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# **Hypotheses for Explaining the Exit Poll-Official Count Discrepancy in the 2004 US Presidential Election**

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About this paper: This is the second in a series of papers analyzing the Discrepancy between the Exit Poll and the Official Count in the 2004 US Presidential Election.

The first, "The Unexplained Exit Poll Discrepancy," documents that the discrepancy could not have been due to chance or random error and that no adequate explanations had been offered. It was originally published as a working paper on November 12, 2004, revised on November 21, 2004 and published December 29, 2004 as a research report. It's available on the web at <http://www.appliedresearch.us/sf/> or [www.organizationaldynamics.upenn.edu/center](http://www.organizationaldynamics.upenn.edu/center). References to that report are referred to as UEPD: [relevant page numbers].

This paper presents and examines the two sets of hypotheses for explaining the discrepancy: polling error or errors in the official count.

Reading Note: In the interest of rigor, this paper is much longer than it would be if I were writing strictly to explain what I think happened. To be thorough, I have tried to systematically address all the important reservations, questions, and critiques I could foresee. I've tried to write the paper so that you can skim through those points that seem self-evident or otherwise unnecessary to elaborate without losing the structure of the thesis. Those who would like to proceed directly to my presentation and examination of the hypotheses may turn to page 13 for theory and analysis on exit poll error (Bush voter refusal to participate), and page 22 for theory and analysis on errors in the official count.



The conclusion that the discrepancy between the 2004 US presidential election exit poll predictions and the official count could not have been due to chance (UEPD:13) generated extensive public controversy when it was written, but now it is widely accepted. National Election Pool (NEP) pollsters have acknowledged that their polls deviate from official totals by 1.9% nationwide (a 3.8% shift from Kerry to Bush)<sup>1</sup> and intimated that this deviation was caused by disproportionate numbers of Bush voters refusing to participate in the polls. Analysis of the available data and theory, however, strongly suggests that at least part of the discrepancy is due to miscount. Moreover, a review of 2004 election processes suggests little reason for confidence that the official result reflects either the intent of the electorate or an accurate count of the way that the votes were cast.

I expect this claim will meet with incredulity and anger. The idea of mass-scale vote fraud in a US Presidential election may be difficult to fathom – or to stomach. So before I analyze exit poll and electoral processes, I acknowledge and examine the reservations about even considering the thesis.

### **Analysis of Resistance to Considering the Thesis**

Despite exit polls that suggested a Kerry victory was likely and a broad array of election irregularities, a majority of Americans dismiss out-of-hand any suggestion of mass-scale vote fraud. One reason is that concerns about the validity of the election have hardly been reported, other than to dismiss them (UEPD: 13-17). Most journalists themselves and others with a public voice seem to dismiss out-of-hand any suggestion of mass-scale vote fraud in the US Presidential election based on four rationales:

- (1) The principal election protagonists seem to accept the official results
- (2) The official count is complete; a poll is a sample

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<sup>1</sup> Uncorrected exit poll data from a national sample of 13,047 voters indicate even a larger shift – of more than five percent (Simon & Baiman 2004). I'll use Mitofsky's 3.8% throughout this paper, but the reader should keep in mind that that number represents an estimate of deviation 1% - 2% *lower* than indicated by the election night exit polls.

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**Inquiry is Divisive.** The thinking goes that the President and the Republican Party fought hard for reelection, just as the Democrats fought hard to defeat them. Now it's time to accept the result and stand united as one nation. To accuse the victor of not having earned that victory dishonors not only Mr. Bush and whomever else is accused, but also our national institutions. If we have any hope at all for civil relations after a hard fought fight, we shake hands and congratulate our opponent. Unless we can accept the legitimacy of the election, we no longer have a functioning democracy.

But whether or not we have a functioning democracy is precisely what's at issue. Absence of scrutiny by broadcasters and the press does not make a democracy function; democratic processes do. And among these processes is scrutiny. Moreover, despite the absence of public scrutiny, the public is highly suspicious. A recent Zogby poll reveals that 28.5% of respondents thought that concerns about validity of the count in the election were very valid, and another 14% thought that concerns were somewhat valid.<sup>2</sup> Even if our election processes were in reality, absolutely honest, the fact that so many question it, makes that unity is impossible, and undermines the credibility of our government both at home and abroad.

### *How to Proceed*

Honest inquiry into the integrity of the election neither divides the country, nor violates any presumption of innocence. To the contrary, the only way to ever restore faith in our democracy or unite the nation is to ask these questions and get answers. So with all due respect, I proceed to investigate the exit poll discrepancy and the broader question of the integrity of the election, beginning with the four reasons people dismiss suggestions that the official count is incorrect and presume that the polls were in error.

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<sup>2</sup> Zogby Interactive Survey of Likely Voters—conducted from 12/1/04 thru 12/3/04 with a margin of error of  $\pm 2.0\%$ — "Concerns have been expressed by some observers of the election that problems with counting the votes may have affected the results and deserve further investigation. Do you think these concerns are...?" **Very valid (28.5%), Somewhat valid (14.0%),** Mostly invalid (24.2%), Not at all valid (31.2%), Not sure (2.2%).

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## **Politicians Rarely Lead the Charge for Truth (Flawed rationale #1: principal election protagonists seem to accept the official results)**

Little can be concluded about the integrity of an election from the fact that the official loser declines to dispute it. Kerry might accept the results for any number of reasons. The Democratic Party leadership – like most Americans – may not fully appreciate the significance of the exit poll results or the vulnerabilities of voting technologies. Little evidence of distortions in the official count was apparent on election night; most has accumulated slowly over the intervening weeks. They may be aware of the mounting evidence, but conclude it better to accept the results than launch a protracted fight they do not expect to win. It was reported that he “didn't want to put the country through any lengthy litigation in a time of war.” If so, it would seem that he accepted the “Inquiry is Divisive” presumption that I have argued is antithetical to truth.

I will examine in detail what principal NEP pollsters, Warren Mitofsky and Joe Lenski, have said later in this report, but if we know little about the thought processes of Kerry and organizational workings of the DNC, we know less about the workings of NEP. The pollsters have made only three unequivocal statements to date: (1) the exit poll was not designed to verify the election (which, of course, in no way establishes that it could not be used to help verify whether or not the election was clean); (2) the poll was conducted correctly; and, more recently, (3) their data confirm the exit poll-official count discrepancy. As I write this two months after the election, neither NEP, nor their media clients have provided evidence explaining the discrepancy, released raw data, or even made available exit poll estimates (UEPD: pgs 3-6) that were previously released and subsequently “corrected.” Indeed, they refused a request by John Conyers, the ranking member of the US House of Representatives Judiciary committee, to make the data available.

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## **Surveys can be More Reliable than Counts (Flawed rationale #2: The official count is complete; a poll is a sample)**

The prevailing view is that a count is real whereas a poll is an educated guess. A physical count of votes should theoretically have minimal error. One pictures the physical sorting of votes into neat piles and a simple and literal summing of the number in each pile. On the other hand, we know that a poll has sampling (random) error, coverage error, and non-response bias, and “just plain” error (i.e., any additional mistakes that might occur). But most people underestimate the accuracy and reliability of a well designed survey and overestimate the “realness” of a count, overlooking both unintentional and intentional sources of count error.

**Survey accuracy.** Counts on the scale of a national election are rare in business and public policy. Surveys and statistical methods, however, are to be found in almost every quality control process, including life-and-death decisions. Surveys are used to evaluate the efficacy of medicine and armaments and to understand and limit the spread of disease or terrorism, to measure, chart, and understand the Earth and its populations, and indeed to explore the heavens for life.

A national exit poll is not a trivial undertaking. NEP must hire 1500 interviewers for just one day of work every two years and deploy them to randomly chosen precincts nationwide. These pollsters can sometimes face challenges soliciting participation and dealing with uncooperative election officials. They may miss some potential respondents if too many voters emerge from the polling place at once or if they slip away amidst electioneering partisans or voters from other precincts at the same polling place (Blumenthal 2004). But, although a national exit poll presents challenges, it is not among the most daunting surveys that social scientists conduct. Pollsters know the sources of error and have developed methodologies to accurately estimate and to limit them (Merkle & Edelman 2000).

Moreover, the NEP pollsters have been conducting exit polls for decades; the challenges they faced were not unique to this election. Surveys are most difficult the first time they are conducted; each time that they are repeated, additional sources of error can be eliminated, for example, by

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training workers deal with specific obstacles faced in previous elections. As with any repeated complex process, each cycle tends to produce increasingly accurate results. Having done these polls over the course of many election cycles, NEP pollsters<sup>3</sup> have had extensive opportunity to learn from experience. Political scientist Ken Warren (2003:165-169) documents the historical accuracy of polling in the US, and of exit polls in particular, concluding,

[...] exit polling has become very sophisticated and reliable, not only because pollsters have embraced sound survey research techniques, but because they have learned through experience to make valid critical adjustments.

**Count inaccuracy.** In contrast, large number counts generally have many more problems than most people realize. Consider the master count in the USA – the decennial census. Brunell (2001) notes that it is,

[...] indisputable that the headcount is wrong. Millions of people are missed by the census and the Bureau can never be expected to count everyone given the current model.

The census may also double count people or count people who have died. Technicians at the Census Bureau and informed observers believe that the 2000 census count came in 6.4 million (2.3%) too high based on birth, death, immigration, and emigration data (Brunell 2001). Many involved in the census, including Kenneth Prewitt, the former Director of the Census Bureau, believe that statistical methods can be used to provide a more accurate count.

*Intentional error.* An election suffers from technological and logistical challenges comparable to a census, but elections are also vulnerable to manipulation. The census is operated by civil servants whose goal is accuracy. The stakes are significant – federal funding and congressional apportionment – so every effort is made to get it right, but are considered not so extreme as to encourage malfeasance (Brunell 2000). In contrast, elections in this country are overseen by politicians whose goal is to win, and the stakes could hardly be greater.

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<sup>3</sup> Warren Mitofsky's experience encompasses nearly 3,000 individual electoral contests in the United States and abroad ([www.mitofskyinternational.com](http://www.mitofskyinternational.com))

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### **Pride and Prejudice in Polls and Elections (Flawed rationale #3: American democracy is a source of pride; polls are viewed with suspicion)**

American democracy, and by association our electoral system, is a source of national pride; polls are widely hated and viewed with suspicion

**US democracy – history vs. current practice.** Many Americans who firmly believe the count must be right do so out of pride that we are not simply *a* democracy, but rather *the* democracy. We have an unbroken tradition extending more than two centuries of war and peace, prosperity and depression. Moreover, we attribute our resilience, success, and preeminence as a nation to democratic practice. Our Declaration of Independence and Constitution have been beacons for the world. That so much of the world is now democratic is due to our influence and largess. A democratic self-concept is embedded in all our cultural values and institutions.

Unfortunately, a proud tradition itself cannot ensure a clean election. Worse, this tradition may lead to unwarranted laxity. Most of the world does not take democracy for granted. Those whose fight for democracy is ongoing or occurred in living memory understand well its vulnerability. The US is indeed the first modern democracy, but it is very far from first in modern democratic practices. Britain, Canada, Germany, and many other nations carefully safeguard democratic practice by employing simple and transparent systems designed to maximally ensure the right to vote and minimize any possibility of manipulation. In Germany, for example, paper ballots are placed in tamper-proof public boxes where they remain in full public view until after they are counted. As an additional safeguard, exit poll results are released to the public as soon as the voting polls close. Every subsequent calculation or correction is published along with the original results, so that the entire exit poll process is also transparent (UEPD: 7-8).

**Attitudes and reality on polls and exit polling.** Polls and pollsters are not popular in the US, but Warren (2003) argues that this is in part because we are threatened by the power and accuracy of well-designed polls. Politicians, the media, and business all spend billions on polls because they

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are accurate; sometimes, because of polling accuracy, journalists, business leaders, and politicians alike, may be unwilling to put forward a point of view, take a chance, or lead without the support of polls.<sup>4</sup> Polls used in this way are dismaying because they take present opinions as future fact, whereas we hope that those with wisdom, knowledge, and a public voice will *inform* public opinion. Relevant to the thesis of this paper, however, is the point that much of our skepticism of polls is precisely *because* of their accuracy.

As accurate as polling is in general, prominent survey researchers (e.g., Asner 1999, Cantril 1991:142), political scientists (e.g., Edwards & Wayne 1999:84), and journalists (e.g., Jurkowitz 2000) concur that exit polls are by far the most reliable. As far back as 1987, political columnist David Broder wrote that exit polls “are the most useful analytic tool developed in my working life.” (1987:253). Edwards & Wayne (1999:84) caution only that,

... the problems with exit polls lies in their accuracy (rather than inaccuracy). They give the press access to predict the outcome before the elections have been concluded.

An exit pollster himself for over twenty years, Warren (2004) has never had an error greater than 2%, except one time – in a 1982 St. Louis primary. In that election, massive voter fraud was subsequently uncovered.

**Recent Exit Poll failures.** The criticism that exit polling received for mistakes made in projecting the winner in the 2000 election was almost wholly unearned. Voter News Service (VNS) used exit polls to project a victory in Florida for Gore. Even if one were to categorize this projection as erroneous, it would not be unexpected that one or two out of 51 contests would fall outside of the statistical margin of error. But VNS really didn't call Florida wrong. Exit polls measure voter intent and the voters' own belief about who their ballots were cast for. Official results notwithstanding, a clear plurality of Florida voters did intend to vote for Gore. In an election where the

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4 For example, a *Wall Street Journal* editorial (“General Morris”, April 7, 1999) charged that President Clinton, after setbacks in his first two years, came to rely too heavily on pollster Dick Morris and a policy of “follow the polls, spin your way out of trouble, and win the next news cycle, whatever the long term effect.” Implied was that he abandoned his principals and commitment to key programs. The editorial concluded, “Spend too much time following the polls and you simply forget how to lead, especially when it matters.”

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official margin of victory was 537 votes, 181,171 votes went uncounted. In Duval County alone, 27,083 primarily Democratic votes were lost (9.3% of the votes cast in the county). Whereas mostly African-American Gadsden County lost 12.5% of its votes due to over-voting (e.g., excess marks such as writing in “Gore” as well as punching the hole for him) or under-voting (e.g., a missed or incompletely punched chad); neighboring, white, Republican-leaning counties using optical scan systems lost 0.3% or less.<sup>5</sup> Gore lost 5,000 more votes due to Palm Beach County’s infamously poor butterfly ballot design. These voters all would have indicated their intent to vote, and belief that they had voted, for Gore in response to an exit poll survey. Additionally, the exit poll calculus may have been influenced by some portion of the 52,000 voters who were disqualified because they were falsely labeled felons.<sup>6</sup> Finally, differential treatment of absentee ballots in Republican and Democratic counties netted Bush an extra thousand votes.<sup>7</sup>

The second wrong Florida network call that night had nothing at all to do with VNS or the exit poll. Tabulation errors in Volusia county resulted in an ersatz Bush lead that led several of the networks, but not VNS, to call the state for Bush.

In the federal elections from 1994 through 1998, exit polls predicted presidential election results extremely accurately (Merkle & Edelman 2000); then in 2002 and 2004 they significantly diverged from official tallies. The prevailing hypothesis is that beginning in 2002 exit-polling methodologies suddenly became unreliable. The obvious alternative hypothesis is that the

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5 Ford Fessenden, and John M. Broder, “Study of disputed Florida ballots finds justices did not cast the deciding vote,” *New York Times*, November 12, 2001. The article’s title notwithstanding, the article states that, More than 113,000 Florida voters cast ballots for two or more presidential candidates. Of those, 75,000 chose Mr. Gore and a minor candidate; 29,000 chose Mr. Bush and a minor candidate. Because there was no clear indication of what the voters intended, those numbers were not included in the consortium’s final tabulations.

6 As with provisional ballots in 2004, we don’t know if any of these non-felons were interviewed by exit pollsters or how they may have affected the exit pollsters’ counts used to estimate precinct turnout. If they were included among the people leaving the polling place, which seems likely, then exit pollsters may have overestimated vote counts in the Democratic precincts where most of these falsely accused felons lived.

7 “Under intense pressure from Republican party leadership, officials in Republican counties accepted hundreds of overseas absentee ballots that failed to comply with state laws.” (David Barstow and Don Van Natta Jr., “Examining the vote: How Bush took Florida: Mining the overseas absentee vote, *The New York Times*, July 15, 2001). See also David E. Scheim, Campaignwatch.org, Notes 2000.

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discrepancy is due to counting inaccuracies related to voting technology changes, especially the introduction of DREs and changes in who controls vote-counting processes.

#### **Accuracy Does Not Necessarily Correlate with Consequentiality (Flawed rationale #4: The count is what counts; a poll is inconsequential)**

The final broad rationale for presuming that the count must be right is that candidates and their parties care very much about winning an election, and not at all about winning a poll. Nonetheless—and indeed partly for this very reason—systemic pressure to distort the count are substantial, whereas they are nil for polls; compounding the effect, systemic pressures on polling accuracy are greater than they are on vote count accuracy.

#### ***What matters to politicians is power; what matters to pollsters is accuracy***

One reason people dismiss the idea that the count could be off is that this was an intensely competitive election: a Democratic party that fought so hard for victory is not just going to allow the other side to steal it; indeed, 10,000 Democratic lawyers were ostensibly assembled on election day to try to guard against a theft. But the goal of politics is power, not truth in numbers.

**Political process and democratic principles.** Even if we assume, for a moment, that the 10,000 Democratic lawyers were pursuing truth and accuracy, what can they do without at least some support in at least one branch or chamber of government? Ohio and Florida, the two critical states with controversial tallies, have Republican governors (one the brother of the President), fiercely partisan Republican secretaries of state, Republicans firmly in control of both state legislative chambers, and primarily Republican judges in their judicial systems. As events have borne out, such powers are hardly shy about forming a partisan gauntlet, preventing any efforts at accuracy that might threaten a favorable party outcome. Indeed, for certifying the narrow victory of Democrat Christine Gregoire as Washington State governor-elect, Secretary of State Sam Reed faces the unified wrath of his party.<sup>8</sup>

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<sup>8</sup> David Postman, "Republican Reed faces GOP wrath over recount decisions," *Seattle Times*, January 03, 2005

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Concern for process is no more likely to trump partisan purposes at the federal level than in Ohio or Florida. Although they are the minority party in terms of registrations, and – arguably, votes – Republicans control the Presidency and the investigatory capacities of the executive branch, both houses of congress, and most of the federal judiciary, including the Supreme Court. U.S. Representative John Conyers, the ranking member of the House Judiciary Committee can write a letter to Ohio Secretary of State Ken Blackwell requesting his assistance on investigations into election irregularities (Appendix E-1), but Blackwell is under no obligation to respond. Without support from the Republican majority, Conyers cannot even call an official hearing. The only recent federal intervention in state electoral matters was the US Supreme Court's decision to prevent Florida votes from being counted in *Bush v. Gore* (2000).

The Democratic Party leadership seems only marginally more concerned with accurate counts. Once Kerry made his political calculation, he reportedly restrained the legion of democratic lawyers ready to mount a challenge.<sup>9</sup> Relatively few prominent Democrats have spoken out on election challenges, abuses, or voting rights. Four years ago, not one Senator joined the Congressional Black Caucus to contest certification of Florida electors, and thereby open debate. With 24 hours remaining until the 2005 Electoral College certification, not one Senator has agreed to join them Democrats from the House Judiciary Committee in contesting it.

The 2004 presidential election confirms what was openly demonstrated in 2000. If a winning strategy is to frustrate a full and fair count, that strategy will be pursued, at least by George Bush and the Republican Party as currently constituted. It also confirms a pattern by the Democratic Party as currently constituted, of retrenchment to retain any residue of power, in apparent fear of their adversaries. Either way, relatively few politicians have found it in their interest to champion the fight for a full and accurate reconciliation of the vote. Fewer still champion a full and accurate reconciliation of the vote independent on principle.

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9 Freidman, Stefan C. "Drama Behind Kerry Decision," *New York Post*, November 4, 2004

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### *Characteristics of innovative, reliable, and accurate processes*

The fact that pollsters call an election wrong may not hurt the winning candidate (e.g., the iconic gleeful Truman displaying the bold newspaper headline “Dewey Wins”), but it DOES hurt the pollster. Mitofsky and Lenski are in a delicate, embarrassing position now. If they falter, they are readily replaced. Polling is an intensively competitive business. Entry barriers are minimal. Hundreds of polling outfits compete vigorously for contracts. It’s a true meritocracy, and the measure of merit is accuracy.

**Polling process.** Accuracy in election polling is fostered not only by competitive pressure, but also by another characteristic of learning, improvement, and adaptation: frequent feedback. After every election pollsters can ascertain how closely their predictions match the official counts, learn from any mistakes, and use this acquired knowledge to fine tune their models and methodologies. Exit pollsters have the additional benefit of being able to verify counts in specific precincts versus their sample estimates, and so learn exactly what has happened and how to improve it for next time. For example, they can ascertain if there is a time-of-day-bias or how to estimate turnout based on mid-day numbers. This is an important reason that it’s so hard to imagine that, all of a sudden, these polls don’t work.

**Election process.** In contrast, there is little competition, feedback, and motivation for accuracy in election processing.

One might imagine that voting systems are continually tested to see if, in fact, voter intent is reflected in the count. How do we know that when we pull the lever, punch the card, or press the button for the candidate of our choice, that the vote really does register for that candidate? In short, we don’t. Levers and machine tabulators fail. Punches may go astray, the card could be damaged, or the counting machine might fail. Absentee ballots can be lost or altered; Direct Record Electronic (DRE) voting machines may be programmed incorrectly or fraudulently so

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that, say, one out of every fifty votes cast for your candidate will register for her opponent.<sup>10</sup>

Machines are supposedly tested prior to the election (although Harris, 2003, challenges that claim), but even if they are, manipulations may not be manifested until the actual election (Jones 2000, Selker 2004 – more later in this report).

Manual recounts, which are after-the-fact tests, are only effective where there is a verifiably unaltered paper trail. Many machines have no paper trail at all, and recounts are not regularly conducted for the purpose of machine or technology verification. In most states, they are only conducted when one of the candidates (typically, a deeply indebted loser) is willing to pay for it and when they do not meet obstructions from the secretary of state and board of elections. The Conyers letter (Appendix E) documents the lengths to which Ohio county board of elections, for example, go to *avoid* obtaining any feedback on the accuracy of their processes.

The incentive system makes such inaccuracy perfectly understandable. Imagine the Florida election officials of 2000 – especially those in Palm Beach county – in the polling business, or any competitive industry. They might *never* work again after the 2000 debacle. If they were beholden to voters for accuracy and integrity as pollsters are beholden to their clients for accuracy and integrity, they would be in litigation and quite possibly in prison. But in Florida election officiating, crimes against democracy not only went unpunished, but were, in fact, rewarded – a congressional seat for former Secretary of State, Katherine Harris, and appointment to a special task force overseeing state electoral reform for Palm Beach Supervisor of Elections, Teresa LePore.

### *Pressures for manipulation*

Ultimately, the most important reason why exit polls may be more trustworthy than official counts is precisely that they are politically inconsequential. The stakes in the 2004 US presiden-

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<sup>10</sup> Kevin Shelley (2003) “[California] Secretary of State’s ad hoc touchscreen voting task force report,” July 1, 2003. See also Dill (2004); Seltzer (2004); Kohno, et al (2003); or Mercuri (2000)

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tial election were enormous. The contrasts were sharp and critical on war and peace, taxes and benefits, environmental policy and education, civil rights, the role of religion, etc. The whole world watched with intense interest. Over a billion dollars was spent, most of it donated by individuals. Hundreds of thousands of people volunteered large amounts of time and effort. If they could manipulate the results so that their candidate could win, many would deem that the ends, in this one case at least, would justify the means. Moreover, it is the world's most powerful people who have the greatest incentive to manipulate the results. All told, that's a great deal of pressure on a highly vulnerable system to produce a given result, rather than an accurate accounting.

To the degree that polls are not consequential, they are free from these manipulative pressures. That's why, all other factors being equal, they are considerably more trustworthy. As discussed, however, all other factors not equal. Polling is also more accurate because accuracy itself is the goal; because it is a competitive business; and because its methods and models are constantly scrutinized and refined through frequent, thorough feedback.

\* \* \* \* \*

In this section, I have examined the reasons why we might presume that the count must have been correct and the exit polls wrong. I conclude that none of these presumptions should dissuade further investigation; indeed, none should provide confidence that the official count is more likely to be accurate than exit poll predictions. In the next section, I begin a systematic analysis of the competing hypotheses for explaining the discrepancy.

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## Possible Polling Error

### The Prevailing Theory – Bush Voters' Disproportionate Refusal to Participate

Although many explanations about what went wrong in the polls (UEPD: 14-17) were advanced and initially accepted by the press, NEP pollsters themselves have offered only one. A week after the election, Gallup News Services reported that

Warren Mitofsky and Joe Lenski, co-directors of Edison/Mitofsky, say that the Kerry voters apparently were much more willing to participate in the exit poll than were Bush voters. The interviewers at each of the sample voting locations are instructed to choose voters as they exit from the voting booth -- every third, or fifth, or eighth voter -- some sequence of this sort that is determined ahead of time. Many voters simply refuse to participate in the poll. If the refusers are disproportionately for one candidate or another, then the poll will be biased.<sup>11</sup>

Two weeks later, it was reported that the pollsters had reviewed the data and come to the same “belief,” this time strengthened by ruling out the notion that their samples were drawn incorrectly:

In a review of 1,400 sample precincts, researchers found Kerry's share of the vote overstated by 1.9 percentage points [...].

Perhaps the Democratic skew this year was the result of picking the wrong precincts to sample? An easy explanation, but not true. A post-election review of these precincts showed that they matched the overall returns. Whatever produced the pro-Kerry tilt was a consequence of something happening *within* these precincts. This year, it seems that Bush voters were underrepresented in the samples. The question is, why were they missed?

Mitofsky, the veteran pollster who co-directed this year's exit surveys, fears that Republican voters refused to be interviewed in disproportionately higher numbers, thus skewing the results. Perhaps they were busier than Democrats and didn't have time to be interviewed. Perhaps they disliked the media's coverage of Bush, and showed it by snubbing poll interviewers. Whatever the reason [...]<sup>12</sup>

And with that, the *Washington Post*, like nearly all our national newspapers and broadcasters, moved on.

### The Research Problem

Researching and writing this paper has presented a challenge that I've never faced in academics. At the fundamental level, there are two competing sets of hypotheses – either the polls were off or the count was off. One set of hypotheses – the set that is accepted by nearly everyone

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<sup>11</sup> David W. Moore, Senior Gallup Poll Editor, “Conspiracies Galore” *Gallup News Service*: November 9, 2004.

<sup>12</sup> Richard Morin, “Exit Polls Can't Always Predict Winners, So Don't Expect Them To” *Washington Post*, Sunday, November 21, 2004; Page B01

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with a public voice in this country – is not supported by any available data and has almost no theory to back it up, at least not in the sense that the term would be used by anyone intent on understanding or solving a problem.

This presents problems for any scholar seeking to ascertain which hypotheses are supported by the data. Although there are many theories to explain how the count could be wrong, neither the pollsters nor the press has elaborated any coherent theory to explain why Bush voters might disproportionately refuse to participate. I've searched the news service databases and too many blogs to recount, and have corresponded or talked with Lenski, Mitofsky and several other pollsters. Based on those conversations and that research, the best sketch of a theory is that laid out by Mark Blumenthal (2004) on various posts made throughout November and December (see especially November 17<sup>th</sup>).

## **A Bush Voter Disproportionate Refusal to Participate Thesis**

**Historical evidence.** “Democratic overstatement” in exit polling is nothing new.

An inspection of within-precinct error in the exit poll for senate and governor races in 1990, 1994 and 1998 shows an understatement of the Democratic candidate for 20 percent of the 180 polls in that time period and an overstatement 38 percent of the time [...] the most likely source of this error is differential non-response rates for Democrats and Republicans (Mitofsky, 2003, p. 51).

Joan Konner (Konner, 2003, p. 11) reports that

[...] in 2000, VNS's exit poll overstated the Gore vote in 22 states and overstated the Bush vote in nine states. In only 10 states did the exit polls match actual results. [I have no idea what happened to the other 9. - sf]

**Low Response Rate.** Pollsters point out that response rates have been steadily declining. NEP has not released a response rate for this year, but, at 50% or slightly greater, there is significant room for error if those who refuse to participate disproportionately favor one candidate. Mitofsky has said that this *is* the source of the error, and that his polls in Mexico and Russia are accurate because they have 90% response rates.

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**Why Bush voters might refuse disproportionately.** According to a Pew Research Center study,<sup>13</sup> a significant percentage of conservatives, especially cultural conservatives, feel the press is highly biased in favor of Democrats. In total, 42% of Republicans believe that news coverage of the campaign is biased in favor of Democrats, whereas only 30% of Democrats believe that news coverage is biased in favor of Republicans. Now consider that when exit poll interviewers make their pitch to respondents, they are supposed to read this script (the text comes from NEP training materials shared via email by an interviewer):

I am taking a public opinion survey only after people have voted and it is completely anonymous. It is being conducted for ABC, the Associated Press, CBS, CNN, Fox and NBC ....

Both their questionnaires and their identifying badges were both emblazoned with this logo:



Those who consider the news media biased against their candidate may also distrust the confidentiality and fairness of a news-sponsored survey. MSNBC commentator Craig Crawford noted that some evangelical churches discourage their parishioners from any contact with the media.<sup>14</sup>

### Analyzing the Bush Voter Disproportionate Refusal Thesis

Unlike the explanations we were offered the first week (UEPD 13:16), this one seems plausible, and if, in fact, Bush-voters disproportionately refused to participate, that *could* cause the shift.

<sup>13</sup> The *Pew Research Center for People and The Press* report, "Perceptions of Partisan Bias Seen as Growing – Especially by Democrats" found that 42% of Republicans believe that news coverage of the campaign is biased in favor of Democrats, whereas only 30% of Democrats believe that news coverage is biased in favor of Republicans (January 11, 2004). As the title indicates, however, perceptions of partisan bias is growing even more rapidly among Democrats, and by now this gap may have closed further, or even disappeared.

<sup>14</sup> Keith Olbermann, Countdown, *MSNBC* November 12, 2004

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### *A Hypothesis, Not an Explanation*

Plausibility, however, is not the criteria for accepting an explanation. An explanation requires independent evidence that supports the hypothesis and casts doubt on the alternatives. Blumenthal (2004) has done much more than anyone from NEP or in the press to provide a plausible hypothesis, but although we can imagine why some Bush voters might not participate, we can similarly imagine why some *Kerry* voters might not participate:

- Unless the poll worker happens to speak their language, Non-English speakers are *de facto* “refusers.”
- The poor and poorly educated may feel intimidated in the presence of a more educated poll worker of higher socio-economic status. In small towns, where “everyone knows everyone’s business”, the poor are also vulnerable and at risk if they express a preference of which their employers might not approve.
- Contrary to the *Washington Post* speculation that “Republicans are busier:” single parents and low-wage workers are among the most harried members of society. If any group doesn’t have time to talk to a pollster, it is these people.

My point here is not to say that Democrats are, in fact, more likely to refuse to participate than Republicans are, just that it’s an empirical question (i.e., it’s a question that must be answered with data, not speculation). To say Republicans *must have* refused to participate more than Democrats explains nothing; rather, it dismisses a legitimate inquiry. the fact that the count deviates from the exit poll does not by itself mean it is *apparent* that “Kerry voters were much more willing to participate in the exit poll than Bush voters,”<sup>15</sup>

### *Historical Democratic Overstatement or Democratic Undercount?*

Pollsters say that Democratic overstatement is nothing new; but analysis of their evidence suggests, rather, past miscount, accuracy of exit polls, and an *absence* of non-response bias.

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<sup>15</sup> David W. Moore, Senior Gallup Poll Editor, “Conspiracies Galore” *Gallup News Service*, November 9, 2004

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Both the Mitofsky and Konner papers cite as evidence data from internal VNS documents. I wrote to ask Mr. Mitofsky for the data and/or the article he used in his 2003 article. He told me he is not authorized to distribute at VNS' internal work, and passed along the name of the author. I wrote to the author who informed me that "The data that you requested is not in shape to be released right now."

Given that neither the data nor the documents presenting the data are available, there really is no evidence, but for argument's sake, let's presume that there is a bias roughly in accord with the VNS report. Mitkofsky doesn't provide percentage deviation for each of these precincts, but in Table 2.1 I enumerate a scenario based on his numbers (Mitkofsky 2003: 51), in which I assume that the Republican and Democratic overstatement each averaged 2% for the respective precincts in which they were found. As calculated in Table 2.1, precincts that overstated Republican support would pull the overall population .4% to the GOP (20% of precincts x 2% deviation); precincts that overstated Democrat support would pull the overall population .76% Democratic; and the precincts for which there was no deviation would result in no change. The overall result would be a 0.36% overstatement for the Democrats.

**Table 2.1: Analysis of Historical "Democratic Overstatement" on Exit Polls**

	#	Average Deviation	Weighted Average
Republican overstatement	20	-2%	-0.40
Within 1%	42	0%	0
Democratic overstatement	38	2%	0.76
Average "Democratic Overstatement"			0.36%

These pollster numbers, however, like those of the 2004 Presidential election and every other election, assume the count is correct, which is exactly the point in question. Differentials in the *residual ballot rate*, the percentage of ballots cast but not counted, represent one explanation for this "Democratic overstatement." Edley, et al (2002) found that 2% of votes for President in 2000 were "lost" due to a combination of poor equipment and voter error, with strikingly different state-to-state and county-to-county rates. Lost votes are overwhelmingly concentrated in the

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poorest counties, where 12% or more of the ballots cast can be “spoiled.” The U.S. Commission on Civil Rights (USCCR) found that in the Florida 2000 Presidential election, black voters were nearly 10 times more likely than non-black voters to have had their ballots rejected.<sup>16</sup> A study by the House Committee on Government Reform<sup>17</sup> found that voters in low-income, high-minority congressional districts throughout the country were three times more likely to have their votes for president discarded than those in more affluent, low-minority districts. Given that low-income, high-minority constituents, especially blacks, vote overwhelmingly Democratic, differential spoilage rates suggest that, based on Mitkofsky’s numbers, exit polls gauge voter *intent* accurately, and that historical *Democratic overstatement* should more correctly be labeled historical *Democratic undercount*.

**Table 2.2: Estimate of Historical Democratic Undercount on Exit Polls**

	% of total lost votes	% of total votes
Spoilage Rate = 2%		
Lost % of Democratic Votes	59%	1.18%
Lost % of Republican Votes	41%	0.82%
<b>Average <i>Democratic Undercount</i></b>		<b>0.36%</b>

Table 2.2 reveals that the numbers derived from analyzing this Democratic bias result in a reasonable estimate for the USCCR-documented undercount of African-American voters. If the 0.36% figure is correct for the "overstatement," and the spoilage rate is 2%, then a 59% Democratic, 41% Republican breakdown of those intended votes – hardly implausibly Democratic, indeed probably too Republican – would be sufficient to account for the "overstatement.” In fact, exit poll findings of Democratic overstatement may represent the best available estimate for Democratic undercount, and confirm the historical accuracy of exit polls as a measurement of voter intent.

<sup>16</sup> U.S. Commission on Civil Rights Report, “Voting Irregularities in Florida During the 2000 Presidential Election”

<sup>17</sup> Special Investigations Division, Committee on Government Reform. “Income and Racial Disparities in the Undercount in the 2000 Presidential Election.” U.S. House of Representatives (July 2001)

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**Relevance to the 2004 election discrepancy.** As regards the 2004 election, spoilage should have become a less significant factor nationally than in 2000, due to publicity surrounded the Florida 2000 election, voter-education programs, and widespread adoption of DREs. Whatever the concerns about electronic voting machines, they do reduce lost votes dramatically. Stewart (2004) found that the introduction of DREs throughout most of the state of Georgia corresponded with a decline in lost votes from 4.9% in the 1998 US Senate election to a 0.9% in the 2002 US Senate election. If widespread adoption around the nation had a similar impact, residual ballots nationwide in the presidential election could have declined from 2% to well under 1%. If the resultant Democratic undercount bias were consistent with past elections, it should have been in the .1%-.3% range. It's partly because of this phenomenon that I say that at least part of the exit poll discrepancy is due to miscount, but these estimates indicate it represents only 5%-15% of the overall discrepancy for the 2004 election, leaving 85%-95% still unexplained.

### *Empirical Study of Response Rate and Survey Error*

Pollster comments notwithstanding, both general and specific evidence indicates that, at 50% response rates, non-response bias is *not* a major factor. In most surveys, 50% response rate is considered very good, and the basis for highly accurate findings. Telephone polls probably average well under 15%<sup>18</sup>, so if we cannot believe exit poll findings based on 50% response rate, telephone polls would seem to be useless.

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18 The only polling agency I could find with a published response rate was Princeton Survey Research Associates (PSRA), whom NBC News contracts for some of their polls. The telephone response rate is calculated by taking the product of three component rates:

Contact rate – the proportion of working numbers where a request for interview was made – of 47 percent

Cooperation rate – the proportion of contacted numbers where a consent for interview was at least initially obtained, versus those refused – of 32 percent

Completion rate – the proportion of initially cooperating and eligible interviews that were completed – of 99 percent

Even this measure doesn't fully cover non-response: It doesn't count non-working numbers, which were, after all, part of the random sample, and the 9% of voters who have no standard telephone service are not covered at all.

Moreover, PSRA's response rate is probably much higher than average (that's why they publish it). Finally, average 2004 numbers are probably lower yet. A study by the Pew Research Center for the People & the Press found the percentage of people reached for interviews in a typical five-day Pew survey dropped from 36 percent in 1997 to 27 percent in 2003.

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**Are Non-Respondents Different?** Exit polls are among the very best surveys in the world for understanding non-response bias. In every election, exit pollsters can compare precinct polling with actual results. Reviewing such results, Popkin and MacDonald (1998:28-29) conclude that “exit poll samples are representative of voters,” i.e. minimal non-response bias. Using their own data, including that of previous presidential elections, Merkle and Edelman (2000:74) concur, with the sole caveat that older voters (60+) disproportionately refuse to respond and thus exit pollsters need to “conduct a nonresponse adjustment for age,” something that NEP presumably does, especially given that Merkle participated on the NEP survey design team.

**Response Rates and Survey Error.** Merkle and Edelman (2000:77), in fact tested specifically the relationship between response rates and survey error. Using 1996 election data, they find “no relationship between response rates and error.” Merkle et al. (1998) even tested this relationship through an experimental study. By giving gifts to participate in the poll, they were able to increase exit poll response rates. This response rate improvement, however, resulted in *increased* survey error.

### *Are Republicans/Conservatives/Bush Voters Less Inclined to Participate in Exit Polls?*

I will soon study this question empirically, but one would think that if this was the case, we would see evidence in past elections and a trend in recent elections. In fact, the evidence is otherwise. Although more Republicans than Democrats believe news coverage is biased against their party, *the gap is narrowing*, so we should have seen an even greater effect in past years. But there was no bias in the elections of 1994, 1996, and 1998. Merkle and Edelman (2000) note that,

In some past elections there has been a Democratic bias (i.e., an overstatement of support for Democratic candidates) in the exit polls. For example, in the 1992 exit polls Clinton's support was overstated by about 2.5 percentage points. This bias has virtually disappeared in recent elections [1994, 1996, and 1998]

If the minimal bias in 2000 is attributable to spoiled ballots, the prevailing hypothesis becomes that beginning in 2002 exit-polling methodologies suddenly became unreliable because conservatives suddenly decided to stop talking to exit-pollsters (even though their animosity to

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the press is nothing new; in fact, their suspicions of the press have been growing less rapidly than those of Democrats).

The obvious alternative hypothesis is that these new discrepancies are not an inexplicable new poll bias, but rather a count bias resulting from voting technology changes and changes in who controls vote-counting processes.

### Summary of NEP Reports to Date and the Disproportionate Refusal Thesis

With so many genuine concerns two months after the election, two points are particularly disturbing about NEP suggesting, but not documenting, this thesis:

- (1) The data are still proprietary. True, the networks paid for the poll, but the data were for use on election night to aid in projecting winners and explaining the results. What benefit is derived from continued withholding? And how can that compare against its public policy importance – helping to either verify the validity of the election, substantiate allegations of electoral fraud, or, most important, highlighting precinct-level anomalous findings? Withholding data critically important to the public interest is even more disconcerting given that NEP is a consortium of the nation's primary news outlets. (Isn't this discrepancy also *news*?)
- (2) The sparse public pronouncements have been subjected to scant critical scrutiny. Most people in a position to raise questions publicly have uncritically accepted the Bush voter refusal explanation, even though NEP has yet to make an unqualified assertion, let alone provide any evidence to support this thesis. Mitofsky and Lenski will still only say that this is what they “believe” or “fear” the data will show.<sup>19</sup>
- (3) This “explanation” is used to dismiss inquiry. For example, Senior *Gallup Poll* Editor David W. Moore writes,

[...] any such biases [disproportional Bush-voter refusal] will be adjusted once the poll results are compared with the actual vote in those same precincts. Because this correction includes the

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<sup>19</sup> Morin, op. cit.

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reported vote, the "adjusted" exit poll results cannot be used to check whether the actual vote count is accurate. The exit poll models *assume* an accurate vote count.

Still, there are checks. The models compare results with previous elections, with the pre-election polls, and with party affiliation. And based on those checks, Mitofsky and Lenski dismiss the idea that in fact Kerry won -- that the exit polls were right and the vote count wrong.

Still, some people fall in love with their own conspiracy theories and no amount of evidence will undermine that sentiment.<sup>20</sup>

Of course neither Mr. Moore nor anyone else has provided such evidence. He merely shows *himself* unwilling to consider evidence that might undermine *his* theory, using instead "conspiracy theory" as a pejorative label so as to avoid engaging in the merits of a discussion.

With all due respect to the integrity and professional competence of Messrs. Lenski and Mitofsky, even Nobel Laureates subject their conclusions to review. If two respected pollsters say this is what they *believe* the data will show, that is a hypothesis to be taken quite seriously. But is it acceptable to the press and the public that this is what they "believe that the data will show," two months after the election? Especially given such substantive questions about the legitimacy of both their poll and the election.

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20 David W. Moore, Senior Gallup Poll Editor, "Conspiracies Galore" *Gallup News Service*, November 9, 2004

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## Possible Errors in the Official Count

In contrast to minimalist polling error hypotheses, charges of count error and fraud are overwhelming. The problem on this side of the investigation is a myriad of unfiltered charges and allegations, all of which would take 100 people to evaluate. The best that I can do here is to relate a few of the more compelling. I present in this section four categories of mostly complementary theories: the big picture (numbers don't add up), conventional mechanisms used to suppress and alter the vote, grand-scale election theft, and systemic conflict of interest problems.

### Big Picture: The Numbers Don't Add Up

**Comparing the 2000 and 2004 Presidential Elections.** In 2000, Gore won the popular vote by more than half a million votes, but in the 2004 election, which was essentially a supercharged rerun, Bush beat Kerry by 3.3 million. What could have caused the change between 2000 and 2004? The bases stayed remarkably constant. In both camps, 9 out of 10 voters maintained their presidential party selection from 2000.<sup>21</sup> There were really only two major changes. First, a 2.8 million decline in 3rd party votes – mostly the 2.5 million fewer votes received by Ralph Nader<sup>22</sup>. Second, intense get-out-the-vote efforts from both camps led to an estimated 20 million new voters.

In Table 2.3, I add up the numbers. Roughly 100 million (83%) of the 120 million voters in the 2004 presidential election voted again in the 2000 presidential election. This represents 95% of the 2000 electorate. Both bases held strong; ninety percent of Gore voters reportedly voted for Kerry, just as ninety percent of Bush 2000 voters supported him again in 2004. As indicated in

<sup>21</sup> Numbers for this analysis are drawn from uncorrected election night exit poll data. a national sample of 13, 047 respondents was asked who they voted for in the 2000 and 2004 elections (see also Figure 2A). Based on their 2000 vote, these are how respondents voted in 2004:

New voters:	Bush 41%	Kerry 57%
Gore 2000 voters:	Bush 8%	Kerry 91%
Bush 2000 voters:	Bush 90%	Kerry 10%
Other 2000 voters:	Bush 17%	Kerry 64%

<sup>22</sup> All national election results obtained wikipedia (November 23, 2004). Nader received 2,882,955 in 2000 vs. 397,519 in 2004. All exit poll data obtained from the CNN election 2004 website (November 23, 2004).

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Row (1), Kerry starts with a base of 48.4 million votes and Bush starts with a base of 47.9 million votes (the 1 in 10 who switched parties canceling each other out). To this base, we add Row (2), the 2000 election third-party votes that were redistributed to the two major parties. Election night exit polls indicated that Kerry amassed the lion’s share of these mostly ex-Nader votes, 64% (2.5 million votes), compared to 17% (600,000 votes) captured by Bush. The third block of votes (Row 3) comes from new voters. Even though, by all accounts, both parties led highly successful registration and get-out-the-vote drives, the Democrats, as is generally the case, won a healthy margin (57%-41%) of new voters. Summing these three voting blocks together, it looks as though Kerry somehow received 4,300,000 votes less than he should have, and Bush somehow received over 4,400,000 votes more than he should have.

**Table 2.3: Expected Presidential Votes based on Changes from the 2000 Election**

	Democrats	Bush	3rd Party	Total
2000 results	50,999,897 48%	50,456,002 48%	3,949,201 4%	105,405,100
2004 results	57,890,314 48%	61,194,773 51%	1,170,071 1%	120,255,158
Increase	6,890,417	10,738,771	(2,779,130)	14,850,058 14%
(1) 95% of 2000 electorate	48,400,000	47,900,000	3,800,000	100,000,000
(2) 3rd party redistributed	2,300,000 64%	600,000 17%		
			New Voters: 20,200,000	
(3) New Voters distributed	11,500,000 57%	8,300,000 41%		
Expected Total	62,200,000	56,800,000		
Discrepancy	(4,300,000)	4,400,000		

Critics may charge circular reasoning here, that I’m using exit poll figures to show 2004 votes based on their 2000 choices, when it is precisely the accuracy of the exit polls that are at issue. But it’s not just exit polls; these numbers are consistent with everything else we know about the campaign. Both sides, especially the Republicans played to their base; ex-Nader voters would be unlikely to support Bush; and three key groups of new voters – young, immigrants, and lower socio-economic non-voters – were important Democratic constituencies. Additionally, it challenges the notion that Republicans or Bush voters were systematically undersampled in the exit poll, because disproportionate response would be unlikely to affect former third-party voters




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or reports of 2000-2004 loyalty levels, and would not have affected new voter numbers sufficiently to erase Kerry's edge among them. While it is plausible that a Democratic bias in the exit polls might reduce the 5.4 million vote Democratic plurality derived from these calculations, it seem unlikely that it could be sufficient to eliminate it, let alone account for Bush's reported margin.

NEP corrections account for this apparent 8.7 million-vote swing as illustrated in Figure 2A. Even though Gore won the 2000 popular vote, the NEP corrected numbers indicate that Bush 2000 voters outnumbered Gore voters by 16%. Lenski will claim that voters don't always remember past actions accurately, but here again, we are left with a strange, unexplained aberration to reconcile the numbers.

**Figure 2A: CNN Presidential Vote 2000 and 2004 Matrix**

<http://www.cnn.com/ELECTION/2004/pages/results/states/US/P/00/epolls.0.html>

PRESIDENTIAL VOTE IN 2000			
	BUSH	KERRY	NADER
TOTAL	2004	2000	2004
<b>Did Not Vote (17%)</b>	45%	n/a	54%
<b>Gore (37%)</b>	10%	n/a	90%
<b>Bush (43%)</b>	91%	n/a	9%
<b>Other (3%)</b>	21%	n/a	71%

**Telephone Polls.** Immediately following the election, much was made about how the pre-election polls got it right (even if the exit polls didn't).<sup>23</sup> Table 2.4 lists the 14 major national polls doing pre-election polling over the final week projecting an average of Bush edge of 1.5%, fairly close to the outcome.

<sup>23</sup> One such summary: "Pre-Election Polls Largely Accurate: Lessons From Campaign '04" *Pew Center for Research on People and the Press* (Nov 23, 2004)

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**Table 2.4: Pre- Election Polls**

Days before the election	Pollsters	Dates conducted	Bush	Kerry	Nader	Edge
1 day	Marist (1026 LV)	1-Nov	49%	50%	0%	<b>Kerry +1</b>
	GW/Battleground (1000 LV)	10/31 – 11/1	50%	46%	0%	<b>Bush +4</b>
3 days	TIPP (1041 LV)	10/30 – 11/1	50.1%	48.0%	1.1%	<b>Bush +2.1</b>
	FOX News (1200 LV)	10/30 - 10/31	46%	48%	1%	<b>Kerry +2</b>
	CBS News (939 LV)	10/29 – 11/1	49%	47%	1%	<b>Bush +2</b>
	Harris (1509 LV)	10/29 – 11/1	49%	48%	2%	<b>Bush +1</b>
4 days	Reuters/Zogby (1208 LV)	10/29 - 10/31	48%	47%	1%	<b>Bush +1</b>
	CNN/USA/Gallup(1573 LV)*	10/29 - 10/31	49%	49%	1%	<b>TIE</b>
	NBC/WSJ (1014 LV)	10/29 - 10/31	48%	47%	1%	<b>Bush +1</b>
	ABC/Wash Post (2904 LV)**	10/28 - 10/31	49%	48%	0%	<b>Bush +1</b>
5 days	ARG (1258 LV)	10/28 - 10/30	48%	48%	1%	<b>TIE</b>
	CBS/NY Times (643 LV)	10/28 - 10/30	49%	46%	1%	<b>Bush +3</b>
6 days	Pew Research (1925 LV)	10/27 - 10/30	51%	48%	1%	<b>Bush +3</b>
	Newsweek (882 LV)	10/27 - 10/29	50%	44%	1%	<b>Bush +6</b>

Four sources of error, however, creep into the telephone polls that would not have effected exit polls: (1) time from election, (2) non-telephone owners, (3) turnout estimates, and (4) assumption of past election count accuracy.

*Time from election.* Table 2.5 reveals that as we got closer to the election, the polls show Kerry closing the margin. The one poll conducted the day before the election (Marist) shows Kerry up by one percent. Based on his same-day polling, Zogby called the election for Kerry. Molyneux (2004) observed that in past US presidential elections, undecided and even some previously decided voters break late for challengers in elections against incumbents,<sup>24</sup> and that performance rating is a better predictor of results than stated preference. On election day, the US electorate reportedly gave Bush a negative job performance rating and felt the country was headed in the wrong direction.<sup>25</sup>

<sup>24</sup> Guy Molyneux, "The Big Five-Oh", *The American Prospect*, Oct 1, 2004: There have been four incumbent presidential elections in the past quarter-century. On average, the incumbent comes in half a point below his final poll result; challengers exceed their final poll result by an average of 4 points.

<sup>25</sup> Zogby polls, "Mea Culpa: I am a Pollster, Not a Predictor," November 08, 2004:

"Surprising to me, and rather significantly, President Bush was just re-elected with a majority of the vote by an electorate that still gave him a negative job performance rating and felt the country was headed in the wrong direction."

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**Table 2.5: Averages of Pre- Election Polls based on closeness to the election**

# polls	Timeframe conducted	Bush	Kerry	Edge
2	Conducted over last 4-6 days	50.50%	46.00%	<b>Bush 4.50%</b>
3	Conducted over last 3-5 days	48.67%	47.33%	<b>Bush 1.33%</b>
5	Conducted over last 1-4 days	48.60%	47.60%	<b>Bush 1.00%</b>
4	Conducted over last 1-3 days	48.78%	48.00%	<b>Bush 0.78%</b>
1	Day before the election	49%	50%	<b>Kerry 1.00%</b>

*Non-Telephone Owners.* Something else we learned from the exit polls indicates that pre-election telephone polls did not fully capture Kerry's support. Seven percent of exit poll respondents have cell phone only, and this group favored Kerry 54-45%. Two percent of respondents have no telephone at all, and this group favored Kerry 58-39%.<sup>26</sup> Consistent with the idea that these voters were overlooked in the telephone polls, note that the NEP exit poll of Oregon, which was a telephone poll because voting in Oregon is conducted by mail, *underestimated* Kerry's vote by 1.5%.

*Turnout.* Despite obstructions to voting in many communities, overall turnout was very high, estimated at 55.4% of the total voting age population, up sharply from approximately 50% in the last two Presidential elections, and the highest it has been since 1968 when the minimum voting age was still 21. Increased voter turnout traditionally favors Democrats,<sup>27</sup> and new voters in this election favored Kerry by a healthy margin (57%-41% in the NEP exit poll).

*Presumption of past election count accuracy.* Exit pollsters are not alone in assuming that the count is correct. All pollsters adjust their models and assumptions every election cycle to try to match more accurately the count, and do so without regard to whether the count is, in fact, correct. That is how it comes to pass that what most of us would call "Democratic undercount,"

26 Pre-Election Polls Largely Accurate Lessons From Campaign '04 *Pew Center for Research on People and the Press* (Nov 23, 2004) . The report credits NEP as the source for these data. Presumably these are corrected data. This question was not listed on the CNN website.

27 High turnout is good news for Democrats. See Jack Citrin, Eric Schickler & John Sides, "What If everyone voted? Simulating the impact of increased turnout in senate elections" *American Journal of Political Science*, 2003, 47 (1) 75-90: Nonvoters are generally more Democratic than voters. Democratic Party candidates generally benefit from higher turnout because the increase comes disproportionately from voters in socio-economic groups that traditionally vote Democratic.

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they label “Democratic overstatement.” If, in fact, there had been disproportionate lost votes or fraud in the previous election, those whose models account for that result, inadvertently or otherwise, would be most accurate, and copied the next time around by others. As it turns out, Gallup, which predicted several 2002 elections correctly that other pollsters got wrong, systematically oversamples Republicans beyond their registration numbers or even their voting numbers (40% Republican, 33% Democrat in summer polls).<sup>28</sup> Other pollsters know are cognizant of the Gallup model’s recent success, and several seem to have adjusted their models accordingly.<sup>29</sup> Thus if fraud or systematic variance from voter intent were to gradually enter into the system, pollsters that have adjusted their methods to match the count would be unable to detect continued or marginally incremented distortion.

**Florida early voters.** Because of the large number of early voters in Florida, the exit poll discrepancy there is even more dramatic than I documented (UEPD: 9-13). By the end of October 30% of Florida’s registered voters had reportedly already voted early/absentee, and out of these, Kerry reportedly led Bush 51%-43%.<sup>30</sup> Assuming that another few percent voted October 31 and November 1, and that 60 – 70% of registered voters vote, early voters account for approximately half of the Florida electorate. Whether or not exit polls are biased, there is no reason to presume that phone polls would be too. In fact, the telephone polls, on average, clearly were *not* biased in favor of Democrats. So either we assume that *two* previously reliable methodologies are suddenly all wrong (one in Florida only) or the on-site exit poll was off by **10%**, an impossibly high number given the sample size, care and emphasis given to that state.

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<sup>28</sup> *The Left Coaster*, September 17, 2004 source: Gallup correspondence. I wrote to them myself to inquire about these numbers, but, unfortunately, demographics details are available only to Gallup subscribers.

<sup>29</sup> John Zogby criticized *Time* and *Newsweek* for using similarly Republican-heavy samples. (*Financial Times*, September 7, 2004)

<sup>30</sup> Susan Page “Swing states lean to Kerry,” *USA today*, October 31, 2004. This number seems high to me; I have tried to confirm this report, but have been unable to get any official results. I called and wrote to the Florida Board of Elections, but have been repeatedly informed, most recently on December 20, 2004 that they’re “still collecting this information.”

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## Conventional Mechanisms to Manipulate the Vote

The internet is flooded with allegations of election fraud and thwarted voter intent, but print and broadcast media barely cover them (UEPD 13:16), and usually in a dismissive fashion. Something of a vicious cycle has set in. Part of the reason I suspect that the press doesn't investigate or report much is because there are an overwhelming number of unfiltered allegations. But because the press doesn't investigate, a significant percentage of the public becomes extremely suspicious. So they report and circulate on the internet many poorly informed, wrong, or just unsubstantiated suspicions that would prove false under further investigation. Which leads to a further glut of poorly informed allegations, etc....

U.S. Representatives on House Judiciary Committee and their staffs, however, have done extensive work investigating and filtering through complaints. So we can use Ranking committee member John Conyers' (D-Mich) letter to Kenneth Blackwell (Appendix E-1) to highlight highly credible allegations of thwarted democracy in this election. Ohio is the focus of the investigation primarily because that's where the election was decided, but there are extensive allegations and evidence of all these mechanisms nationwide.

Relevant to the research questions, the source of the exit poll discrepancy and whether or not we can trust the official count, I identify the categories of three categories of conventional **vote** manipulation allegations:

- (1) Semi-legal, institutionalized mechanisms for vote suppression among opposition constituencies that would not result in any exit poll skew because the potential voter never makes it to the polls
- (2) Legal, institutionalized mechanisms of outcome manipulation (differential rates of spoiled ballots) that probably *do* account for a small part of the exit poll discrepancy
- (3) Clearly illegal measures that would result in exit poll skew (although the skew might be small enough that it could not be distinguished from sampling error)

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### *Vote Suppression*

Vote suppression does not affect either the recount efforts nor would it result in any exit poll skew because the potential voter never makes it to the polls. So it is irrelevant to the cause of the exit poll discrepancy, and because vote suppression mechanisms seem to be officially sanctioned in Ohio and Florida, these questions are whether the count is accurate, in a legalistic sense. For these reasons, I originally planned *not* to write about vote suppression (and if you want to stay focused on those points, you can skip over this section). In the end, however, I included it because the paper is ultimately an inquiry into the state of our democratic processes and vote suppression policies form an important element of that inquiry. They also provide a general insight into how the game is being played, an important understanding to keep in mind when we consider other allegations.

### Justification of Vote Suppression

Obstacles to voting disproportionately affect the poor and transient. Parties with support from these constituencies advocate policies that permit maximum inclusion in elections. Republicans charge, however, that voting policies may have been, at times, too inclusive. Common wisdom has it that the old city Democratic machines could notoriously count on healthy margins from the graveyard vote. More recently, in the 1996 election, Republicans charged that African Americans casting multiple votes gave Mary Landrieu the Louisiana US Senate seat, and that non-citizens, able to vote because of lax California registration procedures, gave Loretta Sanchez a congressional victory against Rep. Bob Dornan.

To counter, Republicans advocate strict procedures for voter verification. As a practical matter, these procedures serve to suppress legitimate votes at least as much as they inhibit illegitimate ones. Requirements such as showing a tax or utility bill in one's name, for example, exclude the homeless and can make it difficult for students or subtenants to prove residence.

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### Obstacles to Registration and Casting (some) Absentee Ballots

In recent elections, some Republicans have pursued suppression policies with vigor and overt partisanship unseen since the pre-civil rights Jim Crow laws were dismantled. One infamous manifestation was the 2000 Florida voting rolls purge of some 57,700 alleged felons were purged from the registries, 90.2% incorrectly (Palast 2003). The majority of these were African American non-felons who happened to share a name with someone on a felons list somewhere.<sup>31</sup> This year, Ohio's Secretary of State (and also Bush-Cheney reelection Campaign Chair – more on that later) Kenneth Blackwell issued a directive to county boards of elections commanding them to reject voter registration forms not “printed on white, uncoated paper of not less than 80 lb. text weight.”<sup>32</sup>

The directive was just one of an arsenal of vote suppression tactics. Complying with the directive could not guarantee registration, as many Ohioans charged that their registration applications were lost or otherwise never processed. Many likewise alleged that their absentee ballots applications were lost or otherwise never processed. Others are just not sure if they were counted. In a double-suppression, Blackwell did not permit Ohioans who requested – but never received – absentee ballots to vote.

### Machine Shortages and Breakdowns → Long Lines

Other means used in Ohio to thwart voting intention this year included machine shortages and breakdowns, extraordinarily long lines, and poll location problems (details in Appendix E-1).

- Machine Breakdowns, usually in the poorest districts. In Ohio, there were consistent and widespread reports indicate a lack of voting machines in urban, minority and Democratic areas, and a surplus of such machines in Republican, white and rural areas.

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<sup>31</sup> U.S. Commission on Civil Rights, *Voting Irregularities in Florida during the 2000 Presidential Election*. African American voters were placed on purge lists more often and more erroneously than Hispanic or white voters. For instance, in the state's largest county, Miami-Dade, more than 65 percent of the names on the purge list were African Americans, who represented only 20.4 percent of the population. Hispanics were 57.4 percent of the population, but only 16.6 percent of the purge list; whites were 77.6 percent of the population but 17.6 percent of those purged.

<sup>32</sup> Directive issued on September 7, 2004. Catherine Candisky, “Blackwell ends paper chase: Some could be unable to vote because of flap over registration forms” *The Columbus Dispatch*, Wednesday, September 29, 2004

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- Amid the two to seven hour waits in the inner city of Columbus, at least 125 machines remained unused on Election Day.
- Only two voting machines were available to the Ohio voting precinct serving students from liberal Kenyon College, resulting in waits of more than eight hours to vote.

Voters had no recourse in Ohio as they would in many other states, because Blackwell issued a regulation prohibiting voting anywhere except for the voter's home precinct. This left those in districts that were short of machines no other option but to wait in lines for up to *seven hours* (an option made worse yet by driving rains that drenched Ohio throughout election day).

### Locations

A third set of tactics to suppress the vote in opposition strongholds was by making (details in Appendix E-1).

- Polling places were moved from large locations, such as gyms, where voters could comfortably wait inside to vote to smaller locations where voters were required to wait in the rain.
- Fraudulent flyers were circulated telling voters the wrong place to vote, phone calls were placed incorrectly informing voters that their polling place had changed, and election workers sent voters to the wrong precinct.

These and many more allegations are substantiated are on a website devoted to documenting evidence of election fraud & voter suppression - <http://www.shadowbox.i8.com/>

\* \* \* \* \*

Voter suppression in Ohio and elsewhere did not effect either the count or the exit polls, so any lost votes due to these phenomena are *above and beyond* any potential count errors that may have caused or contributed to the exit poll discrepancy. Even if it were to turn out that the count in Ohio accurately recorded votes that were cast, it's clear that the count incompletely reflects the intent of the electorate because so many who were legally entitled to vote were prevented from doing so.

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## *Spoiled and Provisional Ballots*

### Provisional Ballots

Provisional ballots were mostly a success around the nation, allowing votes to be cast that would have been rejected in past elections, but there are allegations they were widely overused. Albuquerque journalist Renee Blake of *KUNM Radio* reported, for example, that they were being “handed out like candy” in the Spanish-speaking (and Democratic-voting) precincts of New Mexico. In Ohio, Blackwell’s directive on home precinct voting only prohibited county election officials from counting provisional ballots not cast at a voter’s home precinct. In other areas, precinct workers refused to give any voter a provisional ballot. In at least one precinct, election judges told voters that they may validly cast their ballot in any precinct, leading to many disqualified provisional ballots. Based on Blackwell’s directive, Hamilton County officials refused to count 400 provisional ballots cast at the correct polling place if they were cast at the wrong table in that polling place. (Some polling places contain multiple precincts, with registration for each precinct at a different table.)

### Spoiled Ballots

As we saw in Florida 2000, votes can be lost to pregnant chads, stray marks (e.g., writing a candidate’s name on the ballot along with punching the hole), etc... Technically called residual ballots because they represent the difference between voters who voted and the total votes cast for a given office, these amounted to almost 2% of the total ballots in 2000. Residual ballot rates vary dramatically by technology, with especially high rates for punch cards and very low rates for Direct Record Electronic (DRE) machines and Optical Scan technologies.

Spoiled votes should have been down substantially this year. Whatever the concerns about electronic voting machines, they do reduce residual vote dramatically. In the 2002 Georgia elections, the introduction of DREs throughout most of the state corresponded with a drop from a 4.9% residual ballot rate in 1998 Senate race to 0.9% residual ballot rate in 2002 Senate race

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(Stewart 2004). If widespread adoption around the nation had a similar impact, residual ballots could have declined from 2% to well under 1% nationwide.

Because Ohio is one of the last states to use punch cards widely, one would expect that their residual ballot rate would be much higher than the nation, but the reported 93,000 residuals (1.65% of the total) is not that high. This may be due to educational efforts and general care in voting and counting in the aftermath of Florida 2000.

### Effect of Provisional and Spoiled Ballots on Exit Poll Accuracy

I have been unable to determine whether exit pollsters interviewed those who cast provisional ballots and, if so, whether they were differentiated from regular voters.<sup>33</sup> If they were, then that could explain part of the discrepancy. The Ohio Secretary of State reports that 153,539 provisional votes were cast, and of these 118,734 were counted. It's not reported for whom, but final vote increases before certification were 80,288 for Kerry and 62,580 for Bush. Some of the additional votes were absentee ballots counted late; also incorporated into these late corrections were changes due to a variety of errors, the biggest being subtraction of 3,893 extra votes for Bush in Gahanna. To get a rough estimate of the impact on provisional and spoiled ballots in Ohio, I assume that the loss of Bush votes from correcting the errors are negated by a Republican edge in absentee ballots. If that's the case then the change from the initial count to the certified, official count would be due to Kerry advantage among provisional ballots. This would mean that Kerry earned roughly 56% of the provisional vote and Bush 44%. The change in their percentages of the overall vote were Kerry +.19%, Bush -.19%.

The number of provisional votes counted 118,734 is just slightly less than the sum of those that were not counted, 34,805 plus the 92,672<sup>34</sup> spoiled ballots. Assuming that these lost votes

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<sup>33</sup> I could find nothing addresses provisional ballots in the NEP documentation at [www.exit-poll.net](http://www.exit-poll.net). I've written to NEP and the listserv of the American Association for Public Opinion Research, but have yet to receive a definitive response.

<sup>34</sup> Provisional ballot information and official counts from Ohio secretary of state; spoiled ballots from [www.jefffisherforcongress.com](http://www.jefffisherforcongress.com)

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were cast in similar proportion, the change in their percentages of the overall vote would be approximately Kerry +.35%, Bush -.36%. This is approximately what I calculated earlier for the “Democratic overstatement” in past elections (providing an additional calculation suggesting that the polls are actually accurate) but only about 15% of the 2004 discrepancy.

**Table 2.6: Hypothetical Impact of Spoiled Votes. *If All the Cast Votes were Counted ...***

	November 5 <sup>th</sup> count	December Final	Nov to Dec Increase	Vote from Provisional Ballots	Nov 5 <sup>th</sup> Pct	December Final pct	Pct w Provisional Ballots	Lost votes	If all votes counted? Total	pct	Change
Kerry	2,659,664	2,739,952	80,288	56.20%	48.52%	48.71%	+ 019%	71,639	2,811,590	48.87%	+0.35%
Bush	2,796,147	2,858,727	62,580	43.80%	51.01%	50.82%	- 019%	55,838	2,914,565	50.66%	-0.36%
Total			142,868					127,477	5,752,758		
National extrapolation								2,665,000	120,255,000		

Summary of Vote Suppression and Vote Loss

If Ohio is typical of the US, 2.7 million votes were lost nationwide due to spoilage or provisional ballots not be counted. In addition to that, millions more votes were discouraged. For every poor soul in Ohio that waited six hours in line (in the rain) to vote, many more must have walked away. Given both the targeted nature of suppression and the fact that poor, minority counties are less likely to have sufficient equipment, training and staff to adequately run election day operations, these are likely to be even more disproportionately Democratic votes than spoiled and provisional ballots.

From a standpoint of democracy it’s a travesty. Unfortunately, vote suppression is sufficiently institutionalized in our system that these questions are irrelevant to legal considerations about who really won. They are just numbers to put aside so that we can now do our real calculations. If Bush won Ohio because of the number of votes lost and suppressed, but the election was otherwise fraud-free, one still might say that the election was stolen, but this is the kind of theft that Ken Blackwell and his county operatives can openly boast about. When they get together with their colleagues, they’ll congratulate each other on pulling it off. the question of for those

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suings to overturn his victory is not, “Did the Republicans steal the election?” By necessity, it is only, “Did they steal it fair and square?”

Using the Table 2.6 calculations on vote spoilage and provisional ballots, we can attribute approximately a 0.35% comparative percentage shift from Kerry to Bush. That represents approximately 15% of the exit poll discrepancy attributable to everyday election vote loss (votes that voters presumed were cast and counted, but legally weren't). That leaves exit poll error or outright fraud to account for the rest.

### *Legal in Florida*

But before we move on to this category of outright fraud, I want to point out just how far the line of legality is pushed. Although Ohio is the most scrutinized state this year, it's probably not the worst. Florida, by virtue of a larger vote margin, has gone relatively uninvestigated, but Florida election practices redefine the concept of “legal.”

When I published the *Unexplained Exit Poll Discrepancy*, two students from Broward County, Florida independently wrote to me to tell me basically the same story:

I registered to vote when I turned 18; I am now 24. In both the last election and this one, I voted by absentee ballot, and I vote early. On December 2, I received a letter in the mail from Broward County supervisor of elections stating that my ballot was rejected as being illegal because the signature on my absentee ballot did not match my voter registration signature. This seemed strange to me since it has only been 6 years since I registered to vote, and I have my voter registration card, and the signature on it is the same signature that I use today. I called the office and asked them for copies of my signatures. They told me I can either come into the office (I'm still out of state) or get a court order...

Another wrote to say she never received her absentee ballot. I thought it was strange, but couldn't see a motive in it. Broward County is Democratic. Why reject student absentee ballots? It turns out that Broward County failed to send out nearly 60,000 absentee ballots (it hasn't been reported how many were rejected or not counted), and that Broward's elections supervisor was appointed by Jeb Bush after the governor took the unprecedented step of removing the prior elected Democratic supervisor for incompetence.

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Meanwhile, her counterpart in Palm Beach, one of the two other large and Democratic voting counties, Theresa LePore, designer of the worst election ballot in history, was rewarded by the governor with an appointment to a Select Task Force on Election Procedures to reform Florida's election processes, effectively acting as representative for Florida's 67 county election supervisors.<sup>35</sup> But LePore's egregious performance goes well beyond her infamous butterfly ballot. After costing Gore 5000 votes with that design, she cost him the election a second time by failing to submit the court ordered hand count on time.<sup>36</sup> She made the national news again in March 2002 when her newly purchased electronic voting systems delivered suspicious results that could not be verified, e.g., one town had only one race with only two candidates, but 78 ballots were not recorded. LePore explained that people simply chose to come to the polls and not cast a vote for anyone.<sup>37</sup> In the August 2004 primaries in Florida, Palast (2004) reports:

... 37,000 citizens have requested absentee ballots, but she says she'd only received 22,000 when she began the count. Where are the others? Don't ask: though she posts the names of requesters, she won't release the list of those who have voted, an eyebrow-raising deviation from standard procedure.

... She has reserved for herself the right to determine which ballots have acceptable signatures. Her opponent, Democrat Art Anderson, had asked Theresa to use certified hand-writing experts, instead of her hand-picked hacks, to check the signatures. Unfortunately, while Federal law requires Theresa to allow a voter to correct a signature rejection when registering, the Feds don't require her to permit challenges to absentee ballot rejections.

LePore printed *party affiliation* on the *outside* of each return; aides view this information as they decide whether to reject or accept signatures.

### *Conventional Vote Fraud*

Anomalous voting patterns, poll numbers, and registration figures have all been noted in Ohio. These patterns, in combination with secret counts, blocked access to voting records, and a recount in which no observers are permitted to watch and no votes are changed, strongly suggests fraud.

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35 Jim Ash, "Bush taps LePore and Newell for task force," *Palm Beach Post* (Florida) November 25, 2002

36 Greg Palast, "Madame Butterfly flies off with ballots: Florida fixed again? Absentee ballots go absent," *commandreams.org*, Tuesday, August 31, 2004

37 Rebecca Mercuri (2002) "Florida 2002: Sluggish systems, vanishing votes," *Inside Risks 149, CACM 45:11* (Nov)

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### Anomalous voting patterns

**Spoiled votes beyond the pale.** Two Democratic precincts in Montgomery County<sup>38</sup> had an undervote rate of *over 25% each* – accounting for nearly 6,000 voters who stood in line to vote, but purportedly declined to vote for president. This is in stark contrast to the 2% of undervoting countywide.

**Southwestern Ohio statistical anomalies.** Phillips (2004) showed various anomalies throughout the state, especially in Southwestern Ohio, where Kerry ran considerably worse than expected. In Butler County, for example, an unfunded Democratic Candidate for State Supreme Court running against a well-financed opponent polled much better than Kerry.

**Third party votes in Cuyahoga County.** Ten heavily Democratic precincts in Cleveland reported an incredibly high number of votes for third party candidates who have historically received only a handful of votes from these urban areas. For example, one precinct cast 290 votes for Kerry, 21 for Bush, and 215 for Constitution Party candidate Michael Peroutka. In 2000, the same precinct cast less than 8 votes for all third party candidates combined.

### Non-matching poll numbers and suspicious registration figures in Appalachia

In the aftermath of Part I of this paper being posted, people from all over the country wrote to me with allegations of fraud. One of many such emails I received came from three precinct workers from the Appalachian section of Ohio, who wrote:

360 people signed the book and 33 absentee ballots were cast for a total of 393 votes  
The Board of Election is reporting 489 votes cast in that one precinct  
WE HAVE A COPY OF THE ENTIRE POLL BOOK for this precinct.  
(other totals were hand checked)

They write that they went to the FBI, who referred them to the Secretary of State's office, despite the fact that the precinct workers believe that Mr. Blackwell's office is complicit.<sup>39</sup> As identified

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<sup>38</sup> Documentation for assertions not otherwise referenced may be found in the Conyers letter, reprinted in Appendix E. At the end of Appendix E, I have included a map of Ohio counties mentioned in this report and their voting technologies.

<sup>39</sup> I did pass this note onto other people who passed it to the House Judiciary Committee

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in Congressman Conyers' letter, many such precincts in Appalachia show similarly suspicious registration and turnout numbers.

### Secret Counts and Recounts

Many practices reported in both the count and recount in Ohio suggest the possibility of subterfuge:

- Warren County locked down its administration building and barred reporters from observing the counting supposedly in response to information about a terrorist threat said to have been received from an FBI agent. No FBI agent has corroborated this story.
- As two election observers were in the midst of researching voting records in Greene County, the county's Director of Elections withdrew access, reportedly at the direction of Secretary Blackwell, and in apparent violation of Ohio law.
- In response to the Libertarian-Green party recount filing, state statute requires a countywide manual recount if a 3% sample of county ballots uncovers even one mis- or un-counted ballot. But county after county is reporting perfectly matching hand and machine recounts, and in none of these counties were recount observers allowed to stand close enough to elections officials to see the ballots being counted.<sup>40</sup>
- State statute indicates that the 3% sample of county ballots should be a *random* sample, but the Secretary of State has allowed the supervisors to "randomly" select the precincts as they choose. Fritz Schueren, President-elect of the American Statistical Association and a volunteer for Votewatch in the observations of the recount, observes that this is analogous to IRS agents allowing taxpayers to choose for themselves the items on their tax returns to be audited.<sup>41</sup>

- In conducting the recount, Green Party candidate David Cobb testified that

A representative from Triad Systems came into a county board of elections office un-announced. He said he was just stopping by to see if they had any questions about the up-coming recount. He then headed into the back room where the Triad supplied Tabulator (a card reader and older PC with custom software) is kept. He told them there was a problem and the system had a bad

<sup>40</sup> *Nashua Advocate* "Ohio counties allegedly reject illegal advice on how to return a perfect recount -- then proceed to return a perfect recount." Thursday, December 16, 2004. "Another day, another seven conveniently "flawless" recounts in Ohio." Sunday, December 19, 2004

<sup>41</sup> Fritz Scheuren, Prominent Statistician Calls for Fair and Meaningful Recount of Ohio's Election Results December 1, 2004 Unpublished op-ed. Interesting, that even the President Elect, American Statistical Association cannot publish an op-ed on this subject.

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battery and had "lost all of its data". He then took the computer apart and started swapping parts in and out of it and another "spare" tower type PC also in the room. He may have had spare parts in his coat as one of the BOE people moved it and remarked as to how very heavy it was. He finally re-assembled everything and said it was working but to not turn it off.

He then asked which precinct would be counted for the 3% recount test, and the one which had been selected as it had the right number of votes, was relayed to him. He then went back and did something else to the tabulator computer.<sup>42</sup>

\* \* \* \* \*

In this section, I have presented a small sampling of the evidence of conventional vote fraud. In principle, we do have protective measures against conventional vote fraud, but they can only work if enforced. If counts and recounts are not conducted openly and if records are not available for inspection, then there are no safeguards. With no power in any branch or chambers of government in Florida, Ohio, or at the federal level, and without judges to issue subpoenas, those who would try to ensure accurate vote counts seem to be without recourse this year in securing the safeguards established by law. Indeed, in Ohio, a partisan judiciary has cooperated with the obstruct-and-delay tactics of those who hold, hide, or bury the evidence

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<sup>42</sup> William Rivers Pitt, "Proof of Ohio Election Fraud Exposed" *truthout*, Wednesday 15 December 2004. County supervisors have been choosing precincts that minimally sum to 3%, systematically excluding larger precincts from the process. Some observers are suspecting that votes may have been padded in these larger precincts which were to be excluded from the recounts.

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## Weapons of Mass (Vote) Destruction

As serious as vote suppression and conventional fraud might be, the truly frightening 21<sup>st</sup> century specter is electronic voting. Conventional fraud may not be detected but it is, in principle, detectable, and flagrantly egregious behavior can usually be limited through the courts and public pressure. If procedures are followed or if an investigative team is dogged, they can crack a case of conventional fraud, as the *Miami Herald* did in 1998 uncovering forged signatures, ballot tampering, and forcing Mayor-elect Xavier Suarez to step down from office after 111 days.<sup>43</sup> In contrast, with electronic voting, investigators may be unable to detect fraud and those who have been declared the losers are left with no recourse to verify results.

### *Potential Manipulation of Direct Record Electronic (DRE) Voting Machines*

Several researchers have examined DREs serious security shortcomings and propensity for breakdown or errors. Kohno, et al. (2004), analyzed a popular DRE and found that,

,,, this voting system is far below even the most minimal security standards applicable in other contexts. We identify several problems including unauthorized privilege escalation, incorrect use of cryptography, vulnerabilities to network threats, and poor software development processes. We show that voters, without any insider privileges, can cast unlimited votes without being detected by any mechanisms within the voting terminal software. Furthermore, we show that even the most serious of our outsider attacks could have been discovered and executed without access to the source code.

Harris (2003) excoriates the Electronic Voting Machine manufacturers for an extensive array of security and functional shortcomings. In an embarrassing lapse, for example, source code for the leading DRE manufacturer, Diebold, was found and downloaded from an unsecured website. Diebold and other DRE companies have responded vigorously to these criticisms and insist that

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<sup>43</sup> The 1998 Miami mayoral election was one of the few recent elections overturned for vote fraud. Investigative reporting by the *Miami Herald* uncovering forged signatures, fake addresses, paid vote brokers, ballot tampering, and absentee ballots filed on behalf of dead people prompted a Senate committee to launch a statewide investigation into the accusations, which removed mayor-elect Xavier Suarez from office.

Interestingly, however, Suarez, who had been a Democrat but switched party affiliation, managed to avoid prosecution, and became centrally involved in absentee ballot controversies while helping George Bush secure Florida's electoral votes in 2000. He is quoted as saying that he "helped fill out absentee ballot forms and enlist Republican absentee voters in Miami-Dade County" for the 2000 presidential election... "Dade County Republicans have a very specific expertise in getting out absentee ballots ... I obviously have specific experience in this myself." (*FEED magazine* 11/8/2000)

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their machines are not penetrable by outsiders and that, even if they were, safeguards in the electoral system would protect against unauthorized changes.

This debate, however, is a sideshow. Threat by outside hackers is, ultimately, a chimera. In the long run, at least, the manufacturers are probably correct. Whether they are fully protected against outsiders now, they likely will be, and even now, unauthorized hacking would likely be limited and detectable. The serious question that the manufacturers *do not address* is *manipulation by insiders*. Kohno, et al. (2003), go on to

... demonstrate that the insider threat is also quite considerable, showing that not only can an insider, such as a poll worker, modify the votes, but that insiders can also violate voter privacy and match votes with the voters who cast them.

### *The man behind the curtain*

Stanford computer scientist, David Dill (2004) draws an analogy with “the man behind the curtain.” Suppose you step inside the voting booth and are faced with a curtain. Behind the curtain is a man who fills out your ballot for you as you tell him whom you want for president, for city council, for mayor, etc.... He then says, “OK, thank you. I’ve recorded your vote.” Most people would obviously be uncomfortable. The man behind the curtain may not be good at transcribing what you said and might make a mistake, or he may not like who you voted for and decide to vote for someone else. In either case, the scribe could get away with it because there’s no accountability in the system. As a voter, you have no way of checking that he filled in the ballot as you desired.

The problem with DREs are basically the same. The people who programmed the machine are in the same position as the man behind the curtain. We have to trust them and there’s no accountability. You touch the screen and the machine makes a record; you hope its right, but there’s no way of knowing or checking.

Americans think of Florida 2000 as a nightmare, but at least in Florida we knew what happened. Worse is when you have an election that seems to go smoothly, but has a “surprising”

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result. With DREs, you don't know whether the voters behaved unpredictably or if the count is tainted.

Diebold and ES&S say that they test their machines, but Selker (2004) points out that general testing cannot possibly reveal all bugs or vote-altering code. "Easter Eggs" (Thompson 1983) are undetectable pieces of code that might

... do nothing until election day, when it would change how votes were recorded. Such code could be loaded onto a voting machine in many ways.... Tests must therefore be conducted to catch Easter eggs and bugs that occur only on election day. (Selker 2004:94)

If such tests were conducted at all during the past election, however, they were not widespread. Moreover, whereas older systems were basically large adding machines without programming vulnerable to Easter eggs, the Help America Vote Act requires that all new machines purchased have a real time clock, meaning all systems will be vulnerable. (As far as I know, no public explanation has been given for this requirement.)

### *You've got to trust somebody?*

To be fair, DREs do have some important advantages, especially in states and jurisdictions where many races and questions are on the ballot, where multiple languages are used, or which serve the visually impaired. And all other extant voting technologies have important shortcomings that I have not addressed here. Voting machine companies point these out, and with regard to trust, they will say, "You've got to trust somebody." (Dill 2004)

Voting is, however, the last thing we would ever want to entrust to someone. My neighbor, for example, is one of the most trustworthy people I know. If he found a thousand dollars in cash on the garden strip between our properties, he would knock on the door and ask if the money was mine, but I still would never trust him with my vote. He'd vote for who he thinks is best, and he'd think he was doing it in *my interest!* Almost everyone felt strongly about this presidential election, and most believed that their choice was not just in their own interest, but in the interest of the nation and the world.

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The DRE manufacturers' observation that you have to trust somebody is extremely misleading. Voting and elections are predicated on the idea that you don't trust any one person or any particular group. Fair elections are set up so that representatives from competing factions are always together in the polling place. No vote, no machine, no ballot is ever supposed to be in the hands of one person or one party. If there's some question as to whether even the party representatives can be trusted, one still has recourse. We can ask to inspect the ballot box, the machine, the votes, etc... We can (in principle) request a manual recount of the votes and watch the count.

*If you must trust someone to transcribe your vote, who would you trust?*

For argument's sake, let's grant that we had to trust someone temporarily while we're working out the kinks in our voting technology systems. If we were to do that, what characteristics we would look for in our scribe. Without taking too much time to think through the subject (because we really don't want to trust *anyone* with our vote), most of us would expect at a minimum that the scribe be:

- (1) non-partisan
- (2) honest, or at least not dishonest
- (3) free from conflict-of-interest
- (4) open, i.e. totally transparent in all their activities

The need to be non-partisan would seem to be obvious. If my neighbor who knows what is best for us were the man behind the curtain, he would likely vote as he felt was best – at least in some critical elections. If the election were important enough, this otherwise law-abiding citizen would, I believe, break the law so as to protect us all better. So, at a minimum I would insist my man behind the curtain be a non-partisan technocrat, interested only in the accuracy with which he records our vote.

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Were my neighbor behind the curtain, he might manipulate the vote because he believes that it's critically important for the nation, the world (including me) that his candidate (and not mine) wins. Others might do so because there could be profit in it for them. Candidate A, A's backers, or those who would profit from A's victory might be willing and able to do something for men behind the curtain who generate favorable results for them. Obviously, this would be an unacceptable breach of trust, so we would want a scribe whose honesty and reputation is generally beyond reproach.

We would demand a scribe who was not beholden to any of the candidates. If their livelihoods were dependent on an incumbent victory, that could hardly augur well for the possibility of fair and accurate recording of the votes. Similarly, we would not want any candidates or election officials beholden to the man behind the curtain. That would limit their ability to ensure that he is in fact acting as an impartial scribe. And it would go without saying that the man behind the curtain should not be one of the candidates himself.

Finally, it is only through openness and transparency that we can verify impartiality, honesty, and integrity in dealings with officials. If the man behind the curtain refused to allow us to know the sources of his income, to whom he is indebted, or his system for recording the votes, we simply couldn't trust him.

### *Who are the men behind the curtain?*

Eighty percent (80%) of the time the man behind the DRE touch-screen curtain will be the incarnation of either **Diebold** based in North Canton, Ohio or **Election Systems & Software** (ES&S) of Omaha, Nebraska. The two firms have many linkages, most directly in that ES&S was founded in the early 1980s by Bob and Todd Urosevich. Todd is still Vice President at ES&S, and Bob is the current President of Diebold.

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### Non partisan?

Walden O'Dell, Chairman and CEO of Diebold, is a longtime Republican supporter. In September 2003, he held a packed \$1,000-per-head GOP fundraiser at his home. He has been feted as a guest at President Bush's Texas ranch, joining a cadre of "Pioneers and Rangers" who have pledged to raise more than \$100,000 for the Bush reelection campaign, and wrote in a fundraiser to fellow Republicans that he is "committed to helping Ohio deliver its electoral votes to the president." One of the longest-serving Diebold directors is W.R. "Tim" Timken. Timken is also a Republican loyalist and a major contributor to GOP candidates. Since 1991, the Timken Company and members of the Timken family have contributed more than a million dollars to the Republican Party and to GOP presidential candidates such as George W. Bush.<sup>44</sup>

In 1992, investment banker Chuck Hagel, president of McCarthy & Co, became chairman of the company, then called American Information Systems. Since 1996, he has been a US Senator from Nebraska (Republican). In 1992, he was reportedly on a short list of George W. Bush's potential vice-presidential candidates.<sup>45</sup> Senator Hagel reportedly still owns more than \$1 million in stock in McCarthy & Co., which still owns a quarter of ES&S.<sup>46</sup>

The issue is not *per se* that O'Dell, Timken, and Hagel are Republicans. They may be great, public spirited men, involved in politics for the noblest of reasons. But it doesn't matter; the issue and concern is the same regardless of their party or reasons they have for being in politics. If O'Dell is willing to raise more than \$100,000 for the President's election, if he is "committed to helping Ohio deliver its electoral votes to the president," if he hangs with the President on the ranch, he fails with a skull and crossbones the first test for the man behind the curtain (and it doesn't matter that now Diebold has put in ....

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<sup>44</sup> [http://www.motherjones.com/commentary/columns/2004/03/03\\_200.html](http://www.motherjones.com/commentary/columns/2004/03/03_200.html)

<sup>45</sup> [http://www.businessweek.com/2000/00\\_28/b3689130.htm](http://www.businessweek.com/2000/00_28/b3689130.htm),  
[http://theindependent.com/stories/052700/new\\_hagel27.html](http://theindependent.com/stories/052700/new_hagel27.html)

<sup>46</sup> [http://www.motherjones.com/commentary/columns/2004/03/03\\_200.html](http://www.motherjones.com/commentary/columns/2004/03/03_200.html)

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### Honest, or at least not dishonest?

The second critical criteria is honesty. Unfortunately, in its relatively short history as an Electronic Voting Machines manufacturer, Diebold has employed five convicted felons as senior managers and developers to help write the central compiler computer code that counted 50% of the votes in 30 states.<sup>47</sup> Jeff Dean, a Diebold Senior Vice-President and senior programmer on Diebold's central compiler code, was convicted of 23 counts of felony theft in the first degree including planting back doors in his software and using a "high degree of sophistication" to evade detection over a period of 2 years.<sup>48</sup>

Last year, Diebold was charged by the state of California with providing false information to obtain payments from the state and counties for its electronic voting equipment. On November 10th, 2004 the parties announced a \$2.6 million settlement to resolve the lawsuit.<sup>49</sup>

The third largest Electronic Voting Machine manufacturer, Sequoia Voting Systems, has been involved in kickback scams that resulted in several felony convictions and cost Louisiana taxpayers an estimate \$8 million (Harris 2003:70-71)

### *Conflict of interest?*

The Electronic voting industry has hardly had an arm's length relationship with government. Sequoia's convictions are the most egregious, but others have also lavished contributions and gifts on politicians and election officers' associations alike. All that, however, pales with the most direct conflict of interest possible for the man behind the curtain.

What are we to make of a situation in which a United States Senator from is owns a large share of the voting machine company whose machines count the votes *in his own elections*, and unbeknownst to the general electorate, had been the acting president of that company in until a few weeks before he ran for the US Senate in 1996.

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<sup>47</sup> <http://www.wired.com/news/evote/0,2645,61640,00.html>, <http://portland.indymedia.org/en/2004/10/301469.shtml>

<sup>48</sup> <http://www.chuckherrin.com/HackthevoteFAQ.htm#how> and Harris (2003 chapter-8)

<sup>49</sup> Tom Dresslar, "California Announces \$2.6M Diebold Settlement: Settlement Would Resolve False Claims Allegations, Strengthen Security of Equipment." *Verified Voting Foundation*. November 10th, 2004

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In that election, Nebraska Senator Hagel launched his political career with two stunning upsets:

A primary victory against Republican Attorney, General Don Stenberg, despite the fact that he was not well-known; and

The defeat of the popular Democratic Gov. Ben Nelson, who had led in the polls throughout the entire campaign.<sup>50</sup>

Harris (2003) states that Hagel disclosed no ownership of AIS/EG&G in 1996, nor in 2002, but that it was subsequently learned that he maintained undisclosed ownership of ES&S through its parent company, the McCarthy Group. Hagel's 2002 re-election opponent charged conflict of interest and requested that a Senate Ethics Committee investigate his nondisclosure. The request was denied, as was his request to audit the machine counts. Although Nebraska uses optical scan systems that *do* provide a paper audit trail, the Nebraska Secretary of State told him that Nebraska has no provision in the law allowing a losing candidate to verify vote tallies by counting the paper ballots.

As of last year, Hagel still had undisclosed ownership of ES&S through its parent company, the McCarthy Group. The senator's campaign treasurer is the chairman of that company. ES&S still counts all the votes for the state of Nebraska, and many other states and counties throughout the country.

### Transparency?

The fourth minimal characteristic we would demand of the man behind the curtain is transparency. If we must trust someone, we want to know whom and what we are trusting. By all accounts<sup>51</sup>, however, these firms are extraordinarily private.

Reporter Christopher Bollyn (2004) visited ES&S at the company headquarters on John Galt Blvd. in Omaha, and then came to observe the vote count on election day at the ES&S facility in

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<sup>50</sup> The *Washington Post* called Hagel's 1996 win "the major Republican upset in the November election." *Business Week* described Hagel's victory as a "landslide upset"

<sup>51</sup> See Bollyn (2004) and Harris (2003).

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Chicago. He observes that ES&S is a, “secretive company administering almost every last aspect of ‘democratic’ election process.” The ownership of is a closely guarded secret. Although the company says it is the largest voting machine company in the United States, they were unable to provide any information about their company or their products. At both facilities, workers were unwilling to speak. In Chicago, the only “vote count” the press or public was permitted to observe was what was projected on screens.

The *New York Times* contrasted the safeguards on Las Vegas gambling with the absence of any measures to protect democratic processes. I highlight some of the key distinctions in Table 2.7.<sup>52</sup>

**Table 2.7: Electronic Voting Machines Compared to Las Vegas Slot Machines**

	<b>Las Vegas slot machines</b>	<b>Electronic voting machines</b>
Software	The state has access to all gambling software. It is illegal for casinos to use software not on file.	Electronic voting machine software is a trade secret.
Spot-checking	Board inspectors show up unannounced at casinos to compare computer chips to those on file. If there is a discrepancy, the machine is shut down, and investigated.	No checks required and even if an election official wanted to, they wouldn't have a chip to compare to the one found in the machine.
Standards	Meticulous standards are constantly updated and extensive, e.g., machine must work when subjected to a 20,000-volt shock	Two-year old standards with gaping security holes were still in place. <sup>53</sup>
Background Scrutiny	Manufacturer background checks of six months or more; employees are investigated for criminal records.	No scrutiny, no way for voters to know, for example, if the programmers had fraud convictions. <sup>54</sup>
Equipment Certification	Certification by a public agency, which maintains an arms-length relationship with manufacturers. Public questions are invited.	By for-profit companies chosen and paid by the manufacturers. No public information on how the testing is done.
Disputes	If a gambler believes he may have been cheated, the casino is required to contact the Gaming Control Board, which has investigators on call around the clock. Investigators can open up machines to inspect their internal workings,	If voters believe a voting machine has manipulated their votes, in most cases their only recourse is to call a board of elections number, which may well be busy, to lodge a complaint that may or

<sup>52</sup> *New York Times*, “Gambling on Voting” June 13, 2004

<sup>53</sup> The *Times* did not elaborate on these, but security gaps such as open access to the central tabulator, lack of professional encryption, etc ... have been well documented elsewhere (e.g., Kohno, et al. 2004),

<sup>54</sup> Jeffrey Dean, who served time in a Washington correctional facility for stealing money and tampering with computer files, wrote and maintained proprietary code for vote counting as senior vice president of Diebold's wholly owned subsidiary, which produces the operating system that touch-screen voting terminals use. (Source: Rachel Konrad, *Associated Press*, San Francisco, Dec. 16, 2003). See <http://www.stimson.homestead.com/factsheet.html> for an extensive referenced list of: (1) DRE miscounts, (2) secrecy by the voting machine industry and/or election officials that interferes with discovery and correction of miscounts, and (3) corruption or undue influence.

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and their records of recent gambling outcomes. may not be investigated.

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## DRE 2004 Performance

Defenders of DRE machine counter that there has not been a single verified incident of tampering with an electronic machine under real-world conditions.<sup>55</sup> Unfortunately, that's the point. How can you verify it? If they have been tampered with -- or designed to produce results other than those cast, how would we know? An exit poll that closely matched machine counts would be about the only reason we might have confidence in official results from these machines; under conditions of an exit poll discrepancy, we have *every* reason for suspicion.

There are many, many "irregularities reported with DREs in the election. Two states have been at the vanguard of electronic voting: Georgia, 100% DRE and site of the extremely suspicious results in 2002 election, and Maryland, 91%, in which the media reported a smooth election, but in Montgomery County, county election officials report that all Maryland voting machines have been on "lockdown" since November 2, 2004 due to statewide machine failures including 12% of machines in Montgomery County, some of which appear to have lost votes in significant numbers. Watchdog organization TrueVoteMD informs us,

Election Day was anything but smooth. Votes were lost, computer cards storing votes were unreadable, thousands of error messages were reported, machines froze in mid-voting and machines refused to boot up. The problems with the machines were so widespread and serious that efforts to hide the problems have failed," said Linda Schade, director of TrueVoteMD.org.

Even though only a small number of Ohio residents are voted electronically in 2004, there were significant problems:

- Gahanna precinct in Franklin county recorded an extra 3,893 votes for President Bush.
- Miami county added nearly 19,000 new ballots after all precincts had reported, in the exact same 65.8 to 33.9 ratio favoring the President as the originally reported numbers
- In Mahoning County, numerous voters reported that when they attempted to vote for John Kerry, the vote showed up as a vote for George Bush and continued despite numerous

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<sup>55</sup> E.g., John Fund, No Doctored DRE: Democrats use computer hysteria to get out the vote. WSJ Tuesday, July 27, 2004

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attempts to correct their vote (a phenomenon reported in many polling places around the country).

All of these errors, which seem to have overwhelmingly favored the President, are disconcerting, but equally disconcerting is that every county in which an observer asked to inspect an actual electronic voting machine rebuffed such request.<sup>56</sup>

**Florida 2004 Electronic voting disparity.** Given the lack of audit trail, how do we know if electronic votes are accurately recorded and tabulated? A University of California-Berkeley team (Hout, et al 2004) compared 2000 to 2004 county voting results and found that Mr. Bush's vote gains in counties with electronic voting machines far exceeded his gains in counties with paper ballots. The researchers controlled for the effects of income, number of voters, change in turnout, and size of Hispanic/Latino population. They conclude statistical implausibility of such excess gains and that electronic voting machines may have awarded 130,000 – 260,000 excess votes to the President this year in Florida. The study was widely criticized because two counties are driving the findings, but that is the most interesting feature of all.

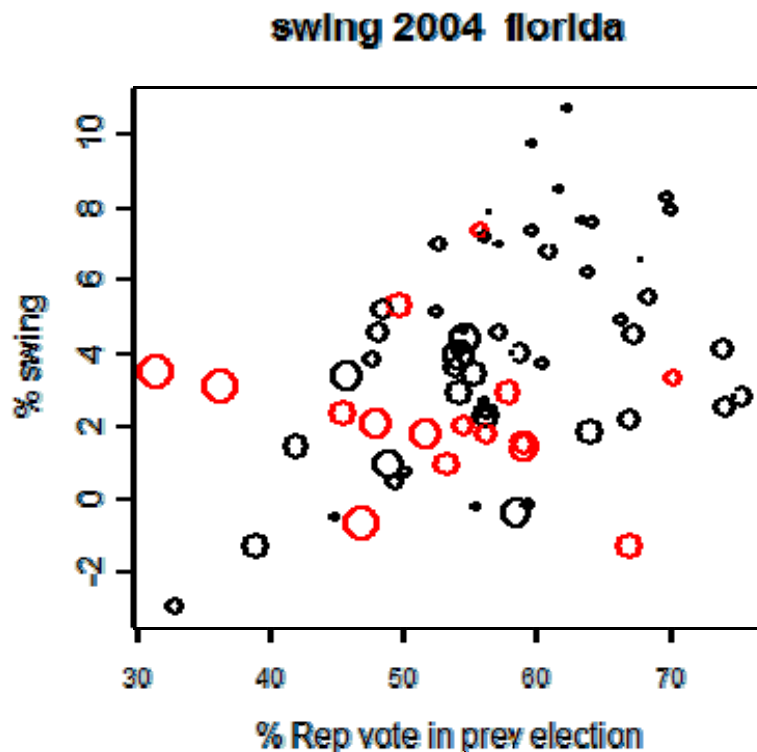
Here is a scatterplot of the counties in Florida, displaying the change in the Republican vote percentage from 2000 to 2004, plotting vs. the Republican vote percentage in 2000 (in both cases, using the Republican % of the two-party vote). Red circles indicate the counties that used e-voting in 2000, and black circles used optical scans. The area of each circle is roughly proportional to the #votes in the county.<sup>57</sup>

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<sup>56</sup> *Nashua Advocate* "Ohio Counties Allegedly Reject Illegal Advice on How to Return a Perfect Recount -- Then Proceed to Return a Perfect Recount." Thursday, December 16, 2004. "Another Day, Another Seven Conveniently "Flawless" Recounts in Ohio." Sunday, December 19, 2004

<sup>57</sup> adapted from an analysis performed Bruce Shaw of Columbia and posted by Andrew Gellman (confirm this is his last name) [http://www.stat.columbia.edu/~cook/movabletype/archives/2004/11/vote\\_swings\\_in.html](http://www.stat.columbia.edu/~cook/movabletype/archives/2004/11/vote_swings_in.html)

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For the optical scan counties, as with most of the country, there was a consistent trend that those counties that favored Bush in 2000, tended to move even more toward Bush in 2004. The two large red (e-voting) circles on the left (Democratic) side of the plot went against this trend and moved strongly toward the Republicans. These are two counties that Broward and Palm Beach. These are the same two counties that crop up in every conceivable election irregularity.

- 2000: Palm Beach fully cooperates in fraudulent felony list (many counties don't); resulting in thousands of most African Americans improperly disenfranchised. <sup>58</sup>
- 2000: Teresa LePore, the world's most famous supervisor of Elections, designed the Palm Beach Butterfly ballot that switched thousands of Gore votes to Buchanan. <sup>59</sup> The

<sup>58</sup> check this and give # for change in votes from PB recount.

<sup>59</sup> Madame Butterfly Flies Off with Ballots: Florida Fixed Again? Absentee Ballots Go Absent" Tuesday, August 31, 2004, by Greg Palast in commondreams.org

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confusing ballot design also led to 29,000 ballots rejected in primarily Democratic Palm Beach County <sup>60</sup> (Gore lost by 537 votes)

- 2000: Teresa LePore fails to turn in the hard count on time, denying Gore the presidency for a third time. <sup>61</sup>

(In honor of these accomplishments, LePore is named to represent election supervisors from Florida's 69 counties on the governors Select Task Force on Election Procedures<sup>62</sup>, to spend over **\$125 million** on new voting equipment and training of voters and election administrators.)

- March 2002: Palm Beach County had two contested election using LePore's new Sequoia DRE machines:

In the city of Wellington, a run-off election involved only one race with only two candidates. The final vote tally was 1263 to 1259, but 78 ballots were not recorded by the touchscreen machines. Elections Supervisor Theresa LePore explained that people simply chose to come to the polls and not cast a vote for anyone. <sup>63</sup>

In Boca Raton, former mayor Emil Danciu, was flabbergasted to finish a distant third in a race for a seat on Boca Raton city council. A poll shortly before the election had put him 17 points ahead of his nearest rival....Danciu sued for access to the Sequoia source code to see if it was flawed. He was told that the source code was considered a trade secret

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60 "In Palm Beach, Results of 2000 Still Stir a Fight" The New York Times, August 28, 2004 Saturday: Section A; Column 1; National Desk; THE 2004 CAMPAIGN: VOTING; Pg. 1 SERIES: FIGHTING FOR FLORIDA: Scars in Palm Beach By ABBY GOODNOUGH 4th paragraph.

61 "Madame Butterfly Flies Off with Ballots: Florida Fixed Again? Absentee Ballots Go Absent" Tuesday, August 31, 2004 by Greg Palast in [commondreams.org](http://commondreams.org) check this and give # for change in votes from PB recount.

## **62 check # of counties this. Bush Taps LePore and Newell For Task Force**

Palm Beach Post (Florida)

**November 25, 2002 Monday FINAL EDITION**

**SECTION:** LOCAL, Pg. 1B

**BYLINE:** By JIM ASH Palm Beach Post Capital Bureau

63 Florida 2002: Sluggish Systems, Vanishing Votes" Rebecca Mercuri, Inside Risks 149, CACM 45, 11, Nov 2002

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under Florida law, and that even LePore and her staff were not authorized to examine it, on pain of criminal prosecution.<sup>64</sup>

- November 2003 Broward County: Florida Governor Jeb Bush takes the highly unusual step of removing the county's elected Democratic supervisor for incompetence. He replaces her the same day with Brenda **Snipes**, a nominal Democrat with no elections experience who has long had the support of some of the governor's close Republican advisors in Broward.<sup>65</sup>
- October 2004 Broward County: 76,000 absentee ballots were unaccounted for, including 58,000 supposedly mailed on October 7 and 8<sup>th</sup> were lost.<sup>66</sup> Five days before the election the county resent the 76,000 ballots. (I could not verify how many were actually returned, although obviously the late mailing meant that many could not be back in by the deadline)
- Broward and Palm Beach County: 2004. A new trick for weeding out opposition voters. They reject large swaths of absentee ballots because of unacceptable signatures. They refuse to use certified hand-writing experts, but are aided in their decisions by party affiliations printed on the OUTSIDE of each return envelope.<sup>67</sup>

Statisticians may debate the merits of the Hout paper, but it's difficult to see how anyone could have confidence in the count of these two counties. We'd wager dollars to pennies that Hout's numbers are closer to voter intent than that of the Florida Board of Election. In fact, given the suppression of Democratic votes in these counties in 2000, Hout by projecting shortcomings from the previous election, almost certainly *understates* the effect.

<sup>64</sup> The Independent (UK) "Something rotten in the state of Florida" 29 September 2004

<sup>65</sup> Miami Herald, Wed, Sep. 22, 2004, **CAMPAIGN 2004 | SUPERVISOR OF ELECTIONS Snipes** wins as opponent leaves race

**Just 10 months after her appointment by the governor, Brenda Snipes is officially elected as her Republican opponent in the Nov. 2 vote, Steve Shin, drops out.**

**BY ERIKA BOLSTAD**

<sup>66</sup> Miami Herald, Thu, Oct. 28, 2004, **Missing ballots to be remailed** BY ERIKA BOLSTAD, GARY FINEOUT AND AMY SHERMAN. Also BBC News, "**Florida ballot papers go missing**: Tens of thousands of postal ballots have gone missing in the state of Florida, sparking fresh fears of irregularities in the US poll campaign." 2004/10/28

<sup>67</sup> "Madame Butterfly Flies Off with Ballots: Florida Fixed Again? Absentee Ballots Go Absent" Tuesday, August 31, 2004 by Greg Palast in [commondreams.org](http://commondreams.org) check this out especially for Broward. get #s

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## Systemic Conflict of Interest

Independent of specific errors and anomalies, '04 election doubts are raised by systemic conflict of interest, partisanship, and lack of transparency in the system.

In 2004, electoral victory hinged on two states, Florida and Ohio. The whole world witnessed the mockery which Florida officials – and the US Supreme Court – adjudicated the 2000 election; apparently that is the model Ohio chose for 2004. One week prior to the election, when asked if he feared being this year's Katherine Harris, Ken Blackwell, Ohio's Secretary of State and simultaneously State Chairman of the Bush-Cheney Reelection Committee, noted that Ms. Harris' efforts landed her a seat in Congress.

America places a high priority on ensuring fairness in sporting events; in contrast, most states allow high-level partisans to double as the top election officers. Imagine the Oklahoma Sooners went to the Orange Bowl to play Miami for the national championship and found that not only would they have to play on their opponents' home turf, but that the 'Canes's head coach would be doubling as referee (using the rest of his coaching staff to fill out the officiating crew, and his personal assistant as the official scorer). Imagine the outcry if, while the judges were reviewing a final game-deciding play that might have given Oklahoma the victory, the official scorer declares game over; "we, ahem, they win! Yet that is what happened in 2000 in Florida to determine the presidential election, and that is the playbook that Ken Blackwell used for Ohio in 2004.<sup>68</sup>

Under Blackwell's direction, Ohio is one of the last states to retain the punch-card machines that results in so many lost ballots among minorities. Earlier in the year, he issued a directive to county boards of elections commanding them to reject voter registration forms not "printed on

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<sup>68</sup> *New York Times*, "An Umpire Taking Sides" July 9, 2004. Ohio and Florida are not unique. Missouri's secretary of state, Matt Blunt, for example, was active in the Bush-Cheney campaign and was himself candidate for governor. Among his actions were a series of directives aimed to obstruct voting in Democratic strongholds, attempting, for example, to frustrate St. Louis' plan to allow early voting, despite legislation enacted after the 2000 election. At the same time, he went to extraordinary lengths to help an important Republican constituency to vote — allowing soldiers to vote by fax, even though it allows anyone to view who the soldier has voted for, effectively abandoning the safeguard of the secret ballot.

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white, uncoated paper of not less than 80 lb. text weight.”<sup>69</sup> As the election approached, he implemented a plan allowing party-designated poll watchers to challenge individual voters and demand they be denied a ballot. This resulted in many voters receiving provisional ballots, which may or may not be counted. His department was indirectly responsible for the failure of voting machines to arrive in minority areas (county boards are the primary perpetrators); meanwhile, his regulation prohibiting voting anywhere outside a voter’s home precinct left those in districts that were short of machines no other option but to wait in lines for up to seven hours. (This was made worse yet by driving rains that drenched Ohio throughout election day.)

John Conyer’s report<sup>70</sup> provides a good list of the allegations in that state. It is also a filtered list of allegations that are substantiated. Ohio was the focus of most investigation because a swing of 60,000 votes would have changed the outcome of the Presidential election, but Florida, New Mexico, the Carolinas, and many other states would have lists of similar length and nature, although differing in the details.

Although Mr. Blackwell is implicated in many of these allegations, he is also in charge of investigating them. Appendix E-2 documents the Congressional forum’s charges of obstructions he made to the Ohio Recount Effort in the aftermath of their solicitation for help.

### *Partisan Scorekeepers, Timekeepers and Umpires*

It’s bad enough when a referees has a direct partial interest in the outcome. But in the present environment, referees, umpires, judges, timekeepers, and scorekeepers are all on one side – at least in Florida and Ohio. Nearly everyone acknowledges the unfairness of this system and the flaws in voting technology, but most Americans nevertheless dismiss the possibility of fraud.

The truth is that when Walden O’Dell, Chairman of Diebold, the largest electronic voting machine manufacturer, writes that he is “committed to helping Ohio deliver its electoral votes to

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<sup>69</sup> Catherine Candisky, “Blackwell ends paper chase: Some could be unable to vote because of flap over registration forms” *The Columbus Dispatch*, Wednesday, September 29, 2004

<sup>70</sup> Get name of report

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the president,”<sup>71</sup> he does in fact have the power to make good on this commitment, regardless of the intent of the rest of the Ohio electorate.<sup>72</sup> When Congressman Peter King (R-NY) arrogantly and shockingly (or perhaps not so shockingly) declares while campaigning with the President before the election that, “We won. It’s all over but the counting ... and we’ll take care of the counting too,” it certainly looks like that’s the plan.<sup>73</sup>

## Conclusions and Next Steps

The conclusions of this paper are simple and clear. We have been provided no evidence to justify any explanations about poll error thus far proposed. In contrast, we have many reasons to suspect that the count may have been skewed.

To date, this has been an unjoined debate, so it may be that there are definitive explanations supported by data that can provide us with confidence that, in fact, the polls were wrong and the count was correct. Unless these explanations are forthcoming, however, increasing numbers of people across the political spectrum will question the legitimacy of the presidential election and the President’s claim to authority. Indeed, they may justifiably question the legitimacy of any elections and the foundations of our government.

To date this has also been an *unreported* debate. Aside from belittling dismissals of the possibility of electoral fraud,<sup>74</sup> national newspapers and broadcast networks have remained silent on these issues (Keith Olbermann and Christopher Hitchens alone excepted). Indeed, AP and the broadcast media that form the NEP are complicit in withholding pertinent data. Is this the nation’s bulwark of liberty? Unless they begin to ask the unanswered questions, reasonable people across

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<sup>71</sup> Republican fund-raising letter (reported by Dawson & McKown, *WISH-TV*, Indianapolis)

<sup>72</sup> Rick Dawson & Loni Smith McKown, “Will Your Vote Count?” An I-Team 8 Investigation, *WISH-TV*, Indianapolis. <http://www.wishtv.com/Global/story.asp?s=1647886>

<sup>73</sup> Alexandra Pelosi, “Diary of a Political Tourist” (an *HBO Documentary*) Tuesday October 27, 2004.

<sup>74</sup> e.g., Manuel Roig-Franzia and Dan Keating, “Latest Conspiracy Theory -- Kerry Won -- Hits the Ether” *Washington Post*, November 11, 2004 and Tom Zeller, Jr. “Vote Fraud Theories, Spread by Blogs, Are Quickly Buried” *New York Times* November 12, 2004 (Front page),

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the political spectrum may further doubt not only the ability of the press to conduct investigative journalism, but abandon them in an exodus that could .

\* \* \* \* \*

‘How could it happen? A massive secret conspiracy? Extending across the nation? That somehow shifted 2% of the vote from Kerry to Bush? And fooled everyone?’

Having spent the past month intensely studying our voting system and this election, the idea that stealing this election couldn't happen because it would require a “massive secret conspiracy” is surrealistic. Looking in this election for “conspiracy” reminds me of a story I read as a child about an emperor who was so proud of his security systems that he challenged anyone in the kingdom to try to steal something. He had guards with X-ray vision, sonar-hearing, incredible sense of smell, etc... of course they could detect anyone trying to abscond with any of the treasures. People would devise fiendishly clever plans to abscond with one treasure or another, but they would invariably be caught. Amidst all this, a small boy would go to the royal grounds every day all summer, collect twigs, grass, or dirt and carry it out in a wagon. Each day, the guards would examine his take to see what kind of treasure he might try to hide and then just chuckle as the dimwitted boy carried off his worthless take. At the end of the summer, the boy announced he had successfully robbed the palace. The king said, “that's impossible – my guards would never allow it,” but the boy insisted. He took the king to his home and showed him a garage full of ... red wagons. Every day he had carted one away.

I'm not comparing our election system to the king's proud security systems, quite the contrary. But while the media and public dismisses allegations of “conspiracy theorists”, the conspiracy has already transpired right from under our noses. The administration and its partisans have taken out wagon after wagon, the right to deny registrations, to record the votes, to count the votes, to decide *not* to count the votes, to prevent observers from seeing the votes being counted or then viewing the ballots and the record books, Everyone sees the theft – at every level.

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Creating poll lines eight hours long in your opponents stronghold is an open theft. Denying registrations and losing absentee ballots are all theft. Having Kenneth Blackwell or Katherine Harris overseeing an election is theft with a get-out-of-jail free card. Allowing Diebold and ES&S to record and count the votes is theft and the right to erase any record of it. The conspiracy has already been committed -- right in front of everyone's eyes, and with the complicity of most of the government, media and most everyone else with the public voice to prevent it.

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