

Secretary of State/Fair Political Practices Commission
Public Hearing on Electronic Filing
September 26, 2007

Transcript Prepared from Audio Recordings

Tony Miller:

Good Morning, there are chairs available in front and also in the back and be friendly and sit next to people that you don't know and get to know them.

My name is Tony Miller. I am Chief of the Political Reform Division with the Secretary of State's office. We have with us at this table, the Honorable Ross Johnson, Chairman of the Fair Political Practice Commission and we have Commissioner Bob Leidigh, Fair Political Practice Commission and we have Susie Swatt, Susan Swatt, she signs Susan sometimes, who is Special Consultant to the Chair of the Fair Political Practice Commission.

I want to welcome you to this informational hearing. I apologize for the sound system. I have to hold the mike, but I am here primarily to listen, to receive your input rather than talk. So bear with me on that.

I want to make a special welcome to the staff that is in attendance from the Franchise Tax Board, from the Attorney General's office, from the Fair Political Practice Commission, and from the Political Reform Division, and to all of you, welcome to this hearing.

Under the Online Disclosure Act of 1997, generally speaking, as you may all know, state entities that have received or spent \$50,000.00 since January 1, of the year 2000, must file campaign finance statements and reports with the Secretary of State online or electronically. Statements and reports that are filed electronically, generally speaking, must also be filed on paper, with the Secretary of State and with various counties. However, the Online Disclosure Act of 1997 provides that the Secretary of State must determine, with consultation with the FPPC and other interested parties, when the online or electronic system disclosure systems are operating effectively and that once such determination is made by the Secretary of State, the paper copies will no longer be required to be filed with the Secretary of State or with county officials. Under that provision of the law, based on the determination of the Secretary of State, lobbying disclosure statements have been filed electronically only since 2005 by those entities that meet the monetary threshold. The issue to be addressed today is whether that same determination should be made with respect to campaign disclosure filings. Please note that this hearing is for receiving public input only; that input will be considered by the Secretary of State when the issue is addressed by her in consultation with the Fair Political Practice Commission. Simply put, the question is whether Ca-1 Access is

operating securely and effectively so as to end the need to file on paper if the information is filed electronically.

Before we get started, some housekeeping rules; the proceedings are being audio recorded. At the beginning of your presentation in front of the podium, please state your name, and if you are representing an organization, the name of the organization and please speak slowly. We plan to transcribe the testimony from the audio recordings. If you want a copy of the transcript of these proceedings, then please let me know and I will certainly email the transcript to you. You will have to give me your name, indicate your interest, and your email address and I'll e-mail the written transcript to you.

Speakers have been requested to fill out a Request to Speak card. They were available at the entry table. If you did not fill one out and would like to speak, Nancy Landers, of our staff, can provide you with a request card and you can give it to her and we will call the speakers in order that they signed up to speak. The restrooms and water facilities are available across the atrium, go out the door and turn right and keep on going north and you will encounter restroom facilities and a drinking fountain. Time permitting, there will be an opportunity to comment on prior testimony presented so if you have additional thoughts after listening to other people speak or if you would want to challenge what has been said in previous testimony, we will allow the opportunity to comment. We want to hear as much as possible with respect to this issue. And, with that, Chairman Johnson, do you have some comments you wish to make?

Chairman Ross Johnson:

Why, yes, thank you. First of all, we are interested to be here to participate in this discussion. I think it is important, as Tony has pointed out, that the statute requires that the Secretary consult with the Fair Political Practice Commission and others to make the determination that the system is operating securely and effectively. As to the question of operating securely that raises technical kinds of questions about the back up systems, what happens if the system crashes, and so on. Those kinds of questions are best left to technicians. But, I have serious questions in my mind — have we undertaken the particular similar kinds of evaluations of the security of the system as was undertaken with respect to electronic voting.

But, I am more concerned with the question of “effectiveness.” The statute says “securely and effectively.” But, it does not define what is meant by that. “Effectively” depends on one’s perspective. I see a lot of my friends, who are professional treasurers and political lawyers, in the audience and it might be very effective for them. But, I believe “effective” needs to be considered from an entirely separate point of view. Since the code does not define “securely and effectively,” I think that you have to step back and look at the fundamental purposes of Proposition 9 – The Political Reform Act. And one of the main purposes of that Act was to make information available to ordinary citizens about who was funding political campaigns so that those ordinary citizens could make whatever judgments they chose to make on the basis of that information. Since SB 49 was an amendment to the Political Reform Act and by definition had to be in furtherance

of the purposes of the Act, then it would seem to logically follow that this switch to electronic reporting, if and when occurs, ought to make it easier for people to access the information. And in terms of testimony here, I am going to be very interested and certainly asking questions about the use of the system by ordinary Californians. And I can tell you that over the past couple of weeks that I have had people, who are very knowledgeable of the Political Reform Act and very knowledgeable about the conduct of political campaigns, use the Cal-Access system and attempt to get the information. For example in one case, 17 times in a morning, information came up on the screen “This is not available.” As it happened, later in the day, it became available. But, I have no way of knowing how long it was not available and again, it is very, very confusing.

So with that as the opening comments, Tony, I hope that people will talk about not just how effective it is for someone who has a reporting obligation, but how effective it is for ordinary citizens like a soccer mom or Joe Six Pack to be able to be better informed about who is funding political campaigns and to draw whatever conclusion from that they choose to draw.

Tony Miller:

Thank you, Mr. Chairman. Commissioner Leidigh, would you like to make some opening remarks?

Commissioner Leidigh:

I will be very brief. I came here, like Tony, to hear what people have to say. I see many of my friends from the private sector all of whom have to file all these reports, package up all these pieces of paper and ship them off to multiple locations and try and get it right. I understand that because I have been there. And, I have seen the big table in the big room with all the stacks. And so, I am sure if the Secretary chooses to do away with paper filing, there will be a kind of like Wall Street on New Year’s Eve or whatever with the confetti raining down. But, I share some of the Chair’s concerns and a couple of others that I would like to put out here now so that you will have an opportunity to address them.

Security is the big concern if we have no paper trail and we are relaying solely on the electronic record. It would be helpful if folks can address how the system works, how it functions, how you would prove to a FPPC investigator that you filed properly, on time, and how you would disclose the proper information if for some reason the system goes down and the information cannot be found there. So, I would like some practical experiences from those who are filing. I thought the comments raised by Mr. Fuhrman in his letter was interesting — the one about the signature requirement that the candidate and the treasurer both sign the hard copy with both attesting under penalty of perjury that they are both fully responsible. The candidate can not say, “Oh, I never saw that.” Enforcement action comes down. How does it work in the electronic world? He raises some interesting questions with his comment letter so I would like to have folks address those as well. That is all I have to say at this time. Thank you for being here.

Tony Miller:

Thank you, Commissioner. Ms Swatt? Any comments? [Ms. Swatt indicates “no.”] Then, let us begin with the input. The first speaker we have is Steven Massey from the San Francisco Ethics Commission. Mr. Massey.

Steven Massey:

My name is Steven Massey, Information Technology Officer, with the San Francisco Ethics Commission.

Chairman Johnson:

Have you submitted written comments?

Steven Massey:

Yes, Sir. We do have a letter from our director that I will submit to you.

Chairman Johnson:

Thank you.

Steven Massey:

At the September 10, 2007 San Francisco Ethics Commission Meeting, the Commission unanimously expressed its support in a 5 to 0 vote for the Secretary of State exercise to her authority under Government Code Section 84606 to eliminate the paper filing requirement. The Commission believes that this step will help pave the way for the local jurisdictions such as San Francisco to eliminate the paper requirement as well. The Commission has been exploring the possibility of eliminating the paper requirement for quite some time. The paper filing requirement is quite a burden for the treasurers and also quite costly and the fact that treasurer’s submit paper copies is not always the best way for the public to view this information. Oftentimes reports are hundreds of pages long and they are more easily viewed electronically. It is also very costly in terms of labor and storage for the Commission and other local jurisdictions. I can’t attest as to whether Cal-Access is operating securely and effectively. I believe that it is difficult for us to assess from the outside. However, I can say that our staff relies on Cal-Access and especially the Secretary of State’s data base CD which we request quite often to view state filings on the web and have found the data as complete and accurate as the paper filings. There is no way that our staff could come up to the Secretary of State’s office and view paper filings as it is not practical so we have to rely on the electronic data. And the Commission already heavily relies on the local electronic data for San Francisco filers and we use the same Cal Format and Cal Data based structure for our data base. And, we use the submission of the electronic Cal document as proof of filing and the filers can

also retain a copy of that Cal filing as proof and we keep a copy as well even after we submitted to the data base. So the Commission offers its assistance to the Fair Political Practice Commission and the Secretary of State's office in any way necessary to help bring about the elimination of the paper filing. We think it is time. Thank you.

Tony Miller:

Chairman Johnson, Commissioner Leidigh, do you have any questions? [No questions]
Thank you and please submit the letter from the Commission.

Is this the request for #2 that we are missing? [Question asked of staff delivering
"Request to Speak form] It is #6.

Who has #2? Is there a #2? If not, we will move on to #3. Mr. Chuck Bell.

Chuck Bell:

Thank you, Mr. Chairman and Commissioner Leidigh and Tony Miller. My name is Chuck Bell from the law firm of Bell, McAndrews & Hiltachk. I am an attorney, yes, but I am also a treasurer and I have had quite a bit of experience, although I have to make a confession which is that at no time have I pointed and clicked at my computer to submit an electronically-filed report to Cal-Access. I have staff members to do that, but per our review process, that [the electronic filing] is not done until the report has been fully reviewed by me as the treasurer and I have signed the paper copy. And, if we are representing a candidate committee, [the electronic filing is not done until] the candidate has reviewed the report and has signed a paper copy which we keep on file which is available for access by the Franchise Tax Board or the Fair Political Practices Commission investigators that are looking at documentation whether or not the report is signed by the appropriate filers. Let me make another confession which is, my daughter thinks that she could file the report from her telephone and so I think the time has come for electronic filing to be the system — for paper to be abandoned. The comment about the paper stacks both in the elections offices and in the offices of professional treasurers and law firms with treasurers is certainly true. We kill a lot of trees to file these copies. My experience using the Cal-Access system is someone who enters online and accesses reports and sometimes downloads them to look at or simply copies them on Adobe Copy — or looks at the data online in the various categories that you sort and look at the information. I have not ever experienced a circumstance when the system is unavailable. I can not say that no one has experienced that, but personally I have not experienced that problem and it seems to me that the perfect ought not be the enemy of the good here. I have no information whatsoever about the security of the system and I think again that is a technical issue that perhaps some technical experts can address. But, we have not experienced a situation in which one of the committees for which we file has either had data lost electronically or not portrayed accurately or corrupted in the transmission and the loading and exhibition of that data electronically. That is my personal testimony on this. I would hope that the Secretary would make that determination for all those filers who currently filing electronically. But it is also be my hope that a system could be devised and I am here addressing I think one of the objections Bob Stern and perhaps

some people from the reform community who are concerned about the lack of complete accessibility to filers that may be local, maybe major donor filers. But as to major donor filers, my hope would be that we could get to a system in which major donors, if they continue to be required to file, file with the Secretary of State and that the form indicate — the electronic format indicate — where they are filing for a particular county or city. And, that the system allow for the exhibit of that and the linking from local jurisdiction websites to the Secretary's website where that information can all be collected electronically. So my suggestion in that regard would be that it be a legislative project, particularly if you make it a determination that existing electronic filers need not file on paper — that you look now to trying to make the entire system electronic. I suspect some of the local jurisdictions here may have a problem with that suggestion — that it be maintained here — but it may be the most efficient way to do that with some kind of linkage system that would allow them to link their own websites to the Secretary of State's page where local major donors information could also be accessed. That would be a benefit at the state level too, I would think, for the media people who would be interested in looking at the whole set of major donors who may be filing in Riverside County but not in Sacramento if they are a local filer. Those are my comments. I appreciate your convening this panel to undertake this project and I hope it has a successful outcome.

Tony Miller:

Thank you, Mr. Bell.

Chairman Johnson:

I have a couple of questions for Chuck. I am certain that you use the system a good deal in the capacity of a treasurer, but how often do you actually use it as a researcher if you are looking into other people's reports trying to make sense out of the contributions patterns?

Chuck Bell:

I mentioned that I have a dual function. I think in my attorney capacity, I am looking at it more as a researcher to see what opponents might have done or what other committees that I may be interested in might have reported, so it's kind of a dual use.

Chairman Johnson:

Can you give me a flavor as to how frequently you use it?

Chuck Bell:

I would say probably weekly.

Chairman Johnson:

Would it be useful to you, for example, in those kinds of researches, to try and understand what an opponent of a client may be doing or whatever, to have street addresses available for contributors?

Chuck Bell:

Yes, actually I do not have an objection to that. I know that this is omitted. I don't think it is a pressing problem in the sense that if we identify someone by city, that often allows other ways to identify who the person is.

Chairman Johnson:

But the fact is that now that information is not available and cannot be available on the Cal-Access system, but you can get a copy of a paper report and get that information.

Chuck Bell:

Yes, I think that factually you are absolutely right on that. Is that a sufficient degradation of the quality of the information to affect the researcher? I have not had that problem when the *Times* has called me.

Chairman Johnson:

Have you ever had any difficulty in understanding on the Cal-Access system what an amendment was? I mean you could tell that there was an amendment made to a report, but have you ever had difficulty trying to figure out exactly what that amendment was?

Chuck Bell:

Well, I think that I'll tell you my personal experience in that. I had to learn how to do that, how to access the amendment. Could that be displayed or that be done more easily? I think that is a technical question that I think that is important that it be. Now the problem with amendments is the way amendment process works and when you amend a report you amend the entire report even if you are changing one jot or tittle. It may not be so easy to determine when you have to refile an entire report exactly what has been amended. It seems to me that ought to be correctable. Again I am not a technical guy on this so I am not sure how that can be done. But when we used to file on paper, we would file with a cover sheet that would indicate what the amendment was and with the changes. I don't know if that can be accommodated under the current system or not. Again I don't think that perfect should be the enemy of the good here and I do think that the computer access to this information has almost been almost since its inception easier for us who want to review reports than to try and go to offices and sort through the piles of papers either at the Secretary of State's Political Reform Division or some where else.

Chairman Johnson:

Have you ever heard of the term “digital divide?” “Digital divide?”

Chuck Bell:

Yes, I probably am on the short side of the “digital divide” myself. I think my daughter can do these reports on her telephone.

Chairman Johnson:

Well, it just seems to me that you, as a full time political lawyer/treasurer — obviously — you are a very sophisticated individual, and you have some difficulty, apparently, but you eventually figure it out, but I am more concerned with just an average citizen out there who is trying to figure out who is behind candidates in their community or statewide.

Chuck Bell:

Yes, again I would say that the net benefit is very much in the plus — that there may be some issues as I said with the amendment process. I had to learn how to do it, but you know on my computer, I had to learn how the pathways to do things, too. And, once I mastered those, and ironically found that there are often multiple ways to do this on the computer, I had mastered it. And, I suspect there are citizens out there who probably are less knowledgeable about the Political Reform Act — that are more knowledgeable about computer processes who would not have that problem. Could there be improvements to the entire system? Yes, but do I think you are ready to go to electronic for those folks who are filing electronically now? My answer is also yes. Thanks for the opportunity to comment.

Tony Miller:

Commissioner Leidigh, do you have any questions?

Commissioner Leidigh:

Again, our focusing on the comment by Mr. Fuhman about the signature issue — you said that you don’t personally push the button to file and that you sign a hard copy that’s retained in your office. (Correct) Now you have to file it also, correct? (Correct) So there’s one signed by you and by the candidate. And presumably sent out in time so that the world knows, our enforcement staff knows, that both of you saw the report and signed it prior to its being filed. As I recall, that particularly during five day turnaround times, it was extremely difficult to manage to get the report prepared, get it out, get it signed, get it back, and get it filed. So Mr. Fuhman has suggested a possible solution. You may have not had a chance to read his letter, but hopefully, if there is time for further comment later on or maybe some of the other folks who may be following you to the podium could look at his relatively short letter and address that issue — some way to insure that when the report gets filed with the Secretary of State and it goes up on the

website, is a public record that those who are responsible for that report are on the hook for its accuracy and completeness and don't have someone later on say, "Oh, well it never got to me or I signed it later." And all rest of that kind of thing. So hopefully, if you get a chance to come back up later if we have time or if others could address that situation, I would appreciate it.

Chuck Bell:

Sure, I would be glad to let someone else address that issue. I have nothing else to add. I think it is a matter of protocol and it seems to me if you have filed a report in which someone who has reportedly signed it has not reviewed it that you are at risk whether it is paper report or

Chairman Johnson:

Mr. Bell, didn't I understand you say earlier that even if the Secretary were to make this determination that you would continue to have your clients sign and maintain that for your records?

Chuck Bell:

Well, I am assuming that the requirement to sign the report is not changed so therefore the protocol that we would apply and I suspect that others do as well would continue to apply — would have to apply and that we would have to maintain some form of actual signature rather than a digital signature. Maybe I am misunderstanding the point.

Chairman Johnson:

No, No. No. No, You are understanding it entirely. That document that you retain for your files I presume would not simply be the cover sheet that is signed under penalty of perjury by the candidate but the complete report.

Chuck Bell:

Oh, I have no doubt that we would maintain a copy of that just as a precaution. We do that with you know copies of Fed Express transmittals, all kinds of things that document that we have transmitted and/or received confirmation that something has . . .

Chairman Johnson:

So what I am having a little problem gasping is why that is burdensome? If you are going to do that — get that signature in any event then maintain that for your records and believe that is required in other contexts — and since printing out a copy of your report is nothing more than pushing a print button, I am having trouble understanding the burden as expressed by a number of attorneys and treasurers as being a great burden and, just as an aside, I find it kind of amusing —the concern for all the trees that are being cut down

and if one of your candidate's put out one less mailer, we would save an awful lot of trees.

Chuck Bell:

I cannot disagree with that.

Chairman Johnson:

Thank you very much.

Tony Miller:

Thank you, Mr. Bell.

A couple of comments for clarification, Mr. Chairman. I am aware that there were 17 attempts to obtain information with respect to a candidate. That, I believe, is the same situation [about which you spoke]. That was brought to my attention. The committee statement had actually been filed electronically and it was there. But by searching on the candidate's name, the information did not come up. That was indeed human error, a linkage problem on our part. It was like something being misfiled or the post office not delivering or whatever and once it was brought to our attention, it was indeed corrected and the linkage was established within about 30 minutes. But you are absolutely right. There was a situation recently where searching under the candidate's name didn't provide the results requested and the information that was displayed by searching under the committee name. But after we established the linkage, it worked fine.

With respect to addresses, we receive electronically all the addresses, but pursuant to the statute, we redact those in terms of display. We have all of the addresses. They are provided to anybody who comes in or who requests them by mail or phone or email. We provide those addresses. We simply, under statute, can't post them on the Internet. They are public records and are available to researchers, media, or whomever. We have them all electronically and we make those available to anybody who requests them. We just cannot post them.

Commissioner Leidigh:

You provide them on electronically, too? Right, Tony? You provide them electronically?

Tony Miller:

We provide them on our Intranet in our office. We can actually provide them electronically in other ways too.

With respect to amendments, indeed the current system does overlay the previous filings with an amendment. There is an easy way — but not a well known way — and it should be well known — to look at the previous filings.

Chairman Johnson:

I actually have discovered that way yesterday, but my question really is, how someone's grandma out there is supposed to figure that out?

Tony Miller:

Yes, and we are actually preparing a user's manual to make that abundantly clear so you will not have to struggle with and grandma can do it. Grandma can probably do it better than I can.

Chairman Johnson:

Tony and I sure do not want to turn this into a debate between the two of us. We want to hear from the witnesses. But it is my understanding that the Secretary of State is contemplating a major review and a potential overhaul of the Cal-Access system which leads me to ask I think a reasonable question: Are we putting the cart before the horse to make a determination that the system is operating effectively when we are still contemplating the possibility of considerable alteration to the system?

Tony Miller:

Still looking for #2. Speaker #2? If not, we will go to Speaker #4. Kim Alexander of the California Voter Foundation. Ms. Alexander.

Kim Alexander:

Good morning. I am Kim Alexander, President of the California Voter Foundation. Many of you know that CVF has been involved with the electronic filing and online disclosure since the very beginning back in 1995 when Secretary of State Bill Jones convened the Electronic Filing Task Force which I was pleased to serve on 12 years ago. I did submit a letter and I hope you have it in your packet. I have copies if you don't. It is in back of the room, too. I want to make a couple of points that were raised in the letter that we submitted. First of all, this issue of the candidate's signature. It is very important that we come up with a way to retain the connection between the candidate and the report that is filed. If you read actually what the statement says — and I would like to read it aloud for you all — it says, "I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct." This has been on the California disclosure statement as far as I know since the enactment of Prop 9. So what I am concerned about is that with the electronic filing system, if we

abandon the paper filings, the candidates will be another step removed from affirming their consent to this statement and I think it would be beneficial to develop some sort of system to retain what Mr. Miller has referred to as a “wet signature” — not my preferred phrase, but I will use it because I guess that is what it is referred to. But that is something — we need a process to retain that so when reports are filed not just the public and the media but also the enforcement agency has an affirmative statement from the candidate saying that I acknowledge that this is what my report says and I take responsibility for the content of this report. We have had incidents in the past where the candidates have denied knowledge of their campaign contributions and their reports and those statements under penalty of perjury come in handy when you want to see some accountability for those contributions.

The other thing that I think we need to look at before making this decision — as part of the process of making this decision — is what is the current use of paper records? There are a lot of staff people here from the Political Reform Division. I am sure that the traffic in that agency has dwindled quite a bit in the last 10 years as that information has been made available online, but there is still some use of the paper records and we should have some sort of a study or analysis on what the actual requests are for paper documents currently. Not just here, but also in county government offices where those reports are also filed — in the county domicile to see what the current requests are for use.

Why are people still using the paper reports? Believe me, nobody wants to sort through paper. This is why the Online Disclosure Act of 1997 was passed because people were tired of pouring through piles and piles of paper. So the preference for any researcher is certainly is to go online and look at the data online. Why in the world would someone go look at the paper reports? Well, for starters, the street addresses are not in the online reports. And, that is an issue that is currently in statute. That is another thing that we have to address if we go down this road in eliminating the paper filings. We need to come up with a way to make sure the public has immediate, convenient access to all the data in the reports. And that would mean a change of statute because that is currently required by statute that the street address be redacted.

The other reason why people go and look at the paper reports is that they can not get the whole picture from the Cal-Access website. There is great amount of data on the Cal-Access website. The California Voter Foundation has been conducting a survey of all 50 states for the last couple of years. We have a new one coming out shortly called “Grading State Disclosure.” California earns A’s across the board in our analysis of California disclosure laws: an A in the law, an A in electronic filing programs; an A in access to content through the web. Where we fall down is in technical and contextual usability. It is very difficult for many people to use the Cal-Access website. And, not only use it, but use it with a sense confidence. You just don’t want to have the information up there and not have people to be able sort it. If someone is going to make a claim against a politician or write an article in the newspaper, they want to make absolutely sure that the information that they are accessing is 100% accurate. You cannot get that level of confidence with the Cal- Access website. That is why people turn to the paper records.

So what are some of the next steps that we would recommend that the Commission and the Secretary of State consider? First of all, let us find out what other states are doing. We now have 40 states that have electronic filing programs according to our upcoming survey results. And, some of them retain paper filings and some of them don't. So let's find out what else is going on out there. And, we can help with some of this research.

We need to set up a process, as I said earlier, retaining a wet signature by the filer in the penalty perjury statement. It doesn't mean that it has to be three reports filed in three different places necessarily, but we need to retain that specific process. Number 3: we need to consult the California Office of Privacy Protection about this issue of donor addresses and come up with a new public policy that will insure that data will be accessible to the public in a way that also will not threaten donor's privacy. Number 4: Survey the filing agencies as I mentioned earlier and asked them what their current level use of the paper records is. And, lastly ask the Political Reform Division staff to track paper record use and compile data from historic use if that is possible. I will be happy to answer any questions you have.

Tony Miller:

Thank you, Ms. Alexander. Chairman Johnson?

Kim Alexander:

You're welcome.

Chairman Johnson:

I have a couple of questions. In this question of securely and effectively, do you think that it would be advisable to have the same kind of Red Team effort that was used in terms of electronic voting paper trail for electronic voting to test the security? I don't know — I'm free to I confess — I don't know what is the maximum allowable or acceptable outage — 4 hours or a week or what is it? What happens in event of a total crash of the system, how do you replicate that? How do you do that historically? So that kind of Red Team analysis would be helpful.

Kim Alexander:

Absolutely. Absolutely. I think that you raised a very good point, Mr. Johnson. You and I worked together on the voter verified paper trail issue and Secretary of State Bowen has been very involved in those issues and made a great deal of progress. And, if there is one thing that we have learned through the electronic voting issue is that there needs to be a paper trail. And, it needs to be independent of the system and publicly verifiable and the same is true for electronic filing. And, I don't really think we contemplated what it would mean legally for the electronic records to substitute for the paper records. It may be that we don't see a lot of break-ins or attempts to monkey around with people's statements right now, but that may be because they are not the official records and if they

did become the official record, it might invite a certain kind of political attack that we haven't seen before. So, I think it would be a good idea to evaluate the security of the system and to conduct a threat analysis with the and it is the same term we used for the voting systems with this idea, the premise, that if the electronic records were the official records, what would we need to do to protect those records from attack, from security, internal security violations, from hardware failure. All those kinds of issues are standard kinds of questions in any kind of threat analysis any computer security system and this is certainly a computer security system that would benefit from that kind of analysis.

Chairman Johnson:

Then the next question relates to this effectiveness and again in my mind, effectiveness need to be judged in terms of ordinary citizens. Don't you think it would be advisable to convene a group of ordinary citizens that can complete, reporters are ordinary citizens, a group of folks and then give them some specific research assignments; say "Take a look at this campaign and figure out who gave" and give them a series of questions and see if they are able to answer those questions looking at the Cal-Access system?

Kim Alexander:

Well, yes, I do think that is possible and I would like to point out that there are different levels of users of the data, and it is important that we serve all levels of the users so I think that it would be beneficial and I said this in my letter, but not here in my comments, it would be beneficial for the Secretary of State to survey the Capitol Press Corps and ask them about the current usage of the system; why they are using paper records; find out what the high end users are having problems with and how we can address those. In terms of the ordinary user, we actually. as part of our Grading State Disclosure Study, we have been conducting usability tests of all 50 states disclosure websites at the UCLA School of Law and we have five students, they are undergraduate students, no expertise in politics or disclosures necessarily and they get paid some minimal stipend to come and do this. They are given three questions; find a campaign contribution for the current Governor; tell us who and how much that contribution was for; and tell us how confident you feel with what you found. And, some states performed very well in the usability test and some did poorly and California has not done very well in the usability tests that we have been conducting so that I think that it needs to be expanded and it can be replicated. We would be happy to work with the Secretary of State's office on developing more in depth usability tests just of Cal-Access. I am sure that the folk at UCLA would be interested in that.

Chairman Johnson:

I think that is a fascinating idea of doing that. A simple question that I would like to ask the students is come with a total figure that this candidate – a total figure of the money spent for and against this candidate in all committees that that candidate has whether it is a ballot measure committee, or a re-election committee, or some other committee — a

legal defense fund — come to a grand total of money that was contributed to this candidate and by whom. I think that would be a fascinating exercise.

Kim Alexander:

Well, you know, one thing if I might add, that the Secretary of State's office did for many years and ceased once Cal-Access went online was to compile summaries of campaign finance statements. And, the thought was once the data was online that was no longer necessary, but that analysis produced by the Political Reform Division staff was incredibly valuable because they did that back end research that people find very intimidating to identify all the committees, figure where transfers had taken place, and come up with a total number. I have done that research over the years and I know how difficult it is. And, I think that if the Secretary of State's office were to re-introduce those annual or every election year analysis of campaign financing by legislative candidates, proposition committees, and state wide candidates, that it would provide the kind of usability that is lacking on the website right now. It may be that we could keep fiddling around with Cal-Access all we want, but at a certain point there is a basic level of analytical information that is missing because these reports are not being produced anymore. So, we would encourage that as well.

Tony Miller:

Thank you, Ms. Alexander. Any questions? Thank you, Ms. Alexander.

Next speaker we have is Stephen Kaufman. Mr. Kaufman.

Stephen Kaufman:

Good morning, Chairman Johnson, Mr. Leidigh, Mr. Miller, Ms. Swatt. My name is Stephen Kaufman. I am a partner in the political office of Kaufman Downing LLP in Los Angeles. I, like Mr. Bell, work kind of two halves here; I am both a lawyer and a treasurer. We have a staff in our office that prepares reports on behalf of dozens of clients. We prepare literally hundreds of reports every cycle generating thousands and thousands of pages most of which sit wasting away in file cabinets in various offices around the state. I did submit a letter to you earlier this week which hopefully, you have had a chance to look at and which is in the binder. I'll highlight a couple of the points in there and then I want to address the issues that were raised by Chairman Johnson and some of the other speakers.

First of all, you should not overlook the burdens that it does place on folks that have to file to generate these tremendous copies of paper reports. While it may seem trivial, I can assure you that in the last days of a semi-annual filing period, our office literally comes to a halt for probably two days of copying and cover memoing and printing and Fed-Exing and mailing of paper copies of reports that also being filed electronically using the Cal-Access system. This in no small burden and I can assure you that it has been our experience that more errors occur in the process of preparing paper reports than occur in

the process of filing electronic reports. We have every election cycle or every filing cycle, I don't like to admit all this publicly, but there is the inevitable call from some county office that says "By the way, we received a report in this envelope that you sent us that we think may have been intended for another county or the Secretary of State." There are copying errors that occur in the process. Sometimes the reports on paper are incomplete where the reports that are online would be complete. Election officials themselves have misfiled paper copies that have arrive in their office. That is not an issue that occurs on the electronic filing system. There have often times been delays in mail arriving at the offices of election officials. Again, another "benefit" of a paper filing system. And, so the idea that somehow that the paper reports are more accurate than the reports that are filed electronically, I just don't ascribe to that position. I have found that it has been exactly the opposite. And, I know of no instance since we have begun filing reports using the Cal-Access system where a report that we have filed electronically somehow later became corrupted or disappeared from the system or there was a security issue. There has certainly been issues when we have attempted to file reports if there is data that is incorrectly entered, the system will tell you that at the time you're trying to file. It will give you an error message and require you to fix those problems. But, that is something that is within our control and that we have to clean up to make sure we don't have a problem. But, on the back end, I am unaware and I guess, I would turn to my colleagues and users and the audience here of any situation where there has been a security issue, corruption of data on the user end once the information has been filed.

You know, we have heard a lot of talk here this morning about, I guess, the failings in the electronic filing systems from the usability stand point and the ability to search. I don't think that we should let the need for improvements in the system to get in the way of progress here. I think that we can all agree universally that we wish the Cal-Access system was much improved in terms of the ability to search and come up with comprehensive data that would allow people to do better research. But, what the issue this morning is, is let's compare what we have with the alternative which is what we have on paper and I assure you that the paper reports are no more searchable than the imperfect system that we have now using the Cal-Access system. And, I had the privilege a year or so ago to serve on the task force formed by former Secretary of State Bruce McPherson — that Ms Swatt was a participant in — and others in the room — and we heard from a number of people in the community, the media, local election officials, and in fact, the Secretary of State's office, itself, which said, I believe Mr. Keplinger told us at the time, they had records that showed that only one person in the last six months had actually walked in to the Secretary of State's office and had asked for a copy of a report because they are available online. And, I would suggest that in the issue of effectiveness the average citizen has reports that are way more accessible to that person by being able to sit in their living room or their work place, and access those reports online than they have the ability to come down to the Secretary of State's office or the county registrar's office in L.A. or San Francisco and try and find the paper copies of that report. And even if they can make it to those offices, whether those reports can actually be found is another issue. So, I would think that you would find that paper reports are rarely requested. I think that it is a legitimate point to raise the issue of address which as I see it would be the only reason one would want to obtain a paper report and actually go to county office

or the Secretary of State's, but as Mr. Miller stated that information is actually available on the reports but it is suppressed when the reports are filed but it is available and the Secretary of State's office has the ability for anybody who walks in and requests a report just as they would request a paper report to print out a copy of the report with the address so there is no differences from the users stand point about walking into the Secretary of State's office and requesting a report that has been filed online or requesting a report that has been filed on paper. So I see that as a non-issue. I mean in a perfect world I would support putting the addresses on the online filings, but the law says otherwise at this point so that is what we are left with. But, I don't think eliminating paper is going to change that issue. And, I actually think that going to an online system is going to encourage more disclosure and more filings and therefore, better serve the public. I would...we have a number of clients, for example, major donors, who do not file electronically because they are not required to on an annual basis until they hit a certain amount. I would certainly recommend to my clients that if they were to file electronically voluntarily and not have to go through the ordeal of filing paper reports that they would be better served doing so and therefore, the public would be better served because there would be more information available to the public online for filers that might not otherwise be filing electronically and if the Secretary of State's order applied to those who voluntarily undertake to file electronically and just not those who may be required to file electronically, I think you are going to see more disclosure, more timely disclosure, and more available disclosure for folks, who are trying to use that information.

Finally, the signature requirement —that issue has come up – I echo what Mr. Bell said and I think what the law requires and that is unless a change is made in the signature requirement under the law, we would continue to maintain a single paper copy, a printed copy in the office that would be signed by the treasurer and signed by the office holder for the files so that if there were an audit or if there were any issues, there would be a printed copy in the file. Yes, that still requires us to print a report, but it does not require us to generate hundreds of copies of the reports. It is one step towards an improvement. And, I would also have you know that the Federal Elections Commission when it adopted its electronic filing system completely eliminated the requirement that any committees file paper copies so the FEC, the federal reports that are filed now, Presidential reports that are hundreds and hundreds pages long with valuable information that gets scrutinized by the press are all filed electronically and electronically only. There is no paper filing requirement for those candidates. So the system has worked before. I think that the Cal-Access system is secure. It is not perfect. It would be nice if people could use it in other ways, but that should not obscure the fact that the system is working. It is working effectively. And, I think that the community, the users, the candidates have all benefited by the fact that information is available the way it is today. I am happy to answer any other questions you might have.

Tony Miller:

Mr. Kaufman, under the FEC requirements, does the committee or candidate have to retain a paper copy signed within the office?

Stephen Kaufman:

There is no signature requirement; I don't recall under the FEC requirement whether we are mandated to retain a paper copy, I can tell you as a law firm there is no way we ever would not retain a paper copy so it is our practice to do so. There is no signature requirement on that paper copy. But, I don't honestly know whether the FEC requires that.

Tony Miller:

Thank you. Mr. Chairman?

Chairman Johnson:

Yes, I do have a few. First of all, kind of in reverse order, you said that the system is secure. If I understood you correctly, I don't want to put words in your mouth, but I thought that you made a flat statement "The system is secure."

Stephen Kaufman:

As much as I can state that, yes that was my comment.

Chairman Johnson:

So can you answer the questions that I was asking earlier about what is the maximum allowable outage, what other provisions for back up? What happens if there is a crash, if the system goes away, I don't understand without you're being able to address those questions how you can say with such assurance that the system is secure.

Stephen Kaufman:

Well, all those are obviously technical issues that would have to be addressed by the technical folks who are here. But, as someone who uses the system, we have confidence that if our reports are filed electronically and electronically only that there will not be corruption of that data, that there will not be issues that will impair what we have done or cause questions about what we have done or our clients have done and jeopardize their status. Now, having said that, if there is a requirement that folks maintain the copies; a signed copy in their office, if there were some horrific event that lead to the crash of system, we would be left with the same thing we would be left with, I suppose, if we only filed paper copies which is — we would have paper copies. And, we might have to copy all of those paper copies so the Secretary of State could have copies of them as well. But, we would have them if that requirement is maintained. So, you know, in the event, in the unlikely event that something like that happened, I suppose that would be the result.

Chairman Johnson:

So, then you're telling us, it is secure or you're telling us, "Gee, I kinda of think it is." And hope it is."

Stephen Kaufman:

I can only tell you what my perspective is and what I can stand here and testify about. And, I am telling you in seven years that we have used the system — I guess I would ask anyone in the audience, who knows of a situation where information became corrupted or the system collapsed and destroyed information. I certainly would be interested in hearing it this morning, but as I don't know of a single incident in which that has ever happened. And at a certain point, we have to rely on the system.

Chairman Johnson:

OK. You said that the address question is a non-issue because people can come in and on an individual basis and get that. How is the average citizen supposed to know that?

Stephan Kaufman:

Well, the same way the average citizen would know to come to the Secretary of State's office to request a paper copy of the document. I mean, it is the same issue. If the issue here is are we going to do away with paper filings, the same person that you are talking about is going to have to come to the Secretary of State's office and request a paper copy of the document or they are going to have to request a paper copy of the document that has been filed online.

Chairman Johnson:

With apologies, I don't think that is exactly what the purpose of this hearing is. I think the purpose of this hearing is to assist the Secretary of State in making a determination that the electronic system, the Cal-Access system, is operating securely and effectively. And, it is kind of a diversion to talk about the paper copy while the real issue that we are addressing is the system, Cal-Access system, secure and effective and from my point of view, the question of the filing effective means usability for millions of Californians for having that potential for them. Let me read — I don't know if you have had the opportunity to see the letter from Robert Stern of the Center for Governmental Studies. This addresses the comments that you made to the Secretary of State that "we will often ask to send us paper copies as well as electronic filings. We find that the paper filings are much more accurate and contain much more information. It is sometimes easier for us to use entries from paper than to struggle through electronic filings that are filled with error and duplications." Now, is he just wrong?

Stephan Kaufman:

On the errors and duplications, I fundamentally disagree. On the other point, there are some people, who find thumbing through paper a lot easier than clicking through on the

computer. And, I have many times myself printed off the Cal-Access website — have printed out the electronically-filed reports so that I can have the paper in front of me and arrange it or rearrange it the way I would like to. So requesting paper copies from the Secretary of State in my mind would not change if we did away with paper filings because the Secretary of State could still print out the electronically-filed reports and send somebody a copy of the report if they requested paper. But, fundamentally, that report should not contain any different information than the information that would be listed on a copy of that report that is filed on paper with the Secretary of State's office so I fundamentally disagree with Mr. Stern's comments that they contain duplicative information and errors and if he's got specific examples I suppose I would invite him to bring those to our attention. But that is not a problem that I encountered and I, too, like Mr. Bell, not only file reports, but I use reports. I use them to do research on behalf of our clients and the paper copies, the electronic versions of the reports are one and the same. Or, should be one and the same.

Chairman Johnson:

Thank you. I just wanted to comment here that I was not always Chairman of the Fair Political Practices Commission and I have some experience myself in both filing reports and reviewing others' reports. So I am not depending just on comments from interested informants. Thank you.

Stephen Kaufman:

Sure.

Chairman Johnson:

Thank you.

Stephen Kaufman:

Thank you.

Tony Miller:

Commissioner Leidigh, do you have any questions?

Commissioner Leidigh:

Like Mr. Kaufman, I have been there and done that. But I would like to get someone to address the concern raised in Jonathan Fuhrman's letter. So maybe I need to read his comments because perhaps you have not had the opportunity to do that. Because I really am interested in the answer to the issues that he poses which is the accountability of both the treasurer and the candidate for reports filed only electronically. And so I am hoping we can get some discourse going here on that topic. So, he writes in the first — and I

will paraphrase a couple parts of his letter — he says: “I strongly support a finding that the system works effectively and securely, thereby eliminating the need for us to follow with paper filings.” Further he says, “I do want to raise one interesting issue.” And, that is the thing about the signature. He said, “With electronic filing, each committee is given a password which, in conjunction with its publicly known committee ID number, constitutes its electronic signature. But in reality, it is the treasurer alone who will be filing the reports electronically. Typically, the treasurer and/or campaign staff compile the data and do the electronic data entry into the reporting software. The treasurer or other senior person — (and that sounds like Mr. Bell’s circumstance — [comment from Commissioner Leidigh]) then uses a CA-Check software to validate the draft report and the CA-Print program to print out a copy for physical inspection, and then uses the upload software to transmit the data. — (and that’s the part which we are referring to — [comment from Commissioner Leidigh]) So it is quite likely that the candidate or officeholder will not see the report until well after it has been transmitted (and perhaps not at all, especially in the hectic days of an active campaign). So, while the use of the campaign password can fairly substitute for a Treasurer’s signature, it really cannot also substitute for a candidate’s signature. Ideally, the candidate should have a second, separate password, and be required to validate or approve the report, so that the candidate must take an affirmative action to approve the report and thereby accept responsibility for its accuracy.”

So that is the issue that I would like to hear from some of you about in terms of making the system work, in terms of accountability for the reports because we all know from experience and my own research myself for clients that you think that you have a “gotcha” and you want to be able to make it stick. And, you don’t want to have the ability to skate around and so, I would like to hear, you may not be prepared — as I just read it — but hopefully there are others in the audience here number 7, 8, or 9 or whatever, who could address that.

Stephen Kaufman:

I am prepared to address it. I don’t agree necessarily with the proposal to have the candidate have to take some affirmative step by pushing some button, you know, on a computer to show that they have reviewed the report. But I do agree that candidates should be responsible for their reports and should review their reports. But, I don’t see that is an issue that fundamentally changes just because they are filed electronically. I mean the reality is, of course, there are some people who, as you know, because you were in private practice — some people pay more attention to their reports than others. But, our practice has not changed and that is, when we prepare a draft report, we send it to the client for the client’s approval. Now, we send it to the client for their approval and their signature and we would continue to do that whether we file on paper or not. And, I think that as long as reports, the law says, the reports are supposed to be filed under penalty of perjury, candidates have an obligation to review their reports because they are going to be charged with that provision of the law that says they are to be reviewed and testified to under penalty of perjury. So, I don’t see that changing if there is discomfort with the way the system may be set up, then perhaps there can be some policy adopted or regulation

adopted that puts some affirmative obligation in writing on candidates to review their reports before they go out. But, I think that may be asking a little much. Candidates should have; do have the obligation/should have the obligation to do so. And, good practices say that is what should happen. So, I don't know that we have to go to the extremes that Mr. Fuhrman suggests. I don't think the issue really — you can have candidates who say that “Yeah, I signed the report, but I didn't really look at it. I trusted my treasurer and it was on there.” So they had the same kind of deniability on paper that they might on a electronic filing. And, that is an issue of concern, but I don't know if it is one that changes just because we're doing away with paper copies — if folks maintain the signed copies of those documents. I hope that addresses your question.

Tony Miller:

Thank you, Mr. Kaufman.

Stephen Kaufman:

Thank you.

Tony Miller:

Next on our list of speakers is Tom Diebert.

Tom Diebert:

Hello, my name is Tom Diebert. I'm Vice President of Netfile. And our company represents the largest majority of electronic filers in the state of California for campaign disclosure documents through our various treasurer firms that contract with us to use our product. I just wanted to make a couple observations that I have seen and I have kind of a unique prospective being that we deal more with the electronic end than the paper end of it and I just thought it might bring a couple points to issue.

Steve Kaufman mentioned that the FEC has set precedent for e-filing without having to have a wet signature requirement. You mentioned that the Franchise Tax Board, there are representatives in the audience here — the Franchise Tax Board adopted an electronic filing service that eliminated their paper and their wet signature requirement as well. So the State of California actually has the underpinnings for a secure system through the Franchise Tax Board and I am sure that if the IT department would talk to the Franchise Tax Board IT department, they can go over the proper protocols for back up procedures, disaster recovery, those are quite commonplace today. As a matter of fact, I would assume that the Secretary of State already has those in place with the lobbyist filings because those lobbyist filings now are all electronic and no paper signature is required so the assumption on our part would be that the Secretary of State actually has those internal protocols set up in their own IT department. And, I would imagine it would be simply applying those over to the campaign disclosure documents.

A couple of issues too; there's been talk about the signature issue and the paper issue and I just want to clarify a couple of things. We're looking at here eliminating the requirement of turning in a wet signature copy to the Secretary of State when an electronic filing is made. As Tony has mentioned, the Secretary of State when an electronic filing is made what goes up on the Secretary of State's website is a redacted version of that paper copy that is turned in and the only difference being is the addresses are redacted and obviously the signature doesn't show on it because it is an electronic version. And, Tony has mentioned also that you do have the ability of creating a non-redacted or an un-redacted version of that paper filing. So it would be very easy from a technical standpoint if anyone should walk into the Secretary of State's office to have a view of the un-redacted document and again the only difference being of what was turned in on paper versus what the person would be seeing electronically would not have the electronic signature. It would be the same filing. And, going back to Chairman Johnson's issues regarding how does that candidate know that the filing that they have made was secure and safe. Well, all they have to do go on to the website and you can look at the filing that you have made and if the candidate wanted to retain a paper document or an electronic version of their original filing, they can compare that, you know, directly against that.

Chairman Johnson:

That really was not my point in terms of security. Again just to focus in — as I said in my opening comments — there are a lot of folks here who are professional treasurers, professional attorneys, who have confidence in security and in usefulness and so on. That is one issue. But, the concern that I have is the public — the public's confidence in the system — just ordinary citizens, not only candidates. I know what I filed as a candidate and I can check it. But how does . . .

Tom Diebert:

Actually, I think that there is an improvement if you go all electronic and I'll just walk you through the process. If I want to go see a filing — let's say I want to see the Governor's last semi annual filing — I come into the Secretary of State's office and I ask for a copy of that. Now, I am not going to be shown the original copy and Tony, you can correct me if I am wrong. I believe that you would make a photocopy of that original filing to show to the person walking into the counter. Am I correct?

Tony Miller:

Well, we would either make a copy from the hard copy filed on paper or a copy from the electronic file.

Tom Diebert:

So there really wouldn't be any difference if you eliminated the paper filing. Again, the assumption is that paper filing is the exact duplicate of electronic. The only difference

being you have a wet signature on one and you don't have it on the other. And, I'm confident that the system is in place. We have been doing this for seven and one half years and I know of no situation where an electronic version that was posted on the Internet was different than the paper filing that was turned in. At least, that has been my experience in that. So saying that, if you walked into the Secretary of State's office and you wanted to see Governor's last semi annual statement which happens to be thousands of pages long, the Secretary of State has to make either a photocopy or as Tony says, you will be shown the electronic or print off the electronic version. If they decide that don't want to keep that filing, now you have to take that couple of thousand page document and probably either throw it away or file it back.

Chairman Johnson:

OK. That raises an interesting point in my mind and that is just an average citizen with their little home computer and they go in to get a report and let's not go to the thousands of pages of the Governor's but go to maybe a 150 pages on a state senate campaign to pull something out of the air. And, they can't download it because the computer won't allow it — it shuts off and you can't download a document.

Tom Diebert:

Then they are no worse off then they were before because they can walk into the Secretary of State's office and say, "I couldn't download this." And, Tony's staff would say, "Let's walk over to the computer here and pull up the filing. Would you like to have a paper copy of it?" They print it off if they do and they charge them per copy charge for the filings. So they are not any worse off going completely electronic than they were with paper. As a matter of fact, I think Steve or Chuck pointed out, they are actually better off because the majority of people that have Internet access and as we all know this is increasing more and more every day, they don't have go into the Secretary of State's office or the county of L.A. or the county of San Francisco to see that filing. They can do from the benefit of their home computer and pull up the redacted version of that filing. Now, the question of redaction is another separate issue whether or not you show that over the Internet or not. But, the technology also exists that if the Secretary of State said that I am going to give the county of Los Angeles and the county of San Francisco the ability to see the un-redacted version of the electronic filing like you do right now. It is very easy — it's just a security protocol log in and it's a very easy thing to do so if someone wanted to go into the county of Los Angeles or the county of San Francisco and see the un-redacted version of the filing like they do now on paper. They would have the ability to do it. So it is a very easy process.

Last but not least, you know, I think if you take a look at precedence set not only by the FEC, but the Franchise Tax Board as well, electronic banking — PG&E just sent me an email that they do completely [electronic] statements now. I mean the concept of electronic filing or electronic notifications — it's something that is not brand new. If this was the very first project coming out of the gate from the State saying we're going from paper to electronic, I would agree with taking a very precautionary approach, having

committees meet to see if that this makes sense or not. But there has been too much precedence already set and it's been seven and one half years of talking about this. I think it is time now to adopt the system because unless the Secretary of State says we have an internal problem with backing up our data or with disaster recovery — that is a minute IT issue that can be addressed by simply talking to the Franchise Tax Board. Again assuming that the Franchise Tax Board has the proper security protocols in place for disaster recovery — if you duplicate those protocols you won't have any problems with that.

Chairman Johnson:

I have to say that all I have heard thus far is anecdotal comments and nobody is offering empirical evidence of people making statements to the effect that the system is secure and then pressed on it. “Well, you know, it seems secure to me.” When asked about the effectiveness, the answers have all been, “It is effective for me.” It is effective for me, but no empirical evidence is provided that it is effective for voters and the issue again in my mind is not paper – that the paper system is the bee's knees or anything. The decision really to be made is the electronic system now empirically secure and effective. So that is what we should be looking at. I appreciate the fact the some of my friends have walked up here and I count you in that category.

Tom Diebert:

Just to give you some empirical evidence. I mean our company handles year in and year out 25,000 to 30,000 electronic filings through the State through our treasurer firms and to my knowledge, we have one incidence and I have been with Netfile since July, 2001. We have not had once incidence where any of our treasurers has come up and said that we have data corruption problem with the Secretary of State. You know and so from an empirical standpoint, you take an average of 20,000 filings times seven years that is 140,000 filings that have gone through our servers through the Secretary of State servers. I think that is a pretty strong case that the system is secure and it's doing what is designed to which is basically take the information that is typically input on paper and that is electronically input and it creates a paper document that duplicates what is being turned in on paper. We're only talking about eliminating the paper document itself and not having it turned in along with the electronic filing and the State has already adopted that procedure in lobbyist forms. You know, I don't know how much stronger the case can be made by saying we should have done this years ago and killing trees, we definitely are killing trees. You take a look at a gubernatorial semi-annual statement that is two to five thousand pages long being filed twice a year in non-election years and also twice a year in election plus during normal election cycle and we are spending untold amounts of money which inputs to considerable cost for us as taxpayers so as taxpayers, yeah we are killing trees. I was at the county of Los Angeles Voters Registrar Office and they walked me through where they keep all of their filings and it just a huge area of paper and trying to find a filing that happened three years in papers versus electronic where you have indexed and categorized — I can tell you it's a lot simpler finding that electronic version than it would be to try and find the paper.

Tony Miller:

Thank you. Commissioner Leidigh?

Commissioner Leidigh:

Since you are more of a technical expert than some of the other speakers maybe you can address my question about signature and accountability and Mr. Fuhrman posed a possible solution and what do you think about that possible solution?

Tom Diebert:

I didn't pick up what his exact...

Commissioner Leidigh:

A separate act would be required by the candidate or other responsible officer when the reports are signed by two people — not just the treasurer — to assure that the electronic report had been reviewed and proofed by both signatories rather than simply one button being pushed by one person.

Tom Diebert:

Personally, I mean, my ideal would be, and again, I deal with professional treasurer firms and most of the electronic filings we are talking about are being filed by professional treasurer firms — is if I, as a candidate, don't have trust in my professional treasurer firm of the data being accurate and if I...

Commissioner Leidigh:

You are missing the point

Tom Diebert:

Well, let me finish. And if I don't have the ability to review that filing before it is e-filed, then that is between me and the treasurer.

Commissioner Leidigh:

You are missing the point. When the enforcement entity comes knocking on the door, the accountability trail needs to be clearly established that that individual knew what was in the report at the time it got filed — not whether he trusts or she trusts his or her treasurer. OK, it's not about the relationship between the preparer and the filer, the person who is ultimately responsible. I can tell you that I have taken depositions from people who signed reports and their lawyers have them dummied up and they know

nothing. And, you pull out the copy of the report from the Secretary of State's office with their signature on it and you say, well, "Is this your signature?" "Oh . . ." Suddenly, you start to get a few answers. If it's not there, there is no hard copy with the signature on it, how are you going to establish who was present — who actually looked at that report and knew what was in it when it got filed?.

Tom Diebert:

Well, I would think it is the fiduciary responsibility of the candidate. They could go online within seconds after it is e-filed and print off a copy of that report that's been filed. I mean, they have the ability to see that filing. So, I don't know if it would hold water that there would have to be a two step process involved. I mean, again, I think that would be between the professional treasurer and the candidate themselves because right now in e-filing, the professional treasurer typically is the one that pulls the trigger on the electronic filing. You know and then what they do is they get a paper copy and the candidate signs it. Whether or not the candidate is reviewing that filing is up to the candidate. I mean, they may or may not be. I mean, I would hope that they would. If I were a candidate and I'm signing that I agreed to everything in here, I would definitely review it, but I can not attest to the fact that they did. But, by the fact that it is on the Internet, you know, within seconds after it has been confirmed as a valid filing and it only takes seconds to come up there unless you have a server issue which you know occasionally we have had one or two incidents in the last seven years that they weren't posted immediately, but that there was a slight delay. I mean, the candidate has the full ability to see that filing. So you could take the course of saying that the candidate, instead of having to pull two triggers, one by the treasurer and one by the candidate, which is a redundant process — you can change the rules to say you are going to have to be responsible for what goes up on the Internet — if you don't want to take a look at what got electronically filed. You know, it's your liability. But, you know, I think a treasurer would probably be better suited to answer that question than I am.

Tony Miller:

Thank you, Mr. Diebert. Are there any other questions or comments from the Chair or the Commissioner? Thank you very much.

Our next speaker is Holly Armstrong.
Ms. Armstrong.

Holly Armstrong:

Hello. My name is Holly Armstrong and I'm a senior staff counsel with the California Integrated Waste Management Board and actually, the issue that I am here to address has just been raised. First of all, we are very supportive of the idea of reducing the amount of paper needed to conduct business with the State. Obviously our mission is to reduce waste. And our sole concern is the issue of the signature under the penalty of perjury. And we were grappling with the issue ourselves in connection with some of the

applications for grants that are filed with our agency and exactly how to make sure that that signature can be authenticated in the event that some kind of enforcement or prosecution needs to take place. And so we wanted to make sure that appropriate consideration was given to that issue because the Secretary of State decision on this issue can affect the way other State agencies are expected to do business. And, so that's why I'm here today.

Chairman Johnson:

Have you submitted a written?

Holly Armstrong:

I haven't. I apologize.

Chairman Johnson:

It is possible for you to do so?

Holly Armstrong:

Yes, absolutely. Basically, we wanted to make certain that appropriate safeguards were in place such as the unique identifier for each applicant which the system already has in place. And several people have mentioned that they were already retaining a copy of a hard copy in their files. And, we would encourage that perhaps that be made part of the rules — that they be required to retain a hard copy not only of the report, but also of the cover sheet that is signed under penalty of perjury and, for example, you could look to California Rules of Court which requires that when anything is e-filed, a hard copy be retained so that its available for subpoena in the event that it's needed to be submitted for authentication in court at a later date.

Tony Miller:

Thank you very much. Any questions, Mr. Chairman or Commissioner Leidigh?

OK. Any other requests to speak? I'm still looking for #2. Volunteer #2. Does anyone wish to speak whether or not they filled out a request form? Either initially or to respond to any comments made. Anybody at all? Going once, going twice. YES! Ms. Alexander. Thank you so much.

Kim Alexander:

Now, I have never been to a hearing before where they have allowed this so I am going to take advantage of it — on just one quick note which is that there is another piece of important information that I understand is also redacted from the online reports and that is phone numbers for the treasurers. So if we do move to all electronic filing that is

another piece information that is currently redacted and I think you carried that bill once upon a time, Senator Johnson. I am not sure, but we did try to protect some of the privacy of the treasurers as well and the idea was to not have people be berated by all kinds of people calling you up and pestering you at all hours of the day and so it is just one other piece if we move away from paper that we will have to make sure it is somehow still publicly accessible.

Tony Miller:

Excuse me, let me ask the experts in the back from PRD, do we continue to redact phone numbers? We did at one point, but I thought that had changed.

Audience member:

They are still being redacted.

Tony Miller:

The committee phone number is not. The treasurer's number is being redacted?

Audience member:

Phone numbers are being redacted, period.

Kim Alexander:

All phone numbers

Audience member:

I don't agree. I think it may be redacted on the 460, but it is on the website when you go to

Audience Member (David Hulse from PRD):

Yes, it is. We grab it in terms of our base records, but in terms of any electronic filings, there was a decision made internally to keep away from phone numbers as well as street addresses in compliance with the street address. There is no law requirement; it is just something that we have done. I think there is discussion to bring it back.

Tony Miller:

Thank you, David Hulse from PRD. You just heard the voice of David Hulse. Any additional comments, Ms. Alexander? Anybody else? Yes, please.

Sandra Dean:

Hi, my name is Sandra Dean, I worked for Bob Leidigh several years ago and I worked for the law firm of Olsen, Hagel & Fishburn for ten years doing campaign disclosure and I understand that the concern is not how the professional treasurers are doing it because you got that clearly well represented today. But, I wanted to comment on a technical side of Cal-Access usability. Because I am far from technical. I mean my husband does everything on the computer. I worked for a law firm, who had a tech that did everything. And, so I had to learn to file when electronic filing started and I think that I am a citizen — a normal day citizen who would have to access Cal-Access. And, I can say without a doubt, it is easy to access, it is easy to use. FEC is not nearly as easy. And, that is just me, who is not a technical person and who does not know how to find things, who does not know how to use online services very well. So, I just wanted to say that point because I can look at it from both sides. I can see the usability. I used campaign disclosure stuff. So I understand what you have to look for and I think that was something important to be said because I think that usability; it is very easy. And, it is easier than going to get a paper copy and I never wanted to do that. OK. That's all.

Chairman Johnson:

Would that be a problem in your mind with doing a larger example of the UCLA students that Ms. Alexander referred to apparently as college students reasonably intelligent but not necessarily experienced people and give them a series of questions and say go on this system and find the answers. I mean if you're confident that it is easy to use then it wouldn't be very difficult to organize that kind of an effort with people not selected by anyone in this room because they're our brother-in-law or something — but, just average people.

Sandra Dean:

No, I don't see a problem with that. The only problem that I see with that is the question where you are saying how much is raised for this candidate across the board or spent for this candidate across the board. That stuff that is accessed on Cal-Access, but going in and getting a paper copy isn't going to benefit that. So that is the only concern I have with that type of question being asked. I think with Cal-Access you can find that information, but you just can't go in and get it with a paper copy because you don't know all the people who have contributed to that candidate or received or sent money to that candidate. That is the only thing.

Tony Miller:

Commissioner Leidigh, do you have any questions for her?

Commissioner Leidigh:

So where are you working now?

Sandra Dean:

I am working for River City Business Services – Rita Copeland.
OK. I guess that is it. That was easy.

Tony Miller:

Thank you so much. Are there any others? There are a few minutes.

Rita Copeland:

Hi, I am Rita Copeland and I just wanted to say that by eliminating the paper filings, I still think we still have all the benefits of a paper filing because you can still go down to the Secretary of State's office and get anything that you can get now and it just seems to me, while as a professional treasurer, it is really – the paper filing is a big problem. I mean you spend so much time copying and sometimes you can have a copy machine where it takes two sheets – it skips a page so your reports aren't really always accurate because of that. I mean that we do try to file our original reports with the signature — so the actual original report would be accurate, but possibly the copies would not be accurate because machines do make mistakes.

Chairman Johnson:

Several people have made references to copying and so on. I think someone, Dave Bauer maybe, in his letter referred to Kinkos being delighted and so on. But isn't it — in preparing an electronic report — isn't it just a question of pushing a button and printing it out? Why...?

Rita Copeland:

When you have over a hundred committees and some of them have reports that are hundreds of pages long and you have to make eight copies of each report in addition to the copy you are keeping for yourself and sometimes you have to have ten copies that you are filing because you are filing an original and a copy to several agencies, so it's not like pushing a button and making one copy. Someone is standing there making 11 copies and it can take a very long time. We have to have two copy machines just to get it done and sometimes we have to work all night long in some of the pre-election reports just to get the copying done. But that is obviously another issue. But I wanted to bring one other point about the signatures and you know, I'm not an attorney so I don't know if this would be legal or not. When you apply for your ID or your pass code, when you start committee or maybe on a 501, have some kind of additional statement where the candidate is certifying that he is going to review the reports and that he is accepting responsibility for the reports that are being filed.

Tony Miller:

Thank you. Are there any other questions or comments? Thank you, Ms. Copeland. Anybody else have anything to say? Yes, sir.

Steven Massey:

Steven Massey again from San Francisco Ethics Commission. I just wanted to address some of the comments that came about the security issue. Speaking from the system that I am running in San Francisco, I don't think there is anybody in the public who can accurately tell me that my system is not secure or is secure. I think the only people who can tell you is probably inside of the office. So I couldn't tell you whether your own system is secure. However, if you don't have sufficient back up system; recovery system right now and you don't believe that your system is secure at the moment, that is something that needs to be addressed now regardless whether this paper requirement is eliminated or not. Because this is a system that needs to be secure and most of the public right now is relying on this electronic data as being official data. So if your system is not right now something needs to be done.

The other thing is about electronic data not having the address information online. Again, that is something that could be made accessible. I think a couple of other people have brought that up. However, what we plan to do in our office, is set up computer terminals such that the public could come in and view the un-redacted data on one of the terminals and they would not need to come to our staff to identify themselves or request that information if they did not want to. They could just go up themselves and use one of our terminals.

As for requesting data, we have a number of people who often come into our office and ask to see paper filings because that is all they believe is exists. And so they will go into our public room and pull out files and start photocopying hundreds of documents. And once they have racked up a bill of \$60.00 or so, then someone notices this, they will go to the person and say to the person, "Do you realize that all this information available on CD and we can produce this in a couple of minutes?" At that point, most people will say that I was not aware of that and they will ask for the CD and at that point now, they have all the hard data versus just a single set of filings. So, in some respects also, this system is designed such that it can accurately reproduce the information that was on the paper reports. If you eliminate the paper filing requirement, I think you can take this electronic system a step forward and really build a much more robust set of data and really tie together transactions information across reports that you just can't do in a system that is requiring you again produce this hard copy that's very separated across different filing periods. So I think that we are will always going to be held back by the fact that we are stuck on this paper system. The Cal Format has not changed in the past six years and I have not seen any signs of this changing. So, I think if we eliminate the paper filing require, it would be a good time to evaluate the Cal Format and advance that even further. And, I think the public would be better off by having a much more robust set of data online that they can better visualize this information. And, in effect, that accomplishes the purpose of this which is transparency. Any questions?

Chairman Johnson:

I am not familiar what you are doing there, but as you describe it — congratulations. That is good. It should be the goal for the Cal-Access system to have the maximum amount of transparency and availability for ordinary citizens to analyze from a variety of perspectives and to have the complete picture available to them. It's my understanding that the Secretary of State's office is actively considering such an evaluation of the Cal-Access system now as I mentioned earlier. And it seems to me, to rush to judgment on this matter and I know folks out here that it's been in place for years, but I don't think we have sufficient information to conclude today with certainty that this system is in fact secure and that it is reliable in terms of the reason the system exists. The reason the system exists is because Prop 9 said folks — voters — had a right to this information so I think it is putting the cart before the horse if we are going to do this now and then, we are going to look at a some changes. Frankly, some comments that you made about the system that you are looking to be put in place, make a lot of sense.

Steven Massey:

I don't think you are ever going to get to the point where you are going to have a very rich, robust data online until you eliminate the fact that you are producing paper copies of that data.

Chairman Johnson:

Why?

Steven Massey:

Because it – you are tied to the fact that you are producing a hard copy of something of information where each transaction is not tied to each other. It is a static piece of information. So, if you have one report, you can't necessarily tie the information between report A and report B. Now, if you had a much more robust electronic system, then you would be able to accomplish that. But you can't if you are still producing the paper copies. Now, I know at least for our system, I am not familiar with how your system produces the paper copy, but our system, if someone submits data in our system and produces that paper copy, there is no way that there can be any different information on the electronic version than on the paper version because the paper version is produced from our electronic data. So, in that respect it is impossible that additional information or less information would be on that paper copy. It is an exact print out of what is submitted through the electronic system. There aren't any people in the San Francisco jurisdiction that are submitting a separately produced version of their electronic data in paper form. It is unnecessary amount of work and they can just, as you said, hit print and print an exact duplicate of the electronic data. Thanks.

Tony Miller:

Thank you. Thank you so much.

Final comments. The Secretary of State's office does have a terminal in the office which provides un-redacted information for anyone who wants to view it without having to identify themselves. Secondly, in the seven and one half years, we have not had any event with disrupted data. On occasion, there's some difficulty filing. That is usually very temporary, but in terms of data that has been filed, it has not been corrupted and has not been lost. It has always been there. And thirdly, to alleviate fears, our system is fully backed up with outside storage and we have the ability, if this building were to be destroyed, to rebuild from the electronic files they system and the data. So, we have certainly taken those precautions. We have done so from the beginning. So, paper isn't necessary in that regard with respect to the security issue. This is not presented as a conclusion, but only as a statement.

Chairman Johnson:

I guess I, for one, would feel a whole lot more comfortable if we had some detailed presentation from the technical staff to be able to answer those kinds of questions with some specificity. It is a great mystery to me at this moment. What we heard is fundamentally from a group who spend their full time on this system and using it and they kind of like it and they find it convenient and that's nice, but to me, what the threshold question is security and reliability and speaks to the people for whom the system was created in the first place and that is the voters of California. And with that, I thank you very much for the opportunity to be here today.

Tony Miller:

Thank you, Mr. Chairman. I appreciate you taking time to be here. Commissioner Leidigh, thank you. Ms. Swatt, thank you so much. Thank all of you for providing input.

If you have additional input, and would like to submit it in writing, please do so. Especially those who have promised us written documents, we look forward to receiving those. If you feel like submitting anything, please do so and they will become part of the record.

We are certainly not a done with this issue. The Secretary of State will be presented with this input as well as other input. The Secretary of State will be consulting with the Commission. The purpose of this hearing was to get public input and I am very grateful that we have received that input and if you have more, don't hesitate to provide it. And with that, unless there is something additional... Commissioner Leidigh?

Commissioner Leidigh:

I just echo the Chair's request that when you do come to consult with the Commission, perhaps you make the technical presentation that you were describing with Mr. Hulse's assistance and whoever else the Secretary chooses — how the system works in terms of accessibility, describe eccentricities and what the back up is, where it is located and so

forth. Then, hopefully, we can come up with a solution to the issues raised by Mr. Fuhrman.

Tony Miller:

Thank you, Commissioner. And, thank all of you.