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Public Comments For The VSPP – 1/19/05

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Executive Summary:

Black Box Voting, Inc. objects to all proposed discussion and actions regarding voting systems technology as outlined in the public meeting announcement at:

http://ss.ca.gov/elections/voting_systems/vsp_agenda_0120.pdf

While unusual, we believe this step is necessary for the following reasons:

- 1) The actions of key members of the Voting Systems Procedures Panel (VSPP) have been inappropriate and lacking basic competency per the state auditor's office and the Howle report. It is not unreasonable to question the general professionalism of the VSPP in light of the recent revelations in that document.
- 2) The prior actions of the VSPP in dealing with Diebold call into question the board's competence and willingness to accept reliable information that comes from sources other than the voting industry itself and the Secretary of State's own staff.
- 3) It has come to our attention that there may be a financial conflict of interest with respect to a current member of the panel. Even if this interest (which must be reviewed ASAP) proves to be purely "emotional" rather than financial, we would argue that a conflict still exists such as would create improper bias.

Part 1: Professionalism and General Competency:

Interested parties should review the findings of State Auditor at:

<http://www.bsa.ca.gov/bsa/pdfs/2004-139.pdf>

...or at least the summary at:

<http://www.bsa.ca.gov/bsa/summaries/2004-111.html>

Note that per VSPP member Tony Miller's sworn testimony on 1/10/05, the VSPP process is part of the HAVA process. This would be correct, as the VSPP determines which technologies HAVA money can be spent on.

Transcripts of previous VSPP meetings, cited earlier, go back through at least mid-2003 and are responsive to this issue.

In any case, the auditor's report on the management practices in the rest of the HAVA processes raises questions about the handling of the VSPP process that must be answered.

Part 2: The VSPP's Handling of Diebold

When the shocking Enron audiotapes (saying "burn baby burn" and worse) were discovered buried in a pile of discovery materials in a civil lawsuit, they were found to reveal market manipulation and stunning ethical lapses in undeniable detail. Federal and State energy commissions and corporate regulators like the SEC quickly took action. Criminal charges followed. This provided an example of best practices in regulatory affairs: when a harmful "bad apple" is identified, professional regulators *act*.

Which brings us to Diebold. In January 2003, Bev Harris discovered live-code-copies of Diebold products and found them sadly wanting. Researchers from John Hopkins University, Compuware, RABA Technologies, the Nevada Gaming Commission and Scientific Applications International Corp. (SAIC) quickly came to the same conclusion. Then in the summer of 2003, an Email archive containing 13,000 individual messages from Diebold Election Systems' tech support and marketing groups was released to Wired magazine and Black Box Voting. These contained the Diebold version of Enron's audiotapes: discussion not only of admitted security flaws and flouted regulations, but direct orders *to hide these flaws from Federal regulators* (FEC-approved private testing labs Metamore, Ciber and Wyle).

The VSPP has never addressed these memos. They have never discussed them, though their authenticity was never in doubt (Diebold claimed copyright on them, identifying them as their own materials as early as Oct. 2003). In fact, Diebold then lost a court case for wrongfully exercising copyrights when "fair use principles" clearly applied; and paid a six figure judgment for such copyright actions in a Federal case in which they ADMITTED ownership of the files (Online Policy Group v. Diebold, 2004):

http://www.onlinepolicy.org/action/legpolicy/opg_v_diebold/20040930_Diebold_SJ_Order.pdf

The VSPP is already in possession of excerpts from this e-mail archive, filed by Jim March. Other interested parties can review them in the Black Box Voting Document Archive:

http://www.bbvdocs/diebold/docs_given_to_VSPP.html

Part 3: Conflict Of Interest:

A key member of the VSPP has a close involvement with security technologies being marketed to the electronic voting industry and possibly a vendor that is marketing a "solution" to the problems this member is pointing out. To understand the implications of what follows, the reader should be aware that there is a "split" in progress among election-reform activists.

On one side is a particular group of computer scientists who believe that the current private voting systems including Diebold, ES&S, Sequoia and others can be "rehabilitated" through cryptographic add-ons. Other computer scientists, including experts in voting systems and

security, disagree vehemently with this model, and feel that it solves nothing and will only create more mistrust in election systems. Under the “cryptographic add-on” model, voting machine manufacturers would purchase encryption technology from specialized security product vendors who publish some or all details of how the add-on encryption (computerized security processes) functions. The main vendor’s code base remains proprietary (referring to Diebold, ES&S, Sequoia, etc.) – leading to the skeptical computer scientists assertion that a cryptographic solution would only “freeze” bad code.

The two leading vendors for such add-on cryptographic security products are VoteHere (<http://votehere.com/>) and Voteegrity (<http://voterverifiable.com/>).

The more radical elements of the “Crypto Crowd” believe that such enhancements can eliminate the need for a Voter Verified Paper Audit Trail of the sort that will be required in California effective 1/1/06, and have proposed cryptography as a cheaper alternative to a full ballot printout at each DRE.

The competing world-view is that “public openness is everything”. The six Black Box Voting directors fall into this category, as does the Open Voting Consortium, Dr. Rebecca Mercuri and another major national group, VotersUnite.org. Black Box Voting advocates a reform agenda based on openness:

- 1) Voter Verified Paper Ballots, an issue now well on the way in California.
- 2) Open publication of source code: election product source code must be publicly available for inspection (read: downloadable) along with the OS version and compiler used to generate the working files. This the equivalent of inspecting the code in the town square, for the purpose of ensuring election honesty.
- 3) A commitment to openness on the part of elections officials: Every item that is available should be accessible to the public via existing FOIA/Public Records Act laws with significant penalties for non-compliance.
- 4) Use of accounting “best-practices” in vote tracking: We believe that basic accounting is a technology perfected long ago. Banks and other businesses track money properly as it enters the company AND as it travels throughout their internal processes, and we can track votes properly too. *Non-erasable/editable audit trails and tracking which human did what to which batch of votes at each step is a very basic start!* (Diebold’s products fail at both of these points.)

It is Black Box Voting’s position that the “crypto solution” doesn’t allow public scrutiny of the process itself, and even if it does we have grave concerns as to whether or not county elections officials can understand the technology and make sure it’s being implemented properly. On the contrary, our dealings with many counties shows that they’re so far over their heads with DRE or even Optical Scan gear, they’re allowing the vendors to basically run the elections. In some cases (especially smaller counties) they seem to view this as a “feature, not a bug” – having employee techs from Diebold, Sequoia and the like come in, set it all up and then tell them which button to press is “easy.” It’s also illegal (at least in California) and having vendors (and the temporary employees they hire) run elections is a security nightmare.

But beyond that, if you’re a crypto proponent *and you’re involved in the companies or technologies producing these solutions*, you want the companies currently selling substandard equipment (i.e. Diebold) to stay in the market to purchase your “improvements.”

Which brings us to VSPP panel member David Jefferson:

Newsweek, 3/29/04: "Ballot Boxes Go High Tech" describes two proposed "crypto add-on systems" (<http://www.msnbc.msn.com/id/4570339/>) - one of them is detailed with:

In 1999 a trio of computer scientists suggested a different method. It involves a doodad called a frog, for no particular reason other than that the term has no association with elections. A frog in this sense is a cheap form of digital storage that records votes. It might be a business-card-size piece of plastic with a bit of digital memory. After proving you're eligible to vote, you get a frog from an election official, who initializes it with the ballot appropriate to your precinct.

...

"It's an attractive method, but no one's picked up on it yet," says *co-inventor David Jefferson*.

In this article, Jefferson is "co-inventor" of a proposed cryptographic solution either related to the VoteHere/Votegrity models, or at least something those later commercial implementations "cribbed off of" as Jefferson's is some of the earliest work in the field.

Jefferson's name also crops up related to the biggest vendor so far of such "security add-ons", "VoteHere" (<http://votehere.com>) managed by Jim Adler. Jefferson is on record praising VoteHere's products numerous times as available via google searching; at least one such case is recorded on the VoteHere website praising VoteHere's publication of their own source code:

http://www.votehere.net/vhti/documentation/support_for_votehere_august04.pdf

(It is the view of BBV that while VoteHere's publication of their own source code is generally a good thing, it's flawed by the fact that purchasers of the product such as Diebold would then have "backing" to **avoid** releasing their source which may itself be flawed or somehow subvert the VoteHere add-on. In effect, VoteHere could provide "cover" for a lack of transparency on the part of Diebold or similar and we strongly object to that.)

In July 2004, Black Box Voting obtained hand-written memos from a Diebold source indicating that David Jefferson was "on board" or likely to be on board with implementing VoteHere inside the Diebold system.

In August 2004, Black Box Voting Executive Director Bev Harris submitted a public records request to David Jefferson for his financial disclosure statement. Dr. Jefferson expressed surprise and also did not provide any disclosure, and Emailed Ms. Harris his opinion that public records law does not apply to him, nor did he believe he should be subject to disclosure.

In August, 2004, David Jefferson and other staff of the Secretary of State's office attended a private meeting with Diebold Election Systems, which we contend should have been a public meeting, in which Diebold demonstrated a new system for the state of California.

Mr. Kyle, you may consider the following items a California Public Records Act Request:

- 1) I, Jim March, a California citizen, on behalf of Black Box Voting, want to see all financial disclosures in the possession of the Secretary of State's office by the VSPP members outlining their financial or ownership interest in any voting system or add-on vendor, including Votegrity or any other voting-related entity. (Jefferson did admit to Harris that he owns options in a company that invested in VoteHere but has explained that this firm was acquired by Hewlett-Packard and he believes his options are worthless. Nevertheless, it is our opinion that this should be fully disclosed.)

- 2) We want to see any documents in the Secretary of State's office's possession outlining the financial or ownership interest of all members of the VSPP with any voting system or add-on vendor, including VoteHere, Votegrity or any other.
- 3) We want to see all correspondence and Emails between all members of the VSPP and any director, stockholder, or employee of VoteHere, Votegrity, or any other voting system vendor.
- 4) We want all notes, correspondence, and discussion memos among any member of the VSPP relating to the proposed new Diebold system demonstrated in a private meeting (held immediately after a public VSPP meeting on Aug. 11, 2003).
- 5) We want copies of any Statement of Economic Interest, FPPC Form 700 filed by any or all members of the VSPP.

Even if David Jefferson doesn't have a financial or ownership interest in VoteHere or Votegrity, he is professionally linked to the cryptographic view through his published scholarly articles. This in turn is going to affect his positions on the VSPP with regards security solutions. While "just one vote", his is critical due to his status as being by far the most technically competent member of the panel; his views on security practices are listened to, with good reason...his qualifications are impeccable.

However, if he is a member of the industry the VSPP regulates, he has no business being on that panel without full disclosure of his relationships with vendors like Votegrity and VoteHere. If he has such a conflict of interest and the Secretary of State's office didn't know, then we're back to "point one" of this document: the repeated findings of mismanagement and incompetence as reported by Ms. Howle of the State Auditor's office carry over to the actions of the VSPP, because such facts and links **should** be known by the management of the Secretary of State's office.

For all of these reasons, we respectfully ask that the VSPP **cease business** until these matters are resolved:

- HAVA fund management and it's implications for professionalism within the VSPP's staff;
- Handling of information and due diligence regarding information critical of both Diebold and the existing Federal oversight process (testing labs, etc.);
- Potential conflicts of interest regarding VSPP members.



Jim March
On behalf of Black Box Voting, Inc.