

STATE OF LOUISIANA LEGISLATIVE AUDITOR

Department of Elections and Registration
Baton Rouge, Louisiana

August 9, 1999



Investigative Audit

Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor

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Department of Elections and Registration

August 9, 1999



**Investigative Audit
Office of the Legislative Auditor
State of Louisiana**

**Daniel G. Kyle, Ph.D., CPA, CFE
Legislative Auditor**

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August 9, 1999

HONORABLE JERRY M. FOWLER, COMMISSIONER
DEPARTMENT OF ELECTIONS
AND REGISTRATION
Baton Rouge, Louisiana

Transmitted herewith is our investigative report on the Department of Elections and Registration. Our examination was conducted in accordance with Title 24 of the Louisiana Revised Statutes and was performed to determine the propriety of certain allegations received by this office.

This report presents our finding and recommendation, as well as your response. Copies of this report have been delivered to the Department of Elections and Registration; the Honorable Doug Moreau, District Attorney for the Nineteenth Judicial District of Louisiana; and others as required by state law.

Respectfully submitted,

A handwritten signature in cursive script, reading "Daniel G. Kyle".

Daniel G. Kyle, CPA, CFE
Legislative Auditor

DGP:AFB:dl

[ELECT2]

Executive Summary

Investigative Audit Report Department of Elections and Registration

The following summarizes the finding and recommendation as well as management's response that resulted from this investigation. Detailed information relating to the finding and recommendation may be found at the page number indicated. Management's response may be found at Attachment II.

AVM Voting Machine and Candidate Counter Purchases

(Page 1)

Finding:

From August 1991 through January 1999, the Department of Elections and Registration (department) purchased 3,247 AVM, reconditioned voting machines totaling \$6,755,585 (1) without competitive bids as required by state law, (2) at prices exceeding those available from other vendors, and (3) for at least the latest purchase, the purpose appears to be highly questionable. The department purchased all of these voting machines from Election Services, Inc., (ESI). ESI purchased the voting machines from three AVM dealers who also sell directly to other governmental units. The voting machines were shipped directly from ESI's suppliers to the department. ESI did not take possession nor add value to the voting machines. Because these purchases were not advertised and competitively bid, the actual savings the department could have obtained are unknown. However, had the department purchased these voting machines directly from the suppliers, at ESI's prices, the department could have saved approximately \$3,540,365.

From 1992 through 1998, the department purchased 122,650 AVM candidate counters, an internal part of the AVM mechanical voting machine, totaling \$5,473,395 plus \$3,216,250 for installation. The department purchased these counters from Independent Voting Machine Service Company (IVM). However, we found that (1) the purpose of these purchases appears questionable; (2) the department purchased the counters at prices double the market rate; (3) on some

occasions, the department purchased counters cannibalized from its own trade-in machines; (4) the department paid a contractor nearly four times the available rate for installation; (5) department employees participated in the installation process, and for some of the installation projects, IVM billed the department twice for the same work; (6) the total cost of the counters and installation for each machine was more than twice the cost of purchasing a completely reconditioned machine from an AVM dealer; and (7) it appears that the counters purchased were no different than those taken out of the department's machines. Based on quotes provided to us, the department could have purchased these counters for an estimated \$2,943,600 and had them installed for \$720,900 saving the department \$5,025,145.

In summary, during the period 1991 through 1998, the department used \$15,445,230 to purchase AVM mechanical voting machines, counters, and installation. Had the department purchased these voting machines directly from the suppliers and the counters and installation at market rates, the department could have saved approximately \$8,565,510.

Recommendation:

One aspect of the department's plan of operations is to move from mechanical to computerized voting machines. As of May 1999, 3,897 of the department's 8,545 voting machines were AVC Advantage Electronic voting machines. As reported above, during the period August 1991 through 1998, the department used \$15,445,230 to purchase AVM mechanical machines, counters, and installation. Had the department used these funds to purchase AVC electronic machines, the department could have purchased an additional 2,741 AVCs. If the department's operational plan is to continue to phase out mechanical machines in favor of electronic voting machines, the department should consider discontinuing its practice of purchasing used AVMs and replacing counters in existing AVMs and use these funds for the purchase of new AVCs.

If the department continues to purchase AVM voting machines, we recommend that the department cease purchasing its AVM machines as a sole-source item and make future purchases through competitive sealed bids. The department should seek bids from as many responsible AVM dealers as practical. In addition, consideration should be given to purchasing AVM voting machines directly from county governments in other states that are discontinuing their use of this equipment. When purchasing machines, careful consideration should be given to the quality of service performed by the seller. During our

investigation, we learned that this quality varies greatly from spot painting and inspection by some dealers to complete reconditioning by others. In addition, warranties vary greatly from dealer to dealer. As previously mentioned, ESI from whom the department purchased its AVMs, provided a 2-year warranty while Voting Machine Service Center offers a 5-year warranty.

In addition, before purchasing machines for one parish, the department should consider whether the desired machines are already available in another parish.

Furthermore, before converting voting machines to printer-type machines or changing the counters, the department should consider the cost effectiveness of purchasing completely reconditioned AVMs or the newer electronic voting machines.

The department should also reconsider its current practice of replacing candidate counters in the existing AVM machines. Before continuing this expensive method of maintenance, the department should adequately study the situation for need and cost effectiveness. Careful consideration should be given to the condition of the existing counters, the frequency of failures incurred, replacement of only those counters experiencing problems rather than all 50 counters in a particular machine, and other alternative solutions. If such maintenance is necessary, the department should consider refurbishing existing counters as opposed to buying used counters removed from other machines and, in some cases, the department's own machines. Furthermore, according to industry experts, counters may be cleaned and lubricated while in the voting machine, making it unnecessary to incur the cost of removal and installation.

The department should document the repairs made to its voting machines. As previously mentioned, the department was unable to provide documentation of its preventative maintenance program. The department should maintain an inventory of its voting machines and a detailed log of all maintenance performed on each machine. This would permit the department to track the cost effectiveness of its maintenance program, alert department officials to reoccurring problems, alert officials to the need for replacement machines, and increase the likelihood of discovering problem areas before failure occurs.

The department should also properly determine whether the services of a contractor are necessary for the installation of counters. If necessary, the department should seek bids from

other responsible contractors and attempt to obtain the lowest price possible. Furthermore, when contracting for such installation services, the department should obtain a clear understanding, in writing, as to the procedures that will be performed by the contractor and any participation required of department employees.

The department has conducted a substantial amount of business with IVM (approximately \$4.1 million during 1998). However, based on the report of the Inspector General and the findings mentioned in this report, some concern by the department for continuing this relationship is warranted. If the department continues to conduct business with IVM, such agreements should be thoroughly reviewed and checks and balances put into place to prevent disallowed, overbilled, and questionable charges from occurring.

In addition, the department should consult legal counsel to determine whether any funds may be recovered from IVM and ESI for previous purchases at rates grossly exceeding comparable market prices.

Lastly, by failing to purchase the AVM voting machines through a public bid process, improperly declaring these purchases to be sole-source, purchasing the candidate counters at excessive rates, and using public funds to pay IVM to install counters while state employees actually performed a material portion of this service, Commissioner Fowler, Mr. Keith Edmonston, and Mr. Ronnie Tassin may have violated one or more of the following Louisiana laws:

- R.S. 18:1362, "Method of Acquiring Voting Machines"
- R.S. 39:1597, "Sole Source Procurements"
- R.S. 42:1461, "Obligation Not to Misuse Public Funds"
- R.S. 14:134, "Malfeasance in Office"

This information has been provided to the District Attorney for the Nineteenth Judicial District of Louisiana and is under investigation.

Management's Response: In general, management disagrees with the finding in this report. See Attachment II for management's detailed response.

Background and Methodology

The Department of Elections is one of twelve constitutionally established state departments. It was established by Article IV, Section 12 of the Louisiana Constitution of 1974. The Commissioner of Elections, a statewide elected official, is in charge of the department's operations. The current commissioner, Mr. Jerry Fowler, was first elected in 1979 and is now serving his fifth term in the office. The department's budget for fiscal year 1997-98 was \$29,411,421.

The commissioner is charged with the responsibility to exercise all functions of the state relating to the custody of voting machines and voter registration. The major responsibilities of the department include maintaining voting machines for elections, providing support services to hold elections, paying for election expenses, maintaining the statewide voter registration system, and administering the laws regarding registration of voters. These responsibilities are allocated among four separate programs: the Administration Program, the Voting Machine Program, the Registration Program, and the Elections Program.

The department has several different types of voting machines. These include SHOUP and AVM, which are older mechanical machines, and AVC, which is an electronic voting machine. The department currently maintains approximately 4,200 AVM voting machines. Throughout the 1990s, the department has purchased over 3,200 AVM voting machines, traded in existing AVMs, and upgraded and performed substantial maintenance on its AVM voting machines.

Since 1991, the department has been trying to replace the older mechanical machines with the new AVC electronic machines. These new machines are lightweight and can transmit election data electronically.

The department purchases its AVM voting machines from Elections Services, Inc., and substantially all of its AVM parts from Independent Voting Machine Service Company, Inc.

The procedures performed during this investigative audit consisted of (1) interviewing employees and officials of the department; (2) interviewing other persons as appropriate; (3) examining selected department and contractor records; (4) performing observations and analytical tests; and (5) reviewing applicable state and federal laws and regulations.

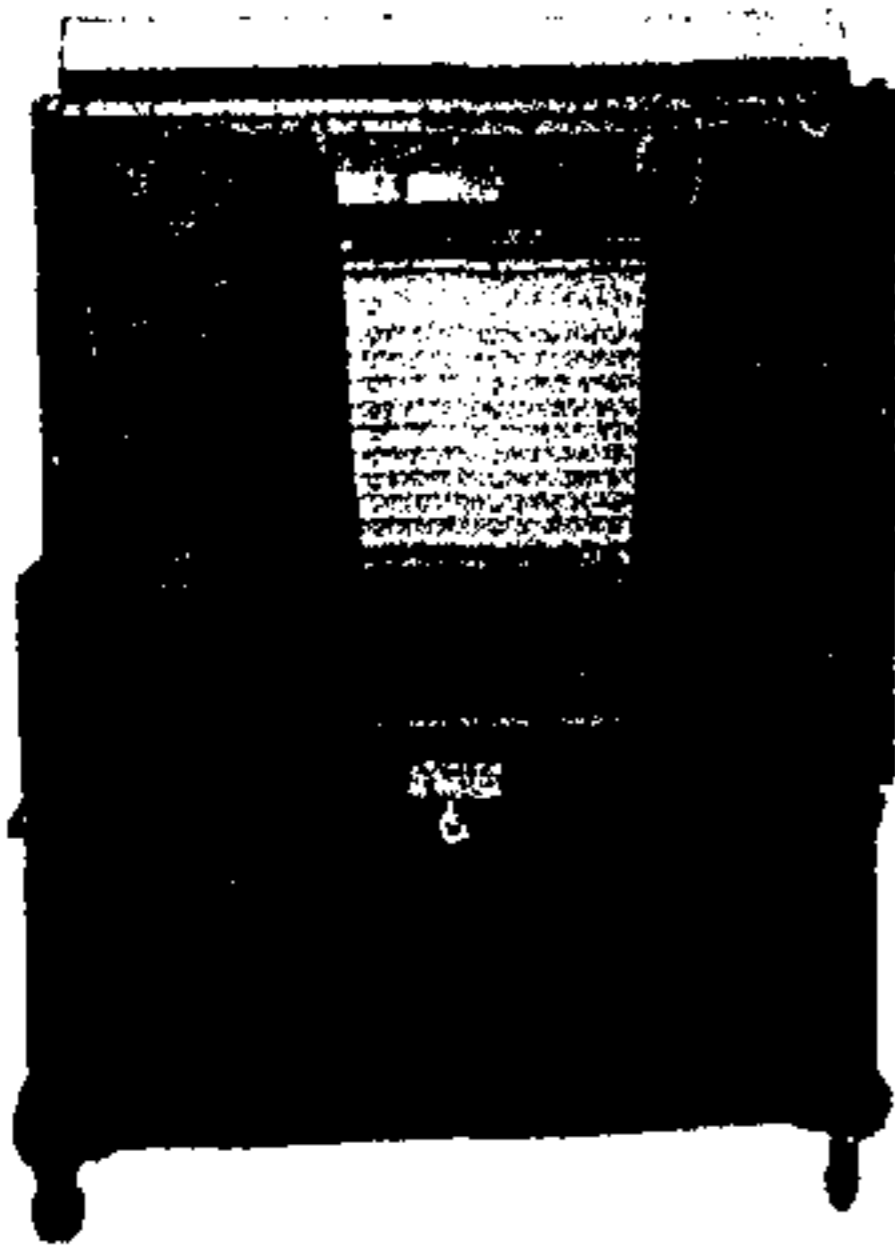
The result of our investigation is the finding and recommendation herein.

Finding and Recommendation

From August 1991 through January 1999, the Department of Elections and Registration (department) purchased 3,247 AVM, reconditioned voting machines totaling \$6,755,585 (1) without competitive bids as required by state law, (2) at prices exceeding those available from other vendors, and (3) for at least the latest purchase, the purpose appears to be highly questionable. The department purchased all of these voting machines from Election Services, Inc., (ESI). ESI purchased the voting machines from three AVM dealers who also sell directly to other governmental units. The voting machines were shipped directly from ESI's suppliers to the department. ESI did not take possession nor add value to the voting machines. Because these purchases were not advertised and competitively bid, the actual savings the department could have obtained are unknown. However, had the department purchased these voting machines directly from the suppliers, at ESI's prices, the department could have saved approximately \$3,540,365.

From 1992 through 1998, the department purchased 122,650 AVM candidate counters, an internal part of the AVM mechanical voting machine, totaling \$5,473,395 plus \$3,216,250 for installation. The department purchased these counters from Independent Voting Machine Service Company (IVM). However, we found that (1) the purpose of these purchases appears questionable; (2) the department purchased the counters at prices double the market rate; (3) on some occasions, the department purchased counters cannibalized from its own trade-in machines; (4) the department paid a contractor nearly four times the available rate for installation; (5) department employees participated in the installation process, and for some of the installation projects, IVM billed the department twice for the same work; (6) the total cost of the counters and installation for each machine was more than twice the cost of purchasing a completely reconditioned machine from an AVM dealer; and (7) it appears that the counters purchased were no different than those taken out of the department's machines. Based on quotes provided to us, the department could have purchased these counters for an estimated \$2,943,600 and had them installed for \$720,900 saving the department \$5,025,145.

In summary, during the period 1992 through 1998, the department used \$15,445,230 to purchase AVM mechanical voting machines, counters, and installation. Had the department purchased these voting machines directly from the suppliers and the counters and installation at market rates, the department could have saved approximately \$8,565,510.



AVM VOTING MACHINES



The Department of Elections and Registration (department) currently maintains several types of voting machines including the AVM, SHOUP, and AVC. The AVM voting machine was manufactured by Automatic Voting Machines, a corporation that ceased operations during the early 1980s. The AVM is a mechanical voting machine and the department owns two basic models: (1) the 40-column model, which contains 40 candidate counters and (2) the 50-column model, which contains 50 candidate counters. During 1998, the department had approximately 4,200 AVMs in use.

AVM MACHINES WERE NOT COMPETITIVELY BID

State law requires that the department purchase its voting machines through a competitive bid process, the purpose of which is to enable the department to obtain the best price possible. However, the department did not purchase its AVM voting machines through a competitive bid process. Rather, Commissioner Jerry Fowler purchased all of the department's AVM voting machines from one vendor, Election Services, Inc., (ESI) of Birmingham, Alabama. Commissioner Fowler declared, in writing, that ESI is the sole source for factory-reconditioned AVM voting machines. The sole-source provision is an exception to the general public bid law contained in the Louisiana Procurement Code. According to the Louisiana Office of State


R.S. 18§1362 provides, ". . . all voting machines used in this state shall be purchased by the commissioner of elections . . . on the basis of public bids . . . Advertisement and letting of contracts for the purchase of voting machines shall be in accordance with the Louisiana Procurement Code . . ."

Purchasing, the sole-source provision is available when there is only one source for the voting machines, when there is doubt competition should be solicited, and when there is more than one source, it must be bid in accordance with proper purchasing procedures. In this case, several vendors of AVM voting machines exist. Therefore, Commissioner Fowler's declaration that AVM voting machine purchases were sole source is incorrect. Furthermore, the Elections Code requires that these purchases be advertised and let in accordance with certain provisions of the Louisiana Procurement Code. Commissioner Fowler did not advertise nor award these purchases in accordance with these provisions of state law.

 State of Louisiana DEPARTMENT OF ELECTIONS & REGISTRATION
JERRY M. FOWLER Commissioner of Elections
October 18, 1995
TO THE FILE:
<p>The sole source for factory-reconditioned AVM-POM voting machines is Election Services, Inc., Birmingham, Alabama (see attached exclusive agent agreement). The State of Louisiana through the Department of Elections is authorized to purchase voting machines (R.S. 18:1362). Louisiana has been attempting to update its voting equipment and purchase either mechanical or electronic printing machines. The only compatible mechanic printer is the AVM-POM that is no longer available new. Factory-reconditioned machines are available through Election Services, Inc. and have a two year warranty. These machines are comparable to the equipment now in use and require no technician or voter reeducation.</p> <p>I therefore determine that Elections Services, Inc. is the sole source for the mechanical printing voting machines to be used in the State of Louisiana until any further determination shall be made.</p>
Sincerely,  Jerry M. Fowler
JMF/cmc
Sole-source memorandum by Commissioner Fowler

AVM voting machines have not been manufactured since the early 1980s. However, there are several vendors of used and/or reconditioned AVM voting machines. During the first few weeks of our investigation, we located five such vendors capable of supplying AVM machines to the department. In addition, other state and local governments are discontinuing their use of the AVMs and in the process, selling off or otherwise discarding their inventories.

During an interview with Commissioner Fowler on January 19, 1999, Commissioner Fowler stated that “. . . the used AVM machines are hard to find . . . there are only 3 or 4 people who recondition the machines . . . ” thereby indicating his knowledge that several sources exist. Furthermore, in his memorandum to the file, Commissioner Fowler refers to an agreement between Sequoia Pacific Voting Equipment, Inc., and ESI. The “exclusive agent agreement” referred to in Commissioner Fowler’s memo does not state that ESI is the sole source of AVM voting machines. The agreement between Sequoia and ESI merely grants ESI an exclusive right to sell *Sequoia’s* used AVM voting machines in the State of Louisiana. In addition, Mr. David Philpot, owner of ESI, agreed that he is not the only source of AVM machines. Furthermore, as another indication that the department was aware of the existence of other AVM suppliers, the department previously made purchases of AVM parts from Voting Machine Service Center, Inc., an AVM dealer located in Gerry, New York.



Sequoia Pacific Voting Equipment Inc.
Jones and Gifford Ave. P.O. Box 1399, Jamestown, NY 14702-1399 716 487-0161

January 2, 1995

Mr. David Philpot, President
 Election Services, Incorporated
 2312 Highland Avenue
 Birmingham, Alabama 35205

Dear David,

This letter outlines the terms of our agreement under which Election Services, Incorporated (ESI) will become an Independent Sales Agent for Sequoia Pacific Voting Equipment Incorporated (SPVE) in the State of Louisiana. We grant you the exclusive right to sell our AVM Voting Machines in this State. Equipment will be sold to ESI at a mutually agreed upon price prior to each order, unless otherwise amended in writing.

AVM VOTING MACHINES PURCHASED AT EXCESSIVE PRICES

The department purchased the AVM voting machines from ESI at prices exceeding those available from other dealers. On average, the department paid double the available price for its AVM machines, though ESI made no modifications and therefore added no value to the machines.

From August 1991 through January 1999, the department paid ESI between \$1,850 and \$2,700 per reconditioned machine, which included a 2-year warranty. ESI purchased its machines from three suppliers including Sequoia, Garden State Elections, Inc., (GSE), and Uni-Lect, Inc., at prices as follows:

<u>Vendor</u>	<u>ESI Price</u>
Sequoia	\$900 to \$1,259
GSE	\$900 to \$1,350
Uni-Lect	\$500 to \$950

Machines purchased from ESI were actually shipped directly from these three suppliers to the department; therefore, ESI added no value to the voting machines. Though Sequoia is represented by ESI for Louisiana sales, both Sequoia and Uni-Lect sell directly to end users at considerably lower prices than the department pays ESI. For example, on October 4, 1994, Uni-Lect sold 13 AVM 50-column reconditioned machines to Chatham County, Georgia, for \$700 each, including a 3-year warranty. Shortly thereafter, in February 1995, Uni-Lect sold 85 AVMs to ESI for \$950 each and ESI resold the machines to the department for \$1,995 each. These machines were shipped directly from Uni-Lect to the department. Again, in May 1995, Uni-Lect sold 22 AVMs, fully reconditioned to Chatham County for \$475 each.

Sequoia also sells directly to end users outside of Louisiana. Sequoia's retail price list for AVM, reconditioned machines, reveals prices for 40-column and 50-column voting machines from \$1,000 to \$1,725.

Voting Machine Service Center, Inc., an AVM retailer located in New York, quoted us a price of \$1,495 per machine¹, completely reconditioned, including a 5-year warranty. In addition, Electec, Inc., an AVM retailer located in New Jersey, quoted us prices ranging from \$1,400 to \$2,000, including a 3-year warranty.

The department's latest purchase of 154 AVM voting machines was made at \$2,700 per machine with a 2-year warranty. This purchase was bounced, and the price increased, between four separate companies before being sold to the department as follows (see chart on following page):

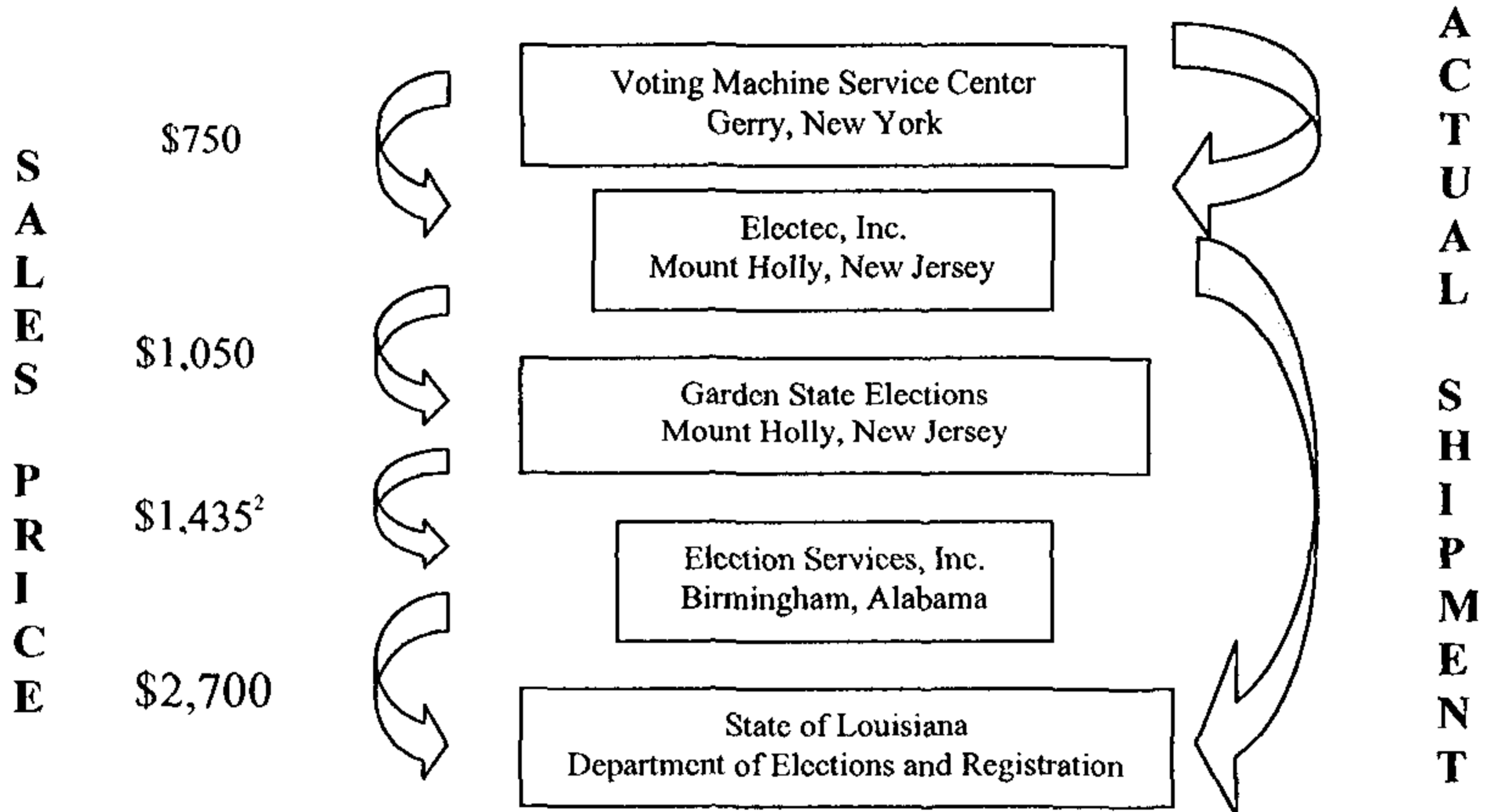
1. Voting Machine Service Center, Inc., (VMS) of Gerry, New York, sold the 154 AVM voting machines to Electec, Inc., located in Mount Holly, New Jersey, for \$750 each (as-is, where-is, not reconditioned, without warranty).
2. Electec sold the machines to Garden State Elections (GSE) also located in Mount Holly, New Jersey, for \$1,050 each.
3. GSE sold the 154 voting machines to Election Services, Inc., (ESI) for \$1,350 plus \$85 freight each.
4. ESI sold the machines to the department on November 19, 1998, for \$2,700 per machine.

¹ Diecast machine, quantities of 200 and more. Prices vary depending on model and quantity.

AVM RECONDITIONED MACHINES 117,000 SERIES AND ABOVE				
Size	Type	1-5	6-14	Over 15
30 Column	Die Cast	\$2,275	\$2,125	\$1,925
30 Column	R/P	2,575	2,425	2,275
40 Column	Die Cast	1,700	1,300	1,000
40 Column	R/P	2,040	1,560	1,200
50 Column	Die Cast	1,825	1,725	1,625
50 Column	R/P	1,925	1,825	1,725
60 Column	Die Cast	Contact Jamestown Office		
60 Column	R/P	Contact Jamestown Office		
Handicap Voter Panel with the purchase of a reconditioned machine is an additional \$125.00 per machine.				
All prices are F.O.B. Jamestown, New York.				
Additional first systems discount: 10%				
For special pricing on machines below 117,000 series, contact the Jamestown Office.				
RENTALS:				
100 machines or above:		\$195.00 each plus transportation.		
Under 100 machines:		\$225.00 each plus transportation.		
9/30's - NY and CT		\$500.00 each plus transportation		
Sequoia Pacific Voting Equipment Inc.			Revised: March 18, 1997	
Sequoia Pacific Price List				

Neither GSE nor ESI added value to the voting machines though the price was increased more than triple the original cost.

Our investigation revealed that the 154 machines that made up the latest purchase were shipped from Voting Machine Service Center, Inc., to Electec, Inc., where they were reconditioned and then shipped directly to Louisiana's Terrebonne Parish warehouse; GSE and ESI never took possession of the machines.



ESI records indicate that the majority of the company's revenues are generated through sales involving the Department of Elections and Registration. Though for this latest purchase, ESI charged the department almost double its cost; ESI records indicate that the department was generally charged more than double ESI's actual cost. Had the department purchased these machines directly from Electec, Inc., at the price Electec, Inc., sold them to GSE, the department could have saved approximately \$250,675 on this single purchase as follows:

Total purchase price actually paid	\$412,375
Electec, Inc., Price (154 @ \$1,050)	<u>(161,700)</u>
Total	<u>\$250,675</u>

According to Commissioner Fowler, the AVM machines are supposed to be *Louisiana Ready*, and for this, they are paying more for the machines. *Louisiana Ready* includes certain specifications such as handicap panels, position of the bell, location of the crank handle, and removal of write-in candidates. However, the machines received by the department are not in accordance with these *Louisiana Ready* specifications. Rather, after delivery, the department

² Cost of \$1,350 plus \$85 freight.

purchases handicap panels and other supplies for installation by its warehouse employees. From August 1991 through 1998, the department paid \$669,800 for handicap panels. In addition, it should be noted that Sequoia's price for handicap panels is listed as \$125, IVM charged the department \$200 to \$225.

Because these purchases were not advertised and competitively bid, the actual savings that the department could have obtained are unknown. However, had the department purchased all its AVM machines directly from the suppliers, at ESI's prices, the department could have saved approximately \$3,540,365.

PURPOSE OF PURCHASE APPEARS QUESTIONABLE

During October 1998, the department ordered 154, 40-column AVM machines at a cost of \$415,800 and traded in 131, 50-column machines located in Terrebonne Parish for \$25 each. Shortly thereafter the department ordered 125, 50-column AVMs for Vernon Parish at a cost of \$309,375 and traded in 102, 50-column AVMs for \$25 each. Had the department used the 50-column AVMs from Terrebonne Parish to satisfy its needs in Vernon Parish, the department may have saved \$309,375.

Purchase for Terrebonne Parish

On October 27, 1998, the department ordered 154 AVM 40-column voting machines from ESI for \$2,700 each. The department's position on the purchase was:

. . . this purchase was made because the Clerk of Court in Terrebonne Parish claimed that his parish's machines were junk and needed replacing.
Commissioner Jerry Fowler - January 19, 1999

. . . Terrebonne Parish needed additional machines and, because of a lack of space in the warehouse, the parish's 50-column machines were being replaced with smaller, 40-column machines.

Mr. Ronnie Tassin, Director of Elections - January 15, 1999

As part of the purchase, the department traded in, for \$25 each, 131 AVM 50-column voting machines. These machines, though originally purchased during the mid 1970s, were converted to printer-type machines during December 1994. During their conversion, all of the candidate counters (the internal part that counts the votes) in these machines were replaced and printer conversion kits were installed at an estimated cost of \$4,215 each or \$552,165 for all 131 machines.

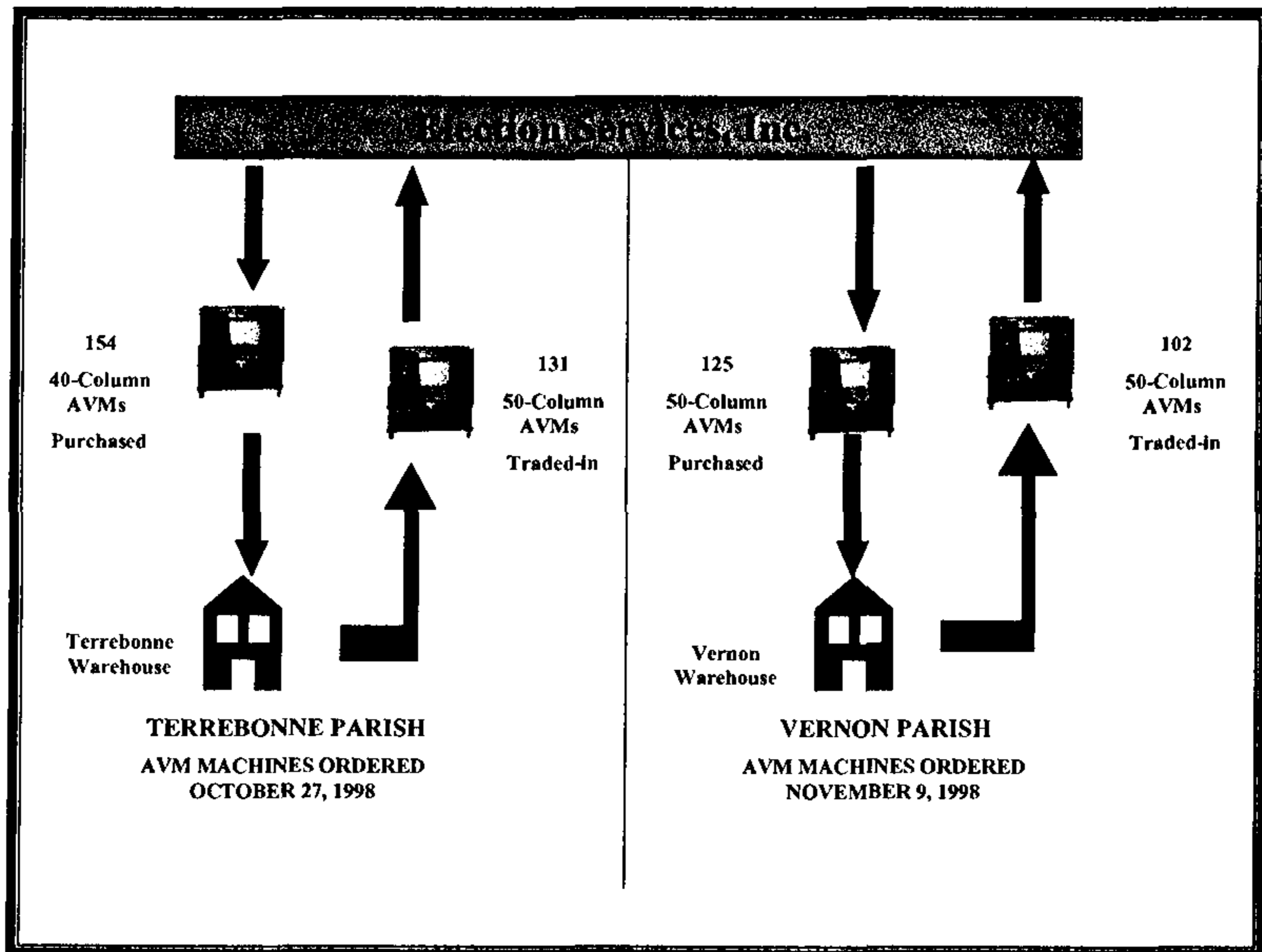
Though Commissioner Fowler cited the condition of the machines as a factor in warranting their replacement, Mr. Robert Boudreaux, Terrebonne Parish Clerk of Court, informed us that he had not experienced any unusual mechanical problems with the parish's voting machines, he simply needed more machines to adequately serve the

residents of his parish. When informed that these machines were taken by ESI and crushed as scrap, Mr. Boudreaux stated “that was a waste.”

According to Mr. Whittless “Butch” Adams, warehouse mechanic for Terrebonne Parish, though the 50-column machines had wear, they were ready for the parish’s next election.

Purchase for Vernon Parish

Thirteen days after the department completed the order to trade in 131 AVM 50-column machines from Terrebonne Parish for \$25 each, the department issued a second purchase order for 125 AVM 50-column machines for Vernon Parish. On November 9, 1998, the department ordered 125 AVM 50-column voting machines from ESI for Vernon Parish for \$2,475 each (total cost of \$309,375). This purchase also included that the department trade in 102 existing AVMs for \$25 each.



We question why the department chose to trade in, for \$25 each, 131 operable AVM 50-column machines that it had spent \$552,165 to recondition rather than using these machines in Vernon Parish and saving an additional \$309,375.

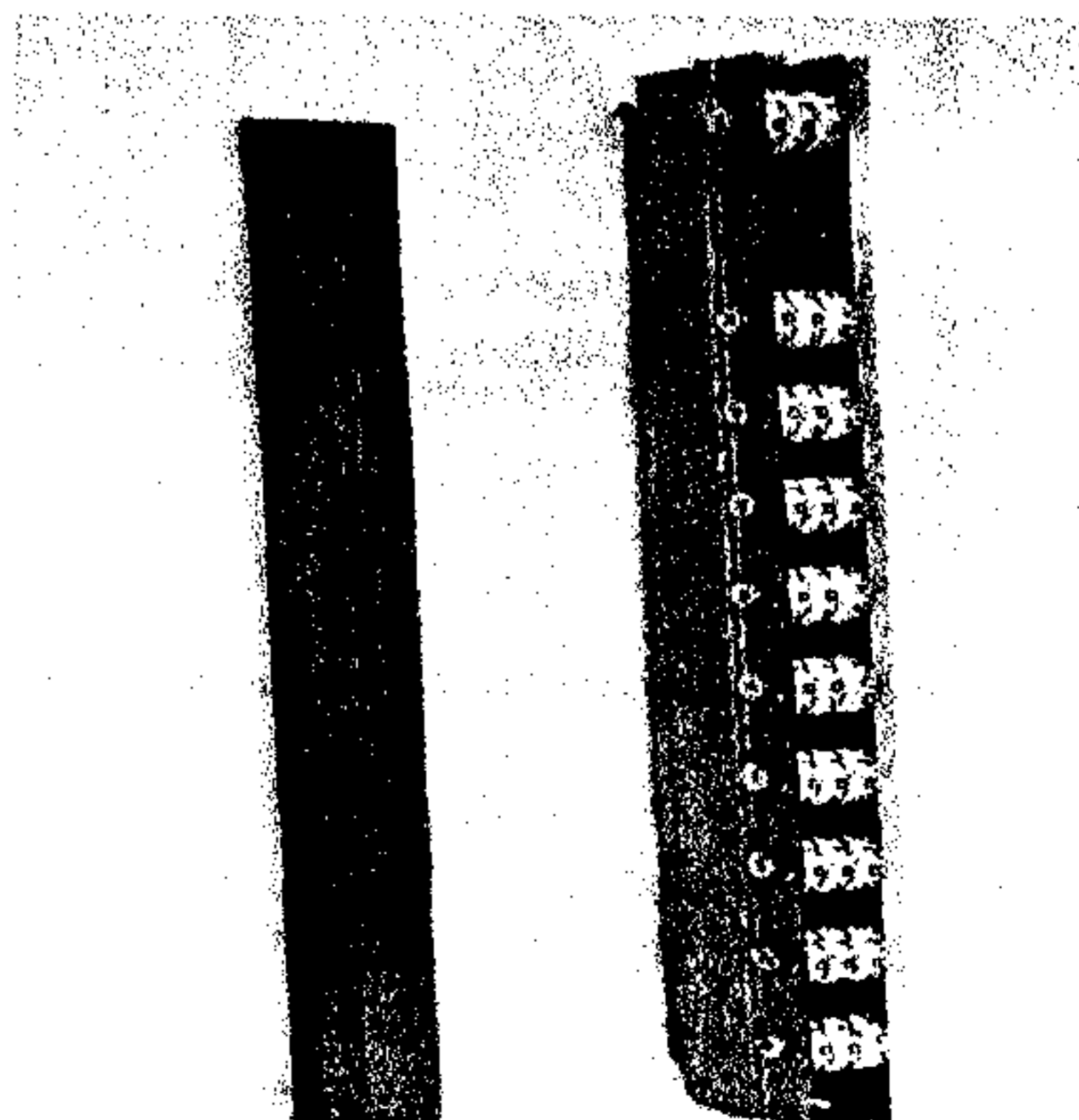
AVM CANDIDATE COUNTERS

From 1992 through 1998, the department purchased 122,650 AVM candidate counters for a total of \$5,473,395 plus installation charges of \$3,216,250 from Independent Voting Machine Service Company (IVM). A counter is the internal part of the voting machine that registers the individual votes. However, we found that:

1. The purpose of these purchases appears questionable.
2. The department purchased these counters at prices double the market rate.
3. The department purchased counters cannibalized from its own machines that were taken out of service and traded in.
4. The department paid a contractor nearly four times the available rate for installation.
5. Department employees participated in the installation process, and for some of the installation projects, IVM billed the department twice for the same work.
6. The total cost of the counters and installation for each machine was more than twice that of the purchase of a completely reconditioned voting machine.
7. It appears that the counters purchased were no different than those removed from the department's machines.

Based on quotes provided to us, the department could have purchased these counters for an estimated \$2,943,600, a savings of \$2,529,795, and had them installed for \$720,900, an additional savings of \$2,495,350, for a total savings on the purchase and installation of counters of \$5,025,145.

The AVM candidate counter is a mechanical counter that registers the individual votes made by voters. The 40-column AVM machine contains 40 candidate counters while the 50-column models contain 50 candidate counters. AVM machines and parts have not been manufactured since the early 1980s; therefore, the counters purchased by the department are counters that have been removed from other used machines and supposedly refurbished. Refurbishing involves cleaning, inspecting, oiling, and making any necessary repairs.



AVM Candidate Counter

PURPOSE OF THE PURCHASES APPEARS QUESTIONABLE

The purpose of these purchases appears questionable because:

1. Though the department claims the candidate counter purchases were part of a preventative maintenance program, it took department officials several months to provide documentation as to the identity of which machines the counters had been placed into.
2. The department provided no documentation of a history of malfunctioning counters.
3. Some of the counters purchased were counters removed from voting machines traded in to the vendor by the department.
4. The department purchased more counters than the total number of counters sold by two of the largest AVM dealers combined.

The department purchased these 122,650 candidate counters as replacements for the existing counters in the department's AVM machines. Counter purchases were normally requested by Mr. Keith Edmonston, Assistant Elections Director, and approved by Commissioner Fowler. According to Mr. Edmonston:

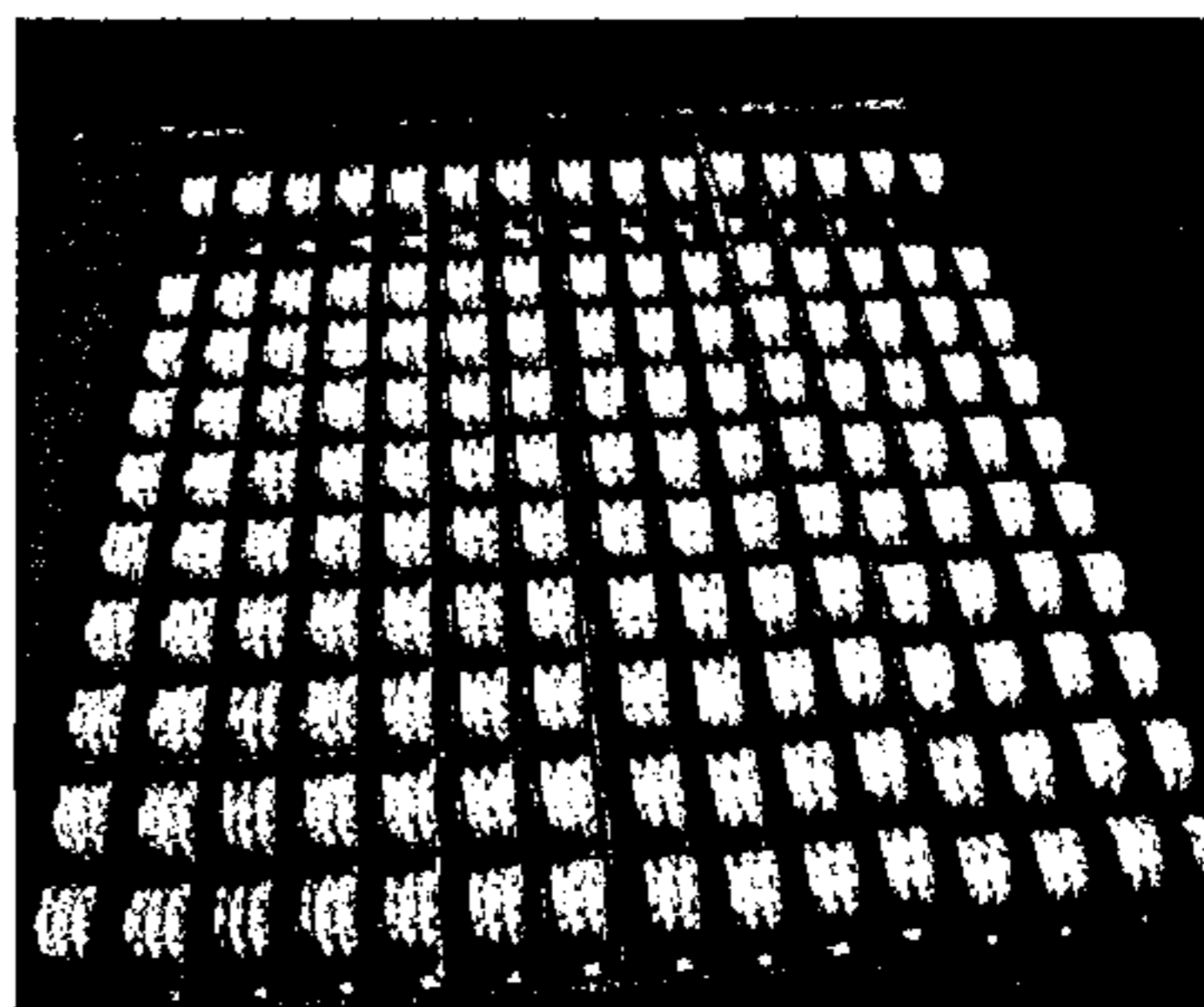
He, Commissioner Fowler, Mr. Ronnie Tassin, the Director of Elections, and Mr. Allen Elkins, Assistant Commissioner, would decide whether to make the purchase.

According to Mr. Ronnie Tassin, Director of Elections:

*The purpose of these purchases was a continuing preventive maintenance program.
December 9, 1998*

However, when asked, Mr. Tassin could not provide any documentation showing which of the department's AVM machines had counters replaced or any other documentation of this program. It took the department more than 6 months to provide this information.

In addition, a refurbished counter is one that has been removed from another AVM machine, inspected, cleaned, and lubricated. No one has provided an explanation as to why the counters already in the department's machines could not be inspected, cleaned, and lubricated, thus eliminating the need to purchase additional ones.



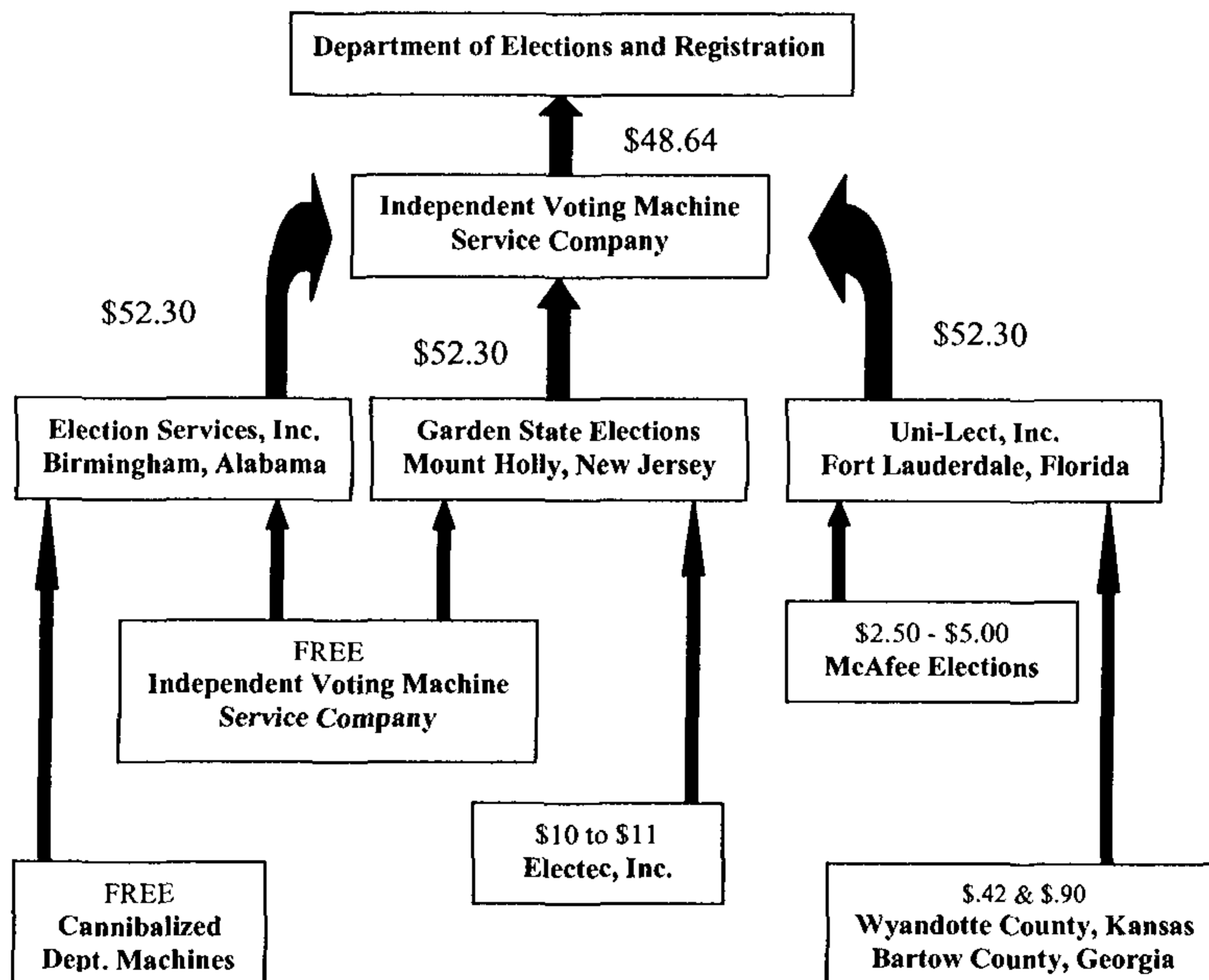
Box of AVM Counters

The malfunction of the candidate counters does not appear to have been a problem for the department throughout its use of AVM machines. Of the 25 warehouse employees who commented on counters, 21 stated that candidate counters either rarely go bad or that only a few have gone bad during their time with the department. Other individuals in the industry have informed us that typically, the counters do not require replacement.

Furthermore, the department has purchased more counters than the total number of counters sold by two of the largest AVM dealers combined. According to Mr. Dale Marshall of Voting Machine Service Center, Inc., his company has probably sold less than 5,000 candidate counters since its formation in 1982. Mr. Robert Click of Sequoia Pacific Voting Equipment, Inc., stated that Sequoia sells less than 1,000 candidate counters per year. As previously stated, the department purchased 122,650 counters from 1992 through 1998.

AVM COUNTERS WERE PURCHASED AT TWICE THE MARKET RATE

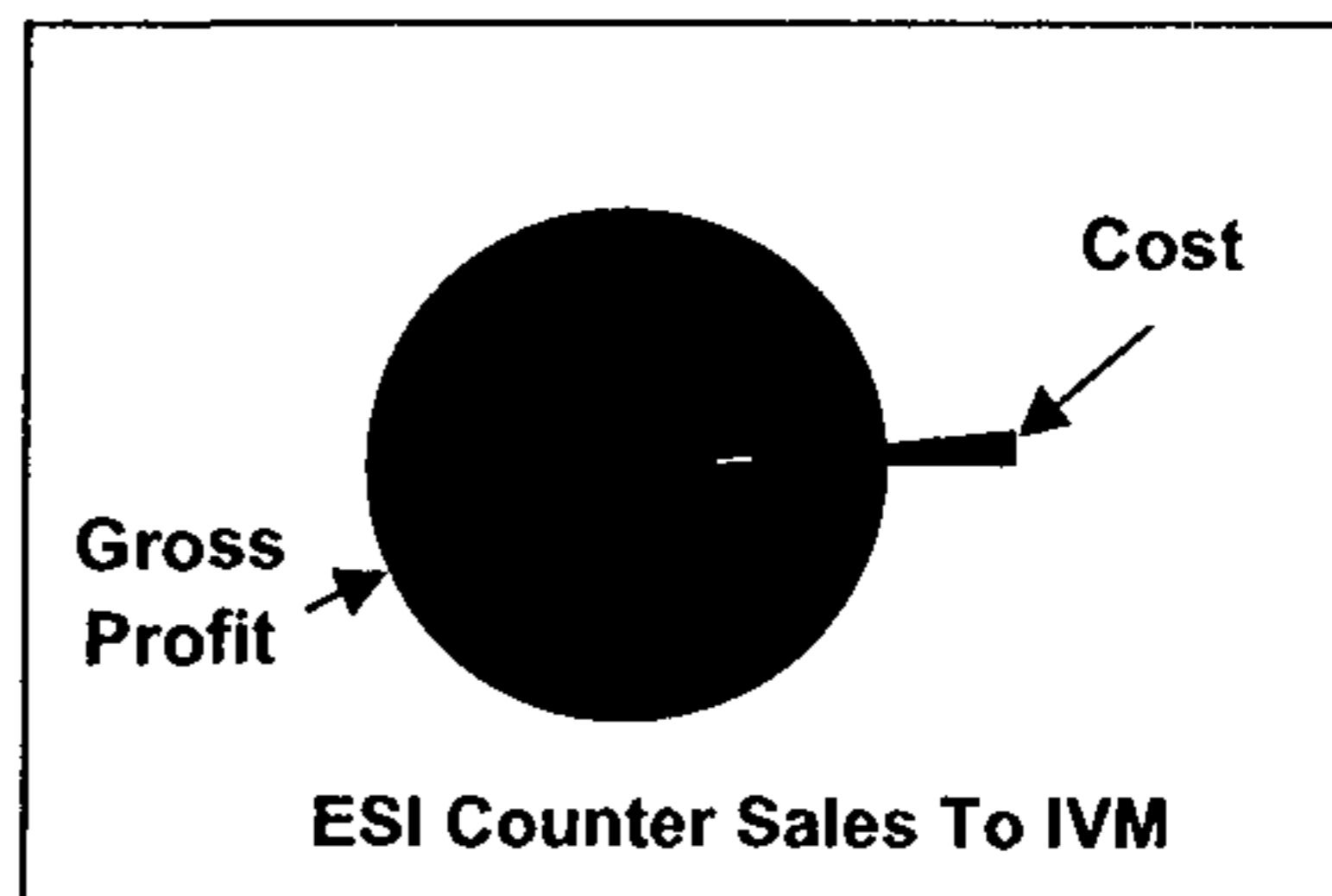
The department purchased all of the counters from IVM for \$48.64 each (\$42.30 before 1997). IVM purchased its counters from three sources (1996-1998): Elections Services, Inc. (ESI), Garden State Elections (GSE), and Uni-Lect, Inc., for \$52.30 each.



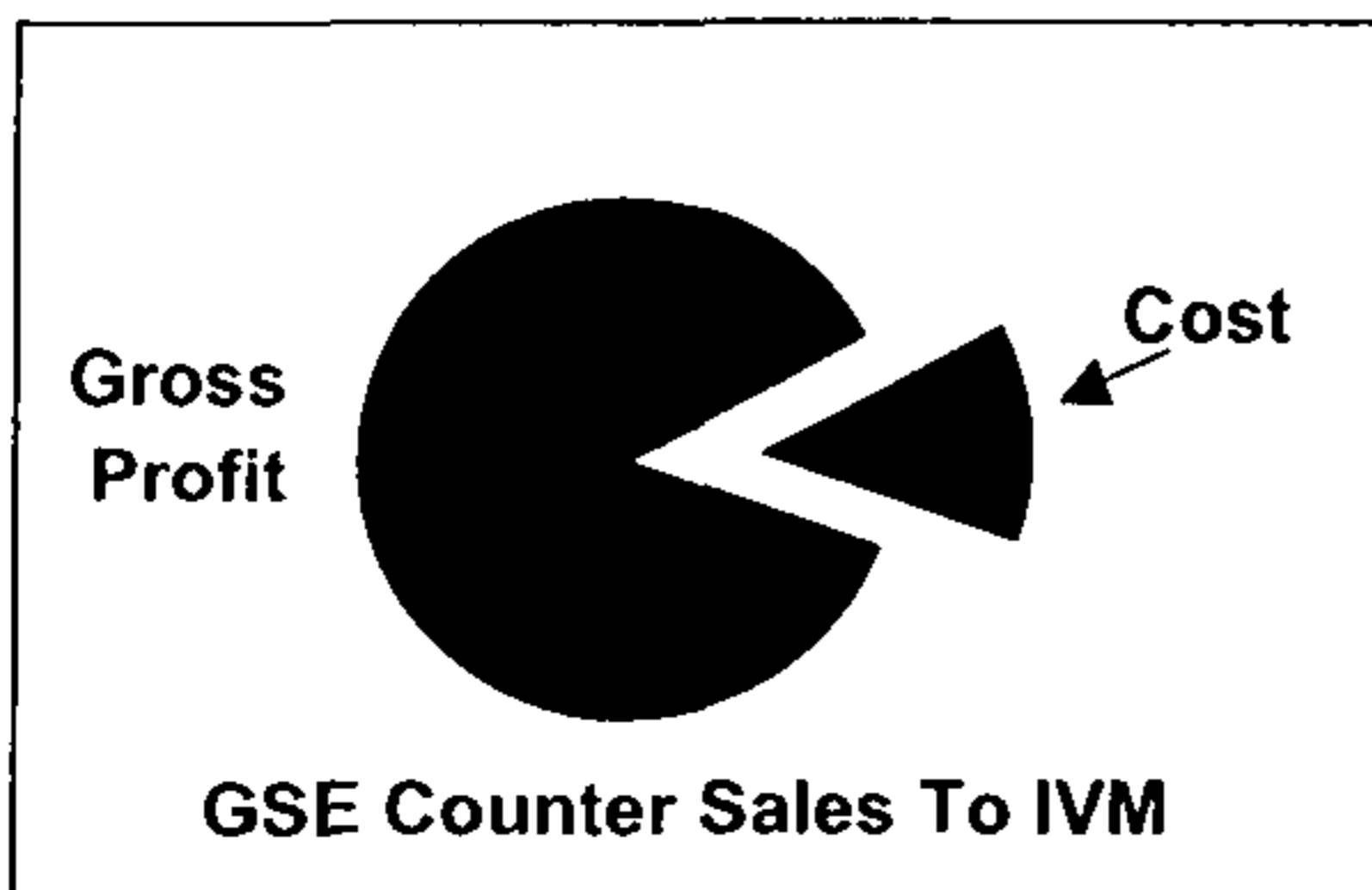
We obtained two quotes from AVM parts dealers and found that the counters could have been purchased for \$24, completely refurbished. Typically, the department purchased 2,500 counters at a time for \$121,600. These same counters were available through other dealers for \$60,000. Had the department purchased its counters at the prices quoted to us, the department could have saved approximately \$2,529,795.

IVM's three sources obtained the counters at costs substantially less than the price paid by IVM. Records for the period 1996 through 1998, obtained from ESI, GSE, and Uni-Lect revealed that each of the three vendors made huge profits on these transactions as follows:

ESI sold 15,000 counters to IVM during the period September 1996 - October 1997. IVM paid ESI \$784,500; however, according to ESI records provided, ESI incurred only \$14,019 in cost thereby making a gross profit of \$770,481. According to Mr. David Philpot, owner of ESI, he obtained his counters free from IVM and from machines traded in by the department. ESI records provided for 1997 revealed that 66% of ESI's revenues are generated by Louisiana sales and that Mr. Philpot is ESI's only employee.

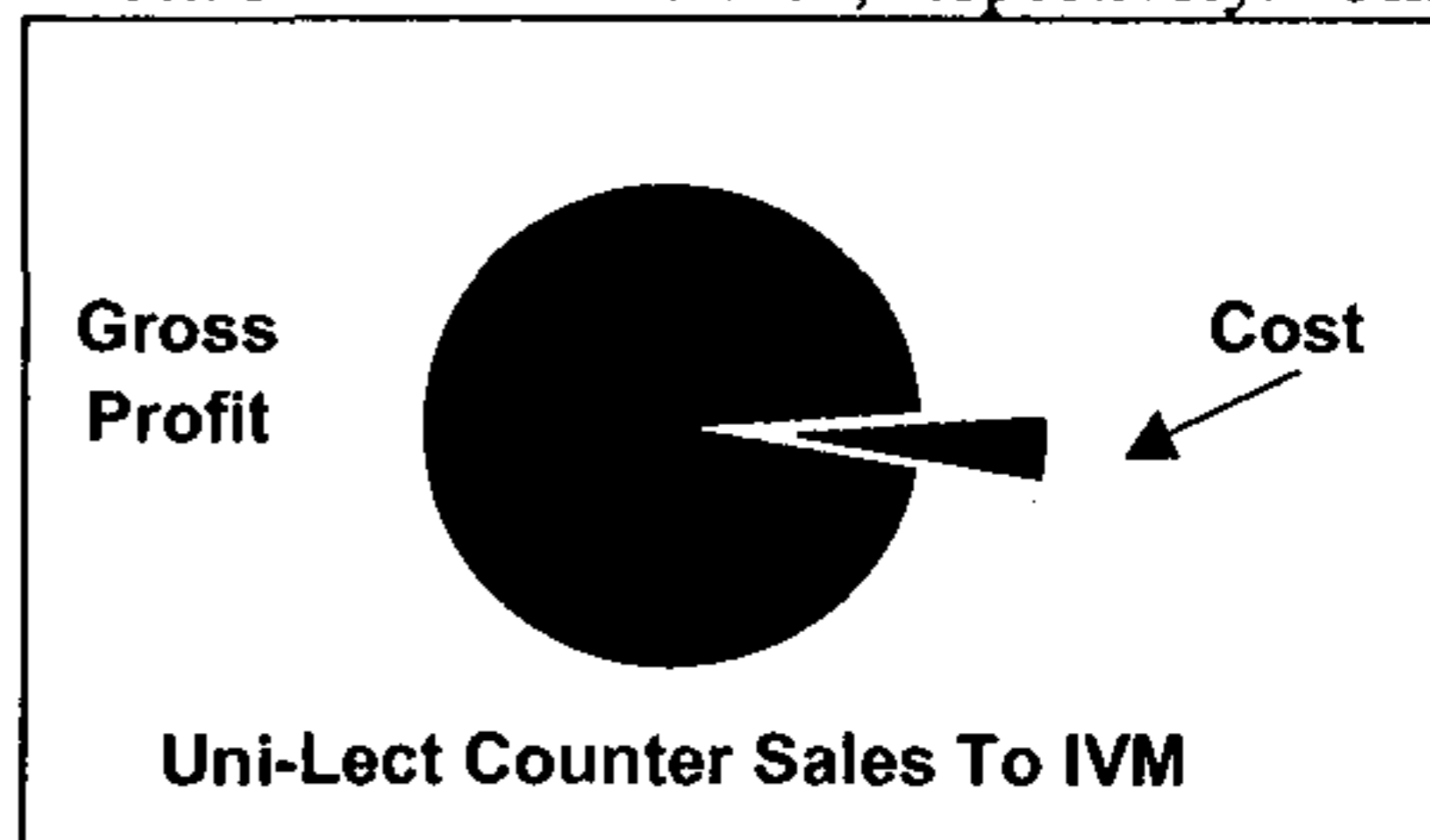


During 1997, GSE sold 10,000 counters to IVM at \$523,000. GSE purchased 6,500 counters from Electec, Inc., also of Mount Holly, New Jersey, and obtained approximately 3,000 free from IVM. GSE's cost for the counters ranged from no cost to \$11 each. GSE's total cost was approximately \$78,921 thereby allowing GSE to make a gross profit of \$444,079.



Records obtained from IVM indicate that Uni-Lect sold IVM 37,500 AVM counters during 1996 through 1998 at a total price of \$1,961,250. Uni-Lect provided to us partial records for its activities. These records revealed that Uni-Lect obtained its counters from cannibalized machines and from another parts vendor, McAfee Election Services, Inc.

Uni-Lect cannibalized, or removed, counters from machines it purchased from Wyandotte County, Kansas, and Bartow County, Georgia, at the cost of 42 cents and 90 cents each, respectively. Uni-Lect also purchased counters from McAfee Elections at prices ranging from \$2.50 to \$5.00 per counter. Unlike ESI and GSE, we did not have access to many of Uni-Lect's records. However, based on the records that were provided, Uni-Lect's total estimated cost for these counters was \$77,212. Therefore, Uni-Lect made a gross profit, excluding labor³, of approximately \$1,884,038 or 96% of its sales price.



³ According to Mr. Ralph Escudero, an officer of Uni-Lect, he would hire casual labor to refurbish counters.

SOME COUNTERS PURCHASED WERE CANNIBALIZED FROM THE DEPARTMENT'S MACHINES

Mr. David Philpot, owner of ESI, informed us that he had no real costs for the counters he sold to IVM. He stated that many of the counters that he sold to IVM were counters he cannibalized (removed) from AVM machines he obtained from the department as trade-ins. Each of these trade-in machines contained either 40 or 50 candidate counters. According to Mr. Philpot, other counters were given to him by IVM for him to refurbish and then resale to IVM.

ESI records revealed that, from September 1996 through October 1997, ESI sold 15,000 counters to IVM for resale to the department. The records also revealed that ESI did not purchase any counters during this time, thus confirming Mr. Philpot's statements.

In addition, GSE records also show that GSE did not purchase all 10,000 of the counters that it sold to IVM. According to Mr. Harold Webb, owner of GSE, he purchased 6,500 of the counters from Electec, Inc. These were shipped directly from Electec to the department. He obtained approximately 3,000 of the counters from IVM, refurbished them, and resold them to IVM.

It should be noted that department employees informed us that, when the purchased counters were being installed, they packaged the counters that were removed from the department's machines. Eight department employees stated that these old counters were picked up by IVM personnel. Based on IVM records provided, we did not see where IVM purchased any counters other than those purchased from the three suppliers for resale to the department--IVM did not purchase other counters to give to ESI and GSE. In addition, Mr. James Fair, a department employee, informed us that he has hauled AVM counters from the department's warehouses to IVM's facility in Baton Rouge. Therefore, it appears that at least some of the counters that IVM sold to the department were counters originally removed from the department's AVM machines.

DEPARTMENT PAID NEARLY FOUR TIMES THE GOING RATE FOR INSTALLATION

From 1992 through 1998, the department paid IVM \$3,216,250 to install 120,150 candidate counters. For each order of 2,500 counters, the department paid IVM either \$105,750 or \$121,600 for the counters. For each counter order, with one exception, the department paid IVM either \$62,500 or \$75,000 for installation. We obtained written quotes from two AVM dealers that indicate that the counter installations could have been performed for nearly one-fourth of the cost. Voting Machine Service Center, Inc., of Gerry, New York, quoted a price of \$75,000 to sell and install 2,500 AVM counters, completely refurbished, with a 5-year warranty (2,500 counters at \$24 plus \$15,000 installation). Voting Machine Service Center's price is \$121,600 less than the amount charged by IVM. Electec, Inc., quoted the installation of 2,500 counters for \$15,000 plus travel expenses. Had the department paid \$15,000 for each 2,500 counters installed, the department could have saved approximately \$2,495,350.

DEPARTMENT EMPLOYEES PARTICIPATED IN THE INSTALLATION PROCESS

The installation process consists of disassembling the voting machines, removing the counters, placing the refurbished counters into the machines, reassembling the voting machines, and ensuring the counters work properly.

The department employs 75 full-time and 47 part-time voting machine mechanics to maintain its voting machines. When asked why the department does not have its employees perform the installation of counters, department officials stated:

. . . the department's warehouse employees do not have time to do the installations.
Commissioner Jerry Fowler - January 19, 1999

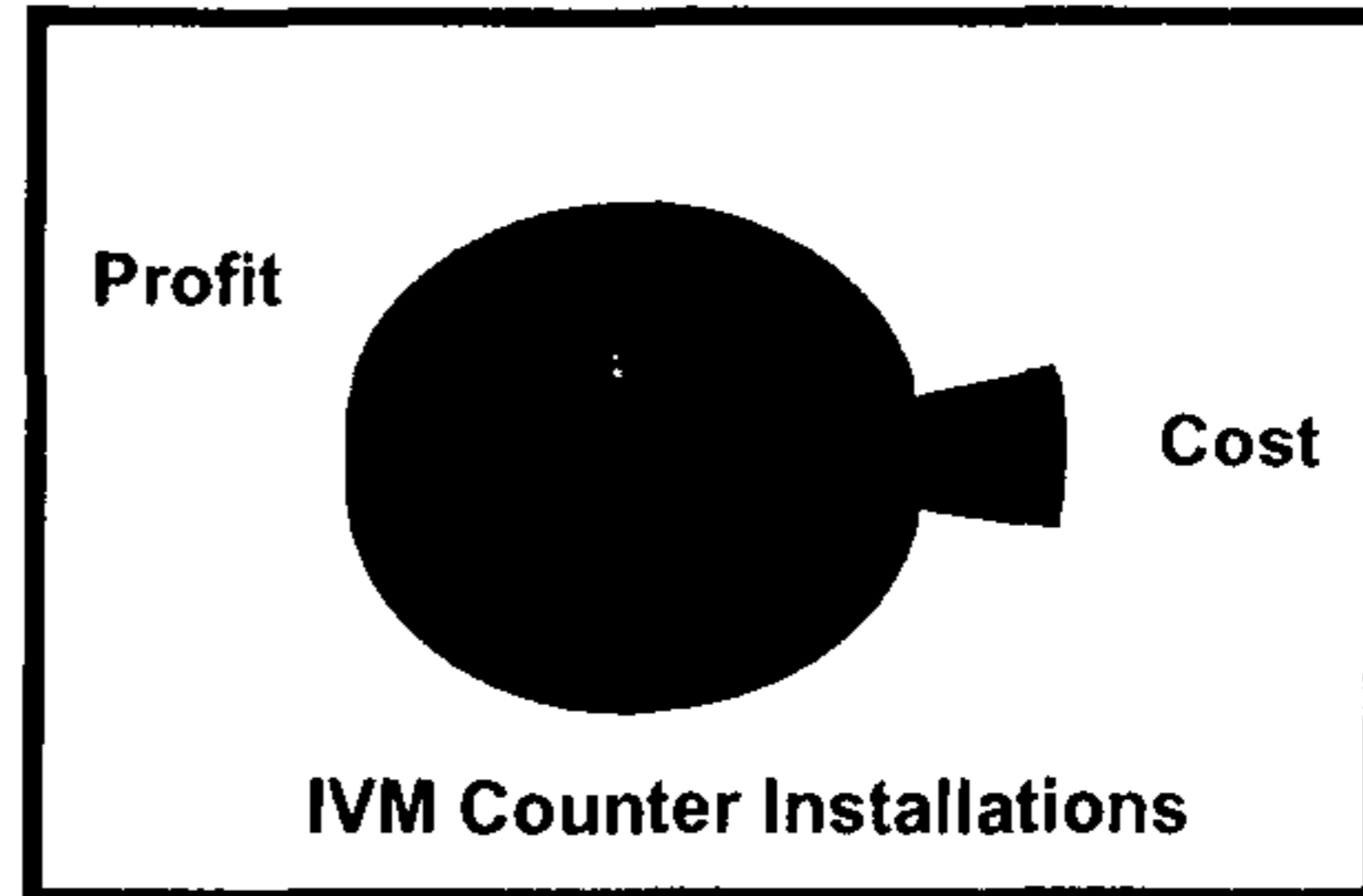
. . . warehouse employees do not have the time.
Mr. Ronnie Tassin, Director of Elections - January 15, 1999

. . . the main reason is that the department is short handed and IVM can bring in a bunch of men at one time.
Mr. Keith Edmonston, Assistant Director of Elections - May 21, 1999

However, we found that in addition to IVM charging the department four times the going rate for the installation, department employees were actually performing a substantial portion of the installation process. During interviews with department employees, we were informed that when counter installation projects were undertaken, department employees materially participated in the work, including disassembling the machines, removing counters, installing refurbished counters, reassembling, and verifying that the machines were operating properly. Consequently, using department labor enabled IVM to reduce labor and travel expenses thereby increasing IVM's profit.

For example, we examined the following 13 counter installation projects that were performed during 1996 through 1998 (see table on following page). For many of the installation projects, more department employees participated than IVM employees. Records indicate that for these 13 projects the department paid IVM \$922,000 to install 33,450 counters. IVM records provided indicate that IVM's cost for labor and travel expenses was \$71,630 and IVM's gross profit was \$850,370 or 92%.

Assuming the same gross profit rate of 92% on all of the counters that IVM was paid to install, IVM would have realized a gross profit of \$2,958,950 on counter installations from 1992 through 1998.



Parish	Number of Counters Installed	Number of Department Employees	Number of IVM Employees	Amount Department Paid IVM	IVM's Cost ⁴	IVM's Gross Profit
Bossier	6,300	7	4	\$157,500	\$13,684	\$143,816
Lafayette	10,000	4	7	250,000	22,907	227,093
Bienville	1,400	6	2	42,000	3,082	38,918
Claiborne	1,600	6	2	48,000	4,577	43,423
Webster	2,000	7	2	60,000	3,362	56,638
Concordia	1,400	2	2	42,000	3,428	38,572
Red River	750	2	2	22,500	1,124	21,376
DeSoto	1,300	4	2	39,000	2,210	36,790
Concordia	500	1	2	15,000	1,366	13,634
Bienville	900	2	2	27,000	1,282	25,718
Webster	1,050	5	1	31,500	1,451	30,049
Ouachita	5,000	2	5	150,000	10,429	139,571
St. Mary	1,250	6	2	37,500	2,728	34,772
Totals	33,450			\$922,000	\$71,630	\$850,370

As mentioned previously, we discussed the counter installation projects with department employees. Several voting machine mechanics stated the following about participating in installation projects.

Mr. David Bays, Elections Specialist Leader, stated that for the first few counter installation jobs, non-department technicians showed the department employees how to change the counters. On the later jobs, he and the other department employees changed the counters themselves.

⁴ IVM's cost based on records provided by IVM including labor and travel expenses.

Mr. Harry Kimrey, Elections Specialist Leader, stated that, about 7 years ago, the department created a crew of seven employees that were to perform mechanical work on machines. The seven employees installed counters and performed other functions necessary to convert AVM voting machines to print-o-matics. As far as installing counters, there was no difference in the work that Mr. Toby Trichel and Mr. Roy Hammett (IVM employees) did and the work that the seven election employees performed.

Mr. Robert Williams, Elections Specialist Leader, stated that department employees performed 80% to 85% of the counter installations in the parishes within district 5.

Mr. Terry Haire, Elections Manager, stated that he talked to Mr. Ronnie Tassin about the counter installations and he (Haire) believed that IVM should be the one to make sure the counters work (properly after installation). If IVM was being paid to do the work, then IVM should have done it. Common sense would tell you they (IVM) should do it. If the contract was a cost plus contract and (department) employees helping would reduce the cost to the state, then he could see that (department employees should participate).

Mr. Jerry Smith, Elections Manager, stated that he could not tell us exactly what each person did because everybody did a little of everything. Both contract (IVM) and department employees participated in disassembling the machines. IVM and one or two department employees participated in putting the counters back into the machines and toward the end of the project, IVM went to another job and his people (department employees) finished what was left over. He actually assisted IVM with placing the counters back into the machines.

DUPLICATE BILLINGS FOR COUNTER INSTALLATIONS

IVM charged the department twice for the installation of counters in Lafayette and Concordia parishes resulting in duplicate billings totaling \$16,864. IVM charged the department a flat fee of \$30 to install each counter (\$25 before March 1997). IVM also provided other professional services to the department and billed these charges through separate invoices. Records indicate that, in addition to charging the installation fee for installing counters, IVM billed the department through separate invoices for professional services supposedly performed by the same employees who installed the counters on the same days that counters were being installed in the Lafayette and Concordia warehouses.

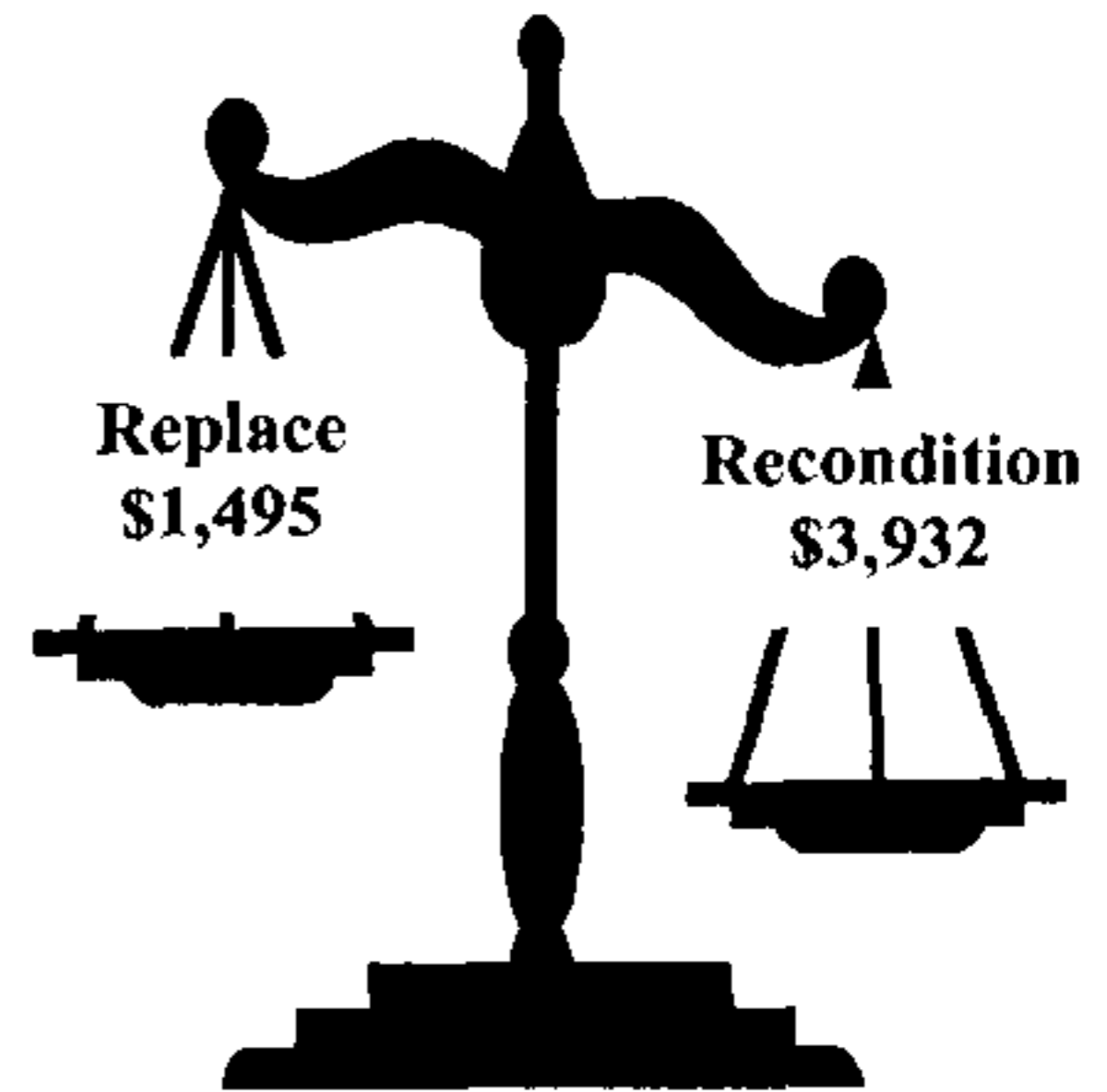
For example, the department paid IVM \$250,000 to install approximately 10,000 counters in Lafayette Parish. Seven IVM employees and four department employees participated in the process of installing counters in the Lafayette warehouse. IVM employees, Mr. Michael Canales, Mr. William Latimore, Mr. Alan Smith, Mr. Clifton Paul Levy III, Mr. David Hennigan, Mr. Sean Drew, and Mr. Kenneth Zahn were present. IVM employees spent 17 days

in Lafayette installing counters. IVM also billed the department \$14,120 for Mr. Michael Canales, Mr. William Latimore, Mr. Alan Smith, Mr. Clifton Paul Levy III, Mr. David Hennigan, and Mr. Kenneth Zahn to provide professional services in Lafayette for 12 of the 17 days in which they were installing counters.

The department paid IVM \$42,000 to install 1,400 counters in Concordia Parish. Two IVM employees and at least two department employees participated in the process of installing counters in Concordia Parish on five days. IVM also billed the department \$2,744 for Mr. Toby Trichel and Mr. Roy Hammett to provide professional services in Concordia for four of the five days in which they were installing counters.

COST OF COUNTERS AND INSTALLATION OUTWEIGHS COST OF REPLACEMENT MACHINES

The department's cost to purchase and install candidate counters in an AVM voting machine is more than double the price to obtain completely reconditioned machines. For example, during 1997-98, for each 50-column AVM machine the department purchased 50 candidate counters at \$48.64 each and had them installed at \$30 each. Therefore, the department spent \$3,932 per machine in the process. In addition, where the department added printer kits to non-printing machines, this cost increased to \$4,215 per machine.



As previously stated, the most the department paid for a completely reconditioned machine was \$2,700 and could have purchased the same for \$1,495 to \$1,995, including a 5-year warranty.

Sequoia Pacific Voting Equipment, Inc., offers reconditioning services at prices far less than the department incurred. According to Sequoia's price list (below), Sequoia charges its customers either \$1,461 or \$1,677 for reconditioning and complete counter change for 40-column and 50-column AVMs, respectively. For an additional \$595, Sequoia will convert AVM machines to printer-type machines.

AVM FACTORY RECONDITIONING PROGRAM			
	30 COLUMN	40 COLUMN	50 COLUMN
<i>* Machine usually #1 & #2 good and #1</i> Basic Factory Reconditioning *	595.00	595.00	595.00
Removable Pointer Conversion (only)	800.00	895.00	995.00
Removable Pointer Conversion with Reconditioning	995.00	1,095.00	1,195.00
Reconditioning and Complete Counter Change	1,245.00	1,461.00	1,677.00
Reconditioning and Complete Pointer Change	723.00	766.00	809.00
Printomatic Conversion <i>(above 120,85)</i>	595.00*		

IT APPEARS THAT THE COUNTERS PURCHASED WERE NO DIFFERENT THAN THOSE REMOVED FROM DEPARTMENT MACHINES

An independent, professional inspection of both recently purchased counters and those removed from the department's machines revealed no significant differences. In addition, one supplier of the counters informed us that, for the counters that he delivered to the department, he did not refurbish them, he simply removed them from other machines and shipped them to Louisiana.

During our investigation, we obtained five candidate counters from a recent shipment of counters purchased from IVM. In addition, we obtained five counters that had been previously removed from department AVMs during one of its installation projects. We shipped these ten counters to an independent industry expert for analysis. We labeled the counters so that the expert would not know which were removed from department machines and which ones were supposedly refurbished. This analysis revealed that the department's supposedly refurbished counters had:

1. Sticky actuators
2. Counters that did not operate smoothly
3. One had a defective pinion
4. Four needed to be lubricated and one had too much lubricant

The analysis further revealed similar conditions for the counters that had been removed from the department's machines, though the expert concluded that all of the counters functioned properly when tested in an AVM machine.

In addition, as mentioned previously, IVM obtained 10,000 of the counters from GSE. GSE obtained 6,500 of these counters from Electec, Inc. According to Mr. Herb Webb, owner of Electec, he was not required to and therefore did not refurbish these counters, he simply removed them from other machines and shipped them to Louisiana.

INDEPENDENT VOTING MACHINE SERVICE COMPANY

The department purchases all of its new electronic voting machines, substantially all parts for both electronic and mechanical voting machines, has warranty contracts, and professional service contracts for voting machine mechanic services, with Independent Voting Machine Service Company (IVM). IVM is owned and operated by Mr. Pasquale "Pat" Ricci who resides in Baton Rouge, Louisiana. IVM has offices in Baton Rouge, Louisiana, and in New Jersey. As stated above, IVM charged the department double the market rate for AVM counters and nearly four times the going rate for installation of counters. In addition, as mentioned in our previous report dated March 17, 1999, one IVM employee performed drayage services for a drayage contractor while also being charged to the department by IVM for voting machine mechanic services. On March 16, 1993, the Office of State Inspector General also released a report on the department

that referred to IVM. The report revealed disallowed, overbilled and questionable costs totaling \$165,729.

QUESTIONABLE RELATIONSHIPS

During our investigation, we learned of two relationships that appear questionable under the circumstances. The first relationship indicates that IVM's accountant, Mr. Gary Mazzucco, is receiving a large portion of the profits derived from the department's purchases from ESI. In the second relationship, it appears that Commissioner Fowler may have been involved in a business (Bayou Ridge Ranch) with Mr. Pasquale "Pat" Ricci, the owner of IVM, and Mr. Fowler may have received a large portion of the profits derived from this relationship.

Roberts Bowman Investors, Inc.

As previously stated, the department purchased all of its electronic voting machines, has maintenance contracts, and purchased substantially all of its parts for both electronic and mechanical voting machines from IVM. The department purchased its AVM voting machines exclusively from ESI. Our investigation revealed that ESI paid a substantial portion of its profits, for no apparent reason, to an officer and accountant of IVM. This indicates that an association exists between IVM and ESI.

ESI is owned by Mr. David Philpot. ESI's records indicate that during 1996 through 1997, ESI paid Roberts Bowman Investors, Inc., \$929,378 as commissions. Roberts Bowman, a New Jersey corporation, is located in Moorestown, New Jersey. Mr. Gary Mazzucco is listed with the State of New Jersey as the president and registered agent. (Mr. Mazzucco is also a Certified Public Accountant who, according to Mr. Mazzucco, does all of the accounting work for and serves as the corporate secretary for IVM.) According to Mr. Mazzucco, Roberts Bowman is generally an investment company that does mortgages, leases, and personal financial business for certain individuals. He stated that, for the money paid by ESI to Roberts Bowman, he participates in the negotiations and acquisition of voting machine equipment for ESI. Mr. Mazzucco stated that he works with Mr. Pat Ricci, owner of IVM, on these matters.

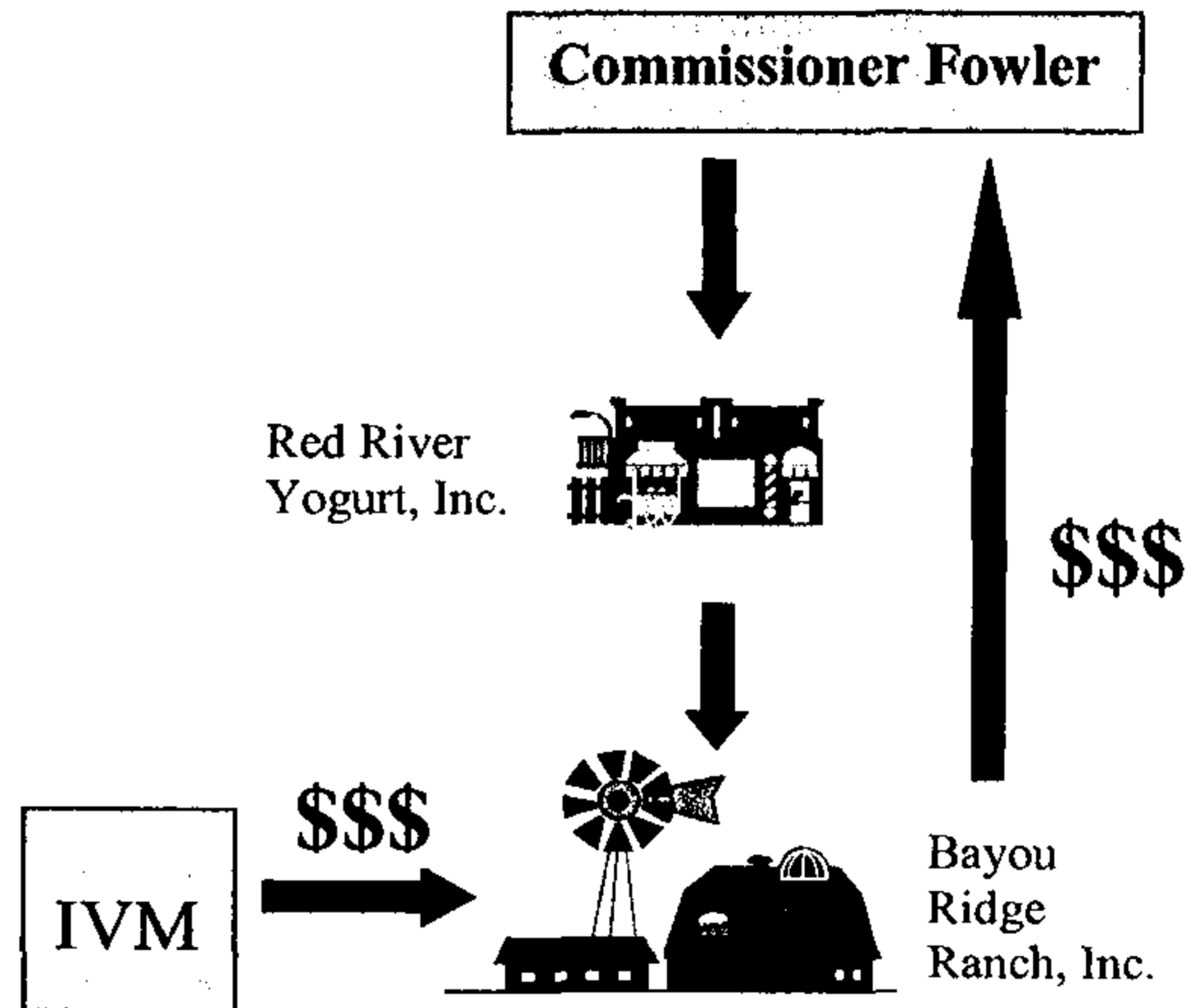
Previously in this report, we noted that ESI purchased its voting machines from Sequoia Pacific Voting Equipment, Inc., Garden State Elections, Inc., and Uni-Lect, Inc. We inquired with each of these entities as to Mr. Mazzucco's involvement in their sales to ESI. Mr. Robert Click, Sequoia Pacific, stated that he has not negotiated any sales with Mr. Mazzucco, his negotiations are with Mr. David Philpot. Mr. Harold Webb, owner of Garden State Elections, stated that he is not aware of any involvement by Mr. Mazzucco during his sales to ESI. The president of Uni-Lect, Mr. Ralph Escudero, stated that he has never heard of Mr. Gary Mazzucco.

Bayou Ridge Ranch, Inc.

It appears that IVM contributed money and incurred risk for a real estate investment on which Commissioner Fowler profited.

Bayou Ridge Ranch, Inc., was incorporated on May 13, 1993, by Mr. James Rex Fair of Natchitoches, Louisiana. According to Mr. Fair, the stock of Bayou Ridge Ranch is owned by a TCBY ice cream company that is owned by Commissioner Fowler and Mr. John Richard Dalme. TCBY officials have confirmed that Commissioner Fowler and Mr. Dalme once received a franchise license that they assigned to Red River Yogurt.

Official public records show that on June 23, 1993, Bayou Ridge Ranch purchased 161 acres of land located on Water Well Road in Natchitoches, Louisiana, for \$200,000. The corporation paid a down payment of \$60,000 and agreed to pay the seller the remaining \$140,000 in eight annual installments of \$26,247.77. Copies of the checks for two annual installments reveal that the payments were made by IVM and were signed by IVM's



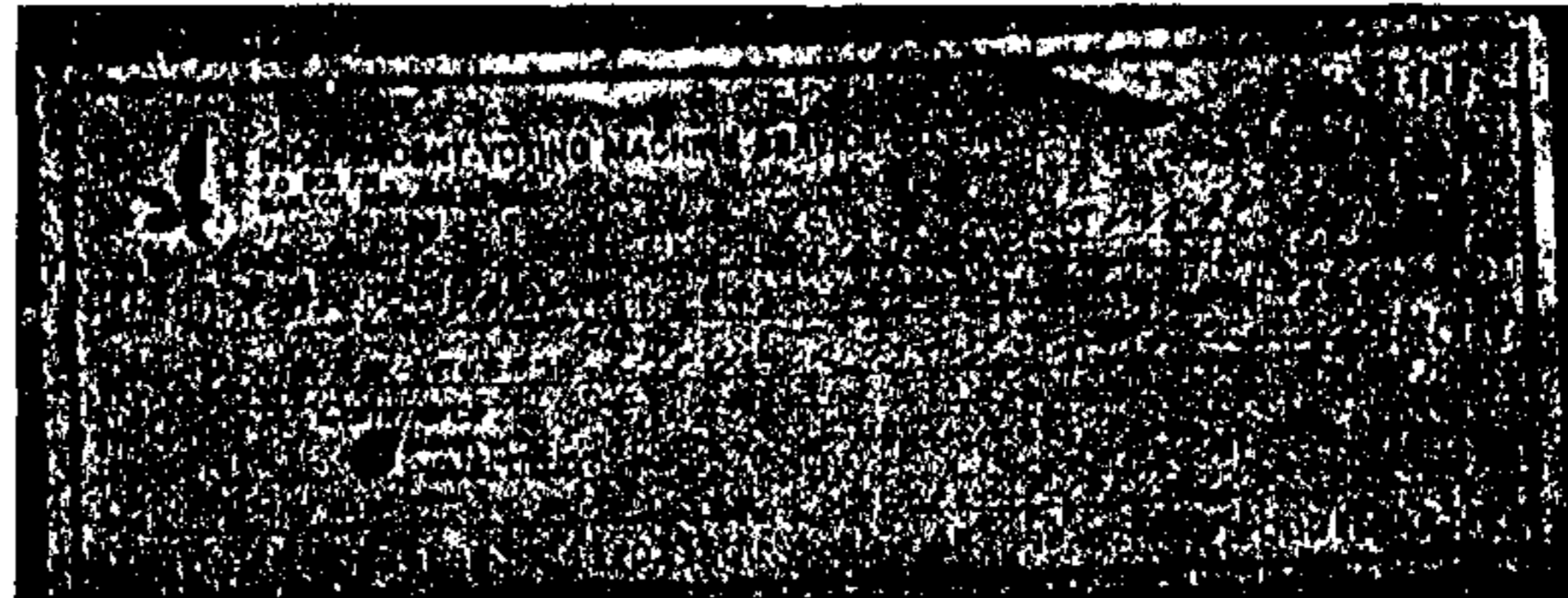
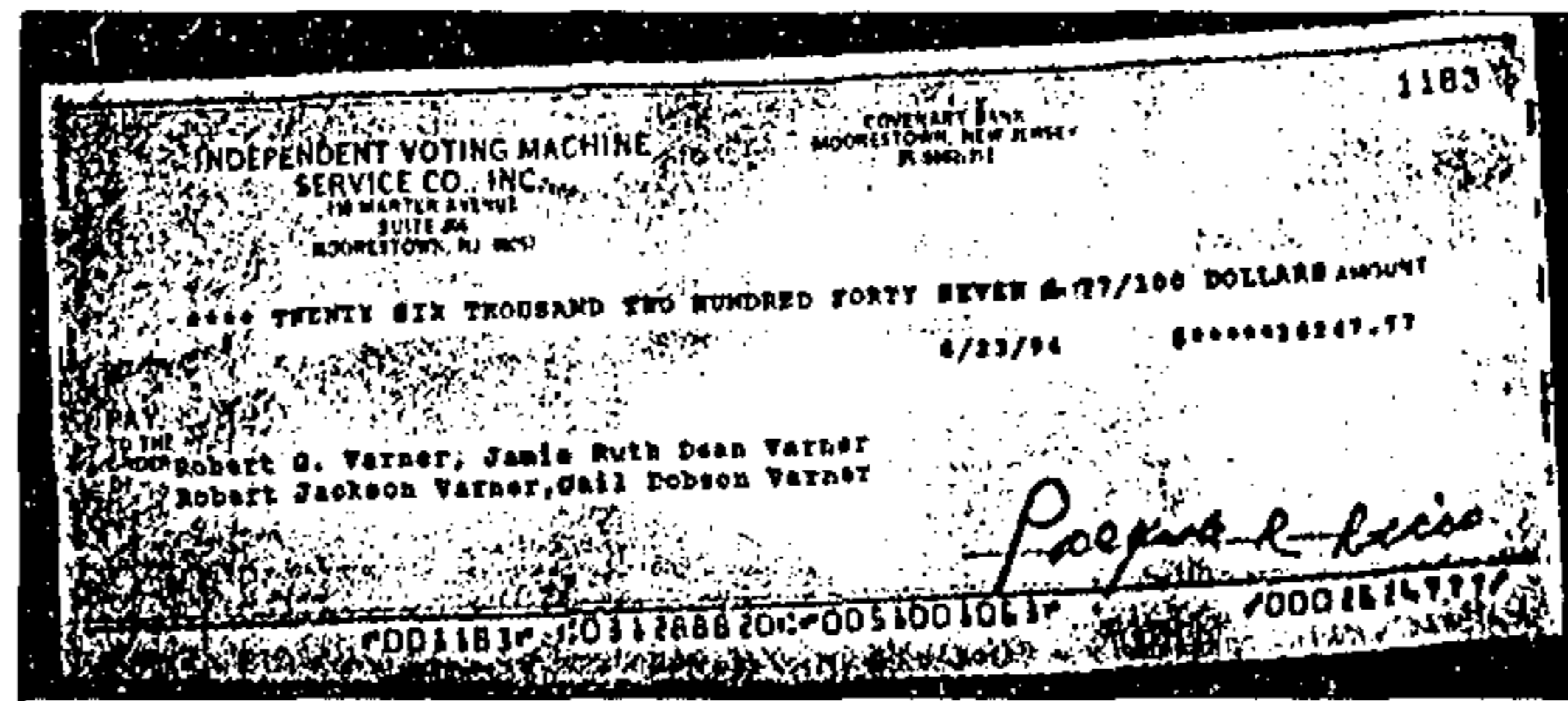
owner, Mr. Pasquale Ricci. According to the seller, the \$60,000 down payment was drawn on a bank located in New Jersey. IVM maintains an office and bank account in New Jersey.

On June 24, 1996, Bayou Ridge Ranch mortgaged the property with First Bank of Natchitoches & Trust Company for \$116,500, the approximate amount that remained on the original note payable to the seller. Mr. Fair signed the note on behalf of the corporation along with Mr. John Richard Dalme as president and secretary, respectively. The note was also signed "Pasquale Ricci" as a witness. During 1996 through February 1998, Bayou Ridge Ranch sold the land to three separate individuals for a total of \$447,060 (realizing a gross profit of \$247,060).

On June 30, 1999, we spoke with Mr. Fair regarding the transactions of Bayou Ridge Ranch. Mr. Fair informed us that, though not reflected in the official records, the land purchase was a project entered into by Commissioner Fowler, Mr. Dalme, Mr. Ricci and himself. According to Mr. Fair, all of the money for the project including the original \$60,000 down payment, payments made to the seller, and payments made on the bank mortgage, was contributed by Mr. Ricci. Mr. Fair stated that when the property was sold he received a 3% commission for his

services, Mr. Ricci received reimbursement of the money he contributed, Mr. Dalme received a small amount, and Commissioner Fowler received a "chunk" of the remaining profit.

It should be noted that, as previously stated in this report, the department, under Commissioner Fowler's direction, purchased \$8,689,645 of candidate counters and installation from IVM when these materials and services could have been purchased for an estimated \$3,664,500.



Checks From Independent Voting Machine Service Co., Inc., to Robert Varner, et. al

OUR RECOMMENDATION

One aspect of the department's plan of operations is to move from mechanical to computerized voting machines. As of May 1999, 3,897 of the department's 8,545 voting machines were AVC Advantage Electronic voting machines. As reported above, during the period August 1991 through 1998, the department used \$15,445,230 to purchase AVM mechanical machines, counters, and installation. Had the department used these funds to purchase AVC electronic machines, the department could have purchased an additional 2,741 AVCs. If the department's operational plan is to continue to phase out mechanical machines in favor of electronic voting machines, the department should consider discontinuing its practice of purchasing used AVMs and replacing counters in existing AVMs and use these funds for the purchase of new electronic voting machines.

If the department continues to purchase AVM voting machines, we recommend that the department cease purchasing its AVM machines as a sole-source item and make future purchases through competitive sealed bids. The department should seek bids from as many responsible AVM dealers as practical. In addition, consideration should be given to purchasing AVM voting machines directly from county governments in other states that are discontinuing their use of this equipment. When purchasing machines, careful consideration should be given to the quality of service performed by the seller. During our investigation, we learned that this quality varies greatly from spot painting and inspection by some dealers to complete reconditioning by others. In addition, warranties vary greatly from dealer to dealer. As previously mentioned, ESI from whom the department purchased its AVMs, provided a 2-year warranty while Voting Machine Service Center offers a 5-year warranty.

In addition, before purchasing machines for one parish, the department should consider whether *the desired machines are already available in another parish.*

Furthermore, before converting voting machines to printer-type machines or changing the counters in its AVMs, the department should consider the cost effectiveness of purchasing completely reconditioned AVMs or the newer electronic voting machines.

The department should also reconsider its current practice of replacing candidate counters in the existing AVM machines. Before continuing this expensive method of maintenance, the department should adequately study the situation for need and cost effectiveness. Careful consideration should be given to the condition of the existing counters, the frequency of failures incurred, replacement of only those counters experiencing problems rather than all counters in a particular machine, and other alternative solutions. If such maintenance is necessary, the department should consider refurbishing existing counters as opposed to buying used counters removed from other machines and, in some cases, the department's own machines. Furthermore, according to industry experts, counters may be cleaned and lubricated while in the voting machine, making it unnecessary to incur the cost of removal and installation.

The department should document the repairs made to its voting machines. As previously mentioned, the department was unable to provide documentation of its preventative maintenance program for several months. The department should maintain an inventory of its voting machines and a detailed log of all maintenance performed on each machine. This would permit the department to track the cost effectiveness of its maintenance program, alert department officials to reoccurring problems, alert officials to the need for replacement machines, and increase the likelihood of discovering problem areas before failure occurs.

The department should also properly determine whether the services of a contractor are necessary for the installation of counters. If necessary, the department should seek bids from other responsible contractors and attempt to obtain the lowest price possible. Furthermore, when contracting for such installation services, the department should obtain a clear understanding, in writing, as to the procedures that will be performed by the contractor and any participation required of department employees.

The department has conducted a substantial amount of business with IVM, approximately \$4.1 million during 1998. However, based on the report of the Inspector General and the findings mentioned in this report, some concern by the department for continuing this relationship is warranted. If the department continues to conduct business with IVM, such agreements should be thoroughly reviewed and checks and balances put into place to prevent disallowed, overbilled, excessive and questionable charges from occurring.

In addition, the department should consult legal counsel to determine whether any funds may be recovered from IVM and ESI for previous purchases at rates grossly exceeding comparable market prices.

Lastly, by failing to purchase the AVM voting machines through a public bid process, improperly declaring these purchases to be sole source, purchasing the candidate counters at excessive rates, using public funds to pay IVM to install counters while state employees actually performed a material portion of this service, and participating in a business with a major department vendor, Commissioner Fowler, Mr. Keith Edmonston, Mr. Ronnie Tassin, and Mr. Pasquale Ricci may have violated one or more of the following Louisiana laws:

- R.S. 18:1362, "Method of Acquiring Voting Machines"
- R.S. 39:1597, "Sole Source Procurements"
- R.S. 42:1461, "Obligation Not to Misuse Public Funds"
- R.S. 14:118, "Public Bribery"
- R.S. 14:134, "Malfeasance in Office"
- R.S. 14:141, "Prohibited Splitting of Profits"
- R.S. 14:230, "Money Laundering"

This information has been provided to the District Attorney for the Nineteenth Judicial District of Louisiana and is under investigation.

Attachment I

Additional Information Related to Department's Response

Additional Information Related to Department's Response

SUMMARY

AVM Machines

The department states that the reason it purchased AVM voting machines from ESI, and considered ESI the sole source for such machines, is that ESI is the exclusive representative for Sequoia Pacific Voting Equipment, Inc., (Sequoia). The department states that when the Automatic Voting Machines Corporation, makers of AVM machines, went out of business, Sequoia bought the corporation's equipment, schematics, product parts, and supplies. Thus the department argues that it is getting "factory reconditioned" machines because it purchases from the representative of Sequoia (the successor to the AVM Corporation).

It is our understanding that Sequoia did purchase some of AVM's equipment, supplies, schematics, and product parts. It is also our understanding that others (Voting Machine Service Center, Inc.) bought portions of the AVM Corporation's manufacturing equipment. Regardless of who owns parts and pieces of the former AVM Corporation, the fact is that the major portion of AVM machines purchased by the department from ESI did not come from Sequoia. In fact, from 1995 to 1999, only 39.5% of the AVM machines purchased from ESI came from Sequoia. Therefore, the department's argument regarding "factory reconditioned" machines is without merit. The department, through ESI, was purchasing AVM machines from several different sources, only one of which was Sequoia.

Counters

Again, the department states that it bought AVM counters from IVM because Sequoia (successor to AVM Corporation) made IVM the authorized dealer for AVM parts. From November 1995 through 1998, the department bought 70,000 counters from IVM. None of these counters came from Sequoia. These counters came from machines that were cannibalized by vendors in New Jersey, Florida, and Alabama; some of which, as stated in the report, were shipped directly to the department with no refurbishing. Since 1991, the department has purchased 122,652 counters. A Sequoia representative stated that they sell less than 1,000 counters a year. Therefore, the department was not purchasing counters that were "factory reconditioned" by Sequoia.

Additional Information Related to Department's Response

DETAILED INFORMATION

In its response, the department raised several issues that we believe should be clarified. Those issues are as follows:

1. The department's response appears to be founded on the repeated statements that it wished to purchase machines from ESI because these machines were "factory reconditioned AVM machines." The department refers to Sequoia's purchase of the assets of the original manufacturer, Automatic Voting Machines Corporation (AVM), and the fact that Sequoia gave ESI the exclusive right to sell its reconditioned AVM machines in Louisiana. The department's response states repeatedly that it wanted "factory reconditioned" machines and that it considered Sequoia to be the only source for such reconditioned machines. This thought appears to be the department's justification for sole source purchases of AVM "factory reconditioned" machines from ESI.
2. Of the 1,985 AVM voting machines ESI sold to the department from 1995 to 1999, only 784 (39.5%) came from Sequoia. The rest came from various other vendors.
 - For example, the purchase of machines in November 1998 for Terrebonne Parish (referred to in our chart on page 5 of the report) clearly shows that machines sold to the department by ESI did not originate with Sequoia. These machines were not factory reconditioned by Sequoia.
3. There are letters to Commissioner Fowler indicating that he knew the department was not buying "factory reconditioned" machines as described in the department's response. Two of these letters are as follows:
 - In a letter dated September 8, 1994, from Mr. Ronnie Tassin to Commissioner Fowler, Mr. Tassin writes that he has just returned from Savannah, Georgia. The purpose of the trip was to inspect AVM/POM 40-column voting machines. Mr. Tassin further writes, "The machines that I inspected are in satisfactory condition for Louisiana election needs. My recommendation is to purchase the machines starting with serial number 162733 to 1695589." As one can see, these machines did not come from Sequoia.

- In another letter dated December 21, 1994, Mr. Fred H. Hoffken writes to Commissioner Fowler stating, "On December 8, 1994, I had at your request flown from Ft. Myers, Florida to Savannah, Georgia. I was met at the airport by Mr. Glen Board (owner of Uni-Lect), who then took me to his warehouse to examine the above machines. I found the above machines had been inspected and are to Louisiana standards. The machines are in very good condition and I would place a value of \$1,950 to \$2,200 per machine." The machines referred to in this letter are 200 "used and reconditioned AVM Voting Machines."
4. On page 11 of the response, the department states that a representative of the Attorney General's office specifically advised the department in 1995 that sole source procurement of factory reconditioned voting machines was permissible. We assume that the department is referring to Mr. Glenn Ducote, Assistant Attorney General with the Louisiana Attorney General's Office. On July 26, 1999, we spoke to Mr. Ducote regarding his advice to the department relative to the purchase of used voting machines. Mr. Ducote made the following statements:
- As far as sole source purchasing of voting machines, there is no sole source if there is more than one vendor.
 - Any advice that he gave the department concerning sole source procurement would have been based on the representations the department made to him.
 - The department must have represented to him that there was only one distributor of voting machines in order for him to inform the department that voting machines could be obtained through sole source procurement.
 - If there are more than one vendor for voting machines, then the sole source procurement statute is totally inappropriate.
5. On page 12 of the response, first paragraph, the department states that the report comment "ESI purchased the voting machines from three AVM dealers who also sell directly to other governmental units" gives them no cause of alarm as ESI must obviously secure the machines it sold to the department from some source as no new machines have been manufactured since 1982. In the next paragraph, the department states that "there is only one source for the required supply." These comments appear to be contradictory. However, the department's first comment confirms, as we do in our report, there were other suppliers of reconditioned AVM machines.
6. Also, in the last paragraph on page 12 of the response, the department states that it must be determined whether other (noncomparable) sources had the required supply at the time the purchases were made. It is evident that other sources not only had the supply but were the actual source of the majority of AVM machines

purchased (1995 to 1999) by ESI for resale to the department. These actual suppliers were the basis of our comparisons. As pointed out earlier, during 1995 through 1999, only 39.5% of the AVM machines sold to the department by ESI came from Sequoia.

7. On page 16 of the response, referring to parts purchases, the department states that it selected IVM as the most responsible supplier for several reasons, most notably that “. . . Sequoia (the successor to the original manufacturer) designated IVM as its exclusive agent for sale of AVM machine parts in Louisiana, and Sequoia required the installation of parts and related maintenance to be performed by only ‘trained and authorized personnel.’” The parts we refer to in our report are counters. It should be noted that of the 70,000 counters the department purchased from IVM from November 1995 through 1998, none came from Sequoia. A Sequoia representative informed us that they sell less than 1,000 counters each year. The department has purchased 122,650 counters since 1992.
8. In our report we comment that the department purchased more counters than sold by two of the largest AVM dealers combined. The department on page 19 of its response stated that this is misleading in two respects. The number of counters compared obviously does not include those sold to Louisiana. We agree with the department as the counters it purchased did not come from Sequoia and Voting Machine Service Center, Inc., the two dealers referred to in our report. The department's comment further conflicts with earlier statements that it did business with IVM because IVM was Sequoia's sole representative for parts in Louisiana. These parts were not coming from Sequoia. The department also stated that we did not consider that Louisiana owns more AVM/POM voting machines than any other jurisdiction in the nation. We do not know this to be true.
9. On page 20 of the response, the department states that we fail to take into consideration that it was buying parts (counters) from the factory authorized supplier in Louisiana of AVM parts. This authorization, according to the department, is from the successor to the original manufacturer, the Automatic Voting Machine Corporation (AVM). The department states that Sequoia is the successor to the AVM Corporation and that Sequoia requires installation by properly trained and authorized personnel. We note that the parts (counters) purchased by the department from IVM came from various sources, including the department's own trade-in machines. As stated above, of the 70,000 counters the department purchased from IVM from November 1995 through 1998, none came from Sequoia. In some cases the counters were removed from old machines and shipped directly to Louisiana with no reconditioning.
10. At the bottom of page 20 of the response, the department states that the prices quoted as allegedly available from other sources are not comparable because the department's intent is to purchase only counter assemblies from the factory authorized reconditioning source and have them installed by properly trained and authorized personnel. We disagree with the department's response because the

sources of our price comparisons are vendors that supplied the department with counters and machines through IVM and ESI.

11. At the top of page 21 in the response, the department states that we fail to recognize that IVM sold counters to the department for less than IVM paid for the counters. This is pointed out in our chart on page 10 in the report. The question that comes to mind (IVM's cost exceeding its sales price) for any person, trained or untrained in business, is "why." In addition, if as the department states, IVM had an exclusive right to sell these parts and sold them at less than its cost, we would again have to ask "why."
12. The department states that it received a "significantly amended draft" on July 28, 1999, thus allowing insufficient time to respond to the report. Also, the department states that it could not respond accurately in all cases because the report contains references to unnamed sources and provides only conclusory information.

There were no material changes to the subject matter in the report provided to the department on July 28, 1999. On Friday, July 23, 1999, Commissioner Fowler called and requested a one-week extension regarding the department's response to the investigative audit report on the Department of Elections. The department was granted an extension until August 4 to respond. On July 28, my staff provided the department with a copy of an updated version of the investigative audit report. This updated version contained some minor edits and a small amount of additional information related to the Bayou Ridge Ranch. In addition, we added three statutes to the legal section.

Though my staff offered to discuss the report findings with the department, we have not been contacted for any such discussions. Commissioner Fowler has not returned phone calls to my staff in approximately a month, but rather my staff's calls to him were returned by his personal attorney.

On July 30, 1999, the department asked for an additional week beyond the August 4 response date. I did not think it necessary to extend the response date beyond August 4, 1999, based on the following: (1) I had already granted a one-week extension; (2) the updated report contained no material informational changes; and (3) Commissioner Fowler and his staff have not wished to discuss the findings during the time period already granted.

Attachment II

Management's Response

STATE OF LOUISIANA
DEPARTMENT OF ELECTIONS
AND
REGISTRATION

Response

to

Amended Preliminary Draft of
Investigative Audit

(Prepared by Legislative Auditor and Received by
Department of Elections and Registration on July 28, 1999)

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RESPONSE

I. INTRODUCTION TO RESPONSE

The Legislative Auditor's original preliminary draft of an investigative report was tendered to the Department of Elections and Registration for response on July 14, 1999. That report was the second one resulting from an extensive investigative audit by the Legislative Auditor of the Department of Elections and Registration (hereinafter "the Department") which is believed to have begun in May or June of 1998, well over one year ago. During that time and continuing to the present date, personnel from the Department have cooperated extensively with the auditors' requests, providing thousands of documents and continuing access to Department files spanning over at least a ten year period. The auditors were so persistent, and their presence in the Department offices throughout the state so pervasive that, on many occasions, the required work of the Department was interrupted and frustrated.

On July 28, 1999, the Legislative Auditor delivered a significantly amended draft report (hereinafter "report") to the Department. The report contained serious allegations not present in the original draft report and made other amendments and changes. Despite both oral and written requests that the Department be afforded the customary fourteen day period for response prior to the public release of the report, the Legislative Auditor allowed only one week and insisted that any response be filed by August 4, 1999.

The report contains references to unnamed sources and provides only conclusory information, making an accurate response impossible in many cases. It is also believed that

comments attributed to named individuals are incorrectly taken out of context. However, without specific advice as to the unnamed sources or access to specific information, a meaningful and complete response is not possible in the severely limited amount of time allowed by the Legislative Auditor. The one week allowed for response pales in comparison to the one year period utilized to prepare the report.

It should be noted that the Department undergoes thorough annual financial audits by the Legislative Auditor, as required by law. Never in those audits have the particular situations identified in this report been referenced. It is believed that the annual audits did, in fact, look at voting machine purchases, maintenance and procedures related thereto. Statements in those audits indicate that "nothing" came to the auditor's attention "that caused us to believe that the department had not complied in all material respects" with "laws and regulations applicable to the Department of Elections and Registration". In other instances, when specific areas of noncompliance were raised, the matters were corrected.

II. AVM VOTING MACHINES AND CANDIDATE COUNTERS

The report deals, in part, with purchases of AVM voting machines and candidate counters by the Department. The report contains only a brief description of AVM voting machines (p. 2 of report) and a cursory description of the AVM candidate counter mechanism (p. 8 of report). In order to completely understand the issues presented by the report, a more complete understanding of AVM voting machines and candidate counter assemblies is necessary.

A. AVM Voting Machines

The cursory description of "AVM Voting Machines" at page 2 of the report provides insufficient information to enable one to understand the machines or their use in Louisiana. The following should be included as it provides a more complete history of the AVM machine and its use in Louisiana.

The only manufacturer of the AVM voting machine was Automatic Voting Machines Corporation of Jamestown, New York. During the corporation's existence, it produced at least three different types of machines. Each type of machine was produced in different sizes: a 30 column size, a 40 column size, a 50 column size and a 60 column size. The three types of machines were not all produced initially but rather represented a progression of successive improvements to the original design. Those types, in order of production, were: first, (1) the original AVM non printer; and later, (2) an AVM non printer capable of subsequent conversion to a printing model via the addition of a retrofitting process; and (3) a fully contained printing AVM machine known as the AVM - POM.

Some time in the early 1980's, Automatic Voting Machines Corporation filed bankruptcy proceedings. No new AVM machines of any type or size were manufactured after approximately November of 1982. In 1984, Sequoia Pacific Systems Corporation (hereinafter "Sequoia") purchased the assets of Automatic Voting Machines Corporation. The Department understands that this purchase gave Sequoia ownership and all rights to the AVM voting machine. Sequoia purchased the manufacturing facility, parts inventory,

equipment to produce parts and supplies, and the schematics to continue to manufacture AVM parts and machines. Due to the declining market for new AVM machines, Sequoia chose not to manufacture any additional machines, but rather concentrated its efforts to support, service and recondition existing machines for sale. Sequoia has, of late, decided to slow efforts in reconditioning machines due to decline in demand and the lack of AVM machines in good condition. Sequoia has granted Election Services, Inc. of Birmingham, Alabama (hereinafter "ESI") the "exclusive right to sell AVM voting machines" in Louisiana.

B. AVM Voting Machines In Louisiana

The AVM machines purchased by Louisiana originally were the non printer type, purchased new from the Automatic Voting Machine Corporation, in sufficient numbers to completely satisfy the need at the time. When the need arose for additional machines, subsequent purchases were of AVM non printer machines with conversion capabilities, also purchased new from Automatic Voting Machine Corporation. Later still, the last type of AVM voting machine purchased new by the state of Louisiana was the AVM-POM, the factory installed printer machine. After these purchases, no new AVM machines of any type were available as Automatic Voting Machine Corporation ceased operations.

In the early 1990's, the Department began to purchase reconditioned AVM-POM machines from ESI, agent for Sequoia (the successor to Automatic Voting Machine Corporation), to replace Shoup machines in various parishes. As part of the Department policy to equip the state with printing machines only (so that results could be printed from

the machines on election night), the Department began a plan of retrofitting the AVM non-printer machines capable of conversion and replacing the AVM non-printing machines not capable of conversion.

Next, the Department policy involved replacing the AVM machines that had been retrofitted (originally non-printer, converted to printer) with either AVC (electronic) machines (where funds were available) or factory reconditioned AVM-POM machines (when those machines were available). In some cases, the replaced AVM retrofitted machines were transferred to other parishes to use as spares. If no spares were needed, the AVM retrofitted machines were traded.

In order to understand the continuing usage of AVM machines in the state, it is also necessary to understand the introduction of electronic machines in the state. [All AVM machines are mechanical machines. The Shoup 2.5 and Shoup 10.25 machines are also mechanical. Electronic machines used in Louisiana included Shouptronic and AVC machines.] The first electronics purchased were 50 Shouptronic machines purchased in 1985 and used as demonstrator machines all over the state in elections. In approximately 1988, these machines were permanently placed in West Baton Rouge Parish. Funding for the acquisition of additional electronic machines was thereafter unavailable for a number of years, during which time the technology involved in the Shouptronic machines was surpassed by new machines on the market.

In 1991, the first AVC (electronic) machines were placed in inventory for Acadia

Parish. In 1993, Orleans Parish received AVC machines, paid for by a legislative appropriation specifically for that purpose. In 1994, the Shoup 2.5 mechanical machines were replaced in Calcasieu Parish with AVC machines. In that same year, the West Baton Rouge Parish Shouptronic machines were replaced with AVC machines. (Shoup had ceased doing business in the early 1990's.) In 1995, AVC machines were purchased to replace the Shoup 2.5 machines in Jefferson Parish. In 1996, AVC machines replaced the Shoup 2.5 machines in Caddo and East Baton Rouge parishes. In 1998, Shoup 2.5 machines in St. Bernard, St. Landry and St. Tammany parishes were replaced with AVC machines. In 1999, the Shoup 2.5 machines in Plaquemines and East Feliciana parishes were replaced with AVC machines. In 2000, should the money be appropriated, the remaining Shoup 2.5 machines in the state (in Ascension and Tangipahoa parishes) will be replaced with AVC machines.

It should be noted that, in 1997, funds had become available through the Division of Administration which would have allowed the Department of Elections to lease purchase AVC (electronic) machines through the LEAF (Louisiana Equipment Acquisition Fund) program. These AVC machines would have replaced all the remaining Shoup 2.5 machines (St. Bernard, St. Landry, St. Tammany, Plaquemines, East Feliciana, Ascension and Tangipahoa parishes), as well as factory built AVM-POM machines in Lafayette, Rapides, Ouachita and Bossier parishes. In turn, the factory built AVM-POM machines were scheduled to replace all retrofitted (non-printer to printer) AVM machines in the state, including those in Terrebonne, Vernon, Union and East Carroll parishes. However, this plan

(although approved by the Division of Administration and actually to be bid on December 24, 1997) was blocked by members of the Legislature.

The overall plan remains to have electronic machines in at least every parish with a major metropolitan area, and to have factory constructed (not retrofitted) AVM-POM machines in every other parish. Specifically, the Department intends that future machines purchased should be only electronic machines, using the replaced factory installed AVM-POM machines in inventory to satisfy any future need. The success of this plan remains dependent on the authorization and appropriation of specific funds by the Legislature to realize these goals. Throughout this entire process, the Department has had to continue to maintain the current inventory of voting machines, including AVM machines.

C. AVM Candidate Counters

The minimal description of the AVM candidate counter assembly contained on page 8 of the amended report is overly simplistic and woefully inadequate. The photographs provided on pages 8 and 9 are not to scale nor do they sufficiently depict the intricacies of the counter assemblies and their internal mechanisms. One counter assembly, such as depicted in the page 8 photograph, is approximately 19" long, 7/8" wide and 2" deep. The counter assembly consists of two main parts: (1) the thirty counter wheels proper and (2) the actuator mechanism. Each of the 30 raised number counter wheels has 21 plastic teeth and ten raised digits. The 30 wheels are grouped in sets of three and are contained within a frame. The frame's two sides are held together by 30 brass axles and seven brass stand-offs.

Each group of three counter wheels has associated with it one plastic actuator, one brass main gear and a grooved reset knob. Each counter wheel in the set of three is linked to the adjacent wheel by a plastic crossover gear and an associated brass axle. Each group of three counter wheels is activated by a plastic pinion gear with an associated brass axle. Each pinion gear has nine plastic teeth. Each group of three counter wheels is connected to the pointers (voting levers on face of machine) by an actuator bar. Each actuator power bar has two yokes each attached by two brass yoke rivets. Each actuator connects to the associated pinion gear by means of ten plastic actuators, each with its own axle. Total number of components subject to breakage, wear or malfunction on each counter assembly is in excess of 1200. Pictures of described individual parts, comprising one complete counter assembly, are provided in Attachment A to this response. (In order to demonstrate size, a six inch ruler is included in each picture.)

Each AVM-POM machine has either 40 or 50 of the above described counter assemblies. Unlike Shoup machines where voting occurs vertically, it occurs horizontally on AVM machines. As a result, each of the 40 or 50 counter assemblies in a machine is subjected to an equal amount of use and wear in each election.

In order to more fully understand the counter function in an AVM-POM machine, the following sequence of events is provided:

1. The commissioner presses the entrance knob and a voter walks into the machine and closes the curtain. The machine is ready for the voter to cast his ballot.

2. The voter makes a selection on an office or an issue by moving the voting lever down over his choice.
3. When the voter pulls the lever down, the actuator arm moves the actuator to the right.
4. The voter casts his entire ballot in the same manner, each time pulling and leaving the lever down.
5. When the voter has completed voting the ballot, he opens the curtain.
6. The actuator power bars in the counter are lifted when the curtain opens.
7. The actuator yoke and actuator turn the .003 pinion gear.
8. The main gear turns.
9. The unit wheel advances by engaging the main gear in one of the twenty plastic teeth.
10. The actuator goes back to its original position.

The process is then concluded for a single voter. When the tenth vote is cast for a candidate or proposition, the transfer gear turns the ten wheel. When the hundredth vote is cast for a candidate or proposition, the second transfer gear turns the hundred wheel. The process continues throughout election day.

The Department purchases reconditioned counter assemblies, as part of its continuing preventive maintenance program, from Independent Voting Machines (IVM) under the authority of La. R.S. 18:1362A(2) authorizing purchases of voting machine parts from a supplier without competitive bid. Sequoia, the successor to the original AVM machine and parts manufacturer, Automatic Voting Machine Corporation, has granted IVM "the exclusive right to sell our AVM parts and supplies line in this State [Louisiana]." As part of its

exclusive agreement with IVM, Sequoia requires that IVM install and repair AVM parts "by only properly trained and authorized personnel".

III. RESPONSE TO FINDINGS

In light of the above background and information, the "Findings" of the amended draft report are hereafter addressed.

A. AVM Machines Purchased Under Used Equipment Regulations and "Sole Source" Determinations - Competitive Bids Not Required

The report initially questions the "sole source procurement" of factory reconditioned AVM voting machines "from August 1991 through January 1999". For fiscal years 1991-1992 through 1994-1995, AVM machine purchases were authorized by State Purchasing Rules and Regulations, particularly LAC 34:1.907 relating to used equipment purchases. The machines were purchased from ESI, the agent of Sequoia, the successor to Automatic Voting Machine Corporation, the original machine manufacturer. See Commissioner Fowler's letter of August 28, 1991 to Virgie O. LeBlanc, Director of State Purchasing: "The machines were reconditioned in the AVM factory. The purchase was a prudent and necessary one." State Purchasing (Division of Administration) approved both the procedure and the purchase. Beginning with the 1995-1996 fiscal year, the purchases were made pursuant to sole source determinations made under the authority of La. R.S. 39:1597. The October 28, 1995 sole source memorandum is contained on page 2 of the report.

The amended report erroneously characterizes the lack of competitive bidding as a violation of state law. Relevant state laws were followed for each purchase, as noted above. Moreover, as the report correctly recognizes, La. R.S. 39:1597 of the Louisiana Procurement Code permits a contract to "be awarded for a required supply ..., without competition when, under regulations, the chief procurement officer ... determines in writing that there is only one source for the required supply ...". A representative of the Attorney General's office specifically advised the Department in 1995 that sole source procurement of factory reconditioned voting machines was permissible. La. R.S. 39:1625 further provides that the determination made under La. R.S. 39:1597 "is final and conclusive unless...clearly erroneous, arbitrary, capricious, or contrary to law". The designation of ESI as the "sole source for factory-reconditioned AVM-POM voting machines" is factually correct (not clearly erroneous, arbitrary, or capricious) and not contrary to law. See Part II. A. above outlining the historical relationship between the original machine manufacturer (Automatic Voting Machine Corporation) and Sequoia, as well as Sequoia's designation of ESI as its exclusive agent in Louisiana.

B. AVM Machine Prices Not "Excessive" - Only One Source

The amended report next finds that the AVM factory reconditioned voting machines were purchased at prices exceeding those available from other vendors. This finding is erroneous as the Department purchased only factory-reconditioned AVM voting machines, available in Louisiana from only one source, ESI. No other dealer sold or supplied factory-

reconditioned AVM voting machines in Louisiana. Consequently, prices for other AVM machines (not factory-reconditioned) are not comparable.

The statement on page vii of the amended report to the effect that "ESI purchased the voting machines from three AVM dealers who also sell directly to other governmental units" gives no cause for concern as ESI must obviously secure the machines reconditioned and sold to the Department from some source as no new machines have been manufactured since 1982. What is important for the Department's purposes is that the machines are factory reconditioned; and ESI is the sole agent for Sequoia, the successor to original manufacturer, Automatic Voting Machine Corporation.

The report erroneously concludes that "because these machines were not advertised and competitively bid", there are some "unknown" "actual savings the department could have obtained". The report again fails to recognize that La. R.S. 39:1597 does not require competitive bidding when "there is only one source for the required supply". Because ESI was determined to be the sole source for factory reconditioned AVM-POM machines, there are no comparables and no "savings" calculation can be made.

Should the Legislative Auditor persist in comparing noncomparables and thereby extrapolate "savings", other factors must be considered. Most notably, it must be determined whether the other (noncomparable) sources had the required supply at the time the purchases were made. In summary, the "savings" calculation made by the amended draft report is erroneous in at least the following crucial respects: it considers noncomparables and it

presupposes the existence of a supply when need arose. The inclusion of the "savings" calculation in the amended draft report is prejudicial and misleading and can only serve to alarm the public without basis in reality or fact.

The Department does not anticipate any immediate future purchases of AVM-POM machines, provided funding is available for the purchase of electronic equipment. (See Part II. B. above regarding the Department's plan to purchase electronic machines only.) As discussed hereafter at Part III.C., with the latest replacement of the Vernon Parish machines, the program to replace the original AVM non-printers has been completed. If and when the presently unanticipated need arises to purchase AVM-POM machines, the Department will consider whether other AVM-POM machines (other than factory-reconditioned machines, which the Department has determined are preferable) will be adequate after investigating the information provided in the report. In order to do so, the Department requests that the Legislative Auditor provide all backup documentation as to the quoted prices and sources.

C. Purchase of AVM Machines For Vernon Parish Is Consistent With Department Plan to Discontinue Use of Retrofitted Machines

The amended report labels as "questionable" the Department's trade of 131 (actually 137, including six retrofitted machines from Rapides Parish that had been received from Union Parish as extras) AVM (50 column) machines from Terrebonne Parish in October of 1998. The chart contained on page 7 of the amended report deceptively suggests that the 50 column AVM machines traded in Terrebonne Parish were the same machines, or identical

or equivalent to, the 50 column AVM machines purchased for Vernon Parish. The two sets of machines were neither the same machines nor were they of the same type and quality. The Terrebonne Parish machines were originally purchased as AVM nonprinter machines and retrofitted in December of 1994 to convert to printing capability. The Vernon Parish machines are factory reconditioned AVM-POM machines with factory installed printing mechanisms. The chart should be revised to note the critical distinguishing features of the two sets of machines. Those features should be included, not only for fairness and completeness, but to avoid deceiving or misleading the public.

Several months before, in August of 1998, other retrofitted machines had been removed from and replaced by factory reconditioned AVM-POM machines in two other parishes, Union and East Carroll, consistent with the Department policy to use only factory installed printing mechanisms and discontinue use of retrofitted AVM machines. Instead of being traded, the Union and East Carroll retrofitted machines were sent to different parishes throughout the state to be used as spare machines, but not for primary use in any parish, simply for use in case of emergency.

The Department policy is to, parish-by-parish, discontinue use of retrofitted machines and only maintain an amount needed to serve as spare machines, not as a primary source. Because the Union Parish and East Carroll Parish retrofitted machines had filled the need for spare supplies throughout the state, it was decided that the trade in value of the Terrebonne Parish machines was the most beneficial use of the machines to the State.

The replacement of the retrofitted 50 column machines in Terrebonne Parish (and the replacement there with newly purchased factory reconditioned 40 column AVM-POM machines) was in response to the continuing requests of the Terrebonne Parish Clerk of Court, as well as a resolution adopted by the Terrebonne Parish Council.

Because Vernon Parish was, in November of 1998, the only parish that still had AVM non-printer machines, in keeping with the Department policy to discontinue use of the obsolete AVM non-printers, an order was placed for 125, 50 column AVM-POM machines (factory installed printer machines); and the 102, 50 column non-printer AVM machines were traded.

As an aside, in 1997, funds became available through the Division of Administration which would have allowed the Department to lease purchase AVC (electronic) machines. These AVC machines would have been used to replace factory built AVM-POM machines in Lafayette, Rapides, Ouachita and Bossier parishes. In turn, the factory built AVM-POM machines were scheduled to be used to replace all retrofitted (non-printer to printer) AVM machines in the state, including those in Vernon, Union and East Carroll parishes. However, this plan (although approved by the Division of Administration and actually scheduled to be bid on December 24, 1997) was blocked by action of members of the Legislature reflected in a December 17, 1997 letter. Had the plan not been frustrated, 857 (some 40 column and some 50 column) factory made AVM-POM machines from Lafayette, Rapides, Ouachita and Bossier parishes would have been available to fill the needs of both Terrebonne and

Vernon parishes. In all, the canceled purchase would have provided the State with 1,931 AVC voting machines through the LEAF Program which, according to Mark Drennen, would have resulted in interest savings to the state of \$4.7 million. Once the authorized lease purchase of AVC machines was challenged and canceled, not only were the projected savings lost but the Department was faced with having to purchase machines (AVM - POM machines) to fill the Vernon and Terrebonne parish needs.

D. Counter Purchases Are Made As Part of Department's Continuing Preventive Maintenance Program

The report correctly notes that the Department purchases candidate counter assemblies, correctly characterized there as "an internal part of the AVM mechanical voting machines". These purchases are made as part of the Department's continuing preventive maintenance program to update and maintain in working order its inventory of AVM-POM machines. What the amended report fails to note, however, is that the Department is legally authorized by the Election Code (La. R.S. 18:1362A(2)) to "purchase directly from the supplier" "voting machine parts" without competitive bid. The Department selected IVM as the most responsible supplier for several reasons, most notably that Sequoia (the successor to the original manufacturer) designated IVM as its exclusive agent for the sale of AVM machine parts in Louisiana, and Sequoia required the installation of parts and related maintenance to be performed by "only trained and authorized personnel".

The amended report finds that "the purpose of these purchases appears questionable".

In so suggesting, the audit complains of the time it took the Department to respond to the April 17, 1999 letter from Daryl Purpera (auditor) requesting a compilation of information not only on counter assembly installations on both AVM and Shoup machines, but also on AVM machine purchases. That response was delivered on July 9, 1999. Not only were four elections conducted by the Department during this period, but the response involved the locating and assembling of multiple years of records gathered from administrative records, records from fifty different parishes, and stored State Archive records. The search was compounded due to the age of the records and the fact that many had been destroyed pursuant to public record retention requirements. The amended report erroneously concludes that the time necessary for response is an indication that the Department has no maintenance plan. To the contrary, the Department's policy is to replace counter assemblies in approximately ten to fifteen percent of the oldest machines or the ones most in need of repair each year.

The counter assemblies are the most important part of the voting machine. The vote count determines the election outcome. On election night, candidates, news media and the public await the final vote count. In view of the importance of each counter working properly, counter assemblies are changed not only when they malfunction on election day, but regularly as part of a planned preventive maintenance program. Individual counters may malfunction for numerous reasons, including but not limited to: (1) Overall wear caused by the platen (roller mechanism) running across the counter wheels, over a period of time

causing the plastic counter wheels and related mechanisms to chip or break. (See discussion in Part II. C. regarding horizontal v. vertical counter assemblies.); (2) Wear or improper alignment of counter wheels, causing print of vote totals on the printer pac to be weak or illegible; (3) Tarnish and/or corrosion of brass gears and axles resulting from atmospheric conditions peculiar to Louisiana's climate, preventing the proper operation of counter wheels; and (4) Breakage or wear of any of the other over 1200 components on each counter assembly. If any of the above occur, the counters do not work and the election results are thereby compromised and inaccurate. Inaccurate results can occasion election contest suits and the calling of additional elections, resulting not only in increased costs but, more importantly, loss of confidence in Louisiana's electoral process.

Machine failure was not a factor in the extremely close statewide 1996 election for U.S. Senator because of the Department's preventive maintenance program. If machine failure had been a factor in such a close election and another election called, the cost to the Department of Elections alone is projected at \$3,803,000. Secretary of State costs are in addition to those of the Department.

In an attempt to prevent the occurrence of problems during an election, the Department's maintenance program replaces approximately 10-15% of the total counters per year. This program has resulted in the replacement of counter assemblies in at most 300 to 400 of the state's 4,222 AVM machines per year over the last five years. Replacing the counters on this ongoing basis drastically reduces the possibility of counter failure on

election day.

Over the last eight years, the Department of Elections and Registration has averaged approximately one million dollars per year replacing counter assemblies used in an average of eleven elections per year during that time frame. The cost for elections incurred by the Department of Elections alone during that time period was \$81,757,072, an average of approximately \$10,000,000 per year. The Secretary of State also incurs costs for those same elections. The continuing maintenance cost is deemed a worthwhile investment to insure public confidence in the electoral process. Preventive maintenance is specifically designed to avoid problems with machines. The lack of a history of machine or counter malfunction since its inception is a tribute to the success of these efforts and hardly justification for criticism.

The amended report's comment that the Department "purchased more counters than the total number of counters sold by two of the largest AVM dealers combined" is misleading in at least two respects. The number of counters compared obviously does not include those sold to Louisiana. And, more egregiously, the comment fails to consider the fact that Louisiana owns more AVM-POM machines than any other single jurisdiction in the nation. The Department is responsible for the maintenance and performance of 4,222 AVM-POM machines in an average of eleven elections per year. To run a preventive maintenance program on as large an inventory as Louisiana's requires the purchase of a large number of parts. Since Louisiana owns and maintains the largest number of AVM machines, it requires

the largest number of counter assemblies in its preventive maintenance program.

E. Purchase of Counters From "Supplier" Authorized By Election Code

The report erroneously finds that "the department purchased these counters at double the market rate". Here again the report fails to note that the purchase of AVM counter assemblies from IVM is authorized by the Election Code, La. R.S. 18:1362(A)(2), allowing the purchase of voting machine parts "directly from the supplier" without competitive bid. The Department believes that IVM is the best suited supplier as it is the factory authorized supplier in Louisiana of AVM parts. As noted above in Part II.C., Sequoia is the successor to the original manufacturer, the Automatic Voting Machine Corporation. Sequoia requires that IVM's installation of AMV parts "must be installed and repaired by only properly trained and authorized personnel". The comparison of prices allegedly available from any other counter supplier is therefore irrelevant.

Further, the amended draft report's comments regarding "cannibalized" counters are no cause for concern since any counter assembly purchased after Automatic Voting Machine Corporation ceased operations (in the early 1980's) obviously came from another machine. What the Department is purchasing are reconditioned counter assemblies, all of which came from other AVM machines as no new ones have been made since 1982.

The prices quoted as allegedly available from other sources are not comparable because the Department's intent is to purchase only counter assemblies from the factory authorized reconditioning source and to have the counter assemblies installed by only

"properly trained and authorized personnel". And, finally, what the amended draft report fails to recognize is that the price the Department paid IVM for the counters was less than IVM's acquisition cost.

The report's conclusion that the Department could have saved several million dollars by purchasing counters from other sources is patently unfair because no verification is contained that either the number of counters needed were consistently and sufficiently available from these other dealers, or that these dealers had "properly trained and authorized personnel" for installation.

F. All Counters Are From Other Machines; The Department's Replaced Counters Are Discarded

The report's finding that "on some occasions, the department purchased counters cannibalized from its own trade-in machines" is neither supported by the evidence nor fairly presented, as all AVM counter assemblies had to come from machines because production of the AVM machines and parts ceased in 1982.

According to the report, ESI sold 15,000 counters to IVM during the period September 1996 to October 1997. The report quotes David Philpot of ESI as claiming he either received these counters free from IVM or that he obtained the counters by removing them from machines traded by the Department. What this analysis fails to note or consider initially is that any counters purchased after Automatic Voting Machine Corporation ceased producing machines had to have come from an existing machine. The fact remains that new

counter assemblies are simply not available. Further, the counter assemblies purchased by the Department were "reconditioned" counter assemblies and not counter assemblies in the same state as those removed from a machine. The counter assemblies purchased were those which had undergone a reconditioning process by "properly trained and authorized personnel" in keeping with the agreement between IVM and Sequoia.

With respect to whether or not the factory reconditioned counter assemblies purchased by the Department from September 1996 through October 1997 were ever the same counter assemblies removed from the Department's traded machines, as the report suggests, the Department's equipment disposal records indicate no AVM machines were traded by the Department between September 1996 and October 1997. Prior to September 1996, the Department had traded a total of 387 AVM machines only. These non-printer AVM machines and were traded to ESI in accordance with the Department policy to discontinue use of non-printer machines. These machines were, on each occasion, removed from Department premises by ESI's owner or contractor. Mr. Philpot has informed us that he removed about 300 counter assemblies from the machines and those counter assemblies are in his basement.

The Department cannot comment on GSE's method of obtaining counters, except to state that all counters had to come from another machine. The Department is purchasing reconditioned counter assemblies because no new ones are available.

As noted in the report, when old counter assemblies are removed from Department

machines during the installation process, these assemblies are placed in the boxes that contained the reconditioned counter assemblies. The old counter assemblies are placed in the packing boxes to promote safety in the work area and to ease in the disposal process. These candidate counter assemblies are approximately 19" long and are made of plastic and metal pieces between 2 metal brackets. The brackets have sharp edges and the counter assemblies are heavy and bulky and do not lend themselves to being thrown in plastic garbage bags for disposal. To the Department's knowledge, the used counter assemblies were either discarded either on site or taken to a disposal site; and no counter assemblies were given to IVM. It is suggested that, if any old counters were removed from Department warehouses by IVM personnel, they were removed for disposal only.

The amended report erroneously concludes, based only on the auditor's review of IVM's records, that IVM did not purchase some counters sold to the department. The further conclusion that the counters IVM sold to the Department "were counters originally removed from the department's AVM machines" is without support and based on conjecture.

G. There Is No "Comparable" Rate For Installation

Also without merit is the report's conclusion that "the department paid a contractor nearly four times the available rate for installation". See above regarding the selection of IVM as the factory authorized supplier of reconditioned counter assemblies, particularly the Sequoia requirement that IVM install and repair using only "properly trained and authorized personnel". The report's alleged "savings" calculation on page 12 is not correct.

Significantly, there is no showing that the other dealers quoting prices for installation had either a requisite supply of parts or "properly trained and authorized personnel" for installation.

H. Whether Or Not Employees Installed Counters Will Be Investigated

Without knowledge of the specific facts allegedly made known to the auditors and the context in which the attributed statements were made, as well as knowledge of the particular documents upon which the general conclusions are based, the Department is unable to determine whether, or the extent to which, Department employees participated in the installation process. An initial investigation into the alleged employee participation in the installation of counter assemblies indicates that some limited participation may have occurred. In no instances was this officially directed, approved or condoned. The Department is conducting a more thorough investigation to determine the extent of employee participation. An assessment will be made and recovery of any overpayments to the contractor may be sought if warranted.

In order to adequately investigate this matter, the Department requests that the Legislative Auditor provide the Department with all records of the employee statements referenced in the report, including the original recording of the statements and notes of the investigation. The Department also seeks copies of all documents upon which the Legislative Auditor relied in developing the chart on page 14 of the amended draft report, particularly the figures in the column labeled "Number of Department Employees", in

addition to an explanation as to the conclusion that "Department employees were actually performing a substantial portion of the installment process".

I. Isolated Billing Errors Are Being Corrected

Two isolated instances of duplicate billings for counter installation submitted by IVM have been noted and corrective action will be taken.

Contractor services rendered by IVM under a different contract (not for counter assembly installation) are billed to the Department on a Contractor Time and Expense Report. IVM is required to submit a Time and Expense Report to the Department to document work performed for each contract employee. Each Time and Expense Report must be signed by the contract employee and approved by the Department employee supervising the contract employee. Time and Expense reports are submitted by each contract employee to IVM who reviews and approves the reports and forwards them along with an IVM invoice to the Department for payment. Employees in the Department's accounting section audit the Time and Expense reports attached to the invoice and process the payments to IVM.

The Department has again reviewed all of its payment files related to the contract with IVM. The Department has located Time and Expense reports billing the Department for employees installing counters for four IVM employees, one for four days and three for five days. These invoices total \$5,938. These Time and Expense reports for installing counters and the related IVM invoice were processed for payment by the Department under the separate contract in error. The Department is taking the appropriate measures to recoup the

money for these overpayments from the vendor. Upon receipt from the Legislative Auditor of documentation of the other duplicate billings referenced in the report, the Department will evaluate and seek reimbursement from the vendor if appropriate. Additionally, the Department will review its internal control procedures for contractor payments and take appropriate measures to insure proper review of contractor time and expense reports and prevent any such future occurrences.

J. AVM Machines Are Purchased When Needed and Available; Machine Inventory Must Be Maintained

The report fails to consider availability when reaching conclusions critical of Department procedures and operation. The report's conclusion that the cost of counters and installation exceed the cost of the replacement machines is another example of criticisms leveled against the Department without adequate knowledge of all pertinent facts. The Department purchases only AVM-POM machines that meet the Department's specifications and needs, factory reconditioned AVM-POM machines, with removable pointers. The supply of these machines is very limited as a result of their desirability. The Department believes it has purchased all such machines which have been available from the "sole source" provider.

What the report obviously fails to consider is that, even with the purchase of the available machines, the Department still has the responsibility and obligation to maintain its current inventory of other AVM-POM machines. Accordingly, funds appropriated in the

Department's operating budget for that purpose have been used to purchase counter assemblies for the Department's preventive maintenance program designed to insure operational integrity. The costs associated therewith are deemed necessary due to the unavailability of the type of factory reconditioned AVM-POM machines sought by the Department.

K. Counter Quality Comparison Statistically Flawed

The report finding that "it appears that the counters purchased were no different than those taken out of department machines" is not only statistically incorrect but irresponsible. The report's conclusion is based on only a single five counter sample from recently purchased counters and a five counter sample of counters removed from the Department's AVM-POM machines. This very small, non-random sample does not follow proper statistical methods. In Principles and Procedures of Statistics, Steel & Torrie state: "A sample must be representative of the population if it is to lead to valid inferences. To obtain a representative sample, we embody in the rules for drawing the sample items, the principle of randomness. ... It has been demonstrated that the individual cannot draw a random sample without the use of a mechanical process." Without a proper sample, no significant conclusions can be drawn. To suggest, based on the limited, non-random, non-representative sample, that the 122,560 counter assemblies removed from the Department's machines were no different than the 122,560 reconditioned counter assemblies installed, is disingenuous and without factual or statistical support.

L. The Reported "Savings" Calculations Are Erroneous

The report makes erroneous calculations of "savings" for both machine purchases and counter installation and purchases that the Department is alleged to have failed to realize. These calculations fail to take into consideration existing budgetary constraints. They neglect to consider the need and duty to "maintain ... all voting machines" (La. R.S. 18:1353C(3)). The numbers used to calculate the alleged "savings" were provided by other than the sole source provider or the factory representative supplier. ESI is the sole source of factory reconditioned AVM voting machines in the state. IVM is the exclusive factory representative supplier of AVM parts in the state. Moreover, there is no showing regarding either the amount necessary for the required supply at all relevant times or the skill and expertise in installation of those who allegedly could have made the installation at the prices assumed in the "savings" estimate. The inclusion and repetition of these calculated "savings" in a report to be released to the public is irresponsible and can only serve to prejudice the Department.

M. Some Statements Made Regarding Independent Voting Machine Service Company Are Incorrect or Incomplete

The report also contains certain information regarding "Independent Voting Machine Service Company", at pages 17-18, which is incorrect, deceptive and misleading. The statement that the "department purchases all of its new electronic voting machines" "from Independent Voting Machine Service Company (IVM)" is incorrect, again showing the

Legislative Auditor's lack of knowledge of Department practices. Competitive bidding is conducted for the purchase of new electronic voting machines (AVC machines). These machines have never been purchased from IVM but are purchased from Sequoia Pacific Voting Equipment, Inc.. State law (La. R.S. 18:1362A.(2)) does permit the purchase of supplies and warranty services from IVM without bid. The professional services contract referenced on page 17 is pursuant to public bid, as the law requires; and IVM has no current professional service contract with the Department. Its previous contract expired and a new contract is being bid as a maintenance contract upon the recommendation of the Procurement Support Team of the Division of Administration.

The report mentions two instances of previous reports of questionable IVM costs (one in 1993 and one in 1999), both of which have been rectified. The Department has recovered the 1999 erroneous payment, and long ago recovered the 1993 questioned charges. The 1993 recovery was made to the satisfaction of the Inspector General by the repayment of \$31,474 in net disallowed expenses, not \$165,729 as the report deceptively implies. Further, all changes in accounting procedure recommended by the Inspector General in 1993 have long since been implemented and are reviewed annually by the Legislative Auditor as part of the yearly financial audits.

N. "Questionable Relationships"

1. Roberts Bowman Investors, Inc.

The amended report refers to two relationships it contends are questionable under the

circumstances. The first allegedly involves one Gary Mazucco, who according to the report, is an accountant for IVM, a company owned by Pasquale "Pat" Ricci. The report claims that a corporation with which Mr. Mazucco is affiliated, Roberts Bowman Investors, Inc., received a large portion of the profits derived from the Department's purchases of voting machines from ESI, the sole source supplier of the state's AVM voting machines.

The auditor's concerns regarding the alleged payments to Mr. Mazucco can best be summarized by quoting directly from the report:

"As previously stated, the Department purchases all of its electronic voting machines, has maintenance contracts, and purchased substantially all of its parts for both electronic and mechanical voting machines from IVM. The Department purchased its AVM voting machines exclusively from ESI. Our investigation revealed that ESI paid a substantial portion of its profits, for no apparent reason, to an officer and accountant of IVM. This indicates that an association exists between IVM and ESI."

Preliminarily, and for reasons discussed at Parts II.A., II.B., III.A. and III.B. of its response, the Department categorically stands by its purchase of AVM voting machines from ESI. The Department would note again that it did not purchase its electronic machines from IVM but rather from Sequoia. Likewise, the Department stands by the manner in which the purchase of parts for mechanical voting machines were effectuated during the period covered by the report and refers specifically to Parts III.D. through L. where those issues are discussed at some length.

Finally, the Department would observe that it is not in a position, particularly given the brief response time allowed by the Office of the Legislative Auditor, to know of or to

determine the corporate, business, or other relationships that might exist between IVM and ESI. The relevant point to be made is that the Department's dealings with both of those entities were in accordance with law as amply demonstrated in earlier sections of this response.

2. The Bayou Ridge Ranch, Inc.

The second questionable relationship referenced in the preliminary report has to do with the assertion that "Commissioner Fowler may have been involved in a business (Bayou Ridge Ranch) with Mr. Pasquale "Pat" Ricci, the owner of IVM, and Mr. Fowler may have received a large portion of the profits derived from this relationship."

At the outset, the Department reiterates its position that all its dealings with IVM and Mr. Ricci were conducted in accordance with this State's election and procurement codes and were legal in all respects. The reader is referred to Parts II.C., III.D., III.E., and III.M. of the Department's response dealing at length and in some detail with the Department's contracts at issue with IVM and the underpinning for those contractual arrangements.

As regards the possibility of Commissioner Fowler having had a business relationship with Mr. Ricci, the Department is at a distinct disadvantage in its ability to respond. The Department has no records having to do with Bayou Ridge Ranch, Inc. or Commissioner Fowler's involvement with that entity.

Mr. Fowler's personal attorney, J. Michael Small of Alexandria, has informed the Department that the Bayou Ridge Ranch issue is one presently being considered by an East

Baton Rouge Parish grand jury and that further comment regarding it would be inappropriate at this time. Commissioner Fowler has deferred to Mr. Small as regards that matter.

IV. RESPONSE TO RECOMMENDATIONS

The Department responds as follows regarding the "Recommendations" made in the report at page viii - x and repeated verbatim on pages 20-22.

In recommending that the Department "consider discontinuing its practice of purchasing used AVMs and replacing counters in existing AVMs and use these funds to purchase new electronic voting machines", the report correctly notes that "the department's plan of operations is to move from mechanical to computerized voting machines". In fact, the Department has equipped two more parishes (Plaquemines and East Feliciana) with an additional 95 electronic machines, raising the inventory of AVC machines to 3,992 or 46.7% of the total. Money further available during the current fiscal year for electronic machine purchases will provide 331 electronic machines for Ascension and Tangipahoa parishes, raising that percentage to 50.6% and will complete the Department's plan to discontinue use of Shoup machines.

The report implies that, had the Department used the funds for AVM machine and counter purchases and installation instead for the purchase of AVC electronic machines, more AVC machines could have been purchased. That implication is naive and shows a disturbing lack of knowledge and understanding of not only the Department's plan but, more importantly, the budgetary process. During the time period in question, the Louisiana

Legislature appropriated specific funds designated for purchase of new electronic machines. That money was at all times used to purchase new AVC machines. The Department also secured LEAF (Louisiana Equipment Acquisition Fund) funding, where available, to purchase more AVC machines. In 1985 the Department proposed a five year plan for new electronic machine purchases in major metropolitan areas. Unfortunately, sufficient funds for realization of that plan have not materialized and at least three major metropolitan areas do not have electronic machines. Prior to the 1998-1999 fiscal year, only Capital Outlay funds and LEAF funds were allowable sources of funding for the purchase of new electronic voting machines. Only in fiscal year 1998-1999 did the Division of Administration authorize the Department to use funds from the Department's operational budget to purchase AVC machines. An earlier attempt by the Division of Administration in December of 1997 to secure alternative sources of funding for the lease purchase of these machines was unsuccessful.

It was this continuing uncertainty of funding for new electronic machine purchases that made it imperative to keep the older AVM machine inventory maintained and operating properly. The operating budget did provide funding for such uses and was used accordingly. The Department does agree that it is preferable, when budgetarily feasible, to purchase new electronic machines rather than to continue to maintain the existing inventory of AVM machines and hopes that this report will result in future appropriations allowing such purchases.

As long as the Department has any AVM-POM machines, however, they must be continuously maintained to function properly in elections. The report fails to consider this fact in suggesting that the funds at issue should have been used for AVC electronic machine purchases. The funds available for AVM purchases and maintenance were utilized from 1991 to 1998 for the purchase of 3,247 factory reconditioned AVM-POM machines and for counters in approximately 2,443 AVM machines. Had those same funds been available for AVC purchases (and they weren't), only 2,741 AVC machines could have been purchased and the Department would still have an existing inventory of approximately 2,948 AVM machines (some non-printers) requiring maintenance.

The report makes recommendations regarding the manner in which the Department should handle future purchases of AVM-POM machines. The Department's current plan, however, is to make future purchases of electronic machines only and to purchase factory reconditioned AVM-POM machines only when necessary. Needs may occur in those parishes having only AVM machines in the event of damage or loss, or if population growth or precinct additions require additional like machines. In the unlikely event that such purchases become necessary, the Department will review its sole source determination and consider whether other than factory reconditioned machines may be adequate.

The report recommends that, before purchasing machines for one parish, consideration should be given to the availability of machines in another parish. That has always been the policy of the Department. For example, in the most recent purchase of AVC machines for

East Feliciana Parish, the Department moved the replaced Shoup 2.5 machines from that parish to Ascension Parish. In all parishes, when the Department has replaced machines, the best of the replaced machines were moved to another parish with less desirable (comparable) machines, using the less desirable machines from the second parish as trade for the newly purchased machines. What the amended draft report apparently questions is the trade in of the Terrebonne Parish machines as opposed to having transferred them to Vernon Parish. As explained in Part III.C. above, the replaced Terrebonne Parish machines were retrofitted [had originally been AVM non printers that were converted to AVM POM (printers)] and were not deemed worthy of retaining.

The report makes a recommendation regarding future conversion of "voting machines to printer-type machines", which again demonstrates a lack of knowledge of the Department's inventory and operations. The Department has no non-printing machines that are capable of conversion to printing machines. All AVM machines in the state have printing capability. With respect to the need for future counter changes in those AVM machines, the Department's plan has always been to purchase new electronic machines whenever funding was available; however, funding for these purposes has been sporadic and uncertain. The Department's policy is to only introduce electronic machines in a parish when the entire parish can be changed to electronic machines because programming, ballots, commissioner training, voter education, election night reporting and all other procedures related thereto are different for mechanical and electronic machines. It has therefore been deemed inefficient

to change only part of a parish to electronic machines.

What the Department has been attempting to do is to discontinue any purchase of AVM machines except as noted above. Those machines were last made in 1982 and the availability of adequately refurbished (removable pointer) AVM-POM machines has become increasingly limited. While the Department's continuing preventive maintenance is not without cost, it will continue to be necessary, particularly in those limited instances where funding is not available for conversion of an entire parish to electronic machines. In the meantime, the Department is forced to maintain its inventory of AVM machines in working order under the continuing preventive maintenance program.

With all of the above in mind, the Department will reevaluate its current preventive maintenance program in light of the suggestions made in the report. The report's philosophy, however, seems geared toward replacement only after breakage or malfunction occurs. The Commissioner of Elections is charged by the Election Code (La. R.S.18:1353C(3)) with the responsibility to "maintain ... all voting machines", in addition to repairing them. Thus, the preventive maintenance program was designed to insure against malfunction during an election and to preemptively address issues of breakage and malfunction prior to their occurrence, thereby insuring the integrity of Louisiana's electoral process.

While the Department does have and did provide the auditors with documentation of its maintenance program, it will consider implementation of a more detailed and documented procedure as suggested in the report.

With respect to the "recommendations" made regarding the use of contractor services for installation of counters, it should be noted that La. R.S. 18:1362A(2) allows the purchase of supplies of voting machine parts directly from a supplier without competitive bids. The Department has purchased these supplies in conformity with the Election Code. The limited number of Department employees and their present skill levels limit the Department's choices with respect to installation. On the other hand, the supplier's personnel are "properly trained and authorized" by the successor to the original machine manufacturer. The Department will, in the future, obtain a "clear understanding, in writing, as to the procedures which will be performed by the contractor and any participation required of department employees".

The Department will continue to thoroughly review agreements with all contractors and suppliers (not only IVM). That review procedure contains checks and balances to guard against improper charges. Those procedures were reviewed by the Legislative Auditor in the last (1997) financial audit of the Department which concluded: "We noted no matters involving the internal control over financial auditing and its operation that we considered to be material weaknesses."

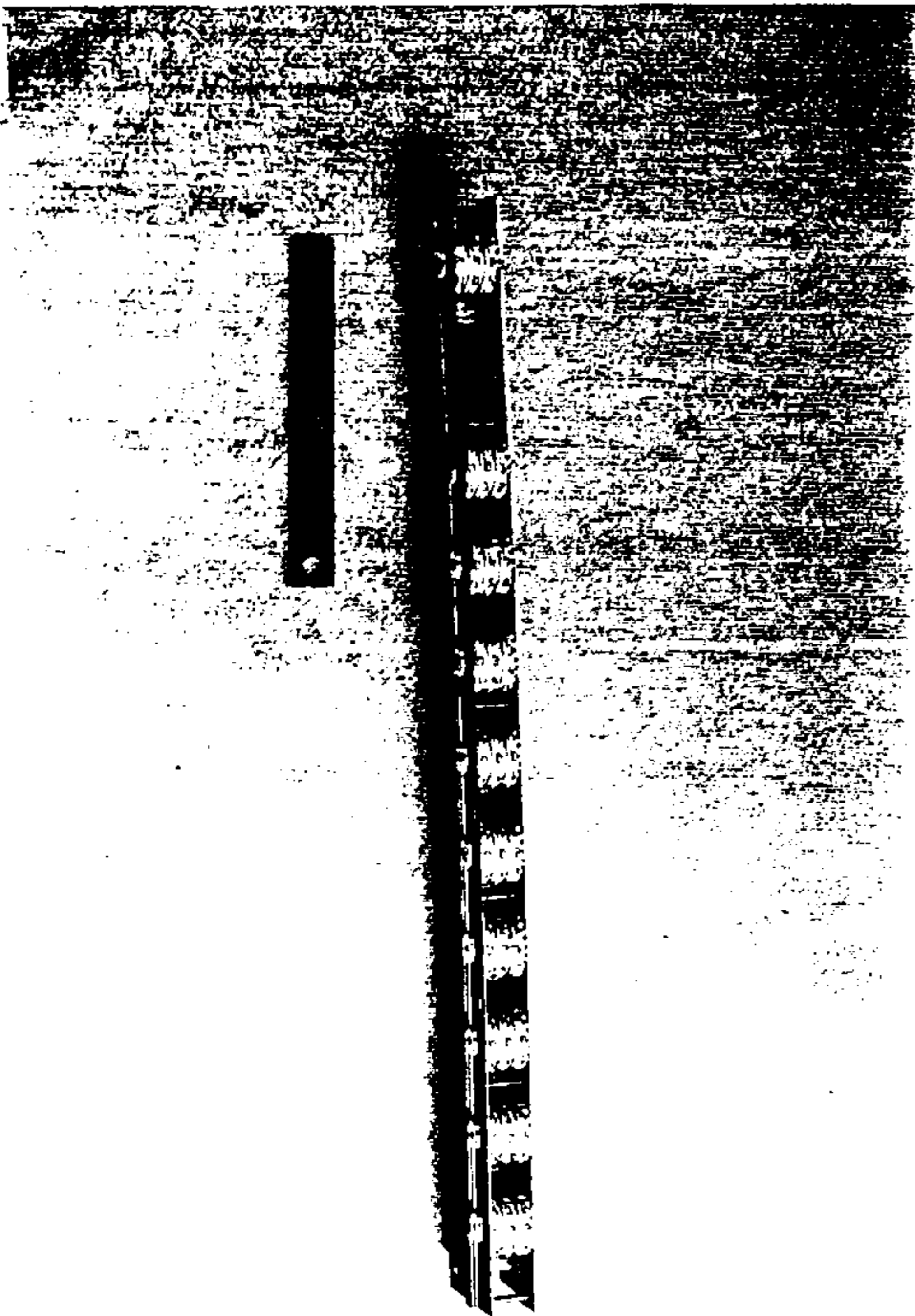
What the report actually questions is the selection of IVM as the supplier for counters and installation. The Department notes that the amount paid for these counter assemblies and installation during the 1998-1999 fiscal year was \$589,800, not \$4.1 million as the report suggests.

In order for the Department to "determine whether any funds may be recovered from IVM and ESI for previous purchases at rates grossly exceeding comparable market prices", as the report suggests, the Department requests that the Office of the Legislative Auditor provide all information (not just the conclusions contained in the report) upon which this recommendation is based.

The auditor concludes the report by citing seven "possible" statutory violations by Commissioner Fowler and others. The Department has found no evidence of any such violations after reviewing the often unsupported and incorrect conclusory allegations contained in the report. What is particularly disturbing are the serious and inflammatory suggestions of public bribery, prohibited splitting of profits and money laundering without so much as a hint as to any specific findings on which those "possible" violations are based.

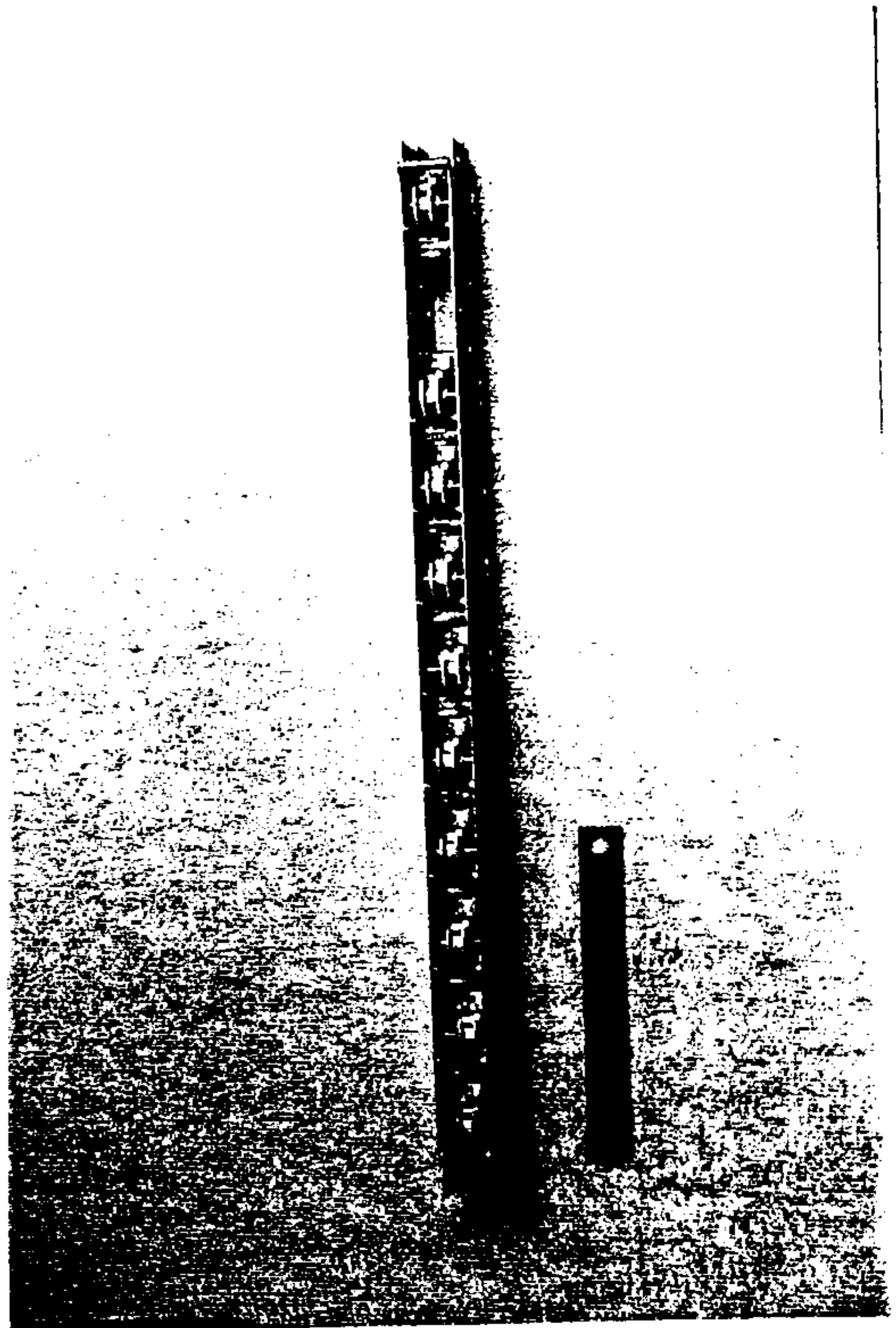
Attachment A

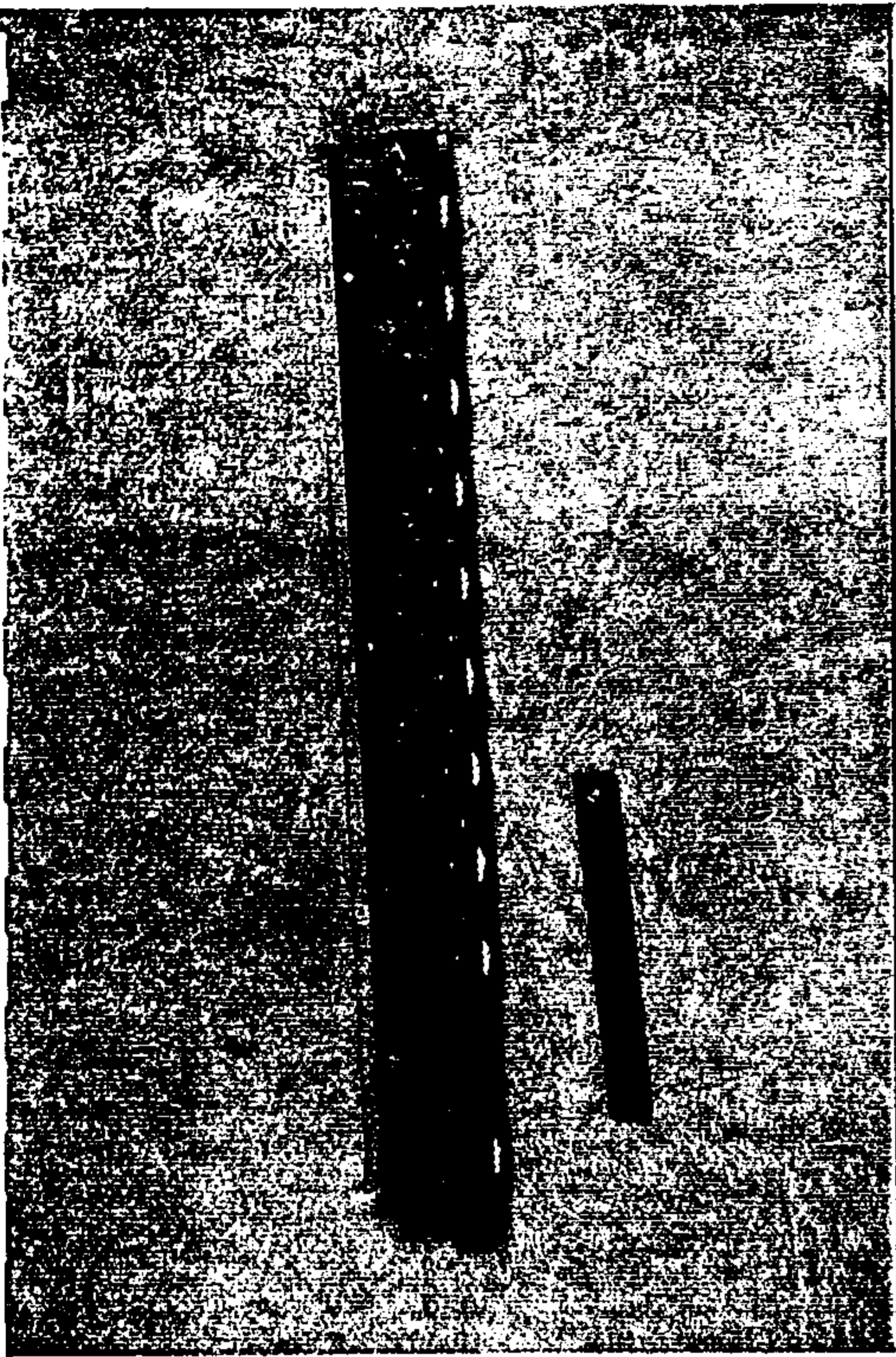
Counter Assembly and Parts



COUNTER ASSEMBLY
(Front)

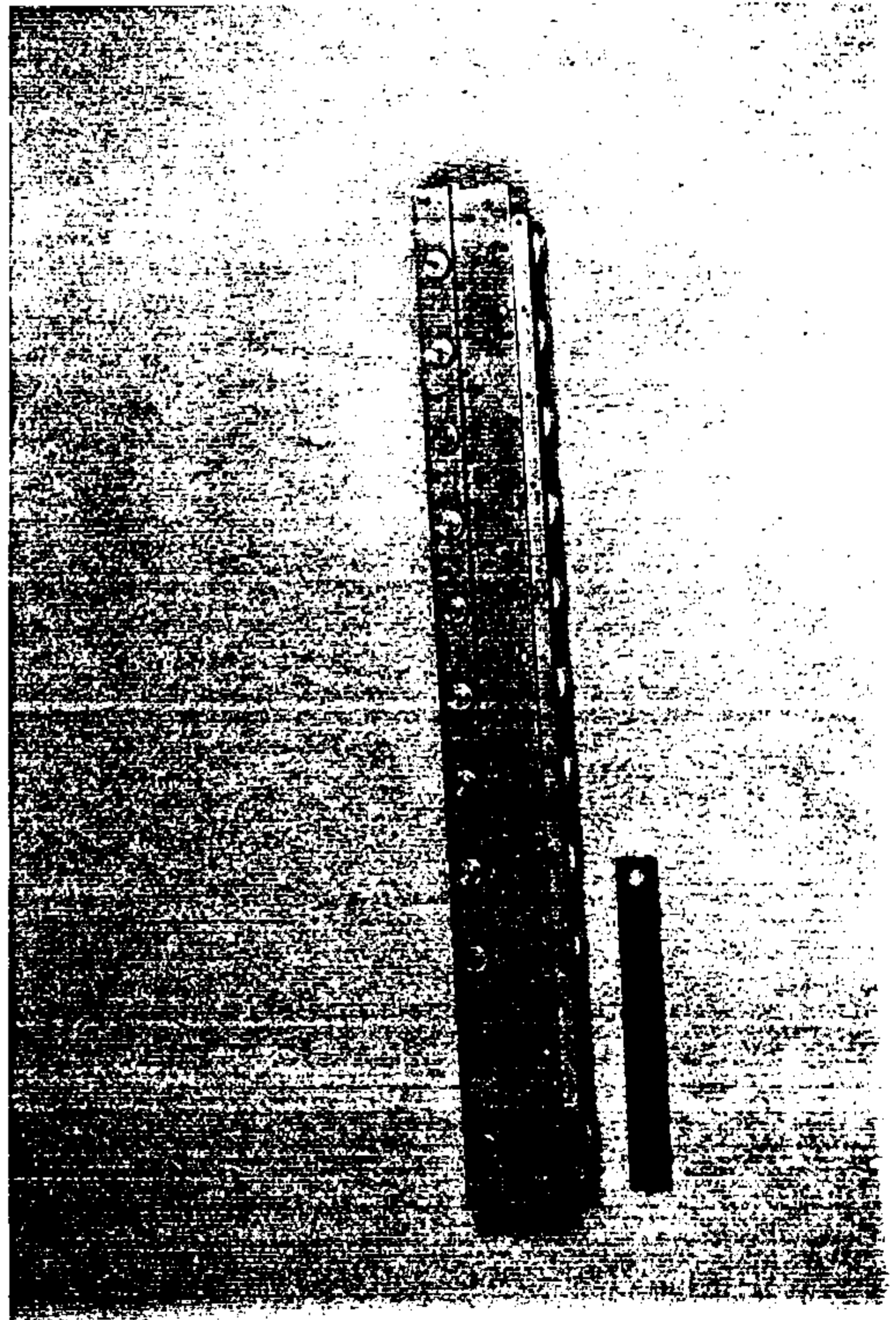
COUNTER ASSEMBLY
(Reverse)



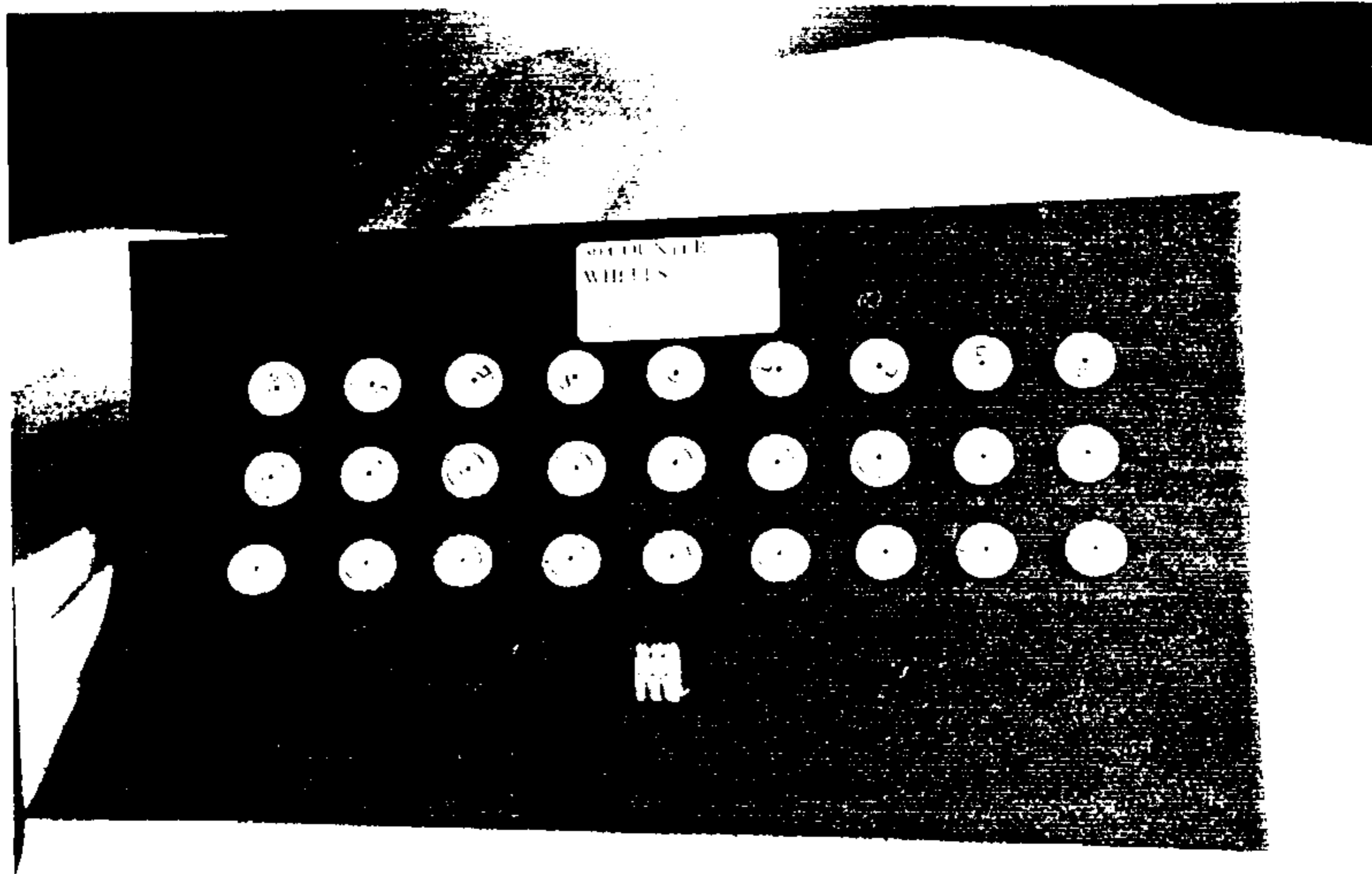


COUNTER ASSEMBLY
(Left Side)

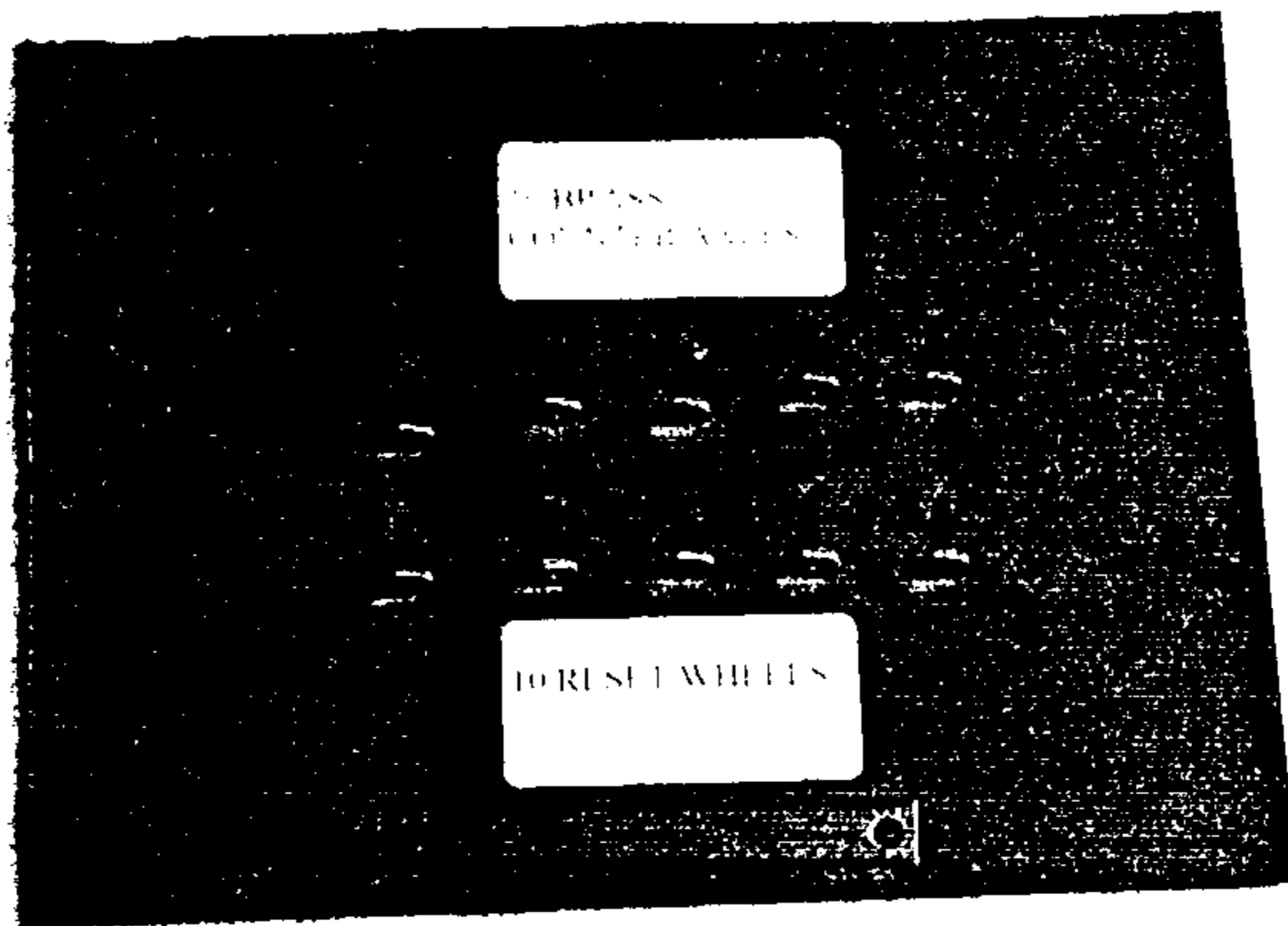
COUNTER ASSEMBLY
(Right Side)



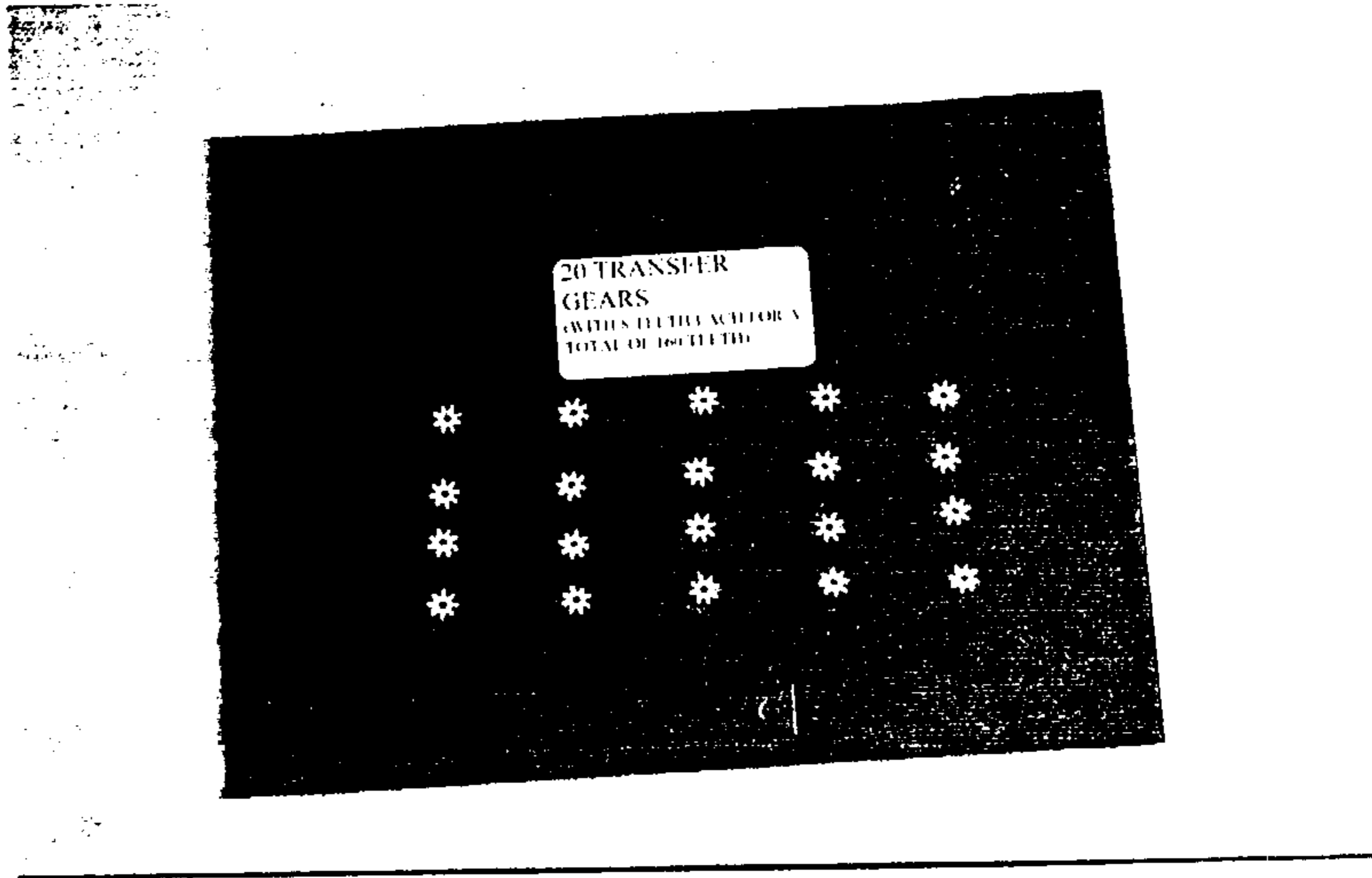
COUNTER WHEELS



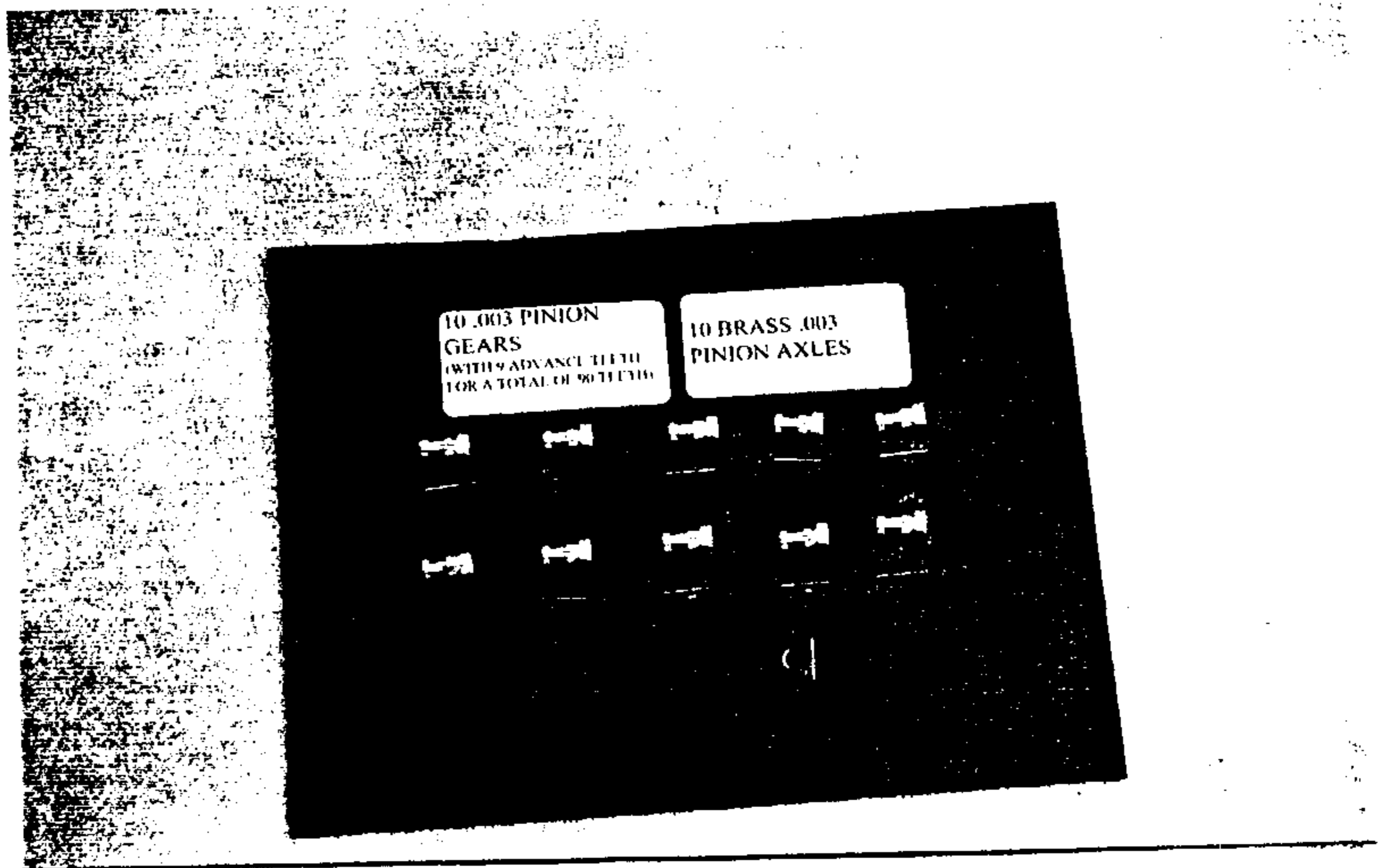
COUNTER AXLES AND RESET WHEELS



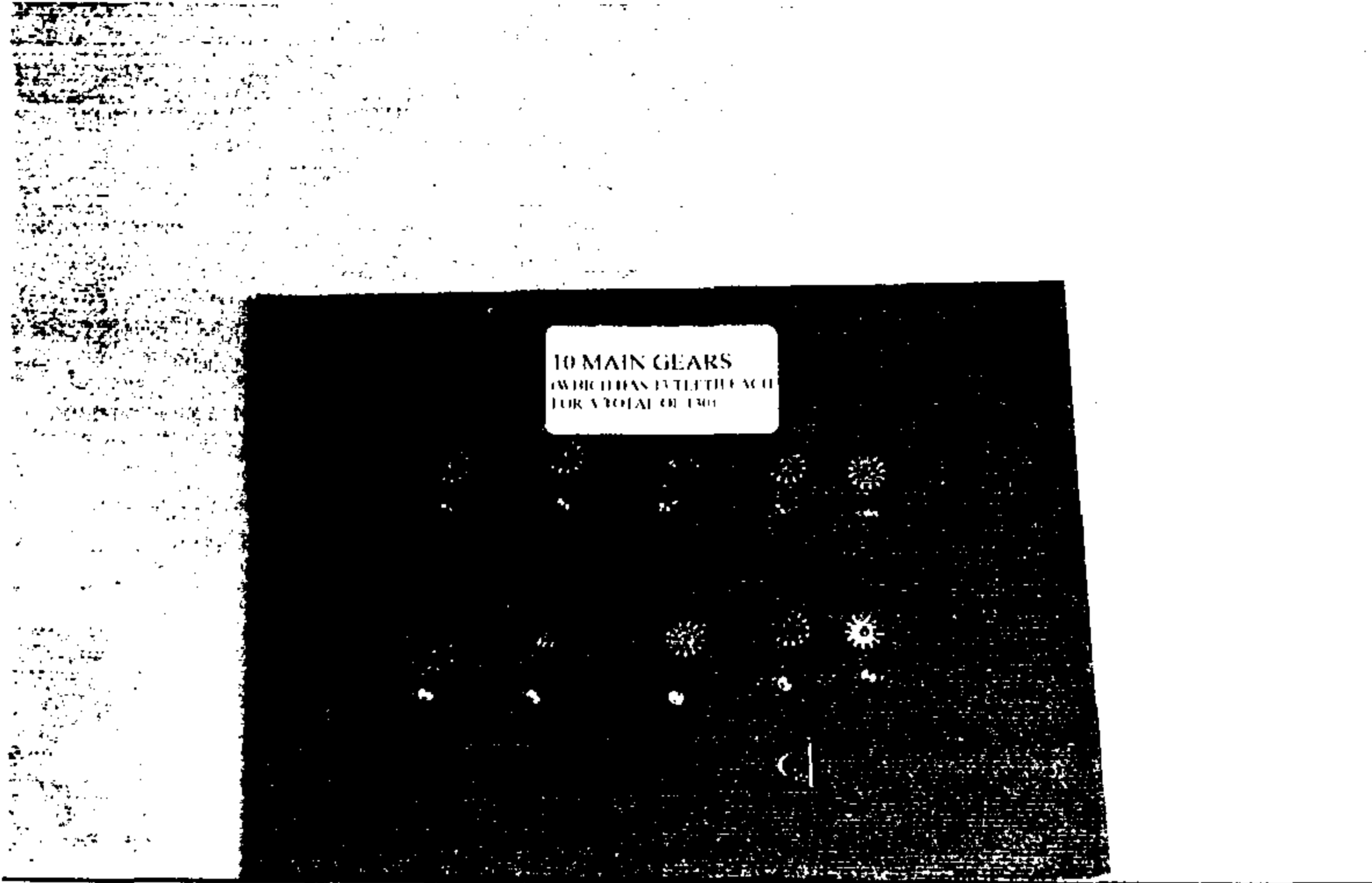
TRANSFER GEARS



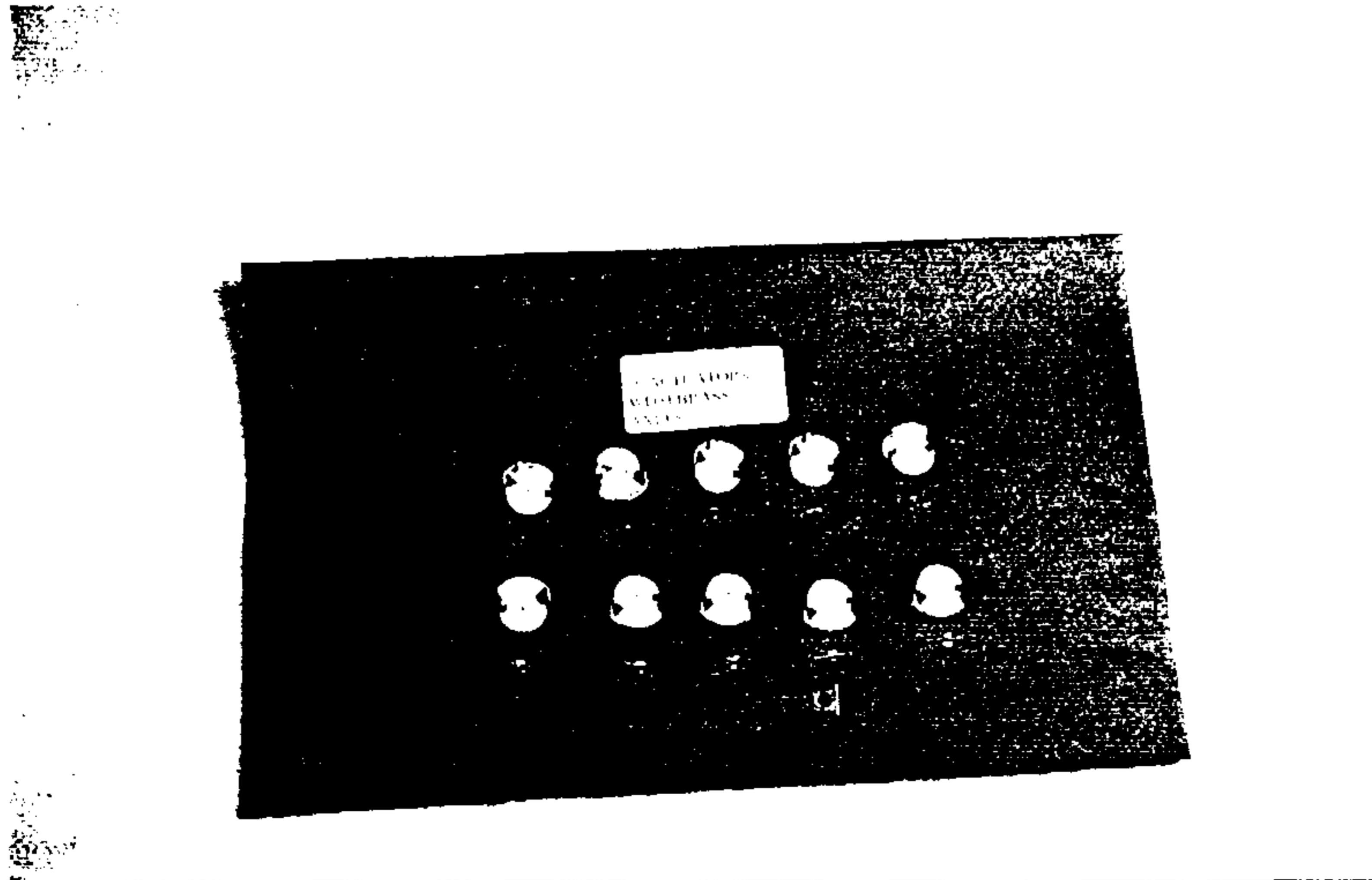
PINION GEARS AND PINION AXLES



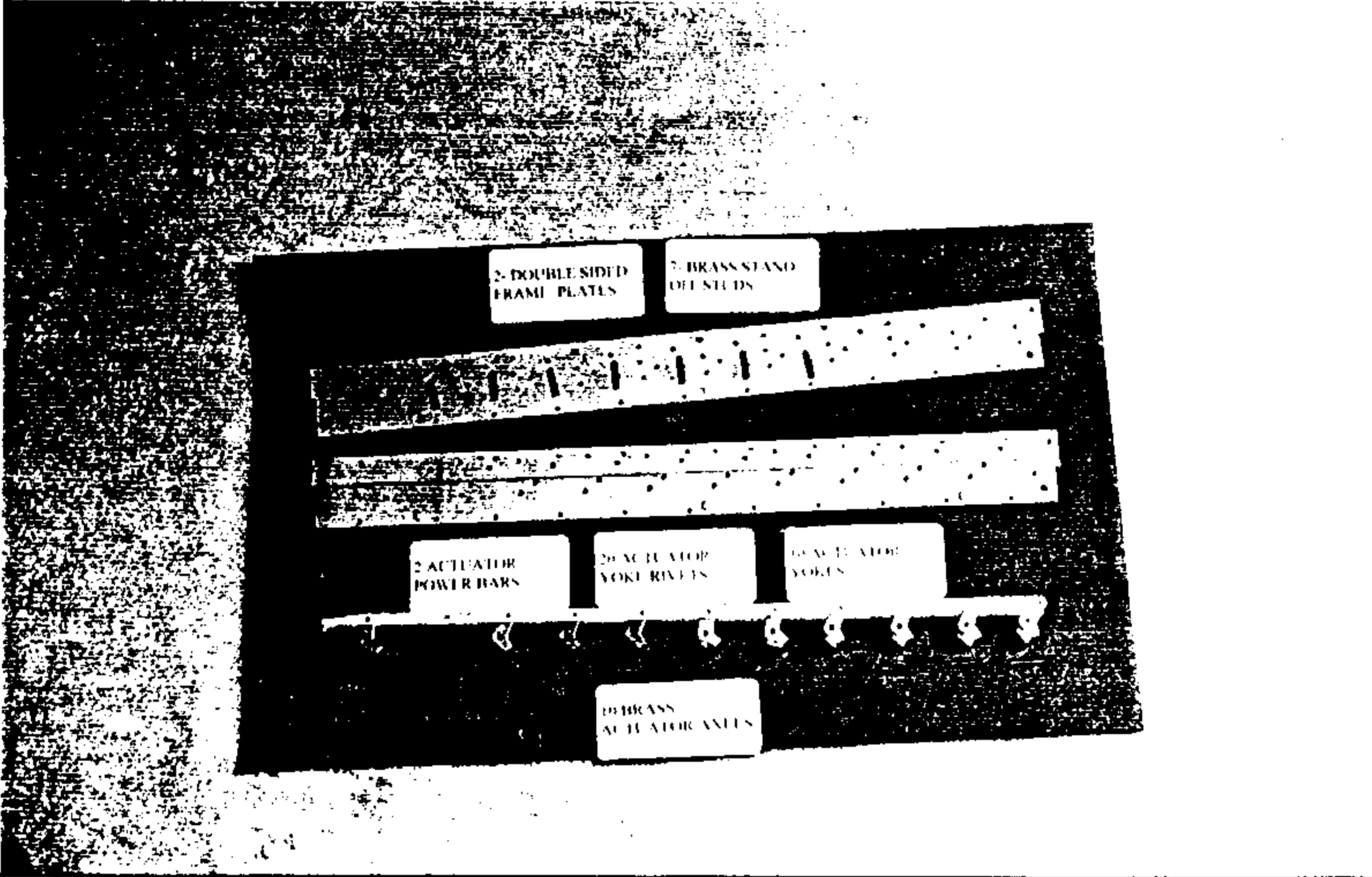
MAIN GEARS



ACTUATORS AND AXLES



FRAME AND ACTUATOR YOKE ASSEMBLY



Attachment III
Legal Provisions

1

Legal Provisions

The following legal citations are referred to in the Finding and Recommendation section of this report:

R.S. 18:1362 provides, in part, all voting machines used in this state shall be purchased by the commissioner of elections on the basis of public bids submitted to the commissioner of elections in accordance with specifications prepared by him. Advertisement and letting of contracts for the purchase of voting machines shall be in accordance with the Louisiana Procurement Code contained in Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950.

R.S. 39:1597, Sole Source Procurement, provides that a contract may be awarded for a required supply, service, or major repair without competition when, under regulations, the chief procurement officer or his designee above the level of procurement officer determines in writing that there is only one source for the required supply, service, or major repair item.

R.S. 42:1461 provides that officials, whether elected or appointed and whether compensated or not, and employees of any "public entity," which, for purposes of this Section shall mean and include any department, division, office, board, agency, commission, or other organizational unit of any of the three branches of state government or of any parish, municipality, school board or district, court of limited jurisdiction, or other political subdivision or district, or the office of any sheriff, district attorney, coroner, or clerk of court, by the act of accepting such office or employment assume a personal obligation not to misappropriate, misapply, convert, misuse, or otherwise wrongfully take any funds, property, or other thing of value belonging to or under the custody or control of the public entity in which they hold office or are employed.

R.S. 14:118(A) provides that public bribery is the giving or offering to give, directly or indirectly, anything of apparent present or prospective value to any public officer, public employee, or person in a position of public authority with the intent to influence his conduct in relation to his position, employment, or duty. The acceptance of, or the offer to accept, directly or indirectly, anything of apparent present or prospective value, under such circumstances, by any public officer, public employee, or person in a position of public authority shall also constitute public bribery.

R.S. 14:134 provides, in part, that malfeasance in office is committed when any public officer or public employee shall:

- (1) intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
- (2) intentionally perform any such duty in an unlawful manner; or
- (3) knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner.

Any duty lawfully required of a public officer or public employee when delegated by him to a public officer or public employee shall be deemed to be a lawful duty of such public officer or employee. The delegation of such lawful duty shall not relieve the public officer or employee of his lawful duty.

R.S. 14:141 (A) For the purposes of this section, splitting of profits, fees or commissions means the giving, offering to give, receiving or offering to receive, directly or indirectly, anything of apparent present or prospective value by or to a public officer or public employee or to any fund or fiduciary existing for the benefit of or use by such public officer or employee, when such value is derived from any agreement or contract to which the state or any subdivision thereof is a party.

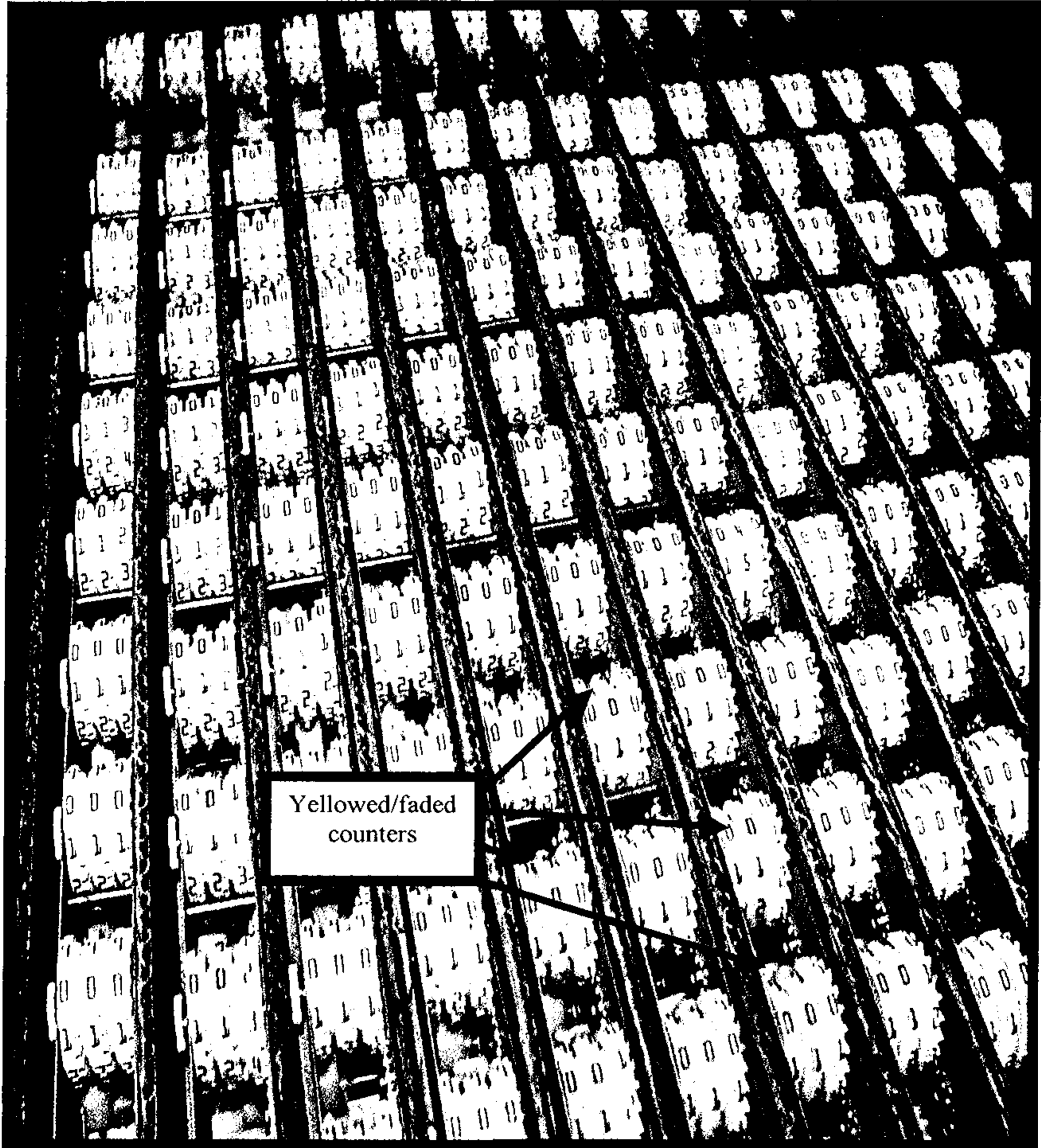
R.S. 14:230, Money Laundering, provides that it is unlawful for any person knowingly to do any of the following:

- (1) Conduct, supervise, or facilitate a financial transaction involving proceeds known to be derived from criminal activity, when the transaction is designed in whole or in part to conceal or disguise the nature, location, source, ownership, or the control of proceeds known to be derived from such violation or to avoid a transaction reporting requirement under state or federal law.
- (2) Give, sell, transfer, trade, invest, conceal, transport, maintain an interest in, or otherwise make available anything of value known to be for the purpose of committing or furthering the commission of any criminal activity.
- (3) Direct, plan, organize, initiate, finance, manage, supervise, or facilitate the transportation or transfer of proceeds known to be derived from any violation of criminal activity.
- (4) Receive or acquire proceeds derived from any violation of criminal activity, or knowingly or intentionally engage in any transaction that the person knows involves proceeds from any such violations.

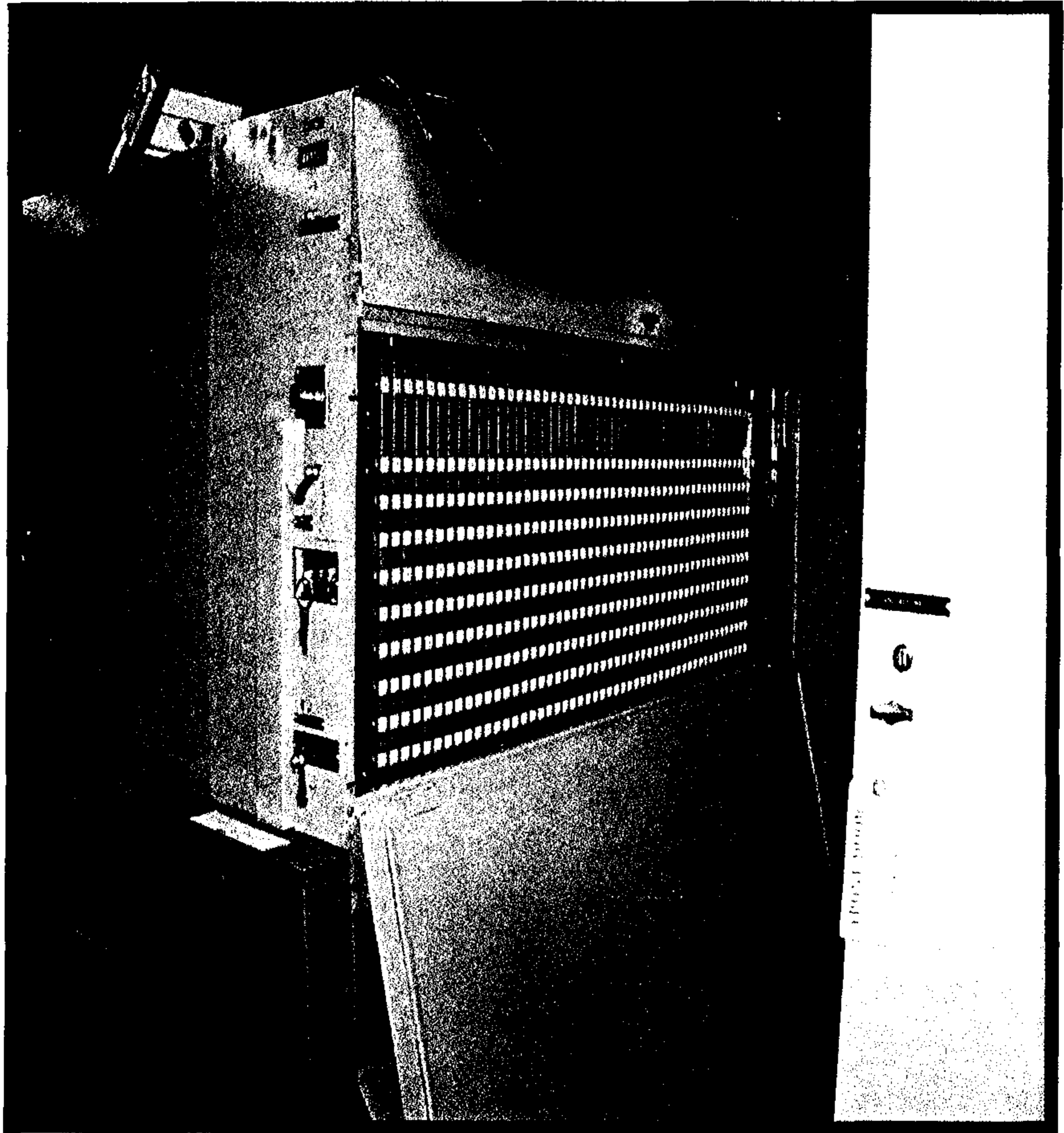
- (5) Acquire or maintain an interest in, receive, conceal, possess, transfer, or transport the proceeds of criminal activity.
- (6) Invest, expend, or receive, or offer to invest, expend, or receive, the proceeds of criminal activity.

Attachment IV

Photos



Box of refurbished counters purchased by the department. Picture shows that refurbished counters include some that are yellowed/faded.



Rear of AVM 50-column voting machine showing candidate counters.