[D12], which asks that the EAC please remove all requirements that mandate election procedures instead of equipment standards in the VVSG. This is something that we'll certainly take a look at as we work to develop the EAC's version. And I know it was a focus of the TGDC, and I'm sure, that was appropriate that you all wanted to remove most of those. So if we missed them, we'd certainly like to know and work with them.

2007-[D13] speaks to the EAC's need to develop a certification process for the innovation class. And for those unfamiliar with the innovation class, it was a concept in the VVSG 2.0, the next iteration, that talks about ways for the EAC to test new and innovative concepts. And stuff that wasn't envisioned when the Standards promulgated, how do we test those systems? And so, the Board of Advisors made a recommendation to us that we develop that certification process before we ever promulgate this concept of the innovation class. And that's certainly something we'll take a look at, as we work with the Standards, and work to look at the innovation class, and how best to promote innovation with the next set of Standards.

I'm going to skip ahead a few, unless -- actually, I'll ask, Mr. Chairman, would you rather go through, in order? Tom, I think, is going to speak to the next two, or would you rather me just continue on the VVSG?

CHAIR THOMAS:

Go ahead.

MR. MASTERSON:

Okay, thank you. So, the next one on the VVSG is 2007-[D16], which recommends that the EAC look at the usability testing and NIST benchmark usability, accessibility testing, and suggests that the test subjects for the usability testing be drawn from targeted users of the usability test module, in addition to the general population. This came about from concern that the sample population suggested in the Standard was not reflective of the actual population of the United States and the targeted users. I

know that NIST has been looking at the benchmarks and the testing of the benchmarks, and it has struggled with this issue in creating the test suites. And so, I think this is something that is still being looked at by NIST as the best way to handle that. Is that correct Lynne?

MS. ROSENTHAL:

Yes. When we test our tests, if you will, validate our test methods, we try to recruit with the appropriate types of people for that type of usability test, and also, with our accessibility tests.

MR. MASTERSON:

Okay, the next one that I'm going to address is 2007-[D19], which speaks to, again, the readability and usability of the VVSG and the need for the document to be understandable, not only by technical experts. As I said, NIST issued a sort of plain English summary of the VVSG, as well as using usability experts to try to make it more readable. And this is something that we'll continue to look at, and struggle with, quite honestly, to make a specific standard that can be testable, while still making it understandable to those of you who have to implement these systems.

I believe that is all of mine dealing with the VVSG. There's one in 2008 that deals with the certification program that, I believe, I'm going to address later. So, thank you.

MR. WILKEY:

Okay, Mr. Chairman I...

CHAIR THOMAS:

Secretary Rokita:

SECRETARY ROKITA:

Just a quick question, thank you. Todd Rokita. You say you're going to take a look at a lot of things, and this might, actually, go to the Commissioners as well, but from that, when you say "take a look at," can we assume that you, generally, agree with the resolution then, or how does that work?

MR. MASTERSON:

You're right in that that kind of goes to the Commissioners. Except to say that all of these issues brought up in our work in developing the EAC's version of the next iteration need to be addressed one way or the other. And so, a lot of these involve policy decisions, or at least looking at development of Ballot-on-Demand requirements, for instance. That's something we need to look at. Is that something feasible to develop for the next iteration? And we take this under advisement, you know, as we look at those, that you are encouraging us to do that.

SECRETARY ROKITA:

I was just wanting to know some feedback on the Resolutions, take a look at, it doesn't necessarily mean you, the EAC, or the staff, agrees with it. And that's fine. I just want to know what I should assume.

MR. MASTERSON:

I believe that's correct, that we, at least, are looking at them and then you, I think your response comes in the issuance of the EAC's version of the next iteration. You'll get your answers to whether we agreed or didn't agree with the development of those, I believe, is the way to answer that question.

SECRETARY ROKITA:

Thank you.

MR. WILKEY:

Let me also add, Secretary Rokita, that, in terms of -- before I go on to the ones that I need to cover, in terms of your interest in innovations that deal with a lot of what is going on in elections these days. That is early voting and vote centers, we would be very hard-pressed if we didn't seriously take a look at that as we move forward into the next iteration. Because, we certainly learned from the 2008 election, in fact, I was just having a conversation with Mr. Crangle during the break, that those types of innovations in elections are just exploding all over the country. And so, that by necessity, we will need to look at the kind of innovations that will make that work even, and enhance it even better. So...

SECRETARY ROKITA:

You shouldn't assume any parochial interest from questions. I'm just trying to procedurally understand if the EAC is responding to this and what...

MR. WILKEY:

Absolutely. Thank you Mr. Secretary. All right, we'll go to Resolution 2007-[D14], and that deals with compiling voting system incident reports provided by local and State election officials. In August of 2007, the Commission adopted a policy creating a voting systems reports clearinghouse, in which election officials could submit information about voting systems. We had great hopes that election officials throughout the Country would share this kind of information, make it available with the intent of helping other jurisdictions throughout the Nation, who had similar equipment deal

with these issues. It's been somewhat disappointing that we have not had the kind of reaction or response to this. We continue to push it. I think I mention it every month in my report at our monthly meetings, and certainly, I think every week when we put out our news line that goes to hundreds and hundreds of election officials across the country, that we continue to encourage election officials to do this. Certainly we have, that particular question was on our Election Day survey some years ago. We removed it, principally because we got very little response from it. And to be able to do an adequate analysis of, really, anything, we needed to have, at least, a fair amount of data to be able to do that. We just weren't getting it. And so, as part of our effort to streamline our survey, and to cut down on the number of questions, we removed that question. Now, we have been, as of late, discussing what we should do about it. We are, again, cognizant of the fact that we want to be able to keep that survey, to the questions that we asked before. Our current thinking is, let's not add anything, but let's, and this may be the only one we may deal with, and the Commissioners have it under advisement, Staff is continuing to look at it. But, again, we continue to be hopeful that jurisdictions will utilize that piece in our website, and offer to us, voluntarily, that kind of information, so that we can share that information with other election jurisdictions around the Country. Yes, Dr. Simons?

DR. SIMONS:

Barbara Simons. This may be off-topic a little bit, so please tell me if it's irrelevant. I was just thinking, along the lines of what

you were saying about incident reports, would it make sense to ask vendors to report any major problems that they are aware of, in systems which are currently in the field? I was thinking of what happened in Humboldt County, where the Head of Elections there was unaware of a workaround that Diebold had issued, or Premier had issued, because of a software bug, and only found out about it after the fact, and was very upset. So, if the information had been made publicly available, so that she would have seen it, that might have helped. So, that's the purpose of the question.

MR. WILKEY:

Dr. Simons, that's a very good question. I'm glad you asked it, and I didn't plant it, but our certification regulations already provide that, once a system is certified by us, then the vendor is required to give us that information. If we find out subsequent that they haven't, then their certification could be in jeopardy. So, once we begin to unroll and get these systems out the door and certified, then that will be part of the vendor responsibility.

DR. SIMONS:

That's great, and it wasn't a plant. But, there is still the issue of the older systems out there, and also, so I guess I still have two questions. One, how to deal with the older systems, if that request could be made, I realize you can't mandate it, but make it. And, then the other is, what will be done with this information when you start getting it in with the newer, with the more recently certified systems?

MR. WILKEY:

Well, I can speak to that. Once that kicks in, that requirement, that will go up on our website, as we have with every piece of information about our certification program. This is, probably, one of the most transparent efforts that I've seen in any Federal agency, in terms of the detail that we're going to be giving out, and that will be part of it.

DR. SIMONS:

But, for the legacy systems, would you be, would it make sense to ask that vendors provide that information?

MR. WILKEY:

Again, I think that we could ask them that, I'm not, to be quite honest with you, how the response would come in. But we will certainly take it under advisement, have some more staff discussion on it. As I indicated earlier, we're having some discussion about putting the question back on our survey, but given the fact that the first time around the response was quite dismal, and, you know, unless you have a good solid amount of data, you can't do really good analysis. So, again, it's under discussion and we'll take it under advisement. Thank you.

CHAIR THOMAS:

Jim Dickson. And then, let's continue on with the presentation.

MR. DICKSON:

Jim Dickson. Tom, is it the Commission's judgment that the requirement on manufacturers to report incidents will get you the data, or is there a need for some kind of conversation with election

administrators to figure out why they're not reporting it and, you know, see if we can find a way that they report?

CHAIR THOMAS:

Don Jones, did you have a question?

MR. JONES:

Don Jones. Tom, what I wanted to ask you, is, do we, with some of the vendors that you're using, are some of these vendors the same ones that would work in coordination with some of the major media markets? Because, I see CNN, sometimes, reporting voter incidents on the ground that election officials are simply not aware of. I mean, are we working with those vendors?

MR. WILKEY:

We certainly have reached out to vendors, in the past, with issues brought to us. But we're very careful, very careful about taking incidents that are given in the news media. Certainly we will, and I've had occasion to follow-up, if I see something, I might reach out to a local administrator and say "what's going on here, is this something that we can work on?" But, we have to take that very carefully, because we all know that, many times, information is provided in the media that is not entirely accurate. So we try to be very careful in that regards.

Jim, yes, to respond to your question, we're hoping, and that's the carrot and stick approach. Once you get into the program, then you abide by a set of rules, and those rules will kick in. And, we, then, will have the ability to make that information public. Right now, it is completely on a voluntary basis.

MR. CUNNINGHAM:

Mr. Wilkey, let me suggest that, perhaps, an incident, if you will, be a little more defined. It might result in more response. In other words, as you well know, those of us that are, actually, you know, boots on the ground position, routinely deal with certain process and system failures that we patch up and keep going. So, while somebody watching that event on the outside may think "oh my god, something's going wrong here," an election administrator may just consider it another day at the office, I deal with that kind of thing all the time. So, perhaps what, I guess what I'm saying is, what an advocate or someone like that may call an incident, an election administrator may just consider another event in the day, and it's not really that important. So, perhaps by, I'm sorry I keep cutting in, so, perhaps by creating some subcategories, if you will, for the term "incident," we might see more response out of local administrators. And that was Keith Cunningham.

MR. WILKEY:

Mr. Cunningham that's an excellent portrayal of some of the issues that we're dealing with, because we want to, we want the information to be out there, but yet we want to be fair to someone, and we have to work through these kinds of things. Perhaps, that is something we can work on with the Committees in place here, and try to come up with some criteria that we could use that would help make that easier for local and State election officials to provide that information, and yet clarify what the real issue is.

Now, we go to Resolution 2007-[D15], which deals with us to compile post-election audit reports, standards, ordinances, legislation, and election auditing pilot projects. We're in the process

of redesigning our website, and we've reached the point now where we have a tremendous amount of information on there. We've recently added, for example, there's the reports clearinghouse that I was just discussing with you. Certainly, this will be one of the areas that we'll look at. But I've got better news than that. Once in awhile we get, we get lucky. And, in our conversations with our staff, with the staff of our Appropriations Sub-Committee this time last year, they said to us, in going over our budget needs for fiscal 2009, "if we had a little money left over, perhaps you could suggest something that we could do." And we had been through some grant options, they had given us the \$10,000,000 grant program, which was a supplement to our budget request, they had provided some money for my collection programs and for some other areas. And we said to them, you know what would be, what is key right now in election administration is pre-election testing and post-election audits. And we would love to be able to do some work in that area. And low and behold, we did get \$1,000,000 for a grant program to do best practices and issues in that area. And we will be getting that information out within the next couple of weeks. We needed to get some work done on our poll worker and our mock election program and some other issues, but we're very, very pleased, very grateful to the Committee for the Congress for providing those extra dollars. So, that program will be there, and of course, all of the information that we get from that grant program will be up on our website for everyone to see.

I think that gets through all of the Resolutions from 2007.
18? As the Chair indicated in his introduction, in my declining

years, I need help to do this. 2007-[D18]. Resolution-[D17]. That is another issue that we have discussed a great deal with our partners at NIST. As you know, there are four appointments to the - and that Resolution asked us to consider putting someone from the Election Technology Council on the TDGC. As some of you may know, there are four members of the TDGC, the Technical Guidelines Development Committee, that are appointed jointly by the EAC and the National Institute of Standards and Technology. By Statute, these individuals must have a technical background. We understand the importance of this Resolution. We have continued to discuss how we could make that happen. These four members, because they represent two government entities, have to file detailed financial reports and have obligations there. So, we're going to still continue to have that discussion with NIST, and we'll have to continue to take it under advisement. That is not something that we certainly have taken lightly, but we still have to continue to have some further discussions about it to see how we could indeed make it happen.

CHAIR THOMAS:

On that issue, I mean, what I'm hearing you say is that there's really not agreement within the Commission to actually put a vendor on the TDGC. I guess in that vein, I would urge the Commission to figure out, along with NIST, how to more involve the vendors in the process. Now, no one, apparently, is comfortable giving them a vote, but it seems contrary to the way NIST generally does their business with Standards, where they have those folks, at the table, in some form, to develop voluntary Standards. So, that's

a complaint that we continue to hear from the industry. It seems that they ought to have a voice more than just commenting on what's already been done. It seems like, at the ground level, they could be of assistance, yet not control the process. We certainly recognize the appearance that that would have and the fact that would have. And we're not interested in that. But we do think that they ought to, at least, have a voice somewhere earlier in the process.

MR. WILKEY:

That's a very good point Mr. Chairman. And, you know, I've been around this stuff for along time and I certainly understand the significance of their role in this effort. And we will continue to try to find ways to do that. I think one of the things that we did that was very successful was our roundtables that we had. And from that we were able to get a great deal of input from the vendor community. And we'll continue to do things like that and make as much time available to them along this process as we can. But, certainly, we understand the role that they play. We are not demeaning that role. We want to continue to get as much input from them as we can.

I think that goes now to Resolution 2007-[D18], which is recommending a cost analysis study of running elections. And I'm going to have Karen address that issue.

MS. LYNN-DYSON:

Thank you Tom. I know that this is an issue that is of particular interest to Mr. Crangle, and I know he has recently asked Mr. Wilkey about this. The Research Department, in 2008 released its Alternative Voting Methods Study. And in that study, which was

actually done for us by the Election Center, there was discussion of the cost of running elections. For those of you who participated in the Board of Advisors meeting last year, you may also recollect that there was a conversation run by Deb Markowitz who, at the time, chaired the Research Sub-Committee of the Board of Advisors, in which we looked at a variety of topics to be addressed and to be studied. Among them, the cost of doing elections. It was the considered judgment of the Board of Advisors at that June meeting that such a study would be unwieldy. It would be very difficult for the EAC to undertake such a study. And, finally, that there were many priorities, competing priorities, in terms of research topics and research concerns and interests, and that it was the judgment of the Board of Advisors, at that time, that this was not a topic that was of high priority.

MR. WILKEY:

Thank you Karen. And just to add one additional thing, I think, certainly, the results, and what we see coming out of our operational assessment, will help drive our continued discussion about how we could go about this. Certainly, this is an area that I have had a great deal of concern and interest in for a long, long time, and something that we would like to be able to do. But given the enormity, and those of you who are, who know how elections are run in this Country, given the enormity of just getting down to the jurisdictional level, because of the way elections are conducted. Not just State, but county, sometimes, town, if you're in the Northeast, or sometimes, local commissions. Sometimes, two different jurisdictions are within the same county, one being State,

one being county. We're talking about an enormous process here, and once we could see our way clear, we'll continue to have more discussion about that.

We've covered Resolution 2007-[D19]. Resolution 2007-[D20], which was the last Resolution from 2007, was a commendation to our dear friend, Tony Sirvello, for his service on the Board of Advisors. I might also add that our dear friend Tony has had some health issues lately. We continue to keep him in our prayers. We know he's coming along and we hope to be able to see him at the next IACREOT meeting. He's a wonderful young man who has given a lot to the election community and we certainly wish him good health.

All right, going on to 2008, and again, some of these issues go into our research area. Before I turn it over to Karen to go through them, and she will probably also discuss this, but some of these projects needed to have working groups as part of their work. We've had a working group policy before the Commission for awhile. I had been reluctant to move forward in naming our working groups until the process was formalized. It's still being discussed, but I have sensed that the feedback from the Commissioners to just go ahead and move forward as we had in the past. So, we will start working on putting some of these working groups together. We have a number of priority things that we want to do, some that I will discuss in my report. So we will begin to move forward, but I just wanted to clarify that before Karen addressed some of these issues.

MS. LYNN-DYSON:

Thank you Tom. Let me just say at the outset too, when you see references to the working groups, and as Tom has indicated, we have just very recently gotten the green light to go ahead. We really are poised to do that. My staff has, in particular instances, with studies identified participants, has drafted agendas, and is, we really are ready over the next two quarters to begin that work. So, we start with this Resolution 2008-1, which has amendments to it, recommendations, the first one being related to the distribution of EAC materials. I would note here that I'm very pleased to say that we have, we are in the final stages of identifying a contractor who will actually work with us over the summer to do a comprehensive evaluation of all of the EAC's, what I call educational materials. We find ourselves at a point in our development where we now have what I consider a very good corpus of education products and materials. Among them, Quick Start Guides, the election management guidelines chapters, ballot design project, poll worker guide books. We will be, over the summer, evaluating comprehensively the effectiveness of all of those products, and we'll move forward into the creation of a second edition of many of those materials. They will be a second edition. They won't be 2.1, they won't be 1.1. And so, related to this effort, we, as I recall the conversation a year or so ago, around this distribution of materials, as I speak we have on board staff who is helping us assemble a very comprehensive list of State officials that, our list is somewhat dated. We are not only going to update the list, but also get email addresses for this list that has some 6,000, 5,000-6,000 local election officials on it. So, I really do consider this to be a first and

very important step towards addressing this topic. To the point about the general recommendation, again under this Attachment A, we do presently have, as many of you here have participated in the Election Day surveys and have responded to them or have had staff who have responded to them, will recognize that we work, staff works very hard to make certain that there is a vetting protocol in place so that all data elements are checked and double-checked with the State election, local election folks who give us this information. That will continue, certainly, to be in place, and for all studies we have a vetting process that includes, many of you have also participated in our virtual meeting rooms. Those materials are reviewed and we take very seriously all of the comments and recommendations and suggestions that you make on those.

Moving on to Resolution 2008-2 that deals with, again, Attachments, Recommendations in Attachment B. Commentary on the importance of doing the social security study, that is something that we will, we hope be able to move forward on now that we are, have gotten the green light to begin that work without a formal working group policy. I know here this Recommendation that deals with the challenges of incorporating communications and internet technologies into the electoral process, I believe that is work that is addressed to a large extent in the work that Matt does with NIST, and will continue to do with NIST. Moving on to definitions of voting in HAVA. I'm very pleased to say that I think we have come quite a distance on getting a clear sense on what the enormous variances are in how States and local election folks define certain election terms. When the EAC did its 2008 Election Day survey, we

provided an instruction manual in which we offered to State and local election folks some definitions. And, in that instruction manual we, for example, provided a definition for their use around "absentee" and around "early voting." And, if you have further questions I can tell you what those definitions are. But moving ahead I would also point out that this year we did a statutory overview, which accompanied the 2008 Election Day survey. The intention of the statutory overview was to have a compendium, a collection if you will, of State statute and within State statute what those definitions were of items such as "absentee," "early voting," and whether States allow for "excused" or "unexcused" absentee voting. To give you some real highlights on what we found in the statutory overview, which by the way, will be released in the next couple of months, most States do share similar definitions of "over vote," of "under vote," of "inactive voters," and of "provisional ballot." However, there is a variation in how they define "absentee" and "early voting." For example, some States have adopted "in-person early voting," but have not adopted their terminology, adapted their terminology rather to distinguish it from traditional absentee voting. For example, Ohio uses "absentee" to describe both in-person and mail voting, California uses mail voting to describe in-person and mail voting, while Kansas refers to both processes as "advance" voting. Twenty-five States indicated that they require an excuse to vote absentee, twenty-three do not require an excuse. Twenty-six States indicated they allow in-person early voting in the manner described above. None of the resources that I've mentioned, just mentioned, namely the statutory

overview or the instruction manual, include definitions related to disabled or hospitalized absentee voting.

So we have, moving on, the topic of provisional voting and allow me to digress just for one moment to say a little bit about the recent change in the structure within the EAC. As I mentioned when I was introduced, I now have responsibility and supervision for a new Division that we've created which is called the Research, Policy and Programs Division. That change took place the first of May and we have joining us, in addition to research staff, now Edgardo Cortes and Juliana Milhofer. Edgardo Cortes and Juliana have a responsibility for our guidance and policy work. Matt Weil who has, Edgardo having the title of Deputy Director for Policy, Juliana Milhofer is in a capacity similar to Matt's, an Attorney/Advisor Policy Analyst. They again have oversight and responsibility for all of our HAVA guidance and policy work. Matt Weil remains a Research Program Specialist. Matt Weil now has primary responsibility for our Election Management Guidelines program. I mention that by way of background to, as we go into a discussion of the provisional voting recommendation Resolution here. We, one of the really good things about now having this kind of connection between the research, the policy, and the programs staff is that we are able to, with things like the provisional voting topic, take advantage of what we've learned and what we know from the Election Day survey. We are able to consider if we want to do and we will be doing additional research on provisional voting, building on our research that we actually did in the fall. And this is all towards an aim of the EAC issuing final guidance on provisional

voting in August of 2010. So we've taken this first step to review what the provisional voting rules are and we will be looking at the similarities and the differences amongst States and how these are developed. So, stay tuned in that regard for some guidance that will be forthcoming.

There is a Recommendation that you will note related to accessibility and I believe Mr. Wilkey, oh I'm sorry, that, yes that is one that you'll touch on. Shall I go through all mine?

MR. WILKEY:

Yes, go ahead.

MS. LYNN-DYSON:

There is also a Recommendation related to the Voter Fraud and Voter Intimidation Report. I'll let Mr. Wilkey touch on that.

And, a Recommendation related to the website design for public information portals, I would just like to note that we did release work that a contractor did for us on that at our November 2008 meeting. And, that project, among others, will be considered in our overall evaluation of our educational products and materials.

I would note the reduced postage for absentee ballots, that is one that we stand ready to do the second piece of work on that. That required a working group.

I believe that covers, Mr. Wilkey, all of the Resolutions that fell within my bailiwick.

MR. WILKEY:

Okay, great. Let me pick up a couple that I would like to address. One is Resolution 2008-2, which deals with clearinghouse containing State and Federal statutes relating to

election crimes and enforcement statutes. We had, at one point, begun a very aggressive legal clearinghouse process and we got to the point where it was too unwieldy for us to deal with, particularly as we got into some of the court cases and cases and case law. And it began to get very mired down. And so, we stepped back and took a look at it in terms of what are the most common things that the public, that local and State election administrations, that advocacy groups ask us? Let's start, for example, with the 10, what we consider the 10 top issues of what people generally ask for and let's begin collecting that information. Now remember that we have to be very careful how we do this. We cannot send out a survey without going through the laborious OMB process. So what we have to do is go to various sources, State websites, State statutes, have the people that are in our Research Division begin going through these and collecting them and then sending them out to you for you to verify whether it's good information or bad information. But we've started on those top 10 and as soon as soon as we go through those top 10 issues we will be putting those up on our website. We think that that's the best approach for us rather than to go into a laborious, comprehensive website that people are going to have a hard time understanding and reading. Let's just deal with the main issues that the public, that our election officials, ask us continually. Now, what are the requirements for absentee voting in your State? What are the requirements for voter registration? What are the deadlines? What are the requirements for filing nominating petitions? What, you know, so we are going through those issues and picking out what we consider to be the

most pertinent and working on those first. And we will keep you updated as we move along in that process.

Now, Resolution 2008, yes Dr. Simon?

DR. SIMON:

Just one quick question. Before you finalize this list, will you open it up to public comment?

MR. WILKEY:

Yes, we will.

MR. LEWIS:

Mr. Wilkey:

MR. WILKEY:

Yes, Mr. Lewis.

MR. LEWIS:

Have you given any consideration, excuse me, Doug Lewis, I apologize. Have you given any consideration to, at least, looking at Federal Court Rulings as relates to elections, both those that have been shot down and those that have been adjudicated and the Court says you change your practice or procedure? And the reason I ask that Tom, is, we always come up, in every election cycle, with whether or not college students are allowed to vote in their area. We always come up with whether or not a military person who has never lived in the State can claim that they live in the State and vote. And of course, the Courts have ruled consistently on both of these, and yet every election cycle we hear of some jurisdiction that is fighting that issue again and again and again.

MR. WILKEY:

We're getting through these first, what we see as key, most common issues that we have, no we haven't. But we certainly will take that into consideration, because I do agree that would be important information to have. I think we'd like to start first with the simplest, most common things, get those out of the way and then go into taking a look at some of those pertinent Court cases.

Resolution 2008-3 deals with us to help resolve the impasse in our certification program. And with your indulgence, since I will cover that at some point during my presentation as well as a follow-up by Matt when I am complete, I think that will answer the questions you have relative to that Resolution.

Resolution 2008-4 dealt with the survey that the Government Accounting Office did on accessibility. Now I know, and I may have, I may have goofed, I may have goofed myself on this because I think it was the intention of the Resolution for us to send out a letter. What we did instead, and I'll clarify this, we worked very carefully with GAO on this process. This is an issue that has been important to me for a long, long time and so when they first came in to talk about how they were going to proceed with this survey, we had two very lengthy meetings with them. Answered a lot of questions, gave them a lot of feedback, and we made an arrangement where GAO would contact all of the jurisdictions up front before they went in to get their cooperation in doing it. My commitment to them was that any that they were ambivalent or said "no," that I would follow-up personally with a telephone call. And I did follow-up with at least a dozen and will tell you that I was successful, all but one, who absolutely would not agree to having

them come in. And I don't think they ever did go in. So that's the way we handled that. If I did it incorrectly and didn't follow exactly what they had in mind in this Resolution, I apologize to whoever drafted the Resolution. But I think the way we handled it came out with the same result and everyone was very cooperative. And we're looking forward to that report coming out. I'm hopeful that we'll glean some real good information.

As to Resolution 2008-5, it requested the EAC to lead an effort to educate the media, campaigns, and the public that the accurate tabulation of results will be compromised by the ongoing emphasis of speed over accuracy. And we did a couple of things. We did a major media campaign involving the four Commissioners and myself prior to last fall's election where we did a number of interviews with media all over the Country. And that is one of the things that we stressed, in addition to information about specific States depending upon the area that we were covering, their registration deadlines and their deadlines for absentee ballot. We did cover that. And we also, for those of you who may have been interested in this subject, had a very, very good forum at the National Press Club in which we invited the news media, in particular the individual who is responsible for the Associated Press collection of all of the election results around the country, as well as State and local election administrators, and had a very lively discussion which was carried live on C-SPAN involving Election Day results and how they should be interpreted. And I think that we now see, as we continue to await the results of the Minnesota Senate election, how we need to be patient and wait until all of the

votes have been counted and all the Court cases have been considered. So that 's how we handled that Resolution

Resolution 2008-6 called for us to do a Quick Start Guide on Accessibility and Disability Issues. That is in the queue, I think it's in the queue for late this fall or early next year. However, in advance of that one of the things that I'll talk about in my presentation is the number of videos that we did last year. We contracted with USDA who did three, now four very critical videos. One of them was on accessibility issues at the polling place. It was very well done. And I know, unfortunately, these came out a little later than we would have liked to for last fall, but they're very pertinent for any election and so we're going to continue to push those. They're on our website. But as we did that video, particular video, it became apparent to me that there are a lot of nuances that people don't think about when they're dealing with accessibility issues and so as part of a discussion I had with my good friend Jim Dickson recently, we talked about perhaps doing a handbook for State and local election officials on pertinent accessibility issues. And I'm pleased to tell you that we have already begun doing an outline for that. We'll get it together and we'll get it out for, hopefully be able to get it done perhaps even in time for this fall's election. But I think it's something that's critically needed. That doesn't mean that we won't do the Quick Start and the election management chapter, but I think this is something that needs to be done, has needed to be done for along time, and so we're just going to go ahead and do it.

That takes care of the Resolutions and now, yes sir?

MR. GARDNER:

Thank you, Ron Gardner. You dropped off there at the end. You said you thought it would be, you anticipated getting it done by, and then I didn't hear what you said.

MR. WILKEY:

I'm hopeful, I would be hopeful that by this year's election, but I can't commit to that because when you're dealing with governmental contracting issues, and coming from the Access Board you can probably well understand that when you do contracts it takes a little extra time. We don't have the ability to just go out and find x, y, z and do a study or a project for us. It takes awhile to do, we have to put a Statement of Work together, which we'll be working on, and then get a contract out to do the work. And probably, put together a working group to work with us on it because that's the most valuable way of doing these projects. So, I can't commit to doing it by this fall, but certainly for the big election next year it will be up and ready early enough that it will have some impact on polling place issues and accessibility.

MR. GARDNER:

I appreciate the response and I completely agree that seeking the input from the populations involved is critical. Sometimes we are well-intended and we do what we think works, but having, I'm coming to understand what the term "baked in," having it baked in to the process beforehand is truly, I think, critical. So, I completely agree with what it sounds like you're doing there.

MR. WILKEY:

Thank you very much because it is something that we do with all of our major projects, we use a working group to guide us as we move along so that when we put that project out that we know that it's right, everything in it is good information. Mr. Chairman?

CHAIR THOMAS:

Tom, we've got about 20 minutes until lunch. I think you've got a Power Point and I'm not sure if NIST was going to do a Power Point as well, which we can do immediately after lunch. So if you would proceed with yours, I'm not sure how much time you think you still need.

MR. WILKEY:

Mr. Chairman, I'll go through this as quickly as I can. One of the videos that I mentioned is part of this presentation. I'd really like the Board to see it...

CHAIR THOMAS:

Absolutely.

MR. WILKEY:

...because it is very well done. So, I'll move through this as quickly as I can and, because I also want to give time at some point for Matt to do a certification update. I know it's a big issue for the Board, as well as some background information from NIST. Mr. Kelley?

CHAIR THOMAS:

And so, some of this will have to go until after lunch.

MR. KELLEY:

May I ask just a quick question of Karen. I know it wasn't a part of the, Neal Kelley, I'm sorry, Resolution 2008-2, but is there any research being conducted on same-day registration? Is that something that's being planned on in the future?

MS. LYNN-DYSON:

We have not identified that as a particular topic, however, as we parse the data from the 2008 survey and release that information this summer, I think there will be some interesting insights that we may get around same-day registration. Also, I would mention, and you might want to ask that, or think about that question tomorrow when our contractor who performed the independent evaluation of the Data Collection Grant program looked at the impact, if any, of States that have same-day, those that don't, different registration protocols, if you will. Some interesting insights I think there.

MR. CRANGLE:

If I may, I've got a question about some former Resolutions. Do you want to take it up now, or, whatever.

CHAIR THOMAS:

Go ahead Mr. Crangle.

MR. CRANGLE:

Well, you know, I wrote back to you about May last year, about the Resolution that the Board of Advisors meeting on January 24, 2007 passed, regarding the report from the EAC and having Election Day other than a Tuesday November, Election Day being a legal holiday. And I requested a status report regarding the HAVA provision, which, you know, sets forth in section 241(b)(10)

of said Law, recites one study, the feasibility and advisability to conduct elections for Federal office on different days, at different places, during hours, advising of establishing in a formal closing establishing (a) a legal public holiday under section 6103 of Title V United States Code, as a date of which general elections for Federal office are held; (b) the Tuesday next after the first Monday in November, in every even numbered year as a legal public holiday under some section; (c) a date other than the Tuesday next after the first Monday in November in every even numbered year as the date of which general elections for Federal offices are held; and, (d) any date described of the, on the public holidays under subsection. And that's part of the HAVA Act. And also too, I just want to bring to the attention, this is going back to a publication in 2003 published by the House Government Printing, it's numbered document 108-94, and it gives some interesting historic background. Why do we vote the day that we do vote, or the history. And the session was, the decision to create a single day for the election of a President electors was intended in part to prevent separate election abuses resulting from electors being selected on separate days in neighborhood states. Several other reasons are traditionally cited as being responsible for the selection of November as the time for Federal elections. In largely rural and agrarian nations, harvesting of the crops was established by November, so farmers were able to take the time necessary to vote. Travel was also easier before the onset of winter months throughout the northern States. Tuesday was chosen probably because it gave a full day of travel time between Sunday, which

was highly observed by religious denominations as a strict day of rest, precluding most travel and voting day. This, in the Bill, was considered necessary when travel was either on foot or by horse in many areas. The only polling place in the most rural areas was at some county seat. The choice of the Tuesday after the first Monday prevented elections from being falling on the first day of the month which was reserved for court business at the courthouse. That's why we vote on Tuesday after the first Monday. And it seems to me that we, as required by HAVA, study the feasibility of having Election Day as a legal holiday for everybody. Just as Thanksgiving is or Christmas is. And that would certainly hurt -- help out rather, it would certainly help out voter participation, which is the essence of democracy, to give people the opportunity to vote whether it be for a Federal election or a local election or a State election. And I think that the statute does require a study being done. And the question is, where are we with that study?

CHAIR THOMAS:

I believe the study has been done.

MS. LYNN-DYSON:

It has. Yes, it has.

CHAIR THOMAS:

Doug Lewis was the contractor on that, Election Center, if I'm not mistaken. And why don't I just suggest that you have a conversation with Doug, and then if we need to bring this up later, we can do that. I would be glad to entertain this later in the agenda. And at this point, so Tom can move ahead and get some more of his presentation done prior to lunch, we can do that. But,

have a conversation at lunch with Doug, and then we can get back and discuss that later.

MS. LYNN-DYSON:

May I just add Mr. Chair that I will be certain to get Mr. Crangle a copy of that study, that's the Alternative Voting Methods Study that was done and was completed by the Election Center last year.

CHAIR THOMAS:

I appreciate that.

MR. CRANGLE:

About voting on a Sunday, I mean voting day being a legal holiday?

MS. LYNN-DYSON:

Yes. And there was a piece of research done on that about the feasibility and advisability.

CHAIR THOMAS:

Okay, Mr. Wilkey:

MR. WILKEY:

Okay, thank you. All right. A lot has gone on since I last updated you last June. One of our short-term objectives transferred EAC from the start-up to a fully-staffed and operational organization. Staff up in key areas, programmatic and operational, complete this while building up our research and clearinghouse activities and getting voting systems certified. And how did we achieve this? We built a strong financial team. As you will hear me refer throughout this report, we were required during last year to do our first OMB audit. Normally an OMB audit is triggered when your

operating budget exceeds \$25,000,000. Our operating budget has run \$17,000,000, however, it was the consideration by OMB that because of all the pass-through money that we have with our grants and our requirements payments, that we were kicked into the category of having to go through an audit. It was, I might tell you, as somebody who has been around for a very long time, one of the worst things I have ever been through and that we continue to go through. It has taken up an enormous of our time. However, I'm a great believer that good things happen from even the worst events. And the good thing that happened is that it pointed out to us that we needed to reorganize and restructure our whole Financial Division. We had come to rely on the services of the General Services Administration to work with us in this area and we needed to completely restructure this. It was pointed out in our audit, as many of our audit findings. And so we thought about doing this. And we have built a strong financial team -- a senior level grants director who administers HAVA funds; an accounting director oversees the accounting and financial reporting process; we now have a CFO, and you didn't get a chance to meet her this morning, but she's sitting behind me, Ms. Annette Lafferty, who ensures we are compliant with Federal requirements and using resources efficiently. And the bottom line is the EAC staff can focus more on providing quality technical assistance to election officials. We're tackling all the financial audit findings. We're having clearly defined roles and responsibilities of Commissioners and Senior Staff, we have approved a Strategic Plan that includes performance-based budgeting which was recommended by OMB,

and we have restructured the Commission so it operates more effectively. We have developed policies and procedures. Those will be completed by the end of this month. I might add that they are very, very comprehensive and I believe will set the standard for Commissions of our size who in the future won't have to go through what we had to go through. I think we'll be the training ground for Commissions that are created in the future. As I have often stated, and I think you've heard Commissioner Hillman address this issue, there is nowhere that an agency, once it is created, that they can go pull a book off the shelf and say this is how you run this Commission and these are all of the Federal requirements that you have to meet. We have done them over the past couple of years, you know, one right after the other. So, we're getting there.

We took action to expedite certification process. You'll hear from Matt Masterson with a little bit more detail on that. But we doubled the size of our Voting System staff and this includes two computer engineers with expertise in voting system technology. We were very grateful to reach out to Kennesaw State University, which runs the entire voting system for the State of Georgia and has some excellent people on staff, mostly graduate students, and did a recruitment at Kennesaw. And from that recruitment, we have recently hired two of their best graduate students to work with us and we're very happy to have them.

We have also launched the cooperative testing initiative which will help us move faster by avoiding redundant testing. We initially had seven States that agreed to participate with us in sharing information on their testing objectives and activities.

Unfortunately, that's been a slow start. We have only heard or have had action with about three of those, but I indicated to our Division Manager this morning that I'm going to follow-up personally with the remaining States and see where they are because we think that's an excellent way to help move our certification and our whole area of certification faster.

We've revised the 2005 VVSG to aid the creation of uniform test suites and other measures that will relieve bottlenecks in the test process. And I think Lynne Rosenthal from NIST will be addressing that.

What are our next steps? Continuing improving internal controls in compliance with Federal financial regulations. We no sooner got rid of the auditors from last year when they have already arrived to be with us for the next several months for this year. And we'll be going through it all over again. So, my hair will get a little grayer and probably a lot less, and Chief Operating Officer Alice Miller will pull a little bit more hair out of her head, but we will get through it.

We will fully implement program and administrative policies and procedures. We will continue advancing the testing process as quickly as possible without compromising quality.

Under Testing and Certification, we have recently certified our first voting system, the MicroVote EMS 4.0. We expect two more systems to complete testing soon, the ES&S Unity 3.2, the Premier Assure 1.2, and Matt has further updates on those during his report.

We recently released a comprehensive test lab accreditation manual. We hired full-time computer engineers that I've already mentioned, who will answer technical questions from election officials and vendors, help test labs understand how to test specialized systems, and keep the technical review and approval process moving forward. And in your written materials you have a chart which shows the progress of all of this testing. And you will be having quite a detailed discussion in the remainder of your meeting about revisions to the 2005 VVSG. Matt will be covering some of these. The revisions will streamline the process by aiding the creation of test suites that promote uniform, consistent and faster testing, providing clarification in clear areas that often cause confusion and slow the process. These revisions will allow us to improve the process before the release of the next iteration of the VVSG. We will hold a HAVA-mandated public comment period before any revisions are adopted. I'm also reminded that at your places today you received a copy of a letter that was sent to you on our Standards Board, officially transmitting from me, as HAVA requires, the set of Guidelines that you will be discussing. It is my understanding that in terms of the Standards Board, they will get an opportunity to review this document at an upcoming meeting. I think staff and our Chair is working on it right now for early August.

Under Election Operations Assessments, we have a scientifically funded assessment of all types of voting systems conducted by the University of Alabama. You'll be hearing more about that during your meeting. It will inform EAC decisions on the next iteration of the VVSG. It will help election officials make

informed decisions about voting system purchases. And the first of three phases is complete. And again, you will hear about more of it later.

Under our UOCAVA electronic voting research, and again, you will be hearing more about this from Lynne Rosenthal from NIST. It has best practices for requesting and transmitting blank ballots via fax, email and internet, security considerations for remote electronic UOCAVA voting systems, That program is scheduled to be completed in December of 2009.

Under our communications initiative, is a collaborative effort between EAC and stakeholders to improve communication about the testing and certification program. It will base action on feedback from stakeholders on issues of great concern. And this will ensure that election officials are getting the information they need. And, as I mentioned earlier, I think we have been superbly, if I can the word, transparent in all of the information that we put on our website regarding our certification process. And we hope that if you have questions that you will first refer to the website, and then of course, feel free to contact us.

Our cooperative testing initiative, I mentioned earlier it involved seven States that had volunteered to work with us at our forum that we held in Miami. So far we've only had contact with three, but as I indicated, we're going to follow-up. And the goal is to reduce the amount of redundant testing between the State and the Federal testing process, resulting in cost savings. So, we want to continue to push forward with that.

Under HAVA funding, we've made the payments easier. And you'll be hearing more about that. There is a letter that will be going out to chief State election officials, probably the end of this week or the early part of next week, talking about the implications for the 2008 and 2009 requirements, payments, and some of the changes that we have made. We will also be conducting a call in for questions and answers on, I believe, June 18th, that's included in the letter, so that we can answer all of your questions. What we have done is consolidated the 2008 and 2009 funds. States will need to provide only one HAVA State plan to claim these funds. This will streamline the process and reduce red tape and we will issue guidance. As I indicated, that letter should be going out by the end of this week or the beginning of next.

States will receive more technical assistance. We intend to do more workshops and training sessions on how to spend and report on spending. We have found doing these workshops, we get much better reports submitted to us. It will help facilitate clean audits. We intend to also, hopefully, put together a program where we would work with States who are having audits that are upcoming to kind of go over with them all the issues that they need to be prepared for so that they are not shocked all at one time when those auditors arrive on site. With risk assessment planning guidance on how to identify red flags or areas of high risk when you are subjected to an audit. These initiatives will be give in the third quarter of this fiscal year.

And, of course, there is the chart of the money that we have given out so far of the 2008 requirements payments and how much

is left -- \$96,000,000 in the 2008 funds, \$100,000,000 in the 2009 funds. I introduced you to our new Director of Grants, Dr. Mark Abbott, and he is available to assist you anytime you need help with this.

Under tools and resources, we have election training videos that I mentioned earlier. They are absolutely fantastic. We have them on a continuous feed in the feed where you had your breakfast and where the presentation will be done. We've done one on polling place management, polling place accessibility, which is excellent, under contingent planning, and our new one under testing and certification, which I'm pushing it fast so that I can show this to you before we go to lunch. These are excellent for training poll workers and new staff and they are available 24/7 on our website.

Now, this is where I get into trouble. Ryan...

CHAIR THOMAS:

How long is your video?

MR. WILKEY:

Seven minutes. And we're almost at the end.

CHAIR THOMAS:

If you can do it in seven minutes, then we'll break at the end of the video.

[Video played]

CHAIR THOMAS:

Very nice, thank you. Okay, along with these movie stars that you have highlighted, we will join them for lunch today. And lunch is outside and to the right. And we reconvene at 2:30.

[The meeting recessed for lunch at 12:38 p.m for a luncheon presentation by Dr. Juan E. Gilbert, as follows.]

MR. WILKEY:

Dr. Juan Gilbert is a Professor and Chair of the Human Centered Computing Division in the School of Computing at Clemson University where he directs the Human-Centered Computing Lab. Dr. Gilbert has research projects in spoken language systems, advanced learning technologies, usability and accessibility, Ethnocomputing and databases/datamining. He has published more than 75 articles, given more than 120 talks and obtained more than \$9 million dollars in research funding in his nine years at Auburn University. In 2002, Dr. Gilbert was named one of the nation's top African-American Scholars by Diverse Issues in Higher Education. He was recently named a national role model by Minority Access, Inc. Dr. Gilbert has been honored with the Auburn University Alumni Engineering Council Junior Faculty Research Award, Auburn University Alumni Outstanding Minority Achievement and the Auburn University Distinguished Diversity Researcher Award. He is also a National Associate of the National Research Council of the National Academies, an ACM Distinguished Speaker and a Senior Member of the IEEE Computer Society. Recently, Dr. Gilbert was named a Master of Innovation by Black Enterprise Magazine, a Modern-Day Technology by the Black Engineer of the Year Award Conference, the Pioneer of the Year by the National Society of Black Engineers and he received

the Black Data Processing Association Epsilon Award for Outstanding Technical Contribution.

Dr. Gilbert recently testified before the Congress on the Bipartisan Electronic Voting Reform Act of 2008 for his innovative work in electronic voting. He is a Fellow in the Center for Governmental Services at Auburn University as well. In 2006, Dr. Gilbert was honored with a mural painting in New York City by City Year New York, a non-profit organization that unites a diverse group of 17 to 24 year-old young people for a year of full-time, rigorous community service, leadership development, and civic engagement.

Prime III is a multimodal electronic voting system research project. It allows people to vote using voice and/or touch. Individuals that can't read, see, hear or those with physical disabilities, for example no arms, can all privately and independently vote using this multimodal interface. This presentation will give a demonstration of the Prime III multimodal interface, a unique voter-verified ballot and additional research that is underway.

And, from my own personal perspective, I have gotten to know Dr. Gilbert very well. I've had a long-standing relationship with Auburn University. As a matter of fact, I meant to mention this morning that I was recently there working with them. Auburn University is the first and only University in the Country that awards an undergraduate degree with a concentration in Election Administration. I've had the opportunity to be there on several occasions to speak with their undergraduates and graduate

students. They're a wonderful group of individuals. And because of that, we have been working together to try to find a way to do an internship program between the EAC and Auburn so that we can bring these great students up to Washington and work with them and have them understand our relationship to the election world. And by doing that, I had a chance to meet Juan Gilbert. He's an outstanding young man and I'm very, very proud of the work he did, and very proud to introduce you. Juan.

[Applause]

MR. DICKSON:

I'd like to just say a couple of things. One of the great achievements of the EAC is that it has started our Country toward fact-based decisions about elections. Dr. Gilbert did two very important things that I want to mention, because he sometimes doesn't like to emphasize this. He developed a multi-person, multi-discipline team – computer people, election people, Disability Act and security people – to develop a model voting system. The other thing that Auburn, to their credit, and Dr. Gilbert, to his credit, did, which is very important, is this material is not patented; this research is being done as a contribution to our discussion about improving elections; the information is public and the hope is that some of this data and our experiments will actually be used by the manufacturers as they develop the next set of voting systems.

DR. GILBERT:

Thanks Jim. All right, good afternoon. And I'm going to talk about Prime III, the voting system that you kind of heard a little bit about. I'm going to give you a demo and talk about what's next,

what we've been doing. And then hopefully, typically, when I do this, we get into a lengthy discussion, which is always fun for me. So, that's the best part.

So, let me begin with Prime III by talking about what we had, our paper ballot. That kicks off this process. So, in Prime III, we begin with basically a blank piece of paper. And that piece of paper again had a watermark or be of certain specified stock, and that starts the whole process essentially. And it begins by having an individual who is registered to vote and entering the voting place, and after they are authorized, we print a ballot as you would see here. So let me talk about that real quick. This ballot will have a barcode on the right hand side of that piece of paper. And below the barcode there is some numbers. And those numbers contain the voter's ballot identification. What does that mean? That number corresponds to the ballot for that individual who lives in that jurisdiction. And it also contains the language for the ballot. So essentially what this barcode is doing is communicating to the machine which ballot should be loaded and under what language. And again, I call this the voter-ready ballot. So then this paper then is taken and placed into the Prime III machine. And Prime III allows, as you heard, to vote using a multimodal interface – speech and touch interchangeably. From the touch aspect, you have a large touch screen with fonts, and you could put images or not, and it has touchable names that are centered on the buttons. I'll talk about that a little later as far as why we made these design decisions. The voter touches the screen, similar to things you've probably already seen with touch screens, and we also have a

ballot layout of one race per screen. And the voter confirms the ballot before it's actually recorded or printed. That's on the digital side, or touch. On the verbal side, you have a headset with a microphone and the system speaks to the voter through the headset. This conversation is confidential, obviously, because it's coming directly in the headset. Now the system can use prerecorded speech or computer generated speech or both. And, you know, if you want to talk about that we can a little later. I kind of prefer computer generated speech and I can explain why later. Now, how do you interact with this? It has an embedded microphone and the voter says things like "vote," "continue," or the voter simply blows into the microphone to make a response. So this feature enables you to vote in a public place and they could eavesdrop on you and never know what your selections are, if they even hear you because you could just blow into the mike. The other interesting things about this approach is it immediately makes our system language independent because it's not listening for specific language or words. So, with this design, what happens? It enables people who are sighted, people who are blind, individuals who are deaf, even people who are illiterate, both sighted or blind illiterate, and people with physical disabilities, for example people that don't have hands, to all privately and independently cast a ballot on the exact same machine as anyone else. So it is not a separate machine for people who may have a disability or not. Everyone is on the same machine. Hence, the term "universal accessibility." Yes?

UNKNOWN:

Any accommodations for deaf/blind?

DR. GILBERT:

The question was, any accommodations for deaf/blind? We have not accommodated deaf/blind. We had a person who was blind and deaf in one ear do it, but not completely deaf and completely blind. That will require another interface, a physical. But, that's future research. Prime III, when we designed it, we designed it so it would run on a bootable DVD. So the software is burned to a DVD, you put it in the machine, you turn the machine on and it boots up. Now that was very important for us because that eliminated a large number of attacks from viruses and other malicious software because a DVD is read-only and it boots, so if the machine did have a virus, the virus would remain inactive because it would never be initiated. So that's an important feature that we can actually run this from a bootable DVD. Now here's the other interesting part. We created this thing called a voter-verified and generated ballot. The VVGB. These are printed ballots that contain the selection of each race. And it also contains a barcode of those selections that can be read back to the voter. So, the VVGB, and I'll show you a picture of it in a second and talk about it and describe it, is scanned by a separate independent machine. So essentially you have the Prime III machine which creates the ballot. And then there's a tally machine that scans the ballot. They're two separate independent machines that don't talk to each other, no network. So the VVGB looks like this. What you have is a barcode, a horizontal barcode at the top. And underneath that barcode are a set of numbers that correspond to the selections

made by the voter. So in this case you'd have President Bugs Bunny, and Bugs Bunny's code would be a 02, and the Vice President was no selection so a 00. So that barcode encapsulates the selections made by the voter. And this is what's scanned by the tally machine.

SECRETARY HERRERA:

Could I stop you right there?

DR. GILBERT:

Yes.

SECRETARY HERRERA:

We're getting confused that because of the barcode number, that if anybody really wanted to be traced back, they would know how they voted.

DR. GILBERT:

The question is, because of the barcode number, can you use that to trace back to an individual? Not in this case. The barcode corresponds to the selections made by the voter and, if you recall, remember the Prime III software runs on a bootable DVD. And everyone is using the same machine regardless of ability or disability, right? Therefore the machine can't distinguish who you are. It has no identification of who you are, so it cannot possibly write any information about who you are into the barcode. That can't happen.

SECRETARY HERRERA:

But when you sign in to vote, you're issued a ballot and it has a barcode number.

DR. GILBERT:

Um-hmm, when you sign in you're issued a ballot that has a barcode that corresponds to the ballot that's supposed to be loaded and your language.

SECRETARY HERRERA:

Okay, and the reason I'm asking you to say this is that's the latest that we're being accused of as election officials.

DR. GILBERT:

Right.

SECRETARY HERRERA:

And I know it doesn't have a...

DR. GILBERT:

Right, I understand that. That's, you know, it's an interesting question, but we took measure to prevent that in this particular design, where you can't tie a ballot back to an individual. And you can't do things with the barcode. And you kind of see why. The barcode becomes less relevant in a second. You'll see why. Okay. So then you actually scan the barcode and that's on the tally machine. So the tally machine is keeping a tally and then, let me do the demo, and I'll talk a little bit more about the actual barcode.

So what I'm going to do first is just establish the vertical barcode, which is what's printing now. So this prints a vertical barcode on a blank piece of paper. And that has my language and my actual ballot ID in it. Okay. So then that paper would be loaded into the Prime III machine, which is this one. And then we scan it. [The Prime III machine talked and Dr. Gilbert answered in providing the demonstration of the Prime III machine. Dr. Gilbert cast his ballot.]

DR. GILBERT:

Barbara?

DR. SIMONS:

If you make a change and you then select the first one, will it make then changes when you go to...

DR. GILBERT:

No, I could just select, if I wanted to make a change to a specific race or contest, I would have been able to just touch it or it would have read it to me, and I would have said "vote for that one" and it would have just changed that one. So I don't have to go through the entire ballot again. So, it printed the ballot and now what I would do is this ballot would actually be placed in a tally machine... so just for demo purposes... [The Prime III machine read the ballot.] So it read back to me what was encoded in the barcode. So that's important to see because anybody could do that. Meaning, it's not only blind people, sighted people could actually hear what's in the barcode.

MR. DONSANTO:

Can you do that twice?

DR. GILBERT:

Yes, I could do it over and over. But, it doesn't count it. I could have it played back to me.

MR. DONSANTO:

Scan it again. What you've demonstrated is you should have somebody read... that's a fairly difficult maneuver.

DR. GILBERT:

Okay, so the interface you're looking at would not be the interface used. This is just a prototype to show that we read the barcode.

MR. DONSANTO:

What would read the barcode in a real...

[Voting machine giving instructions.]

DR. GILBERT:

Oh, okay, let me talk to that. Okay, so in a real environment we don't have a machine yet to do the scanning. But we're in the process of designing what that will look like. It would have to be a vertically faired machine and it would have to have barcode scanners that were in place. It wouldn't be a hand scanner.

MR. DONSANTO:

Oh, so you would feed the ballot in there?

DR. GILBERT:

Right. But it would be vertical, not horizontal. The reason that's important is with current scanning devices, if you think about how does dirt sit? Flat, right? But if you turn it vertical it would limit the probability of any dust or dirt ever sticking to it. Where now with scan machines you get dust on them and you get errors. But we're in the process of working on that. This is just a proof of concept to show, that's all. Good question.

SECRETARY HERRERA:

Does this system work with any of the current scanners that are out in the market?

DR. GILBERT:

Are there any current scanners? Not optical scanners. But this is just, this cost me 60 bucks, this scanner that I have in my hand, optical scan. And I'll talk a little bit more about the optical scan and why I did it this way with the barcodes.

Okay, so what did you see here? Let me elaborate on what just happened. You saw the voter-ready ballot that encapsulated the ballot code or ballot ID and a language. And that's important because it will eliminate confusion, or reduce confusion, on the wrong ballot being loaded for the wrong individual. And we're doing some more research on that as well. One race per screen, I think a lot of you are familiar with issues that occur when you have more than one race on a screen. For example, in Sarasota, remember with the races at the top with the line? That was a problem. The delay after each touch, this is important. Whenever I touched the screen, it grayed out and delayed for at least a second. That's a very important design issue consideration because some people double type a screen. If you double tap, you click the button and the second tap is registered before the next screen appeared. Which means you would click through the second screen and get the third screen. But that doesn't happen because we delay it. Or we have people who play games and slide their finger down the screen, or people who touch the screen with two fingers in two different places. So we put a delay in that would prohibit all those activities.

DR. SIMONS:

What happens if you touch in two different places and there is no registry?

DR. GILBERT:

The first one to register it grays.

DR. SIMONS:

It doesn't take the others?

DR. GILBERT:

No it does not. And even if the screen tried to do it, it would eliminate it because it grays immediately after the first touch. So the second touch is ignored. If you're touching the screen, it can't accept anything at that point.

Names are centered on each button. So some of you are probably familiar with West Virginia, the issue were accusations of people voting for Obama and it flipped to McCain. Well, that issue, and we are running studies on this right now and our preliminary data supports what I'm about to tell you. Some people touch names and not buttons. So, if your recall the design of those screens, the names were in the upper left hand corner of the button next to a check box. So the people who designed that, people like me who write software, thought just touch the button or the check box. But people were actually touching the name and the name was at the top part of the button. Well their finger was bigger than the button and the gap to McCain's button, so they actually touched the bottom of McCain's button when they were trying to touch Obama's name. So we put our names in the center of a button so that you can't have that situation. And we're running studies right now to show this. And so far, amongst technical people, 6% of them touch the name, that's technical people. We're running it with non-technical people now.

MS. HEGARTY:

I have a question. The Voter Ready Ballot, is it the actual ballot in their hands, is it a paper ballot kind of screen right?

DR. GILBERT:

The Voter Ready Ballot is when you, you just start with a blank piece of paper.

MS. HEGARTY:

Right.

DR. GILBERT:

And once they say you are who say you are, you can vote. But print on that blank piece of paper on a vertical barcode...

MS. HEGARTY:

That vertical barcode that some people stitched away, is that number recorded anywhere?

DR. GILBERT:

Yes, that number is, well it's not recorded on the voting machine.

MS. HEGARTY:

Is it recorded in any document?

DR. GILBERT:

Oh yes, yes. All the ballots, every unique ballot would have a unique identification code.

MS. HEGARTY:

So, wouldn't that both bar code up on the top be linked to that voter number?

DR. GILBERT:

No, no. It can be linked to that voter, the ballot ID, meaning the ballot ID is not the voter's social security number or a unique ID for the voter. There could be hundreds of thousands of people with the same ballot. This is only telling you the ballot style and specific ballot. It's not telling you who you are.

MS. HEGARTY:

Got it.

DR. GILBERT:

It's just saying, this is the appropriate ballot for this individual.

MS. HEGARTY:

So ballot 2306 does not correspond to voter number 24...

DR. GILBERT:

Exactly. So ballot 2306 is a ballot style, not that you're voter 2306. So there can literally be hundreds of thousands of 2306 ballots; see. The reason we did this was to eliminate, we were told by some election officials that that's a problem, how do you know that the person's getting the right ballot for, I guess a jurisdiction can have multiple ballots voting. And they wanted to make sure their people got the right ballot. So that's why we did it that way.

Now, on the actual ballot that's printed, the VVGB, it prevents this stuff, which you guys have probably seen. Many optical scan ballots, from Minnesota is what I'm showing you, where people have stray marks on these ballots and essentially what you have is the voter's intent not accurately captured. One of these ballots, a person was voting for Al Franken and they kind of, you know, did a scribbly mark in the oval, and that may or may not be

captured by the optical scan machine. So it was interesting, I was in Chicago at the AAAS meeting and an official from Minnesota said that mark, those marks were not created intentionally, those were older people who couldn't fill in the small ovals. And so they just scribbled, it was the best they could do. With the ballot that you saw here with just the names, the office, the race, and the name, this problem doesn't have. You don't have this ambiguity about who the person voted for.

Now, the other thing I haven't mentioned yet, with this approach we're recommending that you do a statistical audit. So, in other words, you have the tally machine that is tallying these ballots, and we recommend that you do a manual statistical audit. And I'm putting up a chart that shows a statistical power of 10% audits. Where, if you do a statistical audit, it will give confidence in the results that are presented from the tally machine. So, as some of my colleagues would say, what if I somehow hacked into your machine and was able to change the barcode that had voted for my guy and not yours. Well the statistical audit would identify that. That's the purpose of doing this.

Now, the other feature, we've been running studies with a group of senior citizens and this organization called Oak for OLLI, the Osher Lifelong Learning Institute. And in our preliminary studies, this voter-verified generated ballot is outperforming the VV pack and optical scan significantly. In other words, people can count faster and more accurately using this ballot on an 8-1/2 by 11 or 8-1/2 by 14 sheet of paper than they can on a VV pack or an optical scan. And we're running this study in conjunction with,

some of you are familiar with IACREOT, Rice University was working with them, and we're running studies on this. So, it was no surprise to us because there's no ambiguity about who the candidate is. So it's easier to count and it's faster to count.

The other reason we use the barcode, it was interesting that, I had one of my undergraduates do some research on the barcode scanning error rates versus optical scan. And we discovered that barcodes, the whole idea for the barcodes was generated because I got delayed in an airport and I was sitting there watching people get on a plane that I couldn't get on. And they were scanning their Boarding Pass, which had a barcode, and those people printed those barcodes from home, in the airport, and on different devices, and I watched 200 people get on a plane without a single error. And I said, what are the changes that an optical scan machine would give me that same accuracy? And it's not really. What we could find on a barcode scanning was an error in one in every 10,000,000 scans. And that was under fatigue conditions. And so barcodes were something that we noticed are used everywhere and they work very well. And in a controlled environment such as voting, it would be extremely accurate for that task.

The other thing you noticed when I did the demo, on the verbal side you saw a verbal response to touch. Whenever I touched the screen, it said "selected Bugs Bunny or something." So it actually spoke the touch that I had made. And that's another thing, when we designed this it was interesting because when we worked on it we tested it just like I demoed to you. We were looking at the screen and testing. So went to the Alabama...

[P.A. malfunction - feedback].

Okay, can you hear me?

[Several affirmative responses]

DR. GILBERT:

God that hurt. So we did a study at the Alabama Institute for the Deaf and Blind. And our initial design, they tested it and they said it was horrible. And we didn't understand why, but when we designed it we designed it while we were watching it and looking at it and talking to it. So I had to force my team to develop with their back to the machine. And after that, so we designed the verbal interaction such that it's conducive, so if you were listening you would have heard it say "you are voting for President. There are five or six ballots." And it tells you how many options you have. It was very descriptive. And that design was something not easy to come to, trust me.

You noticed also in the interaction there was privacy in the voice. You can't tell who I'm selecting, who I'm voting for. You noticed I blew into the microphone to make a selection, which enables another group of people to vote. And voters can hear the ballot results after they are printed using the scan on the tally machine. And we're designing that as well so that people who want to hear what's on the ballot, they can.

Let me conclude. We put this in place from our universal design perspective. Meaning one machine for everyone. And I put this California incident up here. I was recently informed by a friend of mine who voted in California who, he doesn't have a disability, but he requested to use the disability machine. And the individuals

who worked there joked about it. They made jokes and said "you're the first to use it" and they joked the entire time he voted. And when he left they were still joking. Apparently they were not very experienced at setting up the machine, using the machine, and so they made jokes about it. If we have one machine that everyone uses, that eliminates that debate. This multimodal interface accommodates nearly everyone. And this approach that you just saw is software independent. That's a big buzzword, right, in VVSG? So, it gives you that voter-verified paper trail that is often desired, with accessibility. The statistical audit, that manual recount there gives you some confidence outside of the machine's tally. And the barcode scanning is magnitudes more accurate than optical scan. And hopefully no more Minnesota's.

Recount ability, again I mention that our studies have shown that using this approach is faster than optical scan and more accurate than optical scan and VV Pack. And the way this was designed, and you can't really see it, but I designed the software so it's in components. In other words, this can be implemented in multiple platforms for overseas voting in military. It could be done using fax, internet, mail. We even have an implementation of it using this interface strictly for the phone. And it also can be done with mail-in voting. Now I'm not promoting any one of these per se. What I'm trying to point out to you is that the design that we've come up with can accommodate these different areas, if you so choose to do so. Some of you are probably familiar with N2N (ph) voting. We actually have a procedure by which we can use this interface on top of N2N voting as well. What I'm getting at is that

this design that we put in place can accommodate different platforms, different machines, different environments.

So what's next? Usability studies with different populations. I would love to get this out and do it with longer ballots, with different demographics. Ergonomic design of actual machines. You could see here that I'm just working with a laptop or printer. And I built a touch screen so I can hook it up and you could use a touch screen. But it's not one machine, and we don't have a tally machine designed yet. But that would be something interesting to design. Voter registration and administration, I know many of you have done work with the voter registration data bases and things like that. We are interested in doing some research in integration of some of this with those as well. Election management and poll worker training. If all my dreams come true, and everybody adopts a machine like this, how do you facilitate an election using this platform? Well at Auburn, as Tom mentioned, we have an Election Administration Program. And we work with those people. So how would you train people in doing this? What's the set up process, the breakdown and tally, etc. And it would be really cool if we could do a real election. That would be fun. And I'll stop there and take questions. Yes?

MS. ENSLEY:

Yes, I'm still trying to picture the scanning tabulation machine itself. Are you saying that the voter then receives from the poll worker the initial ballot, the paper matching the requirements, and sticks it in, the voter is sticking it in the same machine you have here, so then they can touch the screen. And that marks their vote

on the ballot and does the voter take the paper from this machine over to another tabulation machine? Is this all done by voters or poll workers or how do you manage that?

DR. GILBERT:

Okay, let me repeat that. I deliberately didn't answer that in my presentation. But since, her question is "what's the process?" Is the paper being handled by the poll worker or the voter, and how does it get from the actual voting machine to the tally machine? To be honest, I don't know yet. There's different ways of doing this. One proposal was to use a sleeve, so that if the actual paper with the print up so that it faces the voter, that a poll worker could come behind and put a sleeve on it and take it to the tally machine. Another proposal is to have a separate tally machine for every voting machine so that it's automatically fed into the tally machine. We haven't designed it. That's additional research that would have to be done. And again, we're working with our Election Administration team to help formulate what's the best process to make that happen. Yes sir?

SECRETARY NELSON:

It looks like most of the concepts here are the same, or very similar, to a machine call the Populex, which was unveiled back in 2003 and never caught on. Did you look at that system at all or is there any collaboration there?

DR. GILBERT:

Did I look at the Populex? No, I did not. And I vaguely remember some of this stuff about that. If you look at what we've done, and it takes a lot from many different places, this ballot

design is very similar to a VV Pack, but we added a barcode, in some sense. There's a lot of similarities here, but we do know that, for example, the ability to speak to it, we didn't see that in any other machines. Yes sir?

REPRESENTATIVE REYNOLDS:

What about – now you've touched on costs some. You have an idea of how this would compare in cost with an existing machine.

DR. GILBERT:

Cost? Okay, so how much would this cost? The software is free. The hardware that I have here, when we set this up and we go do elections for organizations and things, we've been able to do this for less than \$1,200 per station, is what we've been able to do. Now we don't have a manufactured tally machine and the other components yet, but the cost, my personal feelings, so I gave you the correct answer so far. This is what I envision. I would like to see all component-based systems so that you could have multiple vendors creating the different types of hardware. And is it possible to get the software certified on that part of it?

REPRESENTATIVE REYNOLDS:

Well, by station you mean like a precinct, a large precinct you would need, unfortunately multiples...

DR. GILBERT:

Well, you would need multiples. When I station I mean like the touch screen, the actual system.

REPRESENTATIVE REYNOLDS:

You know our average, what they say and I'm sure it's not true but they, they some claim that our average poll worker is around 72 years of age. You know, which I don't think, I personally want them to serve. It's hard to get new people into - you definitely want to make sure you that the ones we have are trained.

DR. GILBERT:

Right. That is a good point. What he said was, he said that it's been said that the average poll worker's age is around 72. But if you remember, the people we were studying with were part of OLLI. The average age of that group isn't 72, but it's around 70, 65 or 70. So the people we're using to test this are of the demographic that would actually be your poll workers. Yes sir?

MR. COWLES:

It seems to me that the person with low vision or blind would have a hard time touching the black box. They'd be hitting them multiple times and how do they know – the orientation of the screen other than the set of visual that - verbal says there is five choices?

DR. GILBERT:

His question is if you had a person that was visually impaired, looking at the layout that we have with the names one after another, that it would be a challenge for them to hit the right target. Well, we've been testing it, we haven't had that problem with our low vision test, you know, our test subjects at the Alabama Institute for the Deaf and Blind. We haven't seen that. But in that case, remember they could still vote by voice. There's still that option.

MR. COWLES:

Do you have a voice recognition built in?

DR. GILBERT:

No, remember it asked me "to vote for Elmer Fudd, say vote"
and it beeped. And then during that 1.5 second window...

MR. COWLES:

Oh.

DR. GILBERT:

...I say "vote."

MR. COWLES:

And then what about shaking, tremors, mute voices and
that...

DR. GILBERT:

They could do, if you have shaking, tremors, remember I put
the gray in, the delay, so that they could do it several times. It only
catches the first tap. So you can't inadvertently double tap and
cause an error. So they could vote by voice or they could double
tap if they want. There's one back in the back? Is there one?
Okay, go ahead.

MS. ADAMS:

Did it show undervotes, is it going to tell you if you're
undervoting?

DR. GILBERT:

Will it show undervotes? We can. It actually, let me see if I
have it.

SECRETARY HERRERA:

If you have "no vote" for governor, will that show?

DR. GILBERT:

Right, let me see. That part of the software will be on this side of the tally. And this is just, you know, again, you could show all kinds of things. I think we have multiple ballots here, we're showing a lot of different things. But it would show "no candidate" would be 3. So it shows undervotes. It would show a total number of undervotes. If someone didn't vote, it would show that. But if you didn't want it to show it, we could tell it not to show it. So that's, we could show whatever...

MS. ADAMS:

I think you'd want to show it...

DR. GILBERT:

Yes.

MS. ADAMS:

...just to alert them.

MS. ADAMS:

A lot of people aren't voting for a reason.

DR. GILBERT:

Right. And we actually do that, we show that here, so that would be visible in our current way of thinking.

MS. ADAMS:

But, visible, but I'm talking about, you know, you can't see so would it say "vote for"...

DR. GILBERT:

Oh yeah, it says, like when I scanned it, it said "vice president, no selection."

MS. ADAMS:

Okay.

DR. GILBERT:

Maybe that's not the appropriate term to use, but we put "no selection" and we've been testing that. And people seem to say "oh, I didn't select a candidate for that, I know." Yes ma'am?

MS. HEGARTY:

So there's no ballot printed out of that has pre-listed?

DR. GILBERT:

Right, there is no ballot pre-printed ahead of time with this.

MS. HEGARTY:

That's a huge mistake. And what about the absentee voters, the people that want to vote early...

DR. GILBERT:

Okay, there's a good question. How would you handle absentee voting in a platform like this? There's multiple ways to do it. So, one, you could mail a traditional ballot. That's one option. The second option is you could have, this system could be used on-line and they could print it, sign it, send in. They could do that. There's a ton of different options here. I don't know what's best. See, let me make sure everyone understands where I'm coming from. I am doing this as research, not as a vendor or a person like that. So, if you say, "well I don't like them praying bringing it," that's fine, we don't have to do it, we could do it another way. I don't have a stake in it other than to see voting work. So, that's why I designed it this way, so it's portable. In other words, the way we designed this, people could test it and play with it on line before they even got to the voting place. But there are different ways, they could print it, seal it, sign it, mail it in a pre-approved envelope. I

mean there's a couple of different models that we looked at. But I don't know which would be best.

SECRETARY HERRERA:

What I worry about if you're printing it, with printing the ballot and then it's reading it back to you, what if you didn't vote how you wanted to vote and you leave disappointed.

DR. GILBERT:

If you did, you mean in absentee ballot?

SECRETARY HERRERA:

When it prints your ballot and it reads it back to you how you voted.

DR. GILBERT:

Right. So you're saying if there was an error when I printed it? Well, remember it has to get to the tally machine. But if it doesn't get there, you could destroy the ballot and make them do it over. Destroy the ballot. Barbara?

DR. SIMONS:

A quick question and comment. The question is are you assuming that everybody will wear headphones and how do you propose to do that part and then the comment is, in terms of cost, you're looking at the hardware and software cost and there is enough cost to figure out how to come out ahead, and then to make his cost. Because off course the current system...

DR. GILBERT:

Yes – exactly! So, what Barbara's saying, that was a good point I didn't make it. But because the software would be made available free, that's a big savings on cost. And again, the

hardware/software, the way we designed this, think about what I'm saying, if you were to adopt a DVD, bootable DVD model, it can run on several different platforms, types of machines. Now, if I'm at Dell Computers, I might want to enter in this market now. I could undercut a whole lot of people if I'm Dell Computers, or IBM. IBM has expressed an interest in this. So, it does open the market for a different way of thinking. Now is that the right way to do it? Again, I'm a researcher, so I'm throwing out ideas and then you all, and other practitioners, will tell me, "well we don't kind of like that, maybe we should do it this way." And I'm saying we could bend and be flexible. And the headphones, you don't have to wear the headphones if you're just going to use the touch. And what we've seen, most people don't. But the headphones, and I have a set here where we have these sanitary napkins that we replace them with. The nursing school advised us on that to make them sanitary. So we considered that as well. So the headset is not required to vote, but because anybody can use it, again, the system cannot discriminate or isolate any single individual regardless of ability or identity because everyone is voting on the same platform. Yes?

DR. SIMONS:

I'm still not...

MR. DONSANTO:

Durability, answer that question.

DR. GILBERT:

Durability? Whoa, this would be extremely durable. The machines will be low cost, so even if they did screw up, replacing them wouldn't be that bad. The design, I don't have a physical

design yet. We need to do the additional research to come up with the actual physical design.

MS. ADAMS:

I've got several that are by-mail precincts and so they all won't have computers at their houses. How are they going to vote?

DR. GILBERT:

If you have people that are by-mail that don't have a computer, again, there's multiple options here. We can, they can go to a library, or again, there's the phone. There's a phone interface for this. Or you could do traditional mail, use a traditional mail-in. They don't have to use, this, that's the one area that you could target. I mean if you have to mail it to them, and have them mail it back, then that would isolate those individuals.

MR. DONSANTO:

That's the entire State of Oregon.

DR. GILBERT:

That's the entire State of Oregon that does mail-in. They do mail. And we're working on that particular approach where maybe they do it from a computer or maybe somewhere with a phone. We're looking at different options.

MR. DONSANTO:

If they do it from a computer, they would have to do it over a publicly accessible internet would they not?

DR. GILBERT:

Right. But remember...

MR. DONSANTO:

Security issues...

DR. GILBERT:

Well, hold on. That's a good question, are there security issues associated with that? If they're printing the ballot to put in a signed envelope to send back, the security issue, that's not the issue.

MR. DONSANTO:

This particular system that you're describing here seems to rely a lot on putting the voter near a piece of hardware that generates the ballot.

DR. GILBERT:

Right.

MR. DONSANTO:

In Oregon they don't do it that way.

DR. GILBERT:

Right, they don't. They mail the ballot to them, they vote, and mail it back.

MR. DONSANTO:

And that's becoming more and more the way of the future. It's kind of absentee voting people like a lot and the utility of the system you are trying, at least as far as engineered to date seems to me to be marginal in terms of voting systems like they have in Washington State and Oregon.

DR. GILBERT:

Well, this system wouldn't allow people, you do have to have a printer somewhere in order to print the ballot. You'd have to have that. Now, how would you get that? That's something we could figure out.

MR. DONSANTO:

I'm the client.

DR. GILBERT:

Yes. Yes?

MS. ENSLEY:

I was wondering if you've done any time trials, the length of time it takes the voter to vote this way. By the time you're printing out the ballot and then another staff is putting it in the machine and another staff is putting it in the tabulator. Do you know if it's faster or slower than current systems? Because lines are a serious problem at voting sites, particularly in November.

DR. GILBERT:

She asked a question on timing. Do we, have we done any studies to identify the amount of time it takes to vote using this process versus what exists today. We don't have the tally part done yet, we don't have that. So we haven't done physical studies. We've done mathematical models, but we haven't done physical studies to identify the amount of time. What we do know with the touch screen, that's, our time has been extremely quick compared to other touch screens. And in most cases it's somewhat faster. But we haven't had any times, because there is no other system that allows you to vote by voice. So there is no baseline comparison there. So that's something, that's why I say I would like to be able to do studies with longer ballots with different demographics and we could get that kind of data. And so one of the things that I would propose, by making this software free, we would also, through the research, be able to identify the number of

machines you would need for a certain voting population. So, if you are, imagine if you are an election administrator and you're trying to get your election set up. And you know you have, I don't know, say 100,000 people that are registered to come to your voting place. So then, what you could do, imagine if you could go on-line and log-on and say "I'm in such and such precinct, I have 100,000 who are coming. Of that 100,000, x% have a certain disability. Tell me how many machines I need to have an average waiting time of so many minutes." That's where we would like to go, to be able to do something like that.

SECRETARY HERRERA:

Well, keep in mind on Election Day, we're only going to have one ballot at the polling place. Early voting sites, you're going to have multiple ballots. So that's going to take more time.

COMMISSIONER DAVIDSON:

In some States you've got multiple ballots...

SECRETARY HERRERA:

Yes.

COMMISSIONER DAVIDSON:

...and...

UNKNOWN:

At polling places?

SECRETARY HERRERA:

Yes. What we call polling stations.

[Several people talking at once.]

DR. GILBERT:

And that was something brought to our attention, that some places would have multiple ballots. And that's why we put the first barcode, the vertical barcode in there. Other questions? Way back in the back, yes?

MS. LOWRY:

Dr. Gilbert, when you mentioned that you'd like to...

[Several people talking at once.]

DR. GILBERT:

The demographics I'd like to study with? I'd like to be able, if the world was mine, I'd like to be able to go, for example, align myself with NCIL, the National Council on Independent Living, and AARP, and some other organizations, and do studies across the nation to hit different demographics. Meaning, with respect to ability/disability and race, gender, ethnicity, income levels, I'd like to hit all of those different areas.

MS. LOWRY:

A little advice. Because – (Indiscernible) I have more data that they say they are not quite comfortable with how to navigate this interface. It would be very important to actually sit down and discuss to make sure that they are truly comfortable with these ideas.

DR. GILBERT:

Yes, they are on my list. There's a group called People First of Alabama that deals with cognitive disabilities, and we would love to be able to do studies with them. One of the things that, I'll give you an example of one of the things that's kind of tricky here. So, I showed you all where I could write in. There was a write in button,

so I can go in and it brings up a keyboard where you can type and write in. But how does a person write in that doesn't have arms or is blind and still remain private - right? That's a good question. So we have a method by which we think we can do that and we're studying it this summer and we're going to compare that against people who actually type it in and see what the speeds are to get some data on that. But we don't have people who would have a cognitive disability, so if I have to spell a name using this approach that we're having, can they, how would that work? And we just, we need to do the studies to see that.

MS. LOWRY:

(Indiscernible)

DR. GILBERT:

Right.

MS. LOWRY:

(Indiscernible)

DR. GILBERT:

Right. Yeah. And we're looking at doing that. And one of the things I mentioned earlier, to kind of get into that, I said I would almost prefer computer generated voice over a more natural sounding voice. And it goes back to something you said where if it's a natural sounding voice, what we've seen is some people lose confidence in it. It's a unique situation because they're voting and they think, "is this a real person I'm talking to?" And so they shut down. But if it's a computer generated voice, they actually open up and are a little more receptive because they think it's a dumb machine.

Other questions? If not, I say thank you for your time and I look forward to talking to you.

[Applause]

MR. WILKEY:

I hope you enjoyed that video and, as I mentioned earlier, we have three other excellent videos which we have produced on polling place operations, polling place accessibility, and on contingency planning and then this one. They are up on our website and available for you to look at. And if you wake up in the middle of the night and don't have anything else to do, you might want to, you know, go to EAC.gov and look at the videos.

All right, I left off at some of the other issues that we're doing. And, our QuickStart Election Management Guides, as you know, these were developed as a short version of the much longer and more comprehensive Election Management Chapters. We did this initially, it happened by accident, that we wanted to get the information out quicker. And so, thanks to the efforts of our consultant Connie Schmidt, we began to develop these very unique QuickStart Guides. We are now up to 17 and we have six new ones that we've recently released -- Serving Voters in Long-Term Care Facilities, Provisional Ballots, Canvassing and Certifying an Election, Conducting a Re-count, Central Account Optical Scan Ballots, and UOCAVA Voters. Now, these, as I said, are the shorter version of what becomes a full-fledged management chapter, the much longer, much more comprehensive document. And we have new chapters in the EMG series which are out, or coming out, on Acceptance Testing, Uniform and Overseas

Citizens, Pre-election and Parallel Testing, Developing an Audit Trail, Contingency Planning and Change Management, Ballot Building, Absentee Voting and Vote-by-Mail, Polling Place and Vote Center Management, and then our previously released chapters on Certification, System Security, and Physical Security. Our upcoming chapters will consist of Canvassing and Certification, Re-counts, Community Partnerships, Media and Public Relations, Provisional Ballots, and, again, the other one that was left off of here that we're moving up into a kind of handbook, is our Accessibility Issues for State and Local Election Administrators. We are very proud of this series. They have been so well received by election administrators all over the country and we look forward to continue to develop more of them as we move along.

Certainly, another area that we're very proud of our achievements in is in the election terminology glossaries, which are now available in Chinese, Japanese, Korean, Tagalog, Vietnamese, and Spanish. These are the required languages under Section V. Now, I know that in many cases jurisdictions, who don't have these requirements probably wonder, you know, what value do they have? Well, they have a tremendous amount of value to small to medium sized jurisdictions who are in a situation where they must provide this information, and in these particular languages, and cannot afford to go out and pay for the translation services and the efforts there. So, this is a tremendous value, has been well received by a number of jurisdictions across the Country.

Now, what we've tried to do with our public meetings is to not only use them as a vehicle to have our issues, regular business

issues, at these meetings, but also to do a series, like we did last year leading up to the big Presidential Election, on a number of management issues. And so, these are held during our Public Meetings. They are streamed on-line so that everybody can view them, and if they don't have an opportunity to see our meeting, at a particular point in time, they can, again, if they can't sleep at night, get up in the middle of the night and watch our meetings. They're focused on the following election administration topics: Contingency Planning, Pre-election Testing, Empowering Voters, Cost Saving Practices, and recently we did one on Military and Overseas Votings.

Now, another primary responsibility of the EAC is to conduct a number of research activities. I'm very pleased to report that we have, at least, gone through the majority of the research projects that were mandated by Congress. One of the biggest projects that we do is our Election Day Survey. And that survey is scheduled for release in the fall of 2009. I'm happy to report that we are at a 100% State response rate compared to 96% in 2006 and 93% in 2004. The survey responses are more complete than in previous years. Why? Because officials said the questions were clearer, and consultants were on-call to answer questions. And this was a major piece that we did this year. We spent a considerable amount of resources in contracting with RTI to be available to offer assistance to everyone who was working through this survey. And that survey of course, the NVRA report will be done at the end of June, is that not correct Karen?

MS. LYNN-DYSON:

Correct.

MR. WILKEY:

And it goes to Congress and the rest of the report will be at the end of September?

MS. LYNN-DYSON:

Thereabouts, yes.

MR. WILKEY:

Okay.

MS. LYNN-DYSON:

The UOCAVA.

MR. WILKEY:

And I might add, we are already working on the 2010. We have committed to the, particularly the State election officials, that we will try to get this survey out and to them as soon as possible and at the earliest possible time. We are having discussions now about whether we leave the questions that we had alone and not ask any further questions, perhaps adding one, but that is still under consideration. But, as you know, once that decision is made, we still have to go through the OMB paperwork reduction process, although we're hopeful someday that Congress will exempt us from that process so that we can do a lot more in being able to do survey work. But until that occurs, we still have to go back through, as I understand, that process even though we may be asking the same exact questions. So, we will keep you posted on that.

Additional EAC research, our Election Data Collection Grant report, which was the \$10,000,000 grant program appropriated by Congress, that report is to be released June 30th. It will have

lessons learned and best practices to be shared in late summer. And as I understand it, a more complete report on this will be as part of your agenda.

Our report on the National Voter Registration Act will be released on June 30th, and we released four reports last year – Statewide Voter Registration Databases In-term Report, Voter Hotlines and Websites, First Time Voters Who Registered by Mail and Voted In-Person, and Alternative Voting Methods.

Our upcoming activities in this, in our research, is to evaluate EAC's educational projects. As Karen mentioned during the responses on the Resolutions, we have now amassed large and very comprehensive pieces of information and research. Some of the more comprehensive ones are our Poll Worker Guidebook, our design which was very well received by election officials, and a number of other reports, our QuickStart Guides, our management series, and we feel that it's very important, before we move forward, to have all of those materials evaluated by an independent evaluation to let us know what they think is good, what they think needs to be updated, and what has been well received, so that we know what we have to do to move forward. I think we all understand, coming particularly from State and local jurisdictions, that money is tight. And while our budget is pretty good, as you will see, for the 2009 and hopefully the 2010, we're living in a situation where in the future we may not always have the kind of resources that we've had in the past to be able to do some of the really wonderful things that we have done. And so, we want to use our money wisely and we want to be able to focus in on the best things

that need to be done. And we can only do this through evaluating what is out there now.

We will continue to translate Voter Guides and Glossaries into more Asian and into Native American languages, and including working with those where there is no spoken language. We will issue guidance on topics of special interest. For example...

COMMISSIONER HILLMAN:

Written language.

MR. WILKEY:

Pardon?

COMMISSIONER HILLMAN:

Where there is no written language.

MR. WILKEY:

Where there is no written, sorry. I'm getting, you know, as the Chair pointed out this morning, you know, age is catching up with me. I'm bound to slip once in awhile. That's why I have Karen here.

We hope to issue guidance on topics of special interest, particularly updating our guidance on Voter Registration. As you know, we've had a very lengthy project with the National Academy of Sciences. They have issued one interim report. They are due to issue a final report...

MS. LYNN-DYSON:

In October.

MR. WILKEY:

...in October. And from that, and from the information in that report, the Commissioners, the staff and Commissioners will be

able to work on updating the guidance which has not been updated since 2005.

We will update also the NVR regulations and get that going. We have a lot of work to do in that area.

Certainly, one of our primary objectives is working with our stakeholders. As I mentioned this morning, we are in the process, in fact it is out for bid, I think the bids are just back already, to do, update our website. We put out a contract for a new website company to work with us. We have reached the limit, and if you looked at our website at all, there is a tremendous amount of information on our website. We keep adding more almost everyday. And it is time for us again to take a more in-depth look at how we can make it bigger and more creative and to be able to even add more information. Dr. Simons?

DR. SIMONS:

Barbara Simons. Just one quick comment. I noticed reading the notes that people can request the Minutes from our meeting, anyone who wants to get them. I just was wondering why don't we just post them on the website?

MR. WILKEY:

I believe they are, and if they're not...

UNKNOWN:

They are.

DR. SIMONS:

So that's in addition to posting on the website?

MR. WILKEY:

Oh yes.

DR. SIMONS:

Oh, okay, thanks.

MR. WILKEY:

So, our efforts continue to increase our clearinghouse activities. We take this very seriously. I think in all of the discussions that we've had with the Congressional staff, both Senate and House, we have made it very clear that at some point in time we want to be the "to go place" for anything you need to know about elections and election administration. And so, building that database and building that web is certainly a part of that. We are dedicating more resources to making the EAC website more accessible and usable. We've added improved search tools and more intuitive navigation research systems. We've improved design so that it will allow more news and resources to be featured on the home page. And clearinghouse activities will be guided by a policy that will be put in place later this year.

We started a plain language initiative. And this was prompted in part by the call from, I believe, this Committee and the Standards Board, in relationship to the VVSG, to make it into a more plain language document. And we thought well, if we're going to do it for the VVSG, let's do it for everything that we produce. So we want to transform technical documents into plain language. The first project was the Voting System Testing and Certification Video that you just saw. Our next project will be simplifying the Elections Operations Assessment project. We certainly understand that the documents, particularly the VVSG and trying to keep track of the various versions, but, the contents can sometimes be

overwhelming. And so it is our goal not only to try to get that document simplified, but all of the technical documents that we put out now and in the future.

Under our budget, for 2009 our operating budget was \$17.9 million and this included a \$4,000,000 direct transfer to the National Institute of Standards and Technology for their part in developing the VVSG and other activities. And as you can see, it relates to personnel costs and non-personnel costs, and some of the grants we were doing. This does not count, for example, the requirements payments money which is a separate budget item.

In 2010 the Office of Management and Budget has requested an appropriation of \$16.5 million. Most of the reduction has occurred in our non-personnel items. Some of the reduction in NIST and into other areas. Frankly, I think that we certainly understand, as I mentioned earlier, that Government needs to trim it's belt like all Americans are being asked to do. We are living in difficult economic times and across the board I think OMB has requested that all Agencies tighten their belts. Even in the fact of that, I think we did very well. OMB has traditionally done very well with us, they've worked very closely with us. I might also add that through that horror that we went through with our first audit last year, that they were extremely accessible to us and helped us all along the way in dealing with some very, very difficult and comprehensive issues. We had a meeting with them last week and they have pledged to work with us with those remaining issues. And we're already, this is the Federal Government, we're already

talking about the 2011 budget, which will be submitted to OMB in September or October of this year.

Funding priorities – Voting system program, as I indicated earlier, we have doubled the staff, a 17% increase over 2009. Clearinghouse activities, additional elections research including the election data survey, our voter registration database guidance, free or reduced postage for absentee ballots, and of course our grant making for 2009. The additional \$100,000,000 in HAVA requirements payments. Voting technology improvement research, and we are very please with that. Congress has appropriated a \$5,000,000 appropriation to fund research on voting systems, particularly in the disability and accessibility area. The \$1,000,000 grant program that I mentioned earlier, in the area of logic and accuracy testing. That information will be out soon. Maintaining our college poll worker program, which has been so successful for \$750,000, and our student mock-election program, which they funded last year for \$200,000 has been increased because of the success of that program to \$300,000 in 2009.

Looking ahead, what are our five strategic goals? To Communicate. Communicate with our stakeholders including all of you here present as our Advisory Board, our Standards Board, the various advocacy groups that we work with, and of course Congress and the general public as well. To Fund and Oversee. We worked very hard in the last year to get our shop in order in terms of meeting our financial and our audit requirements. It has been a very difficult, laborious process, but we have put together an outstanding new team beginning with our CFO, our new Budget

Director, our new Accounting Director, and we have now grown up and are playing in the big leagues. We are going to continue to study, to guide and assist. We take our middle name very serious. We are into assistance and we really think that the number of things that we have done, particularly with our management guideline series, and other things, that we are truly meeting up to our middle name of Assistance. We are going to test and certify. We know that there have been some difficult issues in that area. We have made major improvements and have streamlined that and you'll be hearing from Matt very shortly on an update on that. And we will manage better than we've every managed before.

I will end this by saying I continue to be absolutely blessed to have a fine, not only three terrific Commissioners, but also an outstanding group of people who work with me every day and who make all this happen. And with that I will close my remarks and turn it over to Matt. If there's any questions, I'll be glad to entertain them.

CHAIR THOMAS:

Thank you Tom. Very much appreciate it. I'd like to welcome Mayor McLin for coming. It's good to see you again. Any questions of Tom Wilkey?

MR. CUNNINGHAM:

Mr. Chairman, I'd just like, I know I've said this, I'm sorry, Keith Cunningham. Sorry. I know I've said this unofficially, I'd just like to say it officially for the record, the QuickStart management guides are exceptional tools, well done, and the poll worker publication is a magnificent document and the organization did a

tremendous job with that and it's a very helpful document to those of us at the local level. So, congratulations on that work and thank you so much for that work.

MR. WILKEY:

Thank you Mr. Cunningham, we appreciate that.

CHAIR THOMAS:

Okay, anyone else? Matt.

MR. MASTERSON:

Thank you Mr. Chairman. I'm here to speak to you about the Testing and Certification Program and my goal is to provide you very specific updates on each voting system that is in with us right now and hopefully answer many of your questions about what's happening in the Testing and Certification Program. And this is a bit of a response to a Resolution passed last year in 2008, I think it was No. 3 that Secretary Nelson I think headed up, asking us to remove the roadblocks from our certification process and really look into streamlining our process. And we took that call very seriously. Those of you who were in Miami, Florida, in January for our Cost of Testing meeting heard our Director of Testing and Certification, Brian Hancock, talk about a timeline for getting this done and we've poured everything we have into it. So I'll talk briefly about what we've done to streamline and then I'll go through the list and talk about where each system is. And then I'll be happy to answer whatever questions you have about any of the systems or our process.

To start, to streamline the process we took a hard look at ourselves and what we could do. We heard the complaints about

our review periods, the time it took to approve things like test plans, test reports, and look at test cases. And we took the onus on ourselves and went back to our labs and manufacturers and said provide a schedule to us and we will match that schedule. So whatever time you think it's going to take you to test and certify this voting system, that's the schedule we will work within. So, for each testing engagement actively underway, we requested the schedule, and we're committee to meeting that. So, we can look you all in the eye, as part of the Testing and Certification program and tell you that any schedule, if you want to call it slippage or push back, is not a result of EAC review, of EAC processes, but instead is either a result of the need to further test whether it be because of discrepancies found during testing, or because something additional was added to a system or a vendor chose to revise their system application. And so that's a commitment that I believe we're meeting with the systems that we have in. It does not mean that we've changed our review as far as rigor, but instead means we've changed the way and the timing that we conduct the review. We're working extremely closely with the labs and the manufacturers on this. I have weekly conference calls with both the manufacturer and the labs on all of my testing engagements underway. In addition, we make ourselves available for any conference calls and/or discussions that need to happen in order to streamline the process. Another move that we did was actually to revise the 2005, but to sort of halt the interpretation process at bit until this 2005 VVSG revision is done because the interpretations we understand were causing major delays at times for the testing. Basically, the

interpretation is our way of saying what the Standard means and we had done about 19 of them over the last two years, and we think they're good and strong. But they were causing delays in the process. So for the most part, we have held off unless it's something that really applies to a system in right now and the manufacturer and lab need that interpretation to absolutely test the system. In addition to those efforts, we have worked very closely with the labs and manufacturers in holding kick-off meetings, and it sounds funny to say because some of these systems have been in for two years. But we found one of our major problems and one of the labs major problems in testing the system was just a lack of familiarity with the actual system. The labs take a month or two to evaluate documentation and the system itself before testing even begins. And so, what the EAC has done with each one of its testing engagements, is held a kick-off meeting in which all of our reviewers that are looking at the particular system, the EAC staff who are in charge of that system and the test laboratory either travel to the lab or the manufacturer's facilities, see the system demonstrated, and have a day long question and answer session with the manufacturer about the system architecture. And it gives our reviewers an invaluable chance to meet with these manufacturers and ask them everything they need to know about the system. And I can tell you this has been one of the major efforts that seems common sense to us now, but at the time when we were getting up and started, did not occur to us. And hindsight's always 20/20, but we've been very pleased, very, very pleased with those kick off meetings and the information that's provided. It has

allowed our reviewers to look at a test plan and understand how the test plan relates to the system very specifically so that the test plan review goes a lot smoother. So those are some examples of the efforts we've undertaken to try to streamline our process and to really move things forward. And again, I can't say this enough as I go through with the various systems, but we are committed to the schedule provided to us. When the manufacturers and the test labs sit down and look at the testing to be done and provide a schedule to us, that's our goal to meet. We encourage our labs to take the time they need to test to the requirements. I think all of you here support the labs in testing to the requirements, but at the same time we want to meet that schedule. So that's our commitment and that's what we're meeting in these testing engagements.

So, Tom had the slide up of the chart, but there's a chart on our website of each voting system submitted. It has an update on the status and some notes on it, but I'll just walk my way through...

COMMISSIONER HILLMAN:

Matt, excuse me, Gracia Hillman here. Before you do that, in your briefing book until Tab 15, this would be page 10 of the Executive Director's PowerPoint presentation.

MR. MASTERSON:

Thank you Commissioner Hillman.

COMMISSIONER HILLMAN:

Okay, and also just to put all of this in context, particularly some of our newer Board members may not realize this, but this is the first time that the Federal Government has undertaken the responsibility of testing and certifying voting systems. So the EAC's

Lab Accreditation Testing and Certification Program is a first for the Federal Government.

MR. MASTERSON:

Thank you, Commissioner Hillman. I'm going to choose to start in the middle of the chart, because, I guess, I'll celebrate success and say that the MicroVote System is, in fact, certified. So, we do have a certified system, it's the MicroVote EMS Version 4.0. It's been certified to the 2005 VVSG. All test plans and test reports and certification information for that system are up on our website. So that is our first certified system. Mr. Dickson do you have a question?

MR. DICKSON:

Jim Dickson. I don't have a question, and I don't think this is the appropriate place for the conversation, but I do think it's important for the Board to know that with this particular piece of equipment, there are, there is a big problem with its having been certified. The system has no capacity for sip 'n puff or jelly switches. We're working with the EAC on this problem. I mention it now because it links to something that we will be discussing later. As important as the VVSG itself is, the test suites, which are actually what the manufacturers design and build to, and which will be in place shortly, I think the reason this got through was because the testing protocol for that machine did not include, anywhere in the process, experts in accessibility in defining what the tests were going to be. So, I just think, it was pretty shocking to some of us. I think we know what the problem is and I think we know how to address it.

MR. MASTERSON:

Thank you, Mr. Dickson. Any other comments or questions? I'll move back up then to the top of the list and work my way down through. So, at the top is the AVS WINWare 2.0.4. This system application was terminated at the request of the manufacturer in 2007 so that's no longer in our program.

The Avante optical Vote-Trakker is in at Wyle. They have not submitted a test plan to us yet. We're awaiting the test plan. And that has been at the choice of the manufacturer. They've been focusing their efforts, it's my understanding, on New York and so have chosen not even to pursue testing yet at Wyle. So we're awaiting information on that.

The Dominion Democracy Suite is currently at SysTest. As you can see, the test plan was submitted and under review. The EAC has responded with their comments to that test plan. And then Dominion, the manufacturer opted again, because it's focusing on New York, to wait for the next submission of the test plan. So again, at the manufacturer's choice, testing has been halted until they can put their focus on Federal testing because they're focusing on New York.

Okay, so now we get I guess to the more high ticket, high profile items, and actually, oh I'm sorry, there's a question.

DR. SIMONS:

Barbara Simons. And I actually should have asked this right after Jim, because I also had a question about MicroVote and I apologize for the delay. The testing that's being done, in my view, is a big improvement over what we were doing before. It's more

open, more transparent, but there's still a lot of information that is not available. For example, there's no detail about any of the security analysis that was done on the MicroVote, nor is there very much about the source code review. So, my question is, is it possible to make more of that information publicly available?

MR. MASTERSON:

It's certainly something we can look at making more publicly available. I can tell you the process that we undergo right now, and I'd be interested in receiving from anyone here if there's additional detail specifics that you'd like to know, I can go back to the labs. But as you know, the labs testing protocols, and this is another important reason why the test suites are important to us, the testing protocols right now for the labs are proprietary, and that's protected information, part of their processes, their business processes. And so, we ask the labs for feedback on what can and cannot be released to protect their proprietary practices. But that's not to say that we can't flesh out additional details in the testing. And I will say that one of the things, and you can see we issued a notice of clarification very recently on Test Plans that speaks to this. We are working very hard with the labs to push the idea that these documents, the Test Plans and Test Reports, need to be understandable and make sense to third parties viewing them on the website. We understand that they're tough, they don't always detail, and you have to jump around to find requirements. And so, we're constantly efforting with our labs to make the test plans and test reports more understandable for third parties.

DR. SIMONS:

Barbara Simons again. There are different kinds of third parties of course. Some of the third parties are election officials who want to have this in plain English. Other third parties are computer security experts who want to know what was done. And I've gotten feedback from some computer security experts who were very disappointed in the MicroVote report. And I guess I don't understand why all of this, so much has to be proprietary. These are, I mean, why do we, why can't we know what kind of testing they do? I don't understand.

UNKNOWN:

I share that.

DR. SIMONS:

My neighbor shares that view.

MR. WILKEY:

If I could respond to that particular question, Dr. Simons. The very reason why we worked with NIST to develop these test suites, and I'm going to let, when Lynne gives her presentation, she can address that. They're out there, they're out there for public comment. I just whispered in her ear, do we have any comments yet? No, we haven't received any. So, I'm making a request for not just our election officials and our laboratories, but also our advocacy groups and our computer professionals, to take a look at those test suites. We need to have that feedback, because we are spending an enormous amount of time, energy and resources so that NIST could develop it for the very reason that everybody will play by the same playing field. So, I'm hopeful that that will, that we'll get a lot of comments on that.

DR. SIMONS:

Well, I mean, we know that when software is tested by software vendors in Silicon Valley, they do a lot of testing. They don't just have a test suite. There are many things that they do depending on what they discover. And when we can't even see what was actually done in the testing for a particular system, it's hard to determine, I mean, it's for outside experts to determine how robust the testing was.

CHAIR THOMAS:

Jim Dickson.

MR. DICKSON:

Jim Dickson. Am I accurate in stating that once the revisions to the VVSG are adopted, there will also be public test suites adopted, so that in future we won't be in this situation? That the public will have access to the testing suites?

MS. ROSENTHAL:

Lynne Rosenthal, NIST. That is correct Jim, Mr. Dickson, in the sense that the new material that is being brought, ported back is what we're saying, from the next iteration VVSG, that part, the new material will have test suites. The old material that was not touched that is still in the document will not have a NIST public test suite at this time.

MR. DICKSON:

Going forward, besides knowing the sort of testing detail, will there be information about how the system did regarding specific tests? Will that be public.

MR. MASTERSON:

Yeah, all, this is Matt Masterson with the EAC. All testing results are made public including discrepancies that are found during testing. That's part of the test report. And just to address Dr. Simons again, I would be interested to know what more detail we need to provide so that we can work with our labs to be able to provide that detail.

DR. SIMONS:

Well, I just told you a couple of comments that I received that the software, they couldn't, well, in fact, I can read it. This is from, I don't want to say who it was, because I haven't gotten permission to use this person's name, but he said, "There is no detail on any security analysis the VSTL has done. The VSTL merely reports their conclusion that the system complies with the security requirements without providing any justification or reasoning or technical detail." And then, he goes on to say, "I especially looked at the source code review which is in Appendix B of the report," and he says, again, I better not give his name, "Appendix B is almost laughable in its lack of detail. It is just a table with one real preach requirement. There is a column labeled 'Instances' which has a number next to each requirement. There is no explanation of what the number means. Is it the number of places in codeword the review was relevant? Is it the number of places that comply with the requirement? Is it the number of places that violated the requirements?" And so on. So, this is a pretty detailed commentary. This is somebody else speaking, not me. This individual was not happy.

MR. CUNNINGHAM:

Mr. Chairman?

CHAIR THOMAS:

Yes?

MR. CUNNINGHAM:

I really don't believe that it's appropriate for us to consider anonymous information. I think we're dealing, in a very public way, I mean, I find it odd that they're taking issue with some level of secrecy, while protecting the anonymity of the person that's making the issue. So, I mean, it's sort of a pot calling the kettle black here. So, I really, with all due respect, I don't really believe that we should consider anything that is, without definition, as to where it came from.

DR. SIMONS:

Okay, I'll take responsibility for it. I mean, this is somebody who I trust and value. And, I think the name of the person is irrelevant. The question is, are the points that he is making accurate? And that's something which, I imagine, Matt can answer. Is this the way it was done? Is this description correct?

MR. MASTERSON:

I mean, we're very, I would say we're very confident, extremely confident in the effort that the VSTL had in the MicroVote effort or any of the testing efforts. We review all documentation, all test cases that the VSTL has. Now, as to the quality of the report, we certainly approved it and feel confident in that, but we're always open to feedback on what we can and can't be doing better. And so, I'm open to that. But, I mean, obviously, we approved the test report and have a great deal of confidence in it.

DR. SIMONS:

Right, but you don't take issue with the description that I just read, about the way it was presented, right?

MR. MASTERSON:

I take issue, I would say yes I do take issue, because we have confidence in that test report and that it adequately describes the testing that was done. But again, I'm open to receiving the feedback.

DR. SIMONS:

All right, I'll send it to you.

CHAIR THOMAS:

Doug Lewis.

MR. LEWIS:

When the EAC was assigned the responsibility by the Federal Government to take on this role of both developing standards and, in conjunction with NIST, to approve testing laboratories, and then work out methodologies by which we can make voting systems improved, implicit in that came the assumption that the EAC, NIST, and the testing laboratories are trusted entities. In that regard, we have always got individuals and groups who believe their expertise or their ideas or their methodologies are better than or greater than anybody that is doing the official job. Unfortunately, for all of us, we live in the real world, which is, that at some point, we have to accept that somebody somewhere is a trusted entity on this. And it seems to me that we can have these discussions, ad nauseum, as to whether or not the labs are doing proficient testing and realistic testing, but as the

standards are the standards, I am assured, at least, in the process that looks like at this point, they are testing to the standards that are approved. And that's where we need to be. Obviously, long-term we may evolve into something very different, but right now, that's where we are, and we have to allow, and have to count on, that the EAC and its staff, and NIST and its staff, and the testing laboratories and their staffs, are doing what is in the best interest of America, and we just have to live with that at this point. We will evolve into other things as we go along. But, to constantly question and to constantly pick at what is being done by official institutions, seems to me, to be an exercise in futility and frustration.

CHAIR THOMAS:

Okay, Matt, want to continue?

MR. WILKEY:

Mr. Chairman, if I may? I hate to interrupt, but Commissioner Davidson and I have to leave. We have a delegation of election officials from Indonesia, who are here today, and wanted a briefing. It was the only day they could be here. So, we need to go and do that. We will be returning. I'm leaving you in the capable hands of Mr. Masterson and Lynne Rosenthal, and we will be back to join you later. Thank you.

CHAIR THOMAS:

Okay. Matthew.

MR. MASTERSON:

Thank you Mr. Chairman. So, to get back to the system-specific updates, I'll go to the middle ES&S item, which is ES&S Unity 3.2.0.0 because that's a system that ES&S has pushed

forward and expressed that they need to get out, put all their focus on I would say, that they need to get out the quickest and have the testing focus on. Currently, this ES&S system has an approved test plan. Testing is ongoing right now. All test cases have been looked at, or at least verified to be testing all the standards. We don't look at every single test case because that's thousands of them, but we review them to make sure that every portion of the standard is being tested and then our reviewers focus on certain sections of interest. Currently, the schedule that we've been provided spotlights the testing for the Unity 3.2 to be out in mid-June. So, that's the schedule we've been provided. That schedule has not changed more than a day or two since starting asking for the schedule and committing to meeting their schedule. And so, right now we have every reason to believe that that's when that system, we will receive a test report from that system.

CHAIR THOMAS:

Matt, could you indicate, as you go through, if there's any delays in here that vendors or manufacturers have sought, make that clear.

MR. MASTERSON:

Absolutely. I'll be glad to. I'll be very specific with that. I will say that that Mid-June date was partially determined by the fact that ES&S is trying to sync up their testing with testing in Ohio. And so, Ohio has given ES&S permission to move forward with their process as soon as we produce a test report, our process produces a test report. And Ohio has indicated when the timing is good, or whatever, and so ES&S indicated on their last phone call with us

that this mid-June date syncs up with what they would like to accomplish in Ohio. I will again say, and it's important, that if a system in testing has discrepancies, has failures, that affects schedule. We cannot possibly justify certifying a system that doesn't meet the standards. And so, we take that responsibility seriously and if there's discrepancies we work with the manufacturer and the lab on the best way to handle those. But in the end, the system needs to meet the standards. So, that's an important note in this.

The Unity 4.0 has currently been switched to iBeta. That happened about two months ago, or a month and a half ago, they switched from SysTest to iBeta. We had had an approved test plan from SysTest that they had submitted to us. It's up on our website. iBeta is going to have to go through a similar process that they went through with Unity 3.2 in evaluating the prior testing, looking at the test plan, and determining what testing they would recommend needs to go forward and the EAC will make a decision just as they did with Premier and ES&S Unity 3.2 on use of prior testing. So that's in that process right now. ES&S hasn't even asked for that evaluation yet or to move that forward. They want to get Unity 3.2 out, but as soon as ES&S and iBeta come to us with a project schedule and a request to look at prior testing, we can begin that process just like we did with the Unity 3.2 and the Premier system.

The Unity 3.0.1.0 with the ATS currently they're not doing anything with that. The manufacturer is evaluating whether to combine that certification effort with Unity 4.0 or to leave it alone. And so that's sort of sitting there waiting for 3.2 to come out and

priorities to be made from ES&S's perspective. So we await feedback on that.

The Hart System 6.4 has been removed from testing. Hart has pulled out of testing for now. Their system is no longer in with the laboratory.

MicroVote, I've already covered.

Okay, Premier Assure 1.2. This is a little bit more difficult to explain where we are, and I will try to sum up as best I can where we stand. The Premier system transferred to iBeta after SysTest was suspended in October. We immediately began working with Premier on evaluating prior testing as well as getting a test plan from iBeta. Currently this system has an approved test plan, has approved or reviewed test cases, and the test matrix has been submitted back to the laboratory. Last week on a phone call, on the weekly phone call with Premier and iBeta, Premier indicated to us that they were going to revise their application to reflect some feedback that they had gotten from the field. This feedback was for their central count scanner. And they indicated this would be their 9th revision to their application test plan. And it's important to understand that each revision means that something is changing in the system. It could be huge, it could be relatively minor. But that means re-testing. So each time we receive a revision, that means some sort of re-testing or additional testing is going to happen. So Premier has notified us that they are going to submit revision number 9 to their testing application. iBeta has indicated to us, from what they understand of the revision, that it will cause some schedule push. We have not received information on that schedule

push yet, but we certainly, as soon as we have that information, will be happy to answer questions about what the schedule looks like. The original schedule had this system coming out in the first or second week of June, but it appears as though that schedule is being pushed.

In addition, for each one of these testing engagements, we've received up to this point, discrepancy reports found in testing that's been done to this point. The ES&S system had about 15 discrepancies, many of them documentation thus far. They are in the middle of their volume testing right now so we're not, you know, we don't know until they get through that testing and the security testing. We did receive the discrepancy report for the Premier system on Friday. It had around 30 to 40 discrepancies and the lab has indicated to us that several of those discrepancies are going to lead to additional testing also. So there's a schedule change for Premier in the works. As soon as we have it we'll certainly communicate as best can with those jurisdictions that have been inquiring about the Premier system and indicate the schedule change. And again, this is a result of the system needing to meet the standards. And we can't, that's our job. And so we work with the lab and the manufacturer to deal with these, but they, there's going to be changes and re-testing as a result of these.

The Sequoia system has an approved test plan as well. Testing was underway for the Sequoia system and Sequoia, within the last month, has requested that testing be stopped. They have not formally requested it from us. They have, I believe, a 90-day window to notify us that testing has been halted, per our Manual.

But they have, are focusing on efforts in other jurisdictions. Right now, our indication right now is they're going to come back and re-start testing after their efforts in that other jurisdiction. But, again, we don't have any notice one way or the other on this. And so we've tried to follow-up with Sequoia. I called them yesterday, so that I could provide you with as much information as I could today, and did not hear back on that. But I know Sequoia has the approved test plan, was pursuing testing, but right now is not actively testing.

MS. PURCELL:

Helen Purcell. Matt, you said they have 90 days from the day that they advised you that they wanted to stop proceeding?

MR. MASTERSON:

They have 90 days from the day that they advise the lab to stop proceeding. So, I mean, it's a little bit of a, I don't know if honor system is the right, but, you know, we don't know, except for communicating with the lab, we know the testing has stopped. And so, they need to notify us of their plan of whether testing is going to continue or if they are withdrawing, or what they're doing within 90 days of that.

MS. PURCELL:

And that notice to the lab was sometime in May?

MR. MASTERSON:

That's our indication, yes. Any other questions? I know the Sequoia system is a little bit difficult because they've just sort of stopped.

MR. JENKINS:

Phil Jenkins. Do you have any indication of which of these systems are used in other countries?

MR. MASTERSON:

I do not have any indication which of these systems are used in other countries. That's a good question.

MR. JENKINS:

Has that ever come up before in, with the global economies now manufacturing worldwide, things like that.

MR. MASTERSON:

I've never had that discussion. I'm sure certainly the vendors have that discussion. But that's a very good question about that.

Okay, the Unisyn system, I list two here but they've actually combined to one testing engagement. So, it's just one Unisyn system in with us. We had our kick off meeting with them and we expect a test plan within the next two weeks from Wyle on that. And Unisyn has sort of been choosing to move slowly and deliberately through our process to make sure that when their system actually begin testing that it can move quickly through the process. So they've been, you know, getting out the bugs as they say, to try to ensure that the testing process goes as smoothly as possible for them.

So, at this point I'm happy to answer any questions on any of the testing engagements or processes, any of that.

SECRETARY NELSON:

Chris Nelson. First of all, thank you. I like what I hear today. It sounds to me like you're giving some emphasis to moving things

along, along with your other responsibilities, and I like that. One question, or a two-part question. You talked about, during the streamlining of this, that you're committed to meeting the labs' schedule. Did I understand you to say that the labs work with the vendors to come up with the schedule? Is that correct?

MR. MASTERSON:

Yes.

SECRETARY NELSON:

And then, secondly, is there a typical amount of time that that schedule will be? I mean, can you tell me what a typical length would be?

MR. MASTERSON:

Yes and no. Yes, as you're all probably aware, the manufacturers and labs contract with each other for the testing and that's sort of process or at least a concept envisioned in HAVA. And so they work together on evaluating how long the system will take to go through the schedule. I can tell you that schedules depend on the complexity of the system in large part. And when a laboratory is looking at the system, you know, the MicroVote system for example is a very simple system, not a lot of complexity, versus the Sequoia system which has, you know, all high speed, precinct-based, and touch screen, as well as several other features that affect the schedule. You know, based on the MicroVote certification and what we're seeing here, the typical timeframe that we would estimate, and again, until we get some good hard numbers on all of this, it really is just a guesstimate. We would estimate that for a relatively complex system, you know a system

that has high-speed scanner, precinct-based scanner, and touch screen system with an election management system, it's a pretty fair estimate for a full end-to-end test to last somewhere between 12 to 16 months of testing. And a lot of that, as I indicated before, it takes a lot of time for those labs to familiarize with the system, review the technical data package, review the documentation, and do a lot of those initial steps, before even testing can begin. That is something that we understood from the NASED process, but didn't fully understand particularly given the level of review and rigor that we're asking from our labs. And so that opening part of the process is difficult.

SECRETARY NELSON:

Just one follow-up question. In a fairly complex system, 12 to 16 months, what's that going to typically cost a vendor? Can you give us a ballpark?

MR. MASTERSON:

That's a question for me to answer, only because we don't get involved in the contracting and the money exchange. You know, we really are sort of outside that, working with our labs and the manufacturer. I know the numbers that have been thrown around. I think most of you have heard everything between \$3,000,000 to \$6,000,000 to get through. I will tell you that I think that number's misleading, quite honestly, because of, and recognize this fully, because of some of the problems that one of our laboratories had in testing, there was a lot of re-testing that went into several of these systems that inflated the price of testing. Each time they tested, each time they document reviewed, each

time they re-evaluated, that drove the price up. I can tell you that it's my understanding that one of our laboratories charges a flat rate, or attempts to charge basically a flat rate, and that it is less than \$1,000,000 or around \$1,000,000. But that number goes, it's not quite a flat rate so that goes up and so, it's hard for me to estimate. I just know the numbers I hear. I mean, I guess I can be quoted now that I've said it publicly, but that's just the information that I have from the testing that we do.

CHAIR THOMAS:

Libby, did you have a question?

MS. ENSLEY:

Libby Ensley. And since I'm a new member of the Board, I just wanted to make sure that I was understanding. The certification you're talking about, and I do think it's exciting that we have several companies that appear that they're on track to get certified, would be against the VVSG at the first level, right? The level I?

MR. MASTERSON:

They would be to the 2002 VSS. Each one of these systems is to the 2002. These were submitted prior to the cut-off date for the closure of the 2002 VSS. And actually that's a little bit of what motivated our efforts in looking to revise the 2005 VVSG is to try to help encourage manufacturers to submit to the 2005. Because currently, as you can see on this chart, we only have two systems in to the, or three systems I guess, to the 2005.

MS. ENSLEY:

Okay. So once, and the 2005 has been accepted by the EAC and so at what point will the certification be for the 2005? Is that up to the vendor to say what it is they want is tested to, certified to?

MR. MASTERSON:

It was up to the vendor. Prior to December 13th of 2007, which was actually when you all were in Austin, some of you, the vendor could choose 2002 or 2005. That was a policy decision made by the Commissioners when they adopted the 2005 VVSG. After that date, December 13th, 2007, all systems submitted to us must be tested to the 2005. In addition, any modifications submitted to us, modifications being upgrades, whatever, to already certified EAC systems must be the 2005 VVSG.

MS. ENSLEY:

So, at the next level, which is the 1.1, with which, are the amendments, if that gets accepted, then any new equipment or updates to the equipment out there have to be certified up to the 1.1? Is that correct?

MR. MASTERSON:

It would, again, that would be a policy decision from the Commissioners whether they want immediate, you know, a timeline, whether they want to do simultaneous whatnot, that's a policy decision to be made. I can tell you one of the major driving factors in why, and we'll talk about this tomorrow when we're talking about the 1.1, but the driving factor behind not wanting to require hardware changes is really, the purpose of the revision to the 2005 was to clarify the Standard to make it more testable and to make

improvements in the areas we could where major changes wouldn't be required. So that systems that are fielded could be upgraded relatively easily to meet 1.1 without changing the playing field on the manufacturer, who are really just trying to improve our processes and help create the test suites.

MS. ENSLEY:

So, local jurisdictions, who are usually the ones that are purchasing equipment, sometimes the money comes from the State and occasionally we get some money from the Federal Government, but it's tax payer money either way, are spending millions of dollars for equipment which let's say is certified to the 2002 standards. Usually the equipment stays out there, I believe the statistics are about 15 years. Is there anything in any of our requirements that encourage or require the companies to maintain support for equipment that was certified under older standards, assuming that through the years there will be new certification standards?

MR. MASTERSON:

There's certainly nothing in the Standard that requires that. The, you know, the upgrades we receive to be tested, so you all need an upgrade of some sort, come in to us to be tested to whatever standard we're testing to, for instance the 2005 VVSG, but we have, I would say, no ability or authority to mandate to the manufacturers that they support or don't support, I would say that's probably a market driven thing for you all. That you need that maintained support because those systems are still out there. Which probably isn't a great answer.

MS. ENSLEY:

Thank you.

CHAIR THOMAS:

I suspect they get anywhere near the 15 years, they'll stop supporting them.

[Laughter]

MR. MASTERSON:

Yeah. I'm surprised to hear 15 years.

CHAIR THOMAS:

Yeah. Jim Dickson.

MR. DICKSON:

Jim Dickson. I'm concerned about the fact that we don't have data on the cost of the testing. I know it cannot be fixed retroactively, and I'm not asking for that. But, the cost issue affects negotiations with local jurisdictions about pricing, it affects when the manufacturers actually start or don't start their research and design, and I'm wondering if there has been any thought put into going forward, making that cost piece public, so that we can start to accumulate data that will inform these discussions and that we don't have to rely on the manufacturers using, throwing numbers around that result in delaying progress on equipment.

MR. MASTERSON:

Mr. Dickson, I would say, I don't know what the challenges are in doing that. But I will say that the Testing and Certification Program has been very interested and concerned with the cost of testing. We've held a couple meetings on that. We're constantly analyzing the best way to battle those costs because we

understand, from the feedback from you all, that, the concerns with that. So, certainly that's something we can look into. I don't know what the challenges are, but the cost of testing, particularly given some of the estimates and concerns we've heard with the next iteration of the Standards is something the EAC and the Testing Certification Program has to be aware of and look at.

MR. DICKSON:

Thank you. Is it an accurate statement that says, to some degree, the cost is driven by the manufacturer doing revisions? And in some cases, those revisions may be driven by customer requests, but in other cases those revisions are driven because the manufacturers haven't put enough hard detail work into the design?

MR. MASTERSON:

I don't know if I'd say that, what I'll say is certainly revisions add to cost because it adds to re-testing. I don't know if I'm willing to put all revision requests on the manufacturers.

MR. DICKSON:

I wasn't putting all, some of it is their own doing.

MR. MASTERSON:

Sure, sure. I mean, certainly if something needs to be re-tested because it didn't meet the standards, that's the case.

Absolutely that's part of the cost of testing.

CHAIR THOMAS:

Representative Reynolds.

REPRESENTATIVE REYNOLDS:

Earlier, our State purchased, for each of the counties, with the HAVA money that was available, you know, we got two dollops

of HAVA money for the purchase of the machines. And we provided, and then I authored a Bond Issue to provide the additional, when the funding that was supposed to be forthcoming was not forthcoming. Now we provided compliant machines at that time to each of our counties. Now they picked the compliant system, but we provided complaint machines. Now, you know, the life expectancy of the machines has been alluded to and, you know, we have these machines in place now. So, it is a concern that machines that were purchased, you know, that they be, continue to be usable. Of course we want to be accurate, but we are, from the State perspective now we're worried about things like funding basic health care, you know, education, and other things now. Of course elections are a basic system of democracy, but we've got, we're constrained as we never have, every State that I know is constrained as they have not been before. So, do you share concern that the existing machines be made as compliant as possible so that we will not have to obsolete things that we just got.

MR. MASTERSON:

I share a concern that States and localities have what they need to run elections. So, I think in that sense, absolutely I want you all...

REPRESENTATIVE REYNOLDS:

Well, it was a Federal mandate that we complied with, and so, we complied in the way that was requested to be complied with, and actually spent money that was supposed to have been provided that not all of it was provided that was supposed to be

provided. So, and we're not, every State did so. So, but there is a concern amongst States, at least on that basis.

CHAIR THOMAS:

Keith Cunningham.

MR. CUNNINGHAM:

Keith Cunningham. Mr. Chairman, I guess, it's that time again where I make the annual statement that it was the United States Congress that put the money ahead of the Standards, not the EAC. So, I don't think we can sort of blame them for the debacle that we're in now with equipment that may be rapidly approaching an expiration date, if you will. But I think it's, and Jim this goes to your point, I'm sorry, Mr. Dickson, this goes to your point, I think we have to be very careful that we don't lose sight that the testing labs and the machine manufacturers are private sector organizations and the job, as I see it, of the EAC is to establish Standards by which then the private sector finds a way to compete with the product in the open market. And I think by providing three test labs certainly creates a competitive environment if I'm not mistaken. I mean, they probably all have a bit of a different pricing structure. So, it seems to me that between, as long as we've provided an environment where there's not a proprietary testing lab and so forth, that we've got to let the private sector work their, unless of course we want to acquiesce to having the Government manufacture machines. But I can imagine what sort of dialogue that would create.

[Laughter]

MR. CUNNINGHAM:

So, you know, just remarks. But I do think, I think it's, I've said this at nearly every meeting I believe, and I say it every chance I get, I think there was a grievous error made in 2002 in the passage of the Help America Vote Act, which put money in front of standards and left us all in the position that I think you're describing right now.

CHAIR THOMAS:

Anyone else? Sarah, I'm sorry.

MS. JOHNSON:

That's okay, you get one free pass. I do just want to make one particular point that I think is really important when we're talking about this certification. And I do want to applaud the EAC. Matt, I know you've heard from us election officials day in and day out about this certification. And you all have done a great job. You are working very diligently and streamlining the process and getting things certified. And I do want to point out that it's up to each State to determine what version of Voting System Guidelines that are used in that State. Whether it's the current version or 2002 or 1.1 or 2.0, or, you know, whatever else comes out in the future. For anybody that, because I think there was a question a little earlier about who's pushing what set of standards. But the key thing to me in looking at all of these systems is for those States, and we are one of those States, ours is better than some of the other States, that when HAVA passed and it created a Federal, the EAC, and created that requirement to create Voting System Standards and Voting System Certification, moving it from NASS to the EAC, I think everyone including the EAC, and Commissioners will agree

that no one dreamed that it would be taking this long to actually get something 2002 certified, quite frankly. So, here's the issue. A lot of States went out and passed State laws saying that if you're going to purchase something it's got to be the current level, the current Federal standards, whether that was FEC, Federal Election Commission, or now EAC. And so, our State has had that rule since 1992, so ours is just the most current, but some States actually passed laws that you have to be using, not just if you want to purchase, but actually each election you have to use the current version of the Voting System Guidelines, and they're in a pickle all unto themselves, so to speak. But I did want to just point out, I know it's really exciting that you're certifying things and that we're going to you know see some stuff in June, but the realities, the cold hard realities are, the money is very important don't get me wrong, but the realities are what your State laws are and what version you have to have if you want to make upgrades to your current systems or buy new systems. What are your State laws? And that is something that I thought everybody would like to know because that's a big deal.

CHAIR THOMAS:

Yeah, I would, this is Chris Thomas. I would like to kind of follow up on Sarah's comment. To some extent it's really not the State's choice, if they need a voting system. Because if you look at the list here, unless you all got run out by MicroVote, I haven't seen a stampede headed there yet, and I don't know why, you're pretty well, we're pretty well stuck with 2002 standards. I mean we can say hey we want, we're not going to buy a system unless it's 2005

compliant. Well, then you're not going to buy a voting system. That's pretty much where we are now. And that's transition, you know, coming into the new system. Where we head now, is each one of these vendors wants to make any type of upgrade to their system, they've got to go 2005. And as I understand it, it's not just for that upgrade, but their entire system is going to have to meet, yes, no?

MR. MASTERSON:

No, just for the upgrade. The upgrade will be tested to the 2005.

CHAIR THOMAS:

Okay. So, you know, the process coming in and hopefully when we get the 1.1 or whatever it is, and that gets promulgated, that we move forward and that will freeze the frame for awhile and at least catch up. Because, really, there are a lot of States that have put that in their State laws, it's got to be the most current, well, you could see looking here, there isn't anything at the current standards really, so to speak.

MR. LEWIS"

Matt, just as a point of clarification. Doug Lewis here. As a point of clarification, you were saying they could test upgrades to 2005, but only if they are at 2002, correct?

MR. MASTERSON:

No, all upgrades, for instance if MicroVote comes in with an upgrade, some sort of change, that has to be tested to the 2005, just as...

MR. LEWIS:

I understand. What I'm asking is the opposite, if they started out and had a 1990 standard, and tested to that, can they bring that in and have that tested to a 2005 as an upgrade?

MR. MASTERSON:

Not as upgrade, no. In order to consider something an upgrade, it has to have an initial EAC certification, yeah.

Thank you all for your time. I appreciate you listening and your patience with this. And I look forward to hopefully future meetings where I can talk about systems that you all have and quality monitoring that we're doing with you all in conjunction. So, thanks.

CHAIR THOMAS:

Thank you very much. I appreciate the report and I do appreciate the progress that's been made on this. I think the Commission, and your Division there, has definitely stepped up and moved the ball forward on this. So, thank you very much.

We are at a point where I think it's time for a break. It's 4:00 p.m., we're a little past the break period. We're going to continue on, Lynne, with you, if you still can stay with us.

MS. ROSENTHAL:

Sure.

CHAIR THOMAS:

And, the reports, it looks like we're far, far behind on our agenda, most of the reports on the last part of our agenda for today will be quite quick and we'll get through those without too much trouble, but we would like to hear from Lynne on NIST. So let's

take, if we could keep it to a 10 minute break we can pick up a little time.]

[The meeting took a break from 3:58 p.m. until 4:18 p.m.]

CHAIR THOMAS:

Thank you for staying with us and, as I understand it, your presentation is on UOCAVA.

MS. ROSENTHAL:

Yes.

CHAIR THOMAS:

And we look forward to hearing that.

MS. ROSENTHAL:

Thank you. It's my pleasure to be here, even though it's late in the day. There are a set of slides in the book, if you want to follow along. I am not going to project the slides, I tend to do better just speaking and going along and using the slides as an outline. Commissioner Hillman, what page or what chapter is the slides for, I don't have a book.

COMMISSIONER HILLMAN:

15.

MS. ROSENTHAL:

Thank you Commissioner.

COMMISSIONER HILLMAN:

They're right behind the Executive Director's PowerPoint presentation.

MS. ROSENTHAL:

Okay. It's always a pleasure to talk about the research that we're doing at NIST. And in this case, the work that we're doing on UOCAVA voting systems. What I'm going to talk about is to give you an overview of the work that we've already done, talk about the work that we're currently doing and where we are with that work, and what you can expect.

NIST has tremendous expertise in computer science, in network security as well as computer security, and that is one of the reasons for us doing this research and why we feel that we're qualified to do it. What we have produced, I believe this was produced at the end of last year, early this year, was a report called "Threat Analysis for UOCAVA Voting...

CHAIR THOMAS:

Excuse me one moment. Can I call this meeting to order please. And please keep your sidebars down, so that we can all hear the presentation. Thank you.

MS. ROSENTHAL:

So, we have done some research on looking at overseas voting and produced our first report called, "Threat Analysis for UOCAVA Voting Systems." It looked at the different transmission methods – postal mail, telephone, fax, email, and a web-based transmission method. It divided up the voting process into three stages looking at voter registration and ballot request, ballot delivery, and ballot return. We then did a threat analysis performed for each of those transmission methods at each of those three steps. We looked at what the threat was, and also identified various security, technical and procedural controls that could

mitigate against those threats. The report discusses several conclusions. One is on the registration and ballot request. The key there, the main concern was the sensitive information from the voter and how to protect that information. And there were challenges to email and web-based systems greater than challenges that would arise through postal mail or other types of methods like fax. For blank ballot delivery, there the main concern was reliable delivery, integrity of the ballots as well. Electronic ballot accounting is more difficult than with physical ballots. Again, we looked at the threats and what the mitigating technical controls and procedures could be. Finally, the report looked at voted ballot returns. This is returning a filled in ballot. And here is where the challenges were great. The concerns are also reliability of the delivery, returning the completed ballot, the privacy, and the integrity. And when you use transmission methods such as email or the web-based, the risks are elevated as opposed to, as you would probably think, postal mail. Very challenging to overcome with today's technology. That's basically a summary of the first report that we put out.

Our next step, we are working with the EAC very closely and our ultimate goal is to produce by the end of this calendar year, two documents, one being a draft of Best Practices for Transmission of Election Material. This would be transmission of materials such as blank ballots, the request for the blank ballot, that type. And also, to look at the security considerations for remote voting. And that's where we would address returning a completed ballot. The targets, the reports that we will be looking at will target technical staff, not

necessarily security experts or computer experts. With these next steps, the first thing we have done is to do an outreach program where we, at various forums as well as through word of mouth and telephone and email, have tried to connect with various people in the community, talk to people in the various States and local jurisdictions who have already run pilots. Talk to some of the manufacturers, vendors who are selling machines that they claim can do internet voting. Talk to advocates, etc., and we've actually spoken to several people, several different States, and we've also spoken with two manufacturers, and the people in the FVAP program. One of the things we're looking at, and we had requested information on, are the procedures for election materials, procedures for accounting for, keeping track of the ballots that are being sent out and returned. How does the registration databases tie into this process when you're mailing out or sending out or faxing, emailing ballots overseas? That's the type of information we wanted to gather to learn from and to understand so that we could develop a set of best practices. So currently, now that we've reached out, we've gathered material, we've talked to some people, our next step will be to have a very small meeting of those people that we've already spoken with and a few experts in the field and pull together that information we have and come up with a draft of the best practices. And also to look at the security considerations for remote voting in the sense of focusing on things like the security, accessibility, the system objectives. What are the functions? What are the requirements that you as voting officials would have in needing to do overseas voting? We're looking at

different types of systems. The kiosk-based system as well as what are the risks and challenges with using a, with a voter-based system, a PC from your own home or from a general location like a public library even. And we're looking at how to mitigate those controls. Again, we're basing a lot of the work that we're doing on existing NIST publications for mitigating risks through various controls, controls that are security based, procedural based, and technical based.

So again, at the end of this year, after working with several people in the community and of course always partnering with the EAC, we hope to provide a draft of two documents, one being Best Practices for Transmission of Election Materials, and that's more focused on the sending of blank ballots and also the request for a ballot. And the other report will be probably at a higher level, and that will be the Security Considerations for Remote Voting. There is a lot more work to be done. I know we often get questions that if we can do all of our financial transactions over the internet, why can't we vote? And it really comes down to a lot of the security problems because of the privacy and the integrity that has to be maintained with the vote. What NIST is trying to do with these reports is to educate, is to present what the problems are, what the risks are, what can be done to mitigate against those risks. We are not saying what can or cannot be done, other than make people aware and then it's up to the States and the jurisdictions to make the decision as to what level of risk that they want to take.

The UOCAVA report that we have completed is available on the NIST website at vote.NIST.gov and I'll entertain any questions

that you may have about our UOCAVA work or any other work that we're doing at NIST. Thank you.

CHAIR THOMAS:

Questions? Craig.

MR. DONSANTO:

Yes, Craig Donsanto. In connection with the security issues attending returning live votes to a counting center. Does your research intend to address the perception issue. And by that I mean, an election is really only as valid as the people who voted in it perceive it to be valid. And if the public perceives that votes that have been returned via a public media can be tampered with, isn't that an issue that is important and does your research intend to address that aspect of things?

MS. ROSENTHAL:

Interesting question. I never thought of it. Not particularly address the public perception per se, although the report will address the problems, the threats, the risks with returning a ballot over electronic means. It will go into various levels of detail for different types of systems.

MR. CUNNINGHAM:

Keith Cunningham. You probably don't have a number on this, but I'm sort of curious. Your comment about if we can do all of our banking, what sort of money has been invested in the infrastructure of the financial sector versus the infrastructure of the election sector, and what kind of money might we need to spend to reach that sort of level? Any idea there?

MS. ROSENTHAL:

You're right, I don't know, but what I sort of gleaned from people, we at NIST had some early work with the financial institutions and they have a tremendous organization that has been building standards and working in this. And I'd say magnitudes of money, but I don't have any real basis of that.

MR. CUNNINGHAM:

Well just as a follow up, is it safe to say that our attempts to deal electronically are severely under funded compared to, you know, the other types of organizations that are dealing with one another electronically such as the banking industry?

MS. ROSENTHAL:

I would agree with that.

MR. CUNNINGHAM:

Okay, thank you.

MS. ROSENTHAL:

But with banking just, my understanding is it's private money as well, it's not Government funded money. And that may have a difference.

CHAIR THOMAS:

Helen Purcell.

MS. PURCELL:

This is Helen Purcell. Part of what Craig, you were talking about, we did a program in Arizona in this past election where we, the Secretary of State established a VPN and the UOCAVA voters were allowed to request a ballot by mail, which we do an awful lot of in the State of Arizona. They could request, they could vote that ballot, send it back through the VPN, and we would treat it just, and

it automatically went through the Secretary of State's Office. They automatically send it through VPN to the appropriate county that it belongs to because a military man might not always know what county he should be dealing with. So they just send it through the Secretary of State's Office. We had a tremendous success with it. We treat those ballots when they come in just like any other ballot that we might have to duplicate and send it to a duplication board just like you would any other ballot like that. So the, and you wouldn't know how a particular person voted, you would know that they did vote.

CHAIR THOMAS:

I would note, Chris Thomas. I would note that the Pugh Report that came out last January, Michigan was highlighted in there so it did catch my attention. So I've done a little bit of research, not a lot, but there are like 14 States listed in there that have some sort of electronic transmission and submission, both ways. And so, I contacted some of those States informally and what I originally thought I was going to find is that they work through the Defense Department. But what I actually found is they don't. Most of them are just basically emailing ballots. You know, push "send." And then a number of them, the voter has to download "print," "vote," "scan," and then can either send back as an attachment by email or fax back. I think California is a fax back. So I was a little surprised by that, and I don't mean that critically. I was just surprised that there wasn't as much use with Tom's program there. And I know that over the years there was a considerable amount of money put into an internet voting system

that I think the Defense Department backed off of with some Congressional push to do so. And, you know, this is an issue that is on everybody's burner, and frankly I'm surprised it wasn't a bigger pre-election issue in 2008. But it's becoming a bigger issue today. Ironically, and part of that, maybe it's not so ironic, part of that is the result of the 2008 election and some of the problems that they've had. So we're looking in Michigan, okay where do we go? I mean we'll fax applications and all that, but we haven't gotten into any transmission of ballots either way. So it's easy to sort of swallow and say okay well we can shoot the blank over. I mean I've got 20,000 overseas voters. I've got 1,500 jurisdictions at issue so they're not coming from any one place. So who would know when somebody's going to push the button to send it over? Coming back, that's another issue. So we've looked at just doing a one-way, except a Clerk the other day when we talked about it, said, "I just received on April 1st a mailed ballot that came back that was sent in the middle of October from Afghanistan. So, you know, the idea of just sending the blank ballot over and telling the service person to, they'll find a stamp and an envelope and all that, and mail it back in, that doesn't answer the issue either because of the delivery processes. So, I mean I think there's an issue here, a problem in search of a solution definitely, and so we're looking at, you know, building some sort of secured server. And I'm just not sure where to go. I don't know Tom if you have anything to offer on this, but it is becoming a significant issue.

MR. BUSH:

Tom Bush, from Federal Voting Assistance Program. We do, as I think you know, have a requirement to develop an internet voting system. We can't do that until NIST and the EAC approve Standards. And so I mean the work that you've described so far sort of takes us up to a point of some things we need to think about, but it doesn't get us to the point where we can start initiating anything as far as the systems. So, one question is do you have a timeframe when you think you might be taking that next step to develop some standards that then we can start developing a system too?

MS. ROSENTHAL:

We're currently, the documents that we produce, as I mentioned, will be available by the end of the year. It's hard to, since I don't know exactly what those documents will contain and what they'll look like, my best guess is that the best practice document could be turned around into a set of requirements in a relatively short period of time. But that's not the return of the voted ballot which is everybody's key point. That's going to take a lot longer. There are many security issues. One of the ways we're going to look at that problem is to break it down into different, if you will, environments of returning the ballot, whether it's through a kiosk with a security network, or over different other types of transmission protected methods. And that changes the level of risk depending on how secure that transmission media could be. That's going to take a little bit longer. I think what is very key at this point is to let the election community, the public, understand what the problems are, what the risks are, and why this is so difficult, and

why you have part of the community saying you can't do this and the other part saying but we have not choice, we have to do this. And so at this point, most of what we can offer on the return of the ballot is more or less making people understand where the risks are and what the problems are. But that part is going to take a bit longer.

CHAIR THOMAS:

Barbara Simons, and then Secretary Cortès. Barbara, did you...

DR. SIMONS:

Barbara Simons. We were just fighting over the mic here. So I just have a couple of, three quick comments. One is something which I'm sure everybody here is aware of that if your computer is infected with a virus or a worm that malevolent software can control what your computer does. And even if you're connected to a VPN, it can vote for you over the VPN and you wouldn't know it. And that's one of the fundamental problems with sending back a voted ballot. There's also what Lynne said, which was that it's different from buying a book at Amazon.com because when I buy a book, I want Amazon.com to know what I want to buy, whereas when I vote I really don't want you to know how I'm voting. So that makes the whole voting problem must harder. And I'm sure that this is something which everybody knows, so I'm just saying the obvious. But, in addition I just thought I'd point out that I know that there's some companies that are pushing internet voting at the State level and it's interesting that Washington State almost went with internet voting. And the reason they didn't apparently was the

cost. And the cost that they were given, and again, this is public, I can reveal the source of this information because this is a public document, but was over \$4,000,000 and then an annual cost to the counties of \$200,000 to \$120,000 plus \$2.00 to \$7.00 per registered UOCAVA voter. And this information was obtained under an open records request by John Gideon and Ellen Tyson and it's public information, I can send it to anyone. But, there's another point, which is that I think that we all think that it might be possible to let people, to get the ballots to the people by the internet. That's less dangerous. It still has issues, it's still not trivial, it's still a hard problem. But I would hope that we focus on that first because let's at least tackle the easier problem and try to get that right. That at least cuts the transmission time by half. And in terms of getting the ballots back, I would hope that we might be able to experiment with some low tech approaches such as maybe getting the military to fly some of these ballots back home in a, you know, quickly and help distribute them that way. I think that sometimes we're so quick to move to the G-risk technology that we kind of forget about the old standard, which is we could make the mails work if we, I think, at least in large part, if we invest enough in it, and it still could be cheaper than the internet voting. Thanks.

CHAIR THOMAS:

Tom.

MR. BUSH:

This is Tom Bush. Let me just make a couple comments. First of all we've had, been in several projects over the years to do some sort of electronic register to vote, request a ballot, receive a

ballot, but not transmit the voted ballot. One of our problems is every time we do one of those projects it's a sort of stand alone project, disappears because we've contracted out,, then we have to start over. We are right now trying to start something internal to DOD where we would own the system, own the process, so we can go to, you know, whatever standards we have and we need to apply, we would do that. And what we're trying to do right now is have, develop a system where you can register to vote, you can request a ballot, you can receive a ballot, it would come through a DOD secure server and that would, I think, help a little bit of the security problem. We need to know the standards we need to apply to that. But because it's owned by DOD then we can modify it in the future, we can add to it, we can do whatever we need to do as opposed to starting over with a new contract. I think that would be a, you know, we're hoping that's a useful next step, if I can. Well, let me stop there.

SECRETARY CORTÈS:

Mr. Chairman, Pedro Cortès. As a follow up to Mr. Bush's comments and information, I would like to share with the group that last September, five Secretaries of State, including Secretary Rokita and myself, visited with the troops in Kuwait, Iraq, Afghanistan, and Germany to discuss their experiences in voting their absentee ballots. In the final analysis, the recurrent theme that we heard time and time again is that they understand the need for the procedures to be right and the security procedures, but ultimately don't forget that we don't want to be disenfranchised, so think of us. And, as far as the issue of the secrecy of the ballot,

which in Pennsylvania, as I presume is the case in most States, is a very sort of ironclad strict requirement. What I heard every single time we posed the question, as to, if you have to mail back the ballot in a way that has to be reprinted, and somebody will get a hold of it and then move it to wherever it has to go, every single service member said I will give up that right to secrecy of the ballot if I'm assured that my ballot will be counted, as opposed to being caught up in all this back and forth requesting, receiving, sending back ballots, that in the end means that I don't get to vote. So, I was very, I guess, positively taken by that statement, in that, insofar, that in the end it's about the voter who's protecting our very freedoms, and perhaps there has to be consideration to, maybe, an amendment or a relaxing of the rules of the secrecy of the ballot, despite the, you know, their worth. But, in the end, it's about getting those service members to vote.

CHAIR THOMAS:

Thank you. I did note that in my research, as well, is that each one of those States, there was a statement that the voter signed to, you know, waive that. And, in none of them was that an issue. I mean, and I guess you go back to our early democracy, people did get together and raise their hands in terms of how they voted, in groups. And there are also procedures that the States and the localities have used to, wherever possible, when they come back and need to be duplicated, that you can minimize the number of people that see it, if any. And of course, if it's going someplace where there's more than one you can work that so that the secrecy is maintained. Other comments on this? Tom.

MR. BUSH:

Three other comments here. First of all, just let me talk a little bit about voting in terms of mail ballots and what we did last year, with the military postal system and the U.S. postal system. The military postal system, there was a concern about ballots being returned, didn't have a postmark. The military postal system ensured that every ballot, that every post office, military post office would stamp every ballot so we knew when it was received. So it helps address that concern of when did we receive the ballot. We worked with the U.S. Postal Service and in the last week of the election one of the suggestions had been to use express mail. Well, in fact, we did use express mail. The Postal Service was also developing a barcode system, they didn't have it everywhere, they didn't have it deployed everywhere. But where they had it, they were barcoding the envelopes so they could track the envelopes, the votes, as they came back, which is very helpful. We believe they're going to expand that so it's nationwide, which will help and give voters the ability to track their ballot and be sure it gets back on time.

When we talk about, you know, internet voting, electronic voting, you know whatever it is, and we talk about the privacy, the secrecy of the ballot and all that, you know, even though we talk about the internet or electronic voting may be the answer, the panacea that helps solve all these problems, and it could. But there are people that are concerned with "I don't want to use that system because I don't want anybody to know what I did in my ballot." We don't really care what system they use, how they use it.

What we want to do is have as many options out there so the voter can make the choice, so the election officials can figure out what works, you know, for them. My belief is the more options we have out there, the better off we are. And if it's part one option and part of another option the voter is comfortable with and the State's can work with, that's fine.

As far as funding, you're right, I mean there hasn't been a lot invested in it. You know, we've invested money and at any time, as I said, because every project was different, you know, it's money that is now gone. If we're developing something that we own, one, I think we can - we're trying to get the money to do that. We know, we already have money to do it. Right now it's the wrong color of money, that's our problem. We've got to get the right color of money. We have operation/maintenance money and procurement money and we have to use procurement money to develop this we've been told. But...

UNKNOWN:

That's the way to do it.

MR. BUSH:

Yeah, you know, we can't make it too hard. But my point here I think is if we're able to develop this within DOD as helping all the UOCAVA voters, that can help advance, you know, we can now go to Congress and ask for the money to do that, to make the investment in the systems we need to make this, you know, electronic, electronic process possible. And, I don't want to go too far in how much we can spend and how you can spend it, but the more, from my perspective, we can push the envelope to put a

system in place, if that means we're assisting the States in doing something, then that's fine with me. You know, I don't mind pushing that as a request. Got to get it through the Administration, OMB, and all those other things, but it's certainly, it seems to me when Congress mandated that we do a project, that that means that we've got to come up with the money to do.

CHAIR THOMAS:

Thank you. Keith Cunningham.

MR. CUNNINGHAM:

Well, I probably shouldn't say this but I will anyway. Hot tip for anybody that's ever worked, from anybody that's ever worked in a local election office, if you vote a paper ballot and you put it in an identification envelope...

[Laughter]

MR. CUNNINGHAM:

Well, great effort is taken, you know, at a local board to avoid knowing, but that secrecy has, you know, I keep hearing "we can't do this because of secrecy." Well that secrecy, quite frankly, has been quasi-sacrificed a long, long time ago with absentee voting. And it's only the, you know, the procedure, as Mr. Thomas described, it's only the procedure that takes place in the local election office, and the integrity of the local election official, that protects that ballot in any way, shape or form. So, I find it really difficult, and I'm glad to hear Secretary Cortès, what you said, because I can't imagine that the soldiers serving in Iraq would really care, since I probably don't even know who he is if he sent a ballot back and I could, you know, just happen to see what was voted on

it. I think this is a solvable problem. I think there's too many people telling us why we can't. But when I can sit in my living room and watch pictures from space, watch them fix telescopes in space, I can watch real time live pictures from a war, I can, you know, watch terrorists assault a hotel in Indian, you know, my entire life is spent either on this or a computer at home, I really can't think of any good excuse why we technically can't solve this problem short of getting the money. But I think it rests with the Department of Defense primarily as far as military goes.

MS. ROSENTHAL:

This is Lynne Rosenthal. I think that with any system whether financial, or any of the other systems, that we use today to exchange information, there are risks we are willing to accept. There are problems due to security, identity theft, a whole bunch, range, I'm sure many of us have had a lot of these types of things happen to ourselves or know people who have had their identity or credit card numbers or something. So there are risks using the internet, using electronic measures. NIST, in doing its research, is looking at what are those risks when it comes to doing our votes and returning ballots in particular. And to make people aware of what the problems are, what the risks are, what the threats may be, what are the ways we can mitigate against those. We're not saying you can't do it and I can sympathize with you. It's a matter of how much risk do you want to take on in doing this. Hearing this discussion regarding the privacy of the voter and, you know, versus disenfranchise, I think I will go back and suggest that if we're not already looking at it, that one of the things as we look at the issue

of ballot return, we say let's make the assumption that we have the identity of the voter and that privacy is not a problem. Just in theory, or just as, you know, let's do the research and see what do we get if we put that off the table.

MR. CUNNINGHAM:

Mr. Chairman, I heard some no's there, but I would say, at least this, I would compare it to the risk that an average domestic voter in the Country assumes when voting absentee on a paper ballot. That is, if you can assure the same standards are in place for a citizen in the Country, why should the standards be any higher or any different for those overseas? As long as we can meet that standard and live with the standard we've been living with forever, I don't understand the problem.

CHAIR THOMAS:

Sarah Ball Johnson.

MS. JOHNSON:

I just wanted to answer your question, Chris, when you said you called some election officials and you were surprised that a lot of them, or most of them, did not use the DOD or FVAP ballot delivery system. I can answer that question. I mean, we have used the variations, over the years I've asked, I can't remember all the name changes, we used it in '04, '06 and '08, and I have to tell you why. I mean, only because we were 100% dedicated in our State to using something that was provided for by DOD and FVAP, is the absolute only reason that we continued to put ourselves through the trauma in '04, '06 and '08. Because a lot of the issues, which is not just your all's fault, it's with anybody developing

anything, is we didn't know until, for example, last year, we really did not know until the very end of September how this was going to function. Same thing in '04, same thing in '06. '04 and '06 went a little smoother, '08 was kind of a nightmare, no disrespect to you all, but I mean that is one of the issues. You have to balance all that, and I mean I have to admit we got training materials in '08 and we were really excited about the 2008 General and we trained all of our 120 counties, extensive training, only to find out when they got their user IDs and logged in, the whole system functioned different. So, you know, it is a trial and tribulation. We, in 2010, will probably, if you have something, do that too because we're dedicated to using an official DOD source. But just to answer your question, it is a nightmare and it's really not their, it's not just because it's DOD, I think it's just indicative of any Government entity or private entity. The States that created their own systems had issues too. But it was, you know, and continues to be a big issue. And I kind of agree with the end of what Barbara commented on earlier. The argument over internet voting and ballot, or voted ballot delivery is going to go on for some time. I've read a lot of information, both positive and against, and I think there's still a lot more to be discussed and researched by you guys before anybody jumps into that boat. That's my personal opinion. So I agree with what Barbara said, why can't we spend a lot of the time and research on getting that ballot delivered faster, you know, to that soldier? And then, our State requires that it be mailed back. But because we can deliver that ballot same day via electronic means through the FVAP server, that soldier was getting that ballot back to us much

sooner. So I guess my big rhetorical question is why can't we just focus on one thing that we all can agree on, which is, or potentially agree on, submitting that thing through some electronic means to speed up that end of the voting process?

CHAIR THOMAS:

Commissioner.

COMMISSIONER HILLMAN:

As a Commissioner, before whom the NIST research will come for some decision making, I just want to clarify a statement that you made, Mr. Cunningham, Keith. When a domestic voter votes absentee, you have a sense of privacy if you are following the instructions and putting your paper ballot in the privacy envelope. If you don't do that, and the person receiving it opens it, and your ballot is right there, then yes, you inadvertently waived your right to privacy. But most people don't do that, on purpose. However, it is my understanding that under any circumstances, and I guess my first real introduction, not real, my first introduction to this that affected large numbers of people was with the displaced voters of New Orleans, where they waived their right to secrecy so they could fax back their ballots. That was the only way they were going to be able to receive and get information back, because many of them were in temporary housing and moving to whatever next available housing there was. And so, I came to understand that anytime a voter faxed a voted ballot back, they were asked to, and did, waive their right to secrecy, because they knew somebody had to pick it up off the fax machine, but that there were procedures where that person would rely on their integrity as a voting official to

put it in a secret envelope, and then let it be counted among the other absentee. When you were talking about absentee voters, pretty much, giving up their privacy, you were talking about it in the sense of "it could happen."

MR. CUNNINGHAM:

Oh yes.

COMMISSIONER HILLMAN:

Okay.

MR. CUNNINGHAM:

I'm speaking in terms that that ballot comes back to the Board of Elections in some type of a privacy envelope with a voter's name on it, generally.

UNKNOWN:

Outside and inside.

COMMISSIONER HILLMAN:

Well, but that's my understanding. The privacy envelope has no name. Now the voter may write their name on it, not following complex instructions.

MR. CUNNINGHAM:

Maybe, in some States.

COMMISSIONER HILLMAN:

In some States the name is on the privacy envelope?

MR. CUNNINGHAM:

Yes. Absolutely. And, listen, in Ohio, the ballot comes back in a, you know, B-2 envelope or whatever it is, it's got the voter's name, it's got the voter's birth date, it's got the voter's identification. That envelope is opened. The ballot is removed by one person and

handed to another person, so no two people have those in their hands at the same time, but point being, the opportunity for someone to violate voter privacy is certainly there if an election official, and I don't think Ohio is alone in that process, by any means.

COMMISSIONER HILLMAN:

Okay, thank you.

CHAIR THOMAS:

LuAnn, did you have a comment?

MS. ADAMS:

I was just going to say -- LuAnn Adams. I was just going to say that's how it is in Utah. The name comes back and the reason it comes back that way is because you've got to get the voting history off of it. You've got to give them credit for voting. And you do take it out of there, and there is, you know, privacy along the way. But I was also going to say that, you know, we have them sign an affidavit that, when we fax a ballot to the military, I mean, that they will give up their privacy. They're happy to do it. And as an election official, I want those people to be able to vote. So, if they're willing to give it up, I just don't know that it's that big of a deal.

CHAIR THOMAS:

Tom, did you have one last word?

MR. BUSH:

Yeah, a couple more points please. First of all, on the projects that we had, part of our problem has been, each one, as I said, was a contract problem. We had some contracting problems

and we rolled everything out late. And that caused problems for everybody and utilization was low because of that. That's why we want to do something internally so we can have it there and election officials will know what it is, can use it long-term.

The other things that we found, I met with all the Services, and this really goes to military as opposed to the dependents and the overseas voters. But we asked the military, you know, how many of your service members don't have a military email account. And every single Army soldier has an email account, every member of the Navy, every sailor does, every Air Force member does, Marines about 75%, not everybody does. So, but, to your point, why can't we do this, at least get the ballot to the member. We can do that at least to the military, you know, because we have their email address and that's part of, you know, using our system is, you want to get it through our system? We can get it to a military member. It's a little more difficult to a family member, it's a little more difficult to the overseas voter, but, you know, we can make that happen a lot faster, at least to part of the UOCAVA citizens.

Another thing, when we're talking about, you know, the standards here, I'm going to make my point again that if we give the voter the choice, you know, if we, if they know what the standards are, what the risks are, and say "I am willing to take that risk," it's just like somebody doing banking over the internet, there are risks there and I'm willing to accept that risk. You know, if the military member, the overseas voter is willing to accept that risk, then we would like to be able to provide that service. But we really do need to know, but we don't want to have say anybody can have access

to it. We want some very defined standards because we want to minimize to the greatest extent possible every possible risk. And so, you know, we're happy to take whatever standards they are, and however stringent they are, to work with those.

MS. ROSENTHAL:

This is Lynne Rosenthal. At this point in time, it's very difficult to come up with what the standards are. And without doing the proper research and investigation as to what the threats are, the level of risk, looking at the technology, looking at various ways of configuring the technology, various ways of transmitting the information, whether it be on, through a DOD secure network, which doesn't help those of us overseas who are not part of the military or are not allowed to get on to a DOD system. But part of our research will look at various types of environments for just that reason. But at this point, it's premature to develop standards until we do the appropriate research to figure out what all is possible using today's technology.

MR. BUSH:

I'm not suggesting that we preempt your standards. The only thing is that when we have those, then we can move forward.

CHAIR THOMAS:

Tom Fuentes, your light is on. Did you have a comment?

MR. FUENTES:

I do, thank you very much. This is Tom Fuentes. And Mr. Chairman, I just do not want to concur by silence here. I am uncomfortable with the tone of this discussion that a compromise of secrecy is something tolerable. I think that our American Service

personnel are over there defending our freedoms and things like secrecy of our ballot, and I think they would be the last of individuals whose privacy of ballot I would care to compromise. And I wish to speak forcefully that I don't wish to be a party to the sentiments so far expressed.

CHAIR THOMAS:

Representative Reynolds, and then Craig Donsanto.

REPRESENTATIVE REYNOLDS:

I will say that we passed a Law some years ago, in that it is possible to have a faxed ballot request and a faxed ballot, as well as an email ballot from Service people overseas. And we have had a good many Service people participating in that. Now the secrecy of the ballot, the Secretary of State is attempting to make that as secure as possible. And, you know, now you've got, the Service people tell us there's no fax machines very much in Afghanistan and so you're basically talking about emails for your application and emails for your votes. But our folks, you know, that are in the Service, I cannot speak for any other State, wouldn't want to, they are taking advantage of this and the Afghanistan situation, it is, they're a long way from a lot of things and so it's a very difficult situation. But they have taken advantage of it and I agree in part with what Tom says. Of course we want to maximize to the degree humanly possible, you're weighing two things. You're weighing the sacred right to vote and the Australian ballot, the secret ballot, you know. So you've got two good things, two crucial things, but efforts are being made at least to have these people be allowed to exercise their rights. And they are informed about the situation, but

the Secretary of State is trying to minimize that and that's, so that's what's happening on the ground in our State.

CHAIR THOMAS:

Thank you. Craig.

MR. DONSANTO:

It's Craig Donsanto. I just kind of started this, we've kind of come full circle. I'd like to respond to you, Tom, by saying that in the years that I've been sitting at kind of the vortex, if you will, of all the criminal complaints that come in to the Government about various voting systems, one thing that we've never received a complaint about is the Voting Assistance Project and UOCAVA. I don't believe I've ever seen a matter involving an overseas citizen or a military person who has complained or where there has been a viable complaint made about the wonderful program that your office does run. My initial point with this, however, is still I think valid. And that is we started talking about various means of transmitting voting data. And I think this remains a concern. Regardless of how well your program works, the reason it works well is because of factors that are extrinsic to the manner of transmission. I'll just give you one example. At any one given military post you have voters that live in various, all over the United States. Such a geographic dispersity, a diversity of voters in one location does not lend itself to fraud. But there's a problem, I think, if we get to a point where we go past military voting, where there's probably a need that may outweigh whatever other issues are out there, and make this a matter of general election administration. And I think this is where the NIST research can probably be most beneficial. We have a

perception problem and I just, and there are, people tend to distrust what they don't understand. And most people are not as gifted as you are in terms of understanding computers. Believe me, I get tons of complaints about "the computer ate my vote." And I can just imagine how difficult it would be to respond to those complaints if in fact the votes are transmitted over a public medium.

Technology is increasing by geometric progression as I age, and it's amazing. I will probably, if I'm lucky, live to see a day when we can reliably vote over the internet, I hope, if I live long enough. So maybe perhaps what I would like to suggest to you is that your research focus, if I can, on not just the mechanics of security, but keeping in mind how those mechanics of security play against the public's perception of trust in the system that you're looking at. Perhaps the first step in building trust and public confidence in new manners of transmitting voting data is to expose the risks, address the risks, and then build understanding in that process. So, with that I've come full circle and thank you for your work.

MS. ROSENTHAL:

Thank you for that comment. I think it's a good one and I think it's something that the EAC and NIST should look at, together, and consider.

CHAIR THOMAS:

A quick comment from Barbara and then Neal, you'll be the last, we'll close out this agenda item.

DR. SIMONS:

I just wanted to say I was really happy to hear Tom's comments because I was also feeling very uncomfortable at the

sense that we should be asking our, the people overseas who are fighting to protect our freedoms, to give up their right to a secret ballot. I also don't think we should ask them to give up their right to a secure ballot.

SECRETARY CORTÈS:

We're not asking anyone...

DR. SIMONS:

Pardon?

SECRETARY CORTÈS:

I would say we're not asking anyone to do that...

DR. SIMONS:

Well, but I think...

SECRETARY CORTÈS:

We're reporting what they're telling us.

DR. SIMONS:

I think that there is a concern though, if that becomes an option, that some people might feel peer pressure to do it, I mean things like that can happen and we would have no way of knowing. But that aside, I mean, we've been talking about secrecy as if secrecy is the only issue, and it certainly isn't. The reason that secrecy makes voting harder is that there's no way to verify that the result, that my ballot was delivered with the vote that I wanted over the internet. There's no way. And even if somebody might be able to look at my vote, that still doesn't prove it. If you really don't care about secrecy, let everybody vote on email and post all the emails and then I can check. I mean that's a non-secret vote where I can check my vote and everybody can see how I'm voting. I don't think

that's the way we want to go. It's cheap, it's fast, it's not what we want. So, the bottom line is, did I do that?

[PA malfunction – loud feedback]

UNKNOWN:

No, that's me.

DR. SIMONS:

The bottom line is, so long as we have an internet which is replete with viruses and worms and botnets, which are controlled by who knows whom, which, there are these botnets, you know, there are machines that have been taken over and there are actually clumps of like a million of them, and if a foreign country controls these botnets, or if another political party controls it, or I don't know who, they can subvert an election over the internet and we would never know, or we might never know. Even just having the military vote over the internet, that could be enough in a close election. I don't think we should be asking our service people to vote over such an insecure system. It is fundamentally insecure. I hear people say "as secure as possible," but how can we do as secure as possible for a system that is not secure? That's the problem. The internet is not secure. We've seen this over and over and over again with websites that get broke into, with banks that get broken into. We see it over and over. And I just think it's, it's setting a really bad precedent for our Democracy to ask our troops to vote using such an insecure system. A blank ballot, yes, a voted ballot, no.

CHAIR THOMAS:

Mr. Kelley.

MR. KELLEY:

Thank you. I wanted to respond to Tom's point, because I think it was well made. And as the election official in his county, I think it's important to respond.

[Laughter]

MR. KELLEY:

We in Orange County are happy to report that we had 4,000 service men and women use our fax back service for the Presidential Election. And to your point regarding Afghanistan and the faxes in the field, that's a very accurate statement. What we're finding that they're doing is they're using the computers to then dial into our fax system and to be able to send back the fax ballot. And again, also, we are using that system, which is emailed out and it's faxed back to us, and is as secure as an absentee ballot would arrive in our office when it does come in. So, the security is in place Tom. I just wanted to reassure you of that. And that we have, one more point too to DOD, the five branches of the military work in a great way with us and the liaisons are fantastic in connecting us with the service men and women to allow them to vote.

CHAIR THOMAS:

Lynne, you have your work cut out for you.

[Laughter]

MS. ROSENTHAL:

It gives us job security.

CHAIR THOMAS:

In closing, I will say that it is an issue that, you know, we are all seeking those types of assurances, but the politics of it continue to move the process forward and State after State is in the position where something needs to be done in terms of ensuring that these folks have an opportunity to cast a ballot.

I want to thank you very much for your presentation. As you might see, you're one of the shorter, but you stimulated probably the most conversation we've had all day. So thank you.

MS. ROSENTHAL:

Thank you. If I may, I really appreciate hearing a discussion like this. It helps us do our job and our research by hearing from you and understanding what your issues are. Thank you.

[Applause]

CHAIR THOMAS:

At this point, we ought to lock the doors and, I'm going to ask Mr. Cunningham to give the report on the Elections Operation Assessment. But this will be something that we'll discuss tomorrow in more detail.

COMMISSIONER HILLMAN:

This is it.

CHAIR THOMAS:

No? This is it?

COMMISSIONER HILLMAN:

This is a follow up to...

CHAIR THOMAS:

I'm sorry. Yes, lock the doors please. This is a follow up to the virtual meeting. As Commissioner Hillman noted earlier, the

participation in that was fairly slim and it dealt mostly with those that were on the Committee that worked on this issue. And this issue had a number of concerns. Now I know those of you who just opened this Study and saw all those charts, in the Committee we didn't talk about the charts at all really, not much. Most of the discussion centered on the scope. Wendy talked about the charts, but she's not here right now.

COMMISSIONER HILLMAN:

Tab 14.

CHAIR THOMAS:

Tab 14. Yeah, we're assuming that she may be the only one that understands all those charts. But this was a, really a discussion that went on for several conference calls and so we thought that it was something that really needed to be brought to the Board and not just relying on the virtual meeting. So Mr. Cunningham?

MR. CUNNINGHAM:

If I may take a brief liberty, because I didn't like the tone, either, regarding voter privacy. And I want to just make a statement here. In this past Election, I read more ballots to voters than I have all together in the previous 12 years. Many of these voters were 60 and 70 year old people who had never in their lives voted because they couldn't read. More than willing to give up their privacy so that someone could read a ballot to them and help them vote. Now, I understand the cornerstone of our system is the secrecy of the vote, but if it comes down to voting or not voting, versus, as an election official, me knowing how you vote, I don't really care how

you voted. I've got other things to do. So, I think that the privacy of the vote has a lot to do with what your circumstances are and whether or not you're going to get to vote or not. And again, I would submit that voting is the most important thing, whether or not.

Anyway...

COMMISSIONER HILLMAN:

One second before...

MR. CUNNINGHAM:

Yes ma'am.

COMMISSIONER HILLMAN:

If there are any members who do not have a copy of the Committee's recommendations on the Election Operations Assessment, just raise your hand and we've got copies here. Tab 14, if it's not behind Tab 14 please just let us know.

MR. CUNNINGHAM:

All right, I'll just give it a little preface here before we start.

The, what was the original title of this, I forget?

COMMISSIONER HILLMAN:

Risk Assessment.

MR. CUNNINGHAM:

Risk Assessment. Well obviously that set off all the alarms clear back in January. A group of about, what's on this Committee? About 10 of us, I believe, held numerous telephone conversations, conference calls in excess of an hour; in one case I think it was close to two. I believe there were a total of three of them. This is a pretty complicated topic. I'm not even going to try to trick you into believing that I've got some full grasp and comprehension of it. But,

the title was changed graciously by the EAC after the Committee initially began to take issues with the term "risk assessment." So, now it has been renamed the Election Operations Assessment and this is Phase I.

I'll move right to the recommendations. They're pretty straightforward and pretty simple. The, one of the, the first concern is that the scope of the assessment be limited primarily to the development of future systems through the VVSG and the subsequent protocols for testing. I think that there is, on behalf of at least election administrators, there was a concern that these vulnerabilities would be exploited in ways that certainly was not to the advantage of a local election official. In other words, if through this, vulnerabilities to existing systems that were being used were discovered and pointed out, that then any subsequent failure to address those shortcomings would be seen as problematic. So, it is our hope that, and I know Barbara you expressed to me you don't agree with the Committee on that and you're certainly free to, when I'm done here, to give your position on it.

The second point is that the assessment should specify that the recommendations and revisions contained therein do not apply to the current, oh I'm right on that aren't I - but it should not apply to the current systems which have been tested under different guidelines. In other words, they're going to come up with a set of risk assessments, but the current systems are not going to have been tested to them so it's really not fair to hold those assessments against the current system.

To the greatest extent possible, and I'm not sure how possible this is, the terminology should be what is generally accepted by election administrators and those in the business to avoid any kind of confusion.

And that, you know, that's, and the fourth point which is, should include instructions on how to read and interpret the graphs, models and other visual depictions in the document. This is a pretty complicated document. And I think this is the eternal bridge that we probably strive to build, and that is how do we develop a technical set of guidelines and recommendations that the non-technical that have to interface with those guidelines are capable of understanding and using in a real way.

So those are the recommendations of the Committee. At this point only Barbara has expressed any different view from at least the first or second. If you would like to elaborate on that, I'll certainly give you the opportunity. Sorry, he's chairing the meeting.

CHAIR THOMAS:

Just one second. Matt is still with us and he made reference to this in his presentation. And as I understand it, and correct me if I'm wrong, the genesis of this risk assessment initially was to assist you and the TGDC and NIST perhaps in developing standards that would deal with security. And until you could assess the risks involved, it was difficult to write security standards to which you would conduct tests.

MR. MASTERSON:

That's absolutely correct. The genesis came from the roundtable discussions that we had and the discussions specifically

regarding open-ended vulnerability testing and being able to determine what risks we're talking about when we're talking about evaluating this, and mitigating costs dealing with this.

CHAIR THOMAS:

And so what we saw going in with the scope of it was discussion of also there being a risk analysis tool created for election officials and organizations to use to make risk assessments that really we didn't understand. And I think it's not so much that we were, had any issues with any risk analysis with our current systems, as much as it was you haven't even developed the standards yet on what the risk analysis will be and the resulting security. And this is a going forward type of project. It seemed to us, at least my recollection of the discussion, is that we've got apples and oranges in this project. And that the simple request was, is to go back to where you started, which was to develop this for the purposes of getting security standards that would be used in the evaluation and certification of voting systems.

Barbara.

DR. SIMONS:

So, thanks Keith for asking me about that. My comment was that it seemed to be the consensus of our Committee, except for me, that under no circumstances should any of the results from this study be allowed to be applied to systems that are currently in the field. And I felt that that was sort of looking at taking the cart before the horse, especially if it turned out that something, if the study turned up something where it would actually be quite beneficial to try to apply the findings of the study to systems that are currently in

use. I understand that election officials are concerned about having to spend money that they don't have, they're concerned about being attacked because there's a perception that the systems they're using are not secure, and I think those are valid concerns and I respect them. I just feel that in spite of those concerns we shouldn't dismiss out of hand the possibility that things might turn up that we would want to incorporate into our current systems. I think we should just leave it, leave the door open.

CHAIR THOMAS:

Let me ask a question if I could of Matt. So let's say you reach the point where you develop these security standards, guidelines, as a result of this project. Now you're going to use those to test voting systems?

MR. MASTERSON:

Well, I think the question, respectfully, has a little misunderstanding of what's going to be produced. And understandably because what we're talking about here is you all only got a look at Phase I and you're going to get a look at Phase II. Phase II is the meat and potatoes of the project. Phase II is the actual looking at risk, looking at mitigations of the various types of voting. No standards are going to be produced in this assessment. This assessment is not going to say here's a risk and this is how you test for it and look for it. What will be able to be done is to hopefully, and I believe objectively, evaluate risks and be able to, for instance, and this is how we'd look at using it with the VVSG, be able to look at the VVSG and say "hey, we have this requirement in here that's, you know, supposed to be mitigating or eliminating this

threat" and we look at the threat assessment and say we're really mitigating something that's not very high priority, not very costly, why are we spending money to test for this? So, the assessment helps inform the standards. So this assessment will help us inform our continued our continued work on the next iteration of the Standards. Another good example of how it would work is looking at how do you use something like this open-ended testing in a conformance assessment environment? Well, one of the ways you do it would be to look at the larger risks that pose the larger threats and the most likelihood and have open-ended assessment of some sort that's looking at those. And I'm just throwing that out as an example, I'm not saying that's how we would do it. So there's no standards in the actual assessment. Literally, the assessment is just looking at possible risks, looking at their possible potential and then possible mitigations with them.

MR. CUNNINGHAM:

As I understand it, the study is not device specific. In other words, there will not be risks associated with Acme voting machines versus Ace voting machines. Is that correct?

MR. MASTERSON:

That's absolutely correct. It's voting type or style. We're looking at DRE, you know, absentee mail, even hand-counted paper ballots and remote electronic voting. It is not at all vendor-specific in any way.

MR. CUNNINGHAM:

So there really is nothing that could come out of this, I mean it would be I guess, and this goes to the issue of not wanting it

applied to current equipment, since it's not equipment-specific, to actually take these outcomes and then try to find fault with currently used equipment in the way of security would not be a factually driven...

MR. MASTERSON:

I mean it could be, if we were to, you know, provide the whatever, the original, what Chris was talking about, the original intent, it could be applied in general to your type of system. For instance, you use, you know, precinct-based optical scanners and risks that apply to precinct-based optical scanners. But it would not apply to the ES&S or Premier blah, blah, blah. But certainly, I mean you're looking at risks and possible risks. I mean the idea behind the tool was to allow someone exactly like yourself to look at your possible risks and "am I spending my money wisely or am I mitigating the largest risk or am I not" based on this assessment? And to be able to do that kind of a comparison in understandable fashion, that was the idea. We hear loud and clear what you're saying as far as the recommendation. But that was the thought.

MR. LEWIS:

As I understand it, part of the mission also is really to recognize and understand that voting at every level in every method has some risk associated with it. And to understand what you are managing within those particular types of voting, whether you vote paper by hand, paper by optical scan, DRE, DRE with paper, DRE without paper, or whatever new type of new voting we create at some point in the future.

MR. MASTERSON:

That's absolutely correct. And I mean, quite frankly, for those who administer this on a daily basis, or whatever, I'd be surprised if we found out something that you didn't already know. I mean, you're all the ones dealing with this constantly. I don't think we're going to find out a ton more, except to be able to do comparisons and look at these sort of things. So that's absolutely the thought process behind it.

CHAIR THOMAS:

You should pay us. Linda.

MS. LAMONE:

Linda Lamone. For those of you who don't know, the State of Maryland has been under a microscope since 1992, or 2002 because we made the decision to purchase the DRE system. I can tell you that any little security hiccup that comes out, no matter where it is in the United States, we get scrutinized and it costs the taxpayers of the State of Maryland money, and it's cost them a lot of money over these past seven years. So, to say that this is, you know, just generic and it's not looking at any particular manufacturer, that may be true but I think it needs to be clear that it's intended for future standards. Otherwise, all of us in this room that deal with voting equipment are going to have to look them over, hire more staff, do more things, and spend more money. It's just the nature of the beast. And I feel very strongly about it Keith. So, I would hope that the crowd would support us in that the scope of this study is limited to the development of the future standards.

Thank you.

MR. CUNNINGHAM:

You also have a document that, as a result of the Board of Advisors virtual meeting room, that outlines the comments and so forth that were made. I don't know if you looked that over or need any further explanation of that, I think it's pretty self-explanatory.

Notwithstanding objections, I guess at this point I would move that the Committee recommendations be approved and accepted, if that's in order.

MR. LEWIS:

Doug Lewis. Second.

CHAIR THOMAS:

Jim Dickson, and then Secretary Herrera.

MR. DICKSON:

Jim Dickson. Does the recommendation address the concern that Linda Lamone just raised?

MR. CUNNINGHAM:

Yes Mr. Dickson. In recommendation, I'll read the recommendations for the record just so that we've got them. Recommendation number one is that the scope of the Election Operations Assessment should be limited primarily to the development of future Voluntary Voting System Guidelines and Testing Protocols by NIST. The second recommendation is that the Election Operations Assessment should specify that the recommendations and revisions contained therein do not apply to the current generation of voting systems which have not been tested under the proposed revisions of these guidelines. The third recommendation is that the Election Operations Assessment, hereafter called the EOA, to the greatest extent possible should

utilize commonly accepted terminology that is generally understood by election administrators in order to avoid confusion. And the fourth recommendation is that the EOA should include instructions on how to read and interpret the graphs, models and other visual depictions included in the document.

CHAIR THOMAS:

Secretary Herrera.

SECRETARY HERRERA:

Mary Herrera, New Mexico. I just wanted to thank you for number three and number four because that seems to be an area that we struggle with as election administrators. Thank you.

CHAIR THOMAS:

Any further discussion? Seeing none, hearing none, all in favor?

[Multiple responses in the affirmative]

CHAIR THOMAS:

Opposed?

DR. SIMONS:

Opposed. Just to the one.

MR. JENKINS:

Opposed.

CHAIR THOMAS:

Okay, two in opposition. Thank you.

We're going to do a couple of real quick things here and then we'll be out. Doug Lewis, Proxy Committee, what you have at this point.

MR. LEWIS:

Mr. Chairman, I have a proxy from Mr. Rokita for a Committee meeting that is to start right after this and it is restricted to that Committee meeting, assigning Mr. Rokita's vote to Ms. Lamone in that Committee session. For tomorrow's business, if any, and oral votes that are here, if any, Mr. Donsanto has a proxy of Ms. Abigail Thernstrom and he is also assuming that he may not be here at some point and when that occurs he is assigning not only his vote but his proxy vote to me as Chair of the Proxy Committee. Mr. Ernest Hawkins, Mr. Ernest Hawkins of The Election Center, who is not here today, but probably will be here tomorrow, has assigned his proxy to me in case of any votes and my guess is he will withdraw that proxy tomorrow upon arrival. Ms. Carnahan has assigned her proxy to Wendy Noren and upon Ms. Noren's arrival tomorrow, she will have Ms. Carnahan's proxy. That is all of the proxies that we have at this moment.

CHAIR THOMAS:

I would ask for you to convene your Committee first thing in the morning.

MR. LEWIS:

Okay.

CHAIR THOMAS:

And we can discuss what you have before you and then we'll have a second report. Thank you very much. Mr. Dickson, Resolutions, have you heard from anybody with regard to Resolutions that they are wishing to bring forward?

MR. DICKSON:

No, I have not. I have no Resolutions before the Committee. Members will have the opportunity to make motions. We set a deadline for receiving Resolutions to be discussed at this meeting, and that deadline, help me somebody...

MR. GARDNER:

I think it's noon tomorrow.

MR. DICKSON:

So if you want to submit a Resolution, it has to be to me by noon tomorrow. And there is a Resolution form in your binder near the end.

CHAIR THOMAS:

Thank you very much. We'll call on Commissioner Hillman to talk about the Special Committee to Review Proposed EAC Strategic Plan for 2009 to 2014.

COMMISSIONER HILLMAN:

As I mentioned earlier, the Election Assistance Commission had a draft Strategic Plan and was soliciting constituency feedback. We were on a tight timeline and requested a Special Committee from the Board of Advisors to speak as individuals, representative of the Board, not speaking on behalf of the Board, and the members of the Committee, Special Committee, were Terri Hegarty, Jim Dickson, Ernie Hawkins, Joe Crangle, and Chris Thomas, as ex-officio. And you have, in your binder, at the last part of Tab 15, I believe, yes, is that Strategic Plan. And just to explain that, under the Federal Advisory Committee Act rules, committees can make recommendations to the Board of Advisors. The Board of Advisors would take any formal action, in terms of making

recommendations to EAC. If a committee has discussions with EAC staff, it's just considered individual expressions or opinions on certain topics. But it's not treated as a recommendation from the Board.

CHAIR THOMAS:

Thank you. I'm going to ask Mr. Cunningham to speak to the Voting System Standards Committee and this is just to lay this before the body and discussion tomorrow will be certainly more involved than what we're going to do today. But if you could put before the, and I know this Committee is still meeting and will be meeting as soon as this Committee, or this forum recesses for the day to finish this up. But if you could at least walk through a couple of the comments and where we're headed with regard to the, whatever we're calling these things. And maybe you could make a comment on whatever we're calling these things that will help our discussion for tomorrow so we're all calling them the same thing. Doug Lewis had a moment of brilliance that...

MR. CUNNINGHAM:

Does everybody have a copy of the document dated May 26th, to the EAC Board of Advisors from Voting System Standards Committee. Noted about half way down it says "General Reference Recommendations."

COMMISSIONER HILLMAN:

Tab 13.

MR. CUNNINGHAM:

13, okay.

COMMISSIONER HILLMAN:

It would have been emailed after the books had been mailed out. I'm sorry.

MS. LEEK:

On May 26th.

COMMISSIONER HILLMAN:

So if you don't have a copy with you, just please raise your hand and we'll see you get the information.

MR. CUNNINGHAM:

I will, I'll just go ahead while we're passing this out. You will note that we do not concur, or at least the Committee did not concur, and this is, came from that moment of brilliance Mr. Thomas described Mr. Lewis was having. We have suggested, or will suggest to you tomorrow, that there be a renaming of the VVSG versions and you will see in there we've included the 1990 and the 2002 versions as 1 and 2, 2005 becomes 3, and the update that we're working on now would become 3.1 versus 3.2 as is printed there. And the next iteration would become version 4. I guess that's all up for debate tomorrow. Honestly I think our, the more I think, the current recommendation to begin, by calling the 2005, Version 1 seems to not acknowledge that there were standards in place heretofore and that there were never any Federal standards. And indeed there were beginning in 1990. So that's discussion I think for tomorrow. I would advise you, and ask you, because the Committee on your behalf has done a lot of work, I would ask you to read this document between now and tomorrow and to look at these. I believe these were handed out, weren't they, to everybody where the areas of change were outlined for you and those areas

should relate to this document. Now, if there are issues that are not in this Committee Report, that are in these guidelines, that means we pretty much just accepted those as they were. We had one day, one day just absolutely killer day, to go through this whole document, and we succeeded at that. So, in preparation for tomorrow, I mean, I guess I want to say to you, I think this is pretty important because these are going to be the Standards when we're done here. These are going to be the current Standards, and I think we all agree in the Committee, and I hope the EAC agrees to some extent, that these are the Standards to which the next generation of voting equipment is most likely going to be manufactured to. The equipment you buy five years from now and use for the next 10 years after that, these are the Standards, at least the most current Standards that those will probably be built to. So we're way out into the future there. And I think it's important that, just as a matter of keeping it somewhat light, I guess, I have a friend who believes that, his saying is that even if you fall on your face, at least you're falling forward. So, you know, I want to say that we have to understand in this that everything we want and everything we envision and everything we think should be, may not always be on the table. And I think we have to ask ourselves "but at the end of the day are we further than we were yesterday?" And so when you look at this, I think you have to look at it in that regard. That when we're done with this, are we going to be further along than we were when we began? And I believe the answer to that question is yes.

So, I don't know if that's what you wanted, Chris?

CHAIR THOMAS:

That is exactly what I wanted.

MR. CUNNINGHAM:

Okay. If you've got any questions we'll try to answer them.

CHAIR THOMAS:

And we'll have further discussion on this tomorrow. And we'll have plenty of time to handle full, open discussion. But as Keith indicated, please take a look at them. Again, this Committee is still meeting and we will have additional issues for you tomorrow as well.

I think at this point we will stand in recess and we'll see you 8:00 a.m. tomorrow for breakfast with the meeting starting at 9:00 a.m. and the Voting System Standards Committee will meet up here in the front of the room. I think if we could get going right away it shouldn't take long.

Linda Lamone.

MS. LAMONE:

This is Linda Lamone. Can the Committee members leave their materials, here, in the room tonight?

COMMISSIONER HILLMAN:

It will be secured so you can leave your materials. I wouldn't leave personal items, but certainly your materials.

[The meeting recessed at 5:48 p.m.]