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## MONKEY BUSINESS

### **A look at vote-counting mischief and the potential for more**

By [Miriam Raftery](#)

On Election Day, will your vote be counted accurately?

According to a CBS/New York Times poll, only 35 percent of people surveyed had “a lot” of confidence that their votes would be properly counted.

Nationwide, a movement to reform election procedures and protect against electronic-vote tampering and other forms of voting fraud is gaining force.

CityBeat interviewed San Diego City Attorney Mike Aguirre regarding complaints raised by local and national election-reform activists over alleged violations of election law in San Diego's recent mayoral race.

“I share some concerns about the integrity of the electoral system,” Aguirre said.

In the course of that interview, Aguirre learned of allegations that the county Registrar of Voters failed to take adequate precautions to prevent hackers from tampering with memory cards in voting machines and illegally connected the county's central tabulator to the Internet on election night.

Informed that Jim March, a nationally known election-reform activist from the group Black Box Voting, was arrested and charged with a felony for trying to watch the tabulator count votes at the Registrar's office, Aguirre replied, "You're kidding."

After learning that March has filed a civil complaint alleging violation of his civil right to observe vote-counting-and that a contract between the city and county may make the city financially liable for any damages, Aguirre replied, "Tell him to talk to me before he sues the city!"

As a result of the CityBeat interview, Aguirre hastily called a meeting with roughly a dozen election-reform experts and activists on Oct. 11, the same day the City Council was publicly mulling over whether or not the city attorney is generally exceeding his authority. Representatives of Democratic and Republican political parties, organized labor and other interests were also present.

"I don't care who wins the election," he said during the meeting. "I just want to be sure it's the person with the most votes." But, he added, "fraud is a way of life. People are defrauded every day in the stock market and in redistricting.... We're trying to reduce the possibilities of fraud."

Careful to state that he has no indication any fraud has occurred in San Diego's recent elections, Aguirre voiced concern that serious security holes allow the potential for electronic vote-rigging to occur here-and that both motive and means to monkey with election results may exist.

After getting an earful from election-reform advocates on pitfalls with equipment and procedures used in San Diego elections, Aguirre said he would soon hold a public hearing to take testimony on steps to safeguard votes for the Nov. 8 special election. Aguirre urged the panel of experts to find a simple way to "explain risks to the public. I will invite Diebold," he said, adding that he hopes to "cross examine" the voting-machine manufacturer.

Diebold Election Systems Inc. makes the optical-scan voting machines used in San Diego polling places, as well as the GEMS central tabulator used to count all votes countywide on election night.

Each voting machine contains a programmable memory card on which votes are recorded. Those cards are later read by the GEMS central tabulator at the county Registrar of Voters office.

Black Box Voting (BBV), a nonpartisan consumer-protection group for elections, issued a "critical security alert" on July 4 for Diebold optical-scan systems, including the version used in San Diego. The alert came after BBV security experts Harri Hursti and Herbert Thompson demonstrated that Diebold optical-scan voting machines and a Diebold central tabulator could be manipulated to change votes in Leon County, Fla.

Penetrating the Diebold central tabulator took "less than a minute," said Bev Harris of BBV in an interview published July 28 in the East County Californian. Security experts showed that votes could be changed on an individual voting machine, in groups of machines or en masse through

the central tabulator. By manipulating memory cards, "Hursti was able to take just one memory card from one voting machine in a precinct and infect the whole system," Harris said.

Previously, Harris had videotaped a trained chimpanzee hacking into a Diebold system and deleting votes.

At the Oct. 11 meeting, Aguirre asked Hursti how many people it would take to alter votes electronically in San Diego.

"One," Hursti replied.

Asked how quickly vote-tampering could be accomplished, Hursti described how an election official in Leon County missed the hack even while standing beside Hursti and watching. "When the message, 'Are we having fun yet?' came up on the screen, he jumped," Hursti recalled.

Registrar employees aren't the only ones with access to voting machines and memory cards. During San Diego's recent mayoral special election, 713 voting machines containing memory cards were sent home overnight with poll workers, Harris noted. Seals protecting memory cards could be opened with pliers and reinstalled without detection, she added. Employees of Diebold also have access to voting equipment, such as repairing machines that break down during elections.

"Most counties don't send machines home with poll workers," Harris observed. "It's bizarre. You should have them under lock and key.... You wouldn't send a full ballot box home overnight."

San Diego County Registrar of Voters Mikel Haas maintains that San Diego voters need not worry. "It is as secure as we can make it," he said of the election equipment and safeguards used locally. Asked about the Leon County hack, he noted that Hursti was given insider access similar to that an employee of the Registrar's office would have and insisted that Registrar employees are trustworthy.

But, Harris countered, "a bank does not tell you that you don't need security because we trust our people."

Registrar Haas disagrees with election-reform advocates who distrust Diebold. "I don't view Diebold as an evil empire," he said, adding that ample oversight is provided.

March countered, "We've got internal memos and criminal records that all say otherwise. We've got violations of elections law.... There is every reason in the world to believe these guys are completely bad apples. For Haas to continue trusting them is simply ignoring the mountain of evidence."

In 2002, Diebold acquired Global Election Systems and renamed it Diebold Election Systems Inc. Global "hired people like convicted embezzler Jeffrey Dean and convicted cocaine trafficker John Elder," March said.

It's been widely reported that Dean had 23 counts of computer-aided embezzlement on his record before being put in charge of developing the GEMS central tabulator product for Global in 2000. The convictions stemmed from a case in which Dean pled guilty to embezzling \$465,341, in the 1980s, from a Seattle law firm that had hired Dean to automate and maintain its computer system.

Diebold has a long history of producing ATM machines and other products before entering the election-equipment business with investments in Global prior to acquiring the company. Due diligence investigations should have turned up criminal backgrounds of some Global employees and raised red flags over the wisdom of entrusting the public's votes to systems created by such individuals, March suggested.

“Shortly after the acquisition, [Dean] was no longer associated with the company,” Diebold spokesperson David Bear said.” Elder also left the company long ago, he noted, adding that Diebold has always conducted criminal background checks on its employees.

March points to other legal issues involving Diebold. “We have numerous legal violations already documented from this company,” March said, “more than from any other voting-machine company.”

In California, Diebold electronic touch-screen machines were decertified by former Secretary of State Kevin Shelley, a Democrat.

“They are the only ones who have been fined by the state of California, \$2.6 million, for installation of uncertified software,” March added, referring to a legal settlement Diebold agreed to after the company was sued by March and Harris to making false claims about security and certification when marketing its systems to California counties. State Attorney General Bill Lockyer took over the case.

Also, in recent tests, 20 percent of printers for the systems jammed, causing California's new Secretary of State, Bruce McPherson, a Republican, to deny re-certification.

And March said an incident that occurred during a 2002 primary election in San Luis Obispo provides further cause for concern. A tally of absentee votes was uploaded to File Transfer Protocol (FTP) website operated by Diebold before the polls closed, making it possible for someone to use that information to influence voting during the remainder of Election Day.

In late 2003, roughly 13,000 internal Diebold e-mails were leaked by a company employee. After copies of damning e-mails wound up on the Internet, Diebold filed cease-and-desist orders, alleging copyright violations. (A judge ultimately ruled against Diebold, saying the company misused copyright law.)

“That's like a crook telling the cops, ‘Hey, that's my crack pipe,’” March quipped. “There's all kinds of damaging stuff in there. They laughed about security concerns.”

In one e-mail, Diebold senior engineer Ken Clark revealed a surprisingly lax corporate attitude over security issues regarding GEMS, the system used to tabulate votes in San Diego. "It's fair to say the nature of this company and business make this process fairly informal, perhaps more so than I would like," Clark wrote. "Testing releases go out to customers when they shouldn't, and new features get added to stable branches when they shouldn't."

Then there was the infamous comment by Walden O'Dell, chief executive of Diebold. O'Dell was a member of President George W. Bush's "Rangers and Pioneers," individuals who raised at least \$100,000 for the Bush-Cheney campaign. In August 2003, O'Dell promised attendees at a Republican Party fund-raiser in Ohio, "I am committed to helping Ohio deliver its electoral votes to the president next year."

Whether O'Dell merely intended to pledge financial support for the Bush campaign, or whether electronic voting equipment was rigged to assure a Bush victory, remains unknown. He later apologized for the remark.

But partisan politics isn't the only potential motivation for tampering with votes electronically. Some Internet bloggers have theorized that insiders might have sought to commit stock fraud using voting machines. If insiders knew which candidate would win an election based on accessing early election returns before polls closed, they might invest in the stock market. Knowledge of a Bush victory could result in profits through investing in the military-industrial complex, for instance, while knowledge of local bond-issue outcomes might also prove lucrative.

Nationally, around 80 percent of votes are now cast on electronic voting machines, including paperless touch-screen machines and optical scanners. Serious problems have been reported with machines of both types, including machines manufactured by various vendors.

"I believe Ohio was stolen in 2004, and I'm saying that as a Bush voter who detests John Kerry," March told CityBeat. "The words stick in my mouth, but I believe the race was stolen by a combination of machine fraud and voter-disenfranchisement fraud."

In *Myth Breakers: Facts About Electronic Elections*, VotersUnite! compiled evidence that electronic voting machines have added or deleted votes, awarded votes to the wrong candidate, broken down during elections and even reversed election outcomes. In the 2004 presidential election, optical scanners in Lancaster County, Neb., double-counted ballots. Bernalillo County, N.M., recorded 8,656 more votes than registered voters. Optical scanners counted straight-party Democratic votes as Libertarian in Franklin County, Ind., while in Guildford County, N.C., voting machines changed the outcome of two races.

In the Ukraine, a presidential election with an outcome different from exit polls sparked the public to march in the streets and demand a new election-resulting in a new leader.

In the 2004 U.S. presidential race, 10 of the 11 swing states recorded margins different than those predicted by exit polls-and all shifts favored George W. Bush over John Kerry. According to statisticians who created a report for the nonprofit organization U.S. Count Votes, exit polls predicted a Kerry win by 3 percent, but computer counts showed Bush winning by 2.5 percent.

The 5.5-percent swing is the largest difference in U.S. exit-poll history.

Dr. Steven F. Freeman at the University of Pennsylvania conducted a statistical analysis of the three biggest battleground states—Ohio, Florida and Pennsylvania. He concluded that the odds of exit polls being off by such large amounts in all three states by mere chance were 250 million to one. “Systematic fraud and mistabulation is a premature conclusion,” he wrote, “but the exit poll discrepancies make it an unavoidable hypothesis.”

Harper's Magazine published an article on July 28 titled “None Dare Call it Stolen.” The piece documented evidence compiled by Michigan Congressman John Conyers, who chaired hearings held by Democrats on the Senate Judiciary Committee. (Republican members refused to attend.)

Conyers' report, “Preserving Democracy: What Went Wrong in Ohio,” cited numerous problems in the Ohio 2004 presidential election. Those problems are also documented in Conyers' recent book, *What Went Wrong in Ohio*. He detailed voter-suppression tactics, such as withholding of voting machines in heavily democratic neighborhoods, creating hours-long lines. The report also documented numerous incidences of unexplained electronic voting-machine anomalies.

It also gave evidence that the Ohio recount was also manipulated. To cite one example, a Triad Systems technician disassembled and reassembled a computer during the recount, claiming it had a bad battery, although the system appeared to be running fine. Later, according to a whistleblower, he posted a “cheat sheet” on the wall and urged recount workers to report those results, ignoring actual recounted ballots, to be sure tallies matched.

There were also bizarre election-night incidents. Notably, in Warren County, Ohio, officials claimed to have received a terrorist threat from the FBI. The administration building was locked down, barring public observers from witnessing the vote count. Yet the FBI denied issuing any such warning.

Among the most startling revelations was testimony by Clint Curtis, a computer programmer who testified under oath that he was hired by Florida Congressman Tom Feeney—then speaker of the Florida House of Representatives—to create vote-rigging software that could “flip” votes from one candidate to another.

Vote-flipping software could be designed to erase itself after election night, making it virtually untraceable, said Harris and other experts.

Numerous voters complained that on touch-screen review screens, they noticed their votes had been switched from one candidate to another. Almost every case involved a switch from Kerry to Bush.

A new book, *How the GOP Stole Election 2004 and is Rigging 2008*, hit bookstands in September. Authors Bob Fittrakis and Harvey Wasserman are investigative journalists who broke key Ohio election stories at [FreePress.org](http://FreePress.org). Their book summarizes more than 180 key points, ranging from rigged voting machines to trashed ballots to fraudulent vote counts. The authors allege that the Republican Party stole the election with help from J. Kenneth Blackwell, Ohio's

Republican Secretary of State, who also served as co-chair of the Bush-Cheney campaign in Ohio. Among other acts, Blackwell tossed out numerous Democratic voter registrations because forms provided by his office were printed on too-thin paper.

But Republicans aren't the only ones accused of stealing elections. In Washington State, where a recount reversed the outcome of the recent governor's race, some suggested Democrats had a hand in manufacturing votes.

Nor is election fraud a new phenomenon. Chicago gained notoriety for having dead voters cast ballots. Some political veterans maintain that President Kennedy's father had a hand in fixing his son's victory over Richard Nixon.

In the past, however, potential for election fraud was largely restricted to small geographic areas. Electronic-voting-equipment insecurities, however, open the door for potentially enormous shifts of votes.

What can be done to insure the odds that elections will be honest?

Several election-reform measures are currently pending in Congress. Common Cause, a nonprofit, nonpartisan organization dedicated to open and accountable government, has endorsed three bills: H.R. 550, the Voter Confidence and Increased Accessibility Act of 2005 (Holt, D-NJ); S. 450, the Count Every Vote Act of 2005 (Clinton, D-NY and Boxer, D-CA); and S. 330, the Voting Integrity and Verification Act of 2005 (Ensign, R-NV and Reid, D-NV). Each would require voter-verifiable paper trails for all electronic voting machines, among other things.

The Carter-Baker Commission on Election Reform, chaired by former President Jimmy Carter and ex-Secretary of State James Baker, recently released a report, though congressional action would be required to implement its recommendations at a federal level.

“The American people are losing confidence in the system, and they want electoral reform,” Carter said in a written statement that accompanied the report.

The Carter-Baker commission drew criticism from election-reform groups for including James Baker, an attorney who handled the Bush-Cheney case before the U.S. Supreme Court after the disputed 2000 election. Critics also contend that the commission failed to allow testimony from key election-reform groups.

The commission's report has drawn mixed reviews. Its most controversial recommendation calls for a national ID card for voters. That suggestion has been denounced by Conyers as “essentially a poll tax that will disenfranchise Americans of all backgrounds, but the poor, the disabled, the elderly, students and people of color would bear the greatest burden.” Victims of Hurricane Katrina could also be denied the right to vote, he cautioned.

The commission also proposed requiring paper trails for all electronic voting machines—a recommendation hailed by many election-reform advocates as a step in the right direction.

Nationally, 20 states have passed laws requiring some form of paper trail for electronic voting machines, providing a paper record that, in theory, can be audited and recounted. In California, Gov. Arnold Schwarzenegger recently signed into law Senate Bill 370, state Sen. Debra Bowen's measure to make paper the official ballot of record in audits and recounts. Another measure banning wireless Internet voting equipment was also signed into law.

But some argue that those safeguards, while important, do not go far enough.

California Secretary of State McPherson may soon consider a request to re-certify Diebold paperless touch-screen machines retrofitted to include paper trails. San Diego currently has decertified Diebold touch-screens stored in warehouses. Retrofitting with bulky, cash register-type rolls of paper would provide a cumbersome system for recounts or audits, critics maintain. Some also fear records could be printed with fade-out ink. Privacy advocates have also raised concern that the rolls could allow identification of individual voters-and how they voted.

Some advocate machines that produce actual paper ballots, not mere receipts.

Others call for a return paper to ballots, hand-counted at precincts, as the only means to assure an accurate count.

“Our democracy is at stake,” warned Brina-Rae Schuchman, chair of an election-protection committee with San Diego For Democracy, who opposes use of any electronic voting machines. Hand counting of paper ballots is done successfully in many other major countries, she noted.

Haas countered, “I don't think manual tallying is viable in this day and age.” Approximately 33 million votes are cast in a typical San Diego County election with numerous ballot items, he noted, adding that the complexity of California's initiative-heavy ballots would make hand-counting difficult.

Starting Jan. 1, 2006, election officials must meet new requirements of the Help America Vote Act (HAVA), which requires each polling place to provide at least one system capable of meeting needs of disabled voters, including those who are vision-impaired.

Neither the Diebold optical scanners currently used in San Diego nor the warehoused Diebold touch-screens are HAVA-compliant, according to Haas and election-reform experts.

“You're going to have to have something to run that primary in June,” Haas said. “What is HAVA-compliant? It's very ambiguous, but certainly the DRE [direct response electronic paperless voting machine] is the most advanced in providing something for sight-impaired [voters] to vote on.”

Diebold has a different view, maintaining that its TSX touchscreen voting machines do meet HAVA requirements for the disabled. “We're working for the state certification, but they most certainly make the HAVA [and Americans with Disabilities Act] requirements,” Diebold's Bear said. Moreover, he noted, a Cal Tech/MIT study found that touchscreens captured 1,000 more votes in the 2004 election compared to 2000, a factor he attributes to “accuracy of the system as

well as the accessibility of the systems for persons of disabilities... who may have been disenfranchised in the past.”

Cost is another issue. Local computer expert and election-reform activist Bruce Sims, a registered independent who has been designated by the Green Party to serve as an official observer for the November election, said he learned through a public-records request that San Diego paid \$33 million for its DRE machines.

“If DREs are ever certified, the costs of elections will increase due to maintenance of machines and testing required by law,” he said. “San Diego would have to spend 1,275 person-days testing-if it takes an hour to do the logic and accuracy testing on one DRE-before every election in order to comply with California Law. And, of course, the city of San Diego would be billed for such election preparation.” Sims has filed complaints with the San Diego County grand jury, the city attorney and the Secretary of State over local election equipment and election-integrity issues.

Other activists have proposed legislation to eliminate conflicts of interest by barring election officials from also heading up political campaigns. Additional measures would bar election-equipment manufacturers from wining and dining or making payments to public officials responsible for purchasing election equipment.

In their meeting with Aguirre, election-reform activists urged that images of memory cards be taken before and after the upcoming election to make sure that no inappropriate program is running.

Experts proposed establishment of an improved chain of custody to protect memory cards and voting machines containing the cards. That chain would include witnesses, maintenance of records and transfer to polling places on election morning, not the night before.

The panel also recommended sealing ports and phone jacks to prevent voting machines from being connected to phone lines or the Internet. “A card can be machine-reprogrammed even with a seal, if the machine is hooked up to a phone line,” Hursti warned.

Hursti also unveiled a bombshell: a new software tool to detect fraud in counting of absentee ballots. In San Diego, where approximately one-third of all ballots are cast absentee, the development could significantly improve the ability to assess accuracy of election results.

“Diebold scanners take high-speed digital images of absentee ballots,” he revealed. “I’ve developed a program-an open, free tool-so you can analyze the ballots and do a recount.”

Hursti used a laptop computer to demonstrate how his program can retrieve absentee ballots and reveal not only which bubbles were filled in, but also analyze the levels of blackness in those bubbles, the amount of white space in between and more. A relatively inexpensive desktop computer could analyze 20,000 ballots an hour, he said.

To run the program, analysts would need to obtain CDs containing ballot images from the Registrar of Voters.

Hursti told CityBeat that tampering with those discs would be “more difficult than you'd think.” For example, variations in room temperature produce subtle changes that would make substitutions of ballot batches detectable.

Activists voiced other complaints stemming from the recent mayoral election.

“Why were we deprived of tapes of each precinct?” asked Schuchman, referring to paper rolls containing records of votes. “We want the public to be able to read results of each precinct.”

March said a written request on election day to obtain copies of the GEMS data file after polls closed was refused by a representative from the Registrar's office. “The central tabulator can produce a backup CD at any point that can contain the data of the election. That includes the audit trail, the record-precinct by precinct-of the amount of votes,” he said, adding that no voter identifications would be contained on the CDs.

On election night, the central tabulator was placed behind glass, eight feet away. Unable to view the screen without binoculars, March asked to have the machine moved closer, but the request was refused. Noting that California law allows the public to observe vote counting, he entered the secure tabulating room.

March was arrested, charged with felony trespassing and spent the night in jail. The charge was later dismissed. March has since filed a civil complaint with the county of San Diego and the city attorney alleging that his civil right to observe an election was violated.

Asked by CityBeat if any procedural changes have been implemented since the last election to improve security or improve public access to the vote-counting process, Registrar Haas replied, “No. I felt it wasn't necessary.”

An official election panel will observe the counting process, he added. That panel will include county grand jurors, city clerks and observers designated by political parties. Observers will be allowed to observe logic and accuracy tests on machines, he assured.

But Sims, the person designated by the Green Party to serve as an observer, said that he has received no response two weeks after submission of the request to the Registrar.

Sims has requested numerous public records from the Registrar's office. Many, including records of Diebold equipment purchases and e-mails, have been provided; Sims is currently in the process of examining those records. But a request for the Diebold user guide was denied on the basis that the information is proprietary.

“They do not put trade secrets in a user guide. This is just Liebold,” Sims told CityBeat.

Some activists also asked for improved recount procedures and an investigation into costs charged to Citizens Audit Parallel Election (CAPE), a grassroots citizens group that funded a partial recount of the mayoral election. Half of the precincts recounted were announced ahead of time; those showed no discrepancies between the recount and the electronically cast votes. The other half of precincts chosen were announced on the day of the recount. Discrepancies, though small, were found in many of the precincts announced on recount day.

“Sixty to 70 percent of the ballots were unsealed,” said Judy Alter of CAPE, adding that bags storing the ballots were opened.

The Registrar advised CityBeat that ballots are sealed on election day, but may be opened in a canvas. But he added, “They are always secured and behind locked gates.”

Harris expressed skepticism, noting that ballots have been substituted in some recounts. “If you don't have a proper chain of custody, you don't have anything,” she said.

Harris also faulted the Registrar for refusing to allow a recount of a ballot proposition, the only other item on the ballot aside from the mayoral race. Allowing a recount of both ballot items would have provided added certainty that ballots from another precinct were not substituted once a recount was announced, she said.

Others faulted the Registrar for reportedly allowing the central tabulator to be connected to the Internet on election night, a tactic that would violate California election law. Haas admitted to the online hookup in a previous interview, but later amended that he may have been mistaken.

“The fact that the county is not concerned with maintaining integrity is a concern,” said Aguirre, who pledged to review a list of proposed reforms submitted by election-reform experts. He also encouraged activists to submit a list of violations that they allege were made by the Registrar or other officials.

“In our society, we are closely divided, the city attorney noted. “It's important that the outcome of an election is based on voters' preferences, so that we can truly have people in office who reflect the will of the majority.” Aguirre cited this unsettling quote from Soviet dictator Joseph Stalin:

“It's not who votes that counts; it's who counts the votes.”