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SUSAN J. ADLER
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July 14, 2008

Attorney General, Terry Goddard

Via Fax - (602) 542-4085

Arizona Attorney General
1275 W. Washington
Phoenix, AZ 85701

Dear Mr. Goddard:

I sent you a short letter on July 9th, 2008, together with Mr. Zbigniew Osmolski's Affidavit.¹ I will be out of the County from July 15 through the end of the month. Accompanying this letter are various materials that may help you to better understand the nature of the allegations and more fully understand the past investigation by your office staff.

At the beginning of the database lawsuit, the Pima County Democratic Party, and I personally, had confidence in your Office's integrity. Additionally, I was sensitive to political currents. That is why I informally told Jim Walsh what we were finding out in our lawsuit against the Pima County Board of Supervisors. It was a "heads up" conversation relating to him that we were acquiring evidence suggestive of criminal activity but not enough in my opinion at that point for your office to open an investigation and none was requested.

Later, attorneys for the Board of Supervisors forcefully suggested that I was obligated to make a criminal complaint if I believed crimes had occurred. At that point, I made an appointment with John Evans of your Office who agreed to open an investigation. The "suspects" were listed on your office form as the "Pima County Election Division."²

The Pima County Democratic Party offered technical expertise.³ Your office chose not to accept our technical expertise and we did not complain then nor do we complain now about that decision as your office can investigate in the manner that you choose.

I subsequently had a conversation with Mr. Evans in which I asked him what our role was in the investigation. He said it was a "one way street in which he could not give me information but he could receive information from us." I then gave him the names of two witnesses including Robbie Evans, Jr., who for four years was the computer assistant to Bryan Crane. I explained that Mr. Evans, Jr. would testify that Mr. Crane regularly printed unofficial tallies or summary reports of actual votes before election day. Your Office investigators chose not to interview that witness, even though they knew his testimony would contradict Mr. Cranes' prior testimony. Instead your investigators accepted Mr. Crane's fourth different under oath story without comparison with the prior explanations nor did they question any contradictory witnesses.⁴

During a subsequent conversation with Mr. Evans, I learned that your offices' report from iBeta would be provided

¹ Affidavit of Mr. Zbigniew Osmolski in part 2, page 30 or http://www.electiondefensealliance.org/files/Osmolski_Affidavit.pdf

² AG Case Opening Sheet in part 2, pages 2-3.

³ Risner letter to John R. Evans, Esq. dated June 18, 2007 in part 2, pages 7-11.

⁴ Link to videos from trial testimony of Robbie Evans, Jr. <http://video.google.com/videoplay?docid=3065842076090526996>, testimony of Chester Crowley <http://video.google.com/videoplay?docid=-8269488968037938855> and trial testimony of Isabel Araiza (20 years with Pima Election Department) <http://video.google.com/videoplay?docid=5509349780776531096>

to the suspects, but a copy would not be provided to the Democratic Party, although Mr. Evans concluded the report would be a public record, he said he would require us to retain a copy from the County suspects. I have attached several of the letters that I subsequently sent to John Evans.⁵

I am sure you are now aware that your office joined with the suspects in a joint study, permitted the suspects to direct the investigation and gave them a copy of the investigative report before conducting any interviews.⁶ Before commenting on the iBeta report, I would like to review the background of the decision to proceed in that manner. Mr. Evans had initially contacted Michael Shamos, a nationally known voting systems expert at Carnegie Mellon University. Mr. Evans and Mr. Shamos' e-mails are attached.⁷ Mr. Shamos immediately recommended the ballots themselves be examined as he said: "Ultimately the proof of the pudding is in the ballots." "My suggestion would be to re-tabulate from the original records."⁸ This should tell us very quickly whether the GEMS results were fudged. What is the difficulty with this approach?" Indeed!
Mr. Evans response was:

"As for the white wash, I would agree with you but the party to the civil law suit that discovered this problem is very much on board. They want the data base to be looked at and they have approved the scope of the project. The most vocal local naysayers have bought into this process."⁹

Mr. Evans was completely wrong. We had not "bought into this process." He insisted on this process. Nevertheless, Michael Duniho, on behalf of the Democratic Party, strongly suggested that the ballots he examined. Mr. Duniho recalls a heated exchange with Mr. Evans.

Our deference to your office's integrity at that point should not be characterized as being "on board" Mr. Evans' flawed process.

Mr. Evans' e-mail also contained this important reference to the "issue to be investigated."

"Regarding your questions, the initial issue is about the absentee ballots that were run before the joint summary report. The next question is whether after the summary report there was a flip of the fields. So the accuracy of the absentee ballots is questioned and the accuracy of the subsequent ballots may be an issue."¹⁰

The evidence to resolve that key question was already available to the Attorney General. A.R.S. § 16-445 required Pima County to send "at least ten days before the date of the "RTA election" a copy of the ballot layout. In other words, the position of how the computer would read "yes" and "no" votes was on file. If the computer had later been instructed to read those votes reversed or "flipped" so that "no" votes would count as "yes" votes the computer data could easily have been compared with the data on file with the Secretary of State.

A.R.S. § 16-445D specifically provides that the data on file "shall be used by the Secretary of State or Attorney General to preclude fraud. . ." ¹¹

⁵ Exchange of letters between Risner and Evans dated Aug 6-Sep 13, 2007 in part 2, pages 15-29.

⁶ Risner letter to Evans dated Aug 6, 2007 referring to earlier conversation, in part 2, page 15.

⁷ Email exchange between Evans and Shamos dated Jun 27-28, 2007 in part 2, pages 4-6.

⁸ Shamos emails to Evans dated Jun 27-28, 2007 in part 2, pages 4-5.

⁹ Evans email to Shamos dated Jun 28, 2007 in part 2, page 4.

¹⁰ Evans email to Shamos dated Jun 28, 2007 in part 2, page 4.

In other words, the entire purpose of that data was for it to be examined in a fraud investigation by the Attorney General. Your office did conduct a fraud investigation where that evidence would have provided the answer, but it was neither used nor requested by your office.

Furthermore, your office actively attempted to obstruct the Democratic Party's attempt to find that evidence, when the Democratic Party scheduled a deposition of the Secretary of State's office. Your office filed a Motion for a Protective Order asking the trial court judge to prevent us from learning the whereabouts of that evidence. We ultimately prevailed over your office's objection and learned it had been mailed back to Pima County where Brad Nelson personally handed the critical evidence to Bryan Crane, and it has not been seen since. The Arizona State Election Director, Joseph Kanefield, testified that the Secretary of State's office was aware of the criminal investigation having been informed by your office.¹²

As for the iBeta "investigation" jointly conducted by the suspects and your office, it is clear to us that the investigation was steered by the suspects down blind alleys.¹³ The statement of work written by iBeta contained no reference to either swapping ID codes or replacing a database with one modified on another computer.¹⁴ During the investigation, the suspects' technical defense person, John Moffat, suggested the investigative contractor engineer look at the Preferences table in the database to see if the programming had changed, and also to back each batch of early ballots scanned out of the database to see if vote totals had been changed. But the simplest manipulation of the election database, swapping the codes that identified the Yes and No votes, would have been done in the Candidate tab and swapping the codes would not have changed any vote totals – it would have merely reassigned the votes. Needless to say, the investigative contractor engineer found no conclusive evidence of tampering – either because it did not know where to look or because he carefully avoided looking where tampering was likely to have occurred.¹⁵

The iBeta report discusses five "tests." Test 1 produces no useful information. Test 2 did turn up what appeared to be evidence of "tampering," but the company accepted John Moffat's explanation. Test 3 confirmed "five copies" of the test target file were identical. This was not a useful conclusion as the key issue was data that had been erased. Test 4 was a test "prepared" by John Moffat concerning the "Preference table." I have previously noted the uselessness of that test. Test 5 was also "prepared" by John Moffat, and again, was a test not directed toward the allegations. That test was whether votes had been externally added which has never been an allegation.¹⁶

John Moffat is paid \$184,000 per year by the County for a 30 hour week. He works part-time, so he can continue to run a separate company he owns.¹⁷ He reports directly to Charles Huckelberry on an "oral" basis only. Since competent evidence, such as the Osmolski Affidavit, quotes Bryan Crane as saying that he was told to fix the election by his bosses, it is clear that County management has a potential motive to obstruct an investigation.¹⁸ An assessment of John Moffat's role in your investigation, and in the civil case, indicates that his role has been to prevent an examination of past election practices. At a recent meeting of the Pima County Board of Supervisors, John Brakey reported that John Moffat said he would cooperate with the Democratic Party in the future if we would agree not to look into the past.¹⁹

¹¹ Full text of ARS 16-445 in part 2, page 1.

¹² Video testimony March -- 2008

¹³ Email exchange between Evans and Moffatt dated Aug 9-10, 2007 in part 2, pages 38-40.

¹⁴ iBeta report in part 2, pages 32-33.

¹⁵ iBeta report in part 2, pages 31-35.

¹⁶ iBeta report in part 2, pages 32-35 (original copy without Mr. Brakey and Mr. March's notes: http://www.electiondefensealliance.org/files/iBeta_Election_Forensic_Report_Pima_Co.pdf

¹⁷ Moffatt testimony at trial: <http://video.google.com/videoplay?docid=9173871560399643488>

¹⁸ Osmolski affidavit in part 2, page 30 or http://www.electiondefensealliance.org/files/Osmolski_Affidavit.pdf

¹⁹ Brakey and March confirm that this was suggested several times.

A press report this week quoted Bryan Crane as saying he had to look up on a map where the Boondocks Bar was located.²⁰ However he got there, he was seen that evening by another available witness who knows Mr. Crane. Mr. Osmolski related his conversation with Mr. Crane to four separate people at the bar that evening.

The truthfulness of Mr. Crane's confession can readily be determined by examining the ballots. As noted by Michael Shamos, the proof is in the ballots. The likelihood that the RTA election was fraudulent can also be inferred from the totality of the circumstantial evidence. The circumstantial evidence is strong. I have already mentioned that Mr. Crane received from Mr. Nelson the RTA pre-election tape sent to the Secretary of State's office pursuant to A.R.S. §16-445. The box delivered by Mr. Nelson contained several tapes but only the May 16, 2006, RTA tape has disappeared. An inference can be drawn from the disappearance of computer data that has the specific ability to prove the crime by contradicting saved data.²¹

The motive of the "bosses" could not be clearer. The proposal that a sales tax be approved for roads was defeated on some four prior occasions. The May, 2006, proposals were unanimously endorsed by all five supervisors. Supervisor Valadez was the RTA Chairman.²²

Months before the RTA election, the Board of Supervisors hired James Barry, a Special Assistant County Manager, to work under the direction of Chuck Huckelberry, and develop a computer database of all previous County board elections by precinct to determine precinct by precinct voting patterns. Mr. Barry's contract began the day after his retirement from the County. Mr. Barry was paid \$75,000 for that work. At the same time, Mr. Barry received approximately \$12,000 from the RTA Yes Committee for "consulting."²³

The RTA was said to have passed by a surprisingly large margin. Yet the RTA Yes group was privately claiming in the weeks leading up to the election that their tracking polls showed the measure likely to lose.

A Microsoft access manual was seen and photographed in the vote tabulation room on election night.²⁴ Use of MS access on an election computer was and is illegal.²⁵

The Chair of the Pima County Democratic Party requested days after the RTA election day for a party consultant to enter the tabulation room accompanied by Election Director Brad Nelson for the sole purpose of looking at the cables attached to the election computer. The request to enter the vacant room to see if another computer might have been connected to the election server was denied. This request occurred while all parties were present in a room next to the vacant room.

Chester Crowley, an election department employee, testified at trial that the election computer had in the past been connected to Bryan Cranes' computer in his office and he believed Mr. Crane had printed unofficial tallies on his office printer directly from the election computer.²⁶

Mr. Crane's assistant for some four years, Robbie Evans, Jr., testified that Mr. Crane regularly took home during elections a compact disc (CD) of election data.²⁷ Isabel Araiza, perhaps the election division's senior employee and the office manager prior to Brad Nelson being hired, testified that she had discussed with Brad Nelson the

²⁰ Tucson Citizen article dated July 9, 2008 <http://www.tucsoncitizen.com/ss/transportation/90624.php>.

²¹ Nelson trial testimony <http://video.google.com/videoplay?docid=6207109568642429330> and Tucson Citizen articles dated Dec 6, 2007 <http://www.tucsoncitizen.com/daily/frontpage/70793.php> and Dec 15, 2007.

²² http://www.rtamobility.com/index.php?option=com_content&task=view&id=345&Itemid=120

²³ Barry trial testimony <http://video.google.com/videoplay?docid=1282511168148207359>.

²⁴ Photos in part 2, page 41.

²⁵ http://www.azsos.gov/election/Electronic_Voting_System/2007/Manual.pdf, page 89 and Arizona revised Statute (ARS 16-442 no unauthorized software to be on central tabulator) also see letter to SoS Jan Brewer http://www.pimadems.org/votingreport/brewer_letter.htm

²⁶ Crowley testimony at trial <http://video.google.com/videoplay?docid=-8269488968037938855>

²⁷ Evans testimony at trial <http://video.google.com/videoplay?docid=3065842076090526996>

security problem of Bryan Crane taking election data home with him during live elections.²⁸ Mr. Nelson did not object to the practice and did not instruct Mr. Crane to cease that practice. The GEMS system has a well-known security defect known as “the back door” whereby data can be changed using Microsoft Access without knowing or using a password.²⁹ The GEMS audit log is not separate from the data itself. That means that election data can be changed and then the audit log itself can be amended to erase any history of the changes having been made.

The audit log for the RTA election shows evidence consistent with just that kind of manipulation and inconsistent with the normal operation of the GEMS software.³⁰ Since Bryan Crane operated the GEMS software for ten years before the RTA election his normal style is known.

The May 10, 2006, audit logs demonstrate the normal operation of the ballot counting. On that day, election employees counted more than 13,000 early ballots over a four hour period. The vote total data from those ballots was backed-up and labeled as Day 1 back-up. If a CD of the election data had been made, it would not have shown on the audit log. Testimony has confirmed that the making of a backup CD was his normal practice.³¹

The number of persons who could observe inside the counting room was severely restricted in the months just prior to the RTA election. Brad Nelson radically changed prior procedures so as to prohibit employees that previously had access to the counting room from doing so during the RTA election.³²

Bryan Crane was quite familiar with the ability of the GEMS system to export data and manipulate it off line. He had done so in 1996 at the instructions of Chuck Huckelberry. During one of Mr. Crane’s depositions, I asked him about 1996 at which point the County Attorney’s Office stopped the deposition and attempted to reach the trial judge to prevent any questions about that off line activity.³³ The deposition continued only when I agreed to not ask any questions at that time about 1996.³⁴

The audit log of May 11, 2006, shows that thirty-three seconds after the election computer was opened that morning, Bryan Crane created a second “Day 1 backup” and erased the prior day’s data, replacing it with a new “Day 1 backup.” This action would be similar to your experienced secretary backing up a brief she was preparing for you before going home and then seconds after coming to work the next day again “backing-up” the brief when no additional charges had been made. Such an event is highly unlikely. Bryan Crane’s normal practices are known. The audit logs show that he backed up vote totals only after ballots were counted.³⁵ Precisely what one would expect.

At his deposition, Mr. Crane had no explanation for the new Day 1 backup nor for the two separate unofficial tallies did he print thereafter. At trial, he was questioned by Deputy Pima County Attorney Chris Straub and explained that the writing over of the data had been a “slip of the finger on the mouse.”³⁶ That explanation cannot be true, however. That is because the overwriting and destruction of the day one data required responding to two warning messages, one from GEMS and one from Windows.³⁷ A box would have appeared on his screen that said a day one backup already existed and did he really want to wipe out that file and create another one with the

²⁸ Araiza testimony at trial <http://video.google.com/videoplay?docid=5509349780776531096>

²⁹ New York Times article dated May 12, 2006 <http://www.nytimes.com/2006/05/12/us/12vote.html?partner=rssnyt&emc=rss> “David Bear, a spokesman for Diebold Election Systems, said the potential risk existed because the company’s technicians had intentionally built the machines in such a way that election officials would be able to update their systems in years ahead.”

³⁰ Tucson Citizen article dated Jun 7, 2007 <http://www.tucsoncitizen.com/daily/opinion/53903>.

³¹ Araiza testimony at trial <http://video.google.com/videoplay?docid=5509349780776531096>

³² Araiza testimony trial <http://video.google.com/videoplay?docid=5509349780776531096>

³³ YouTube video; Clip 1 of 2: <http://ca.youtube.com/watch?v=yfPGU4LjN94>, Pima County has known about the backdoor since 1996.

³⁴ YouTube video; Clip 2 of 2: <http://ca.youtube.com/watch?v=QzyxQszono0>

³⁵ Tucson Citizen article dated Jun 6, 2007: <http://www.tucsoncitizen.com/daily/opinion/53903>

³⁶ Crane testimony at trial: <http://video.google.com/videoplay?docid=7304338799617243809>

³⁷ Tucson Citizen editorial: <http://www.tucsoncitizen.com/daily/opinion/53903>.

same name. Such a sequence from a ten-year veteran of that system is unlikely in the extreme.

What the audit log evidence is consistent with is the re-insertion of a new data with reversed data. If Mr. Crane had taken home a CD of the election data he could have examined that data at home and reversed the votes of no to yes. That simple change would then cause GEMS to automatically make multiple changes. For instance, the computer would automatically change all four hundred or so precinct totals to match the new reversed count. Additionally, the computer would count all future No votes as Yes votes as its instructions would have been changed. As previously noted, this sort of election fraud is precisely why the ballot data was filed pursuant to A.R.S. §16-445 for the use of your office in a fraud investigation.

At the end of each election day, the data was normally backed up on the computer. One would expect that such a backup would be made since if it is wise to back up each day's counting of early ballots. It would certainly be wise to back up data from each precinct that came in after the close of the polls. And that is the normal pattern. Before the election staff goes home on election night the audit logs show that a backup is made of that data.

Except for the RTA. For the RTA, such a backup was not made. This failure is a very significant departure from normal practice and suggestive that vote total manipulation was occurring off line. The data was not backed up "until three days later," after the results had been published.

In any sophisticated computer crime, the variance from normal patterns offers clues as to what has occurred. Those clues are referred to as "badges of fraud" in the case law.

In the database lawsuit filed by the Pima County Democratic Party, the Board of Supervisors' lawyers filed a pleading stating that they could not adequately defend the lawsuit because of the substantial risk that every employee who operated the Pima County Election computer would assert his or her Fifth Amendment privilege not be incriminate themselves. Such a written confession by the County's lawyers is unprecedented to my knowledge in this country.

Neither that admission nor any other admission of violation of rules, criminal laws or good practices has resulted in any inquiries by County management or even a reprimand of any election department employee. John Moffat testified that he had been instructed by the County's lawyers not to ask questions of Mr. Crane about violations of law relating to the printing of summary reports.³⁸

Joe Kanefield testified that he assumed the county had itself examined such allegations as would any organization or company. His assumption is the same as ours. Therefore, the total organizational failure to do so speaks volumes to the necessity of an outside review and clearly suggests that the management of the organization is complicit. In other words, it supports Mr. Crane's statement to Mr. Osmolski that he fixed the RTA election on the instructions of his bosses.

Ten months prior to the RTA, the Pima County Election Division, at the request of Bryan Crane, purchased a "crop scanner," a read-write device that is a computer hacking tool. That tool has no other purpose than to illegally alter the programming of precinct voting machines.³⁹ Actually, it does have a legal use, but I am certain the election division was not using it to know when to irrigate their crops.

The Pima County Democratic Party's election integrity Committee has an unusual number of individuals with extensive computer and election computer expertise. Dr. Tom Ryan, PhD. is a retired computer engineer who has been studying computer election issues for several years. The Pima County Democratic Party adopted a report

³⁸ Moffat testimony at trial <http://video.google.com/videoplay?docid=9173871560399643488>

³⁹ Crop Scanner purchase invoice in part 2, page 42, also has link to video on how to stuff votes on Diebold Memory Card for Accu-vote precinct's optical scanner

he wrote in April 2003 concerning election computer problems.⁴⁰ James March is a member of the Board of Directors of Black Box Voting, a National Organization of citizen election reform advocates. He was one of the first computer technicians to examine the Diebold GEMS software. He has been consulting with the Democratic Party on election security issues.

Michael Duniho (“Mickey”) has retired to Tucson from a career with the National Security Agency where he was one of fifty “master programmers.” He has spent innumerable hours learning election and ballot processing procedures. John Brakey, another computer expert, is self-taught, but has an excellent grasp of the GEMS system and its potential use in fixing an election.

All those informed individuals are in agreement that sufficient questions exist to merit a hand count of the RTA ballots.

All of our freedoms in the United States are ultimately guaranteed at the ballot box. Anything less than an honest count of ballots is a crime that strikes at the heart of our Democratic system.

All of us who have been active on issues related to election security believe that the ballots for the RTA must be preserved and counted. Only you, as Arizona’s Attorney General, can take control of the ballots as potential evidence of a crime and count them.

Our community, your political party, and our core freedoms, will be protected only if you act to determine whether a major crime has occurred against the Democratic process. The issue is not the fallout of that crime but whether the crime has occurred.

Pima County management now asserts that they want the RTA ballots preserved, but they want a judge to tell the Pima County Treasurer what to do with the ballots. The ballots can be preserved and counted only if Arizona’s Attorney General does the job he is required to do.

The obligation to determine if a crime has occurred is not for the Democratic Party. The political party is not a prosecutorial agency. It has been involved in order to preserve its core role of election observation. The prosecutor’s role is yours. Whether or not a crime has occurred can be simply and definitively determined through an examination of the ballots. We ask for you to personally direct that the current investigation be conducted in such a manner as to arrive at an answer that the people of Pima County can accept.

Very truly yours,

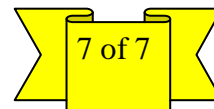
RISNER & GRAHAM

William J. Risner

WJR/et

Enclosure

Part 2: Documents supporting Bill Risner’s argument in letter of July 14, 2008 are below (JB)



⁴⁰ Links to the report that Tom Ryan PhD authored in 2003 on the Pima County’s Diebold system <http://www.pimadems.org/votingreport/votingintegrity.htm>

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PARALEGALS
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July 14, 2008

Subject: Part 2 Exhibits to letter to Terry Goddard; Attorney General of Arizona,
Total pages 45

16-445. Filing of computer election programs with secretary of state

- A. For any state, county, school district, special district, city or town election, including primary elections, utilizing vote tabulating devices as provided in this article, there shall be filed with the secretary of state at least ten days before the date of the election a copy of each computer program for each election. The secretary of state shall hold all computer program software filed pursuant to this section in escrow for three years. The secretary of state shall securely destroy the software filed pursuant to this section on the expiration of the three year period.
- B. A copy of any subsequent revision of the computer program shall be filed in the same manner within forty-eight hours following the revision.
- C. Any tape or disc used in the programming or operation of a vote tabulating device upon which votes are counted and any tape used in compiling vote totals shall be kept under lock and seal, and if there is a retally of votes, the officer entrusted with the tapes or discs shall submit his affidavit stating that they are the tapes or discs, or both, used in the election and have not been altered.
- D. All materials submitted to the secretary of state shall be used by the secretary of state or attorney general to preclude fraud or any unlawful act under the laws of this title and title 19 and shall not be disclosed or used for any other purpose.
- E. Each program tape or disc or any other material submitted to the secretary of state shall be returned to the county, city or town within six months after the close of the election for which it was submitted except:
1. When a court ordered recount is pending.
 2. When a restraining order is in effect.
 3. When any other legal action is pending.

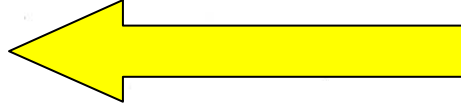
CASE OPENING SHEET

Investigation: T002-2007-000044 SECTION # GJ# CR #
UNIT CODE: TUC

Date Case Recd: 5/29/07

LIST ALL SUSPECTS NAMES, BUSINESS (including full name, aka, dba, etc.)

PIMA COUNTY ELECTIONS DIVISION



CHARGES:

SPECIFIC FACTUAL ALLEGATIONS (including suspected offenses and dates)
Corruption investigation

STATUTE OF LIMITATION RUNS? 2013

ESTIMATED LOSS: \$ ESTIMATED ASSET RECOVERY \$

ESTIMATED NUMBER OF VICTIMS:

ASSIGNED INVESTIGATOR/AGENCY: Unassigned DR #

ASSIGNED TO SECTION:

DATE CHARGES FILED: _____

NEXT COURT DATE:

APPROVED: _____

(Section Chief)

UNIT CHIEF INITIALS: _____

DATE

5/31/07

APPROVED: _____

(Division Chief)

DATE

8 7/19/07

ASSIGNED TO: John R. Evans

DATE _____

Name Search Done by: _____

DATE _____

CASE CATEGORY
(Check One Only)

FOR STATISTICAL TRACKING ONLY

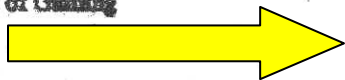
(1) FINANCIAL CRIMES:

- | | |
|---|---|
| <input type="checkbox"/> (A) Investment Fraud | <input type="checkbox"/> (E) Embezzlement |
| <input type="checkbox"/> (B) Bank and Credit Card Fraud | <input type="checkbox"/> (F) Real Estate |
| <input type="checkbox"/> (C) Telemarketing | <input type="checkbox"/> (G) Consumer Fraud |
| <input type="checkbox"/> (D) Insurance Fraud | |

(2) CRIMES INVOLVING STATE AGENCIES

(Victim is a State Agency or People of the State of Arizona)

- | | |
|--|---|
| <input type="checkbox"/> (H) Department of Revenue | <input type="checkbox"/> (K) Registrar of Contractors |
| <input type="checkbox"/> (I) State Compensation Fund | <input type="checkbox"/> (L) AHCOCs Unit Code: _____ |
| <input type="checkbox"/> (J) Department of Gaming | Date Investigation Received _____ |
| | <input checked="" type="checkbox"/> (M) Other: (Specify)
Pima County Elections
Division |



(3) CRIMES AGAINST THE ELDERLY:

- | | |
|---|---|
| <input type="checkbox"/> (N) Financial Exploitation | <input type="checkbox"/> (O) Physical Abuse |
|---|---|

- (4) (P) SCHOOL/EDUCATION CASES
- (5) (Q) CRIMES INVOLVING ALL OTHER GOVERNMENTAL ENTITIES AND EMPLOYEES
- (6) (R) HIGH TECHNOLOGY CRIMES
- (7) (S) POST CONVICTION MATTER: (Specify type) _____
- (8) (T) DEPORTATION/EXTRADITION/ARTICLE 4/VIOLENT CRIME
FOREIGN PROSECUTION MATTERS
- (9) (U) IDENTITY THEFT
- (10) (V) ENVIRONMENTAL CRIMES
- (11) DRUG/GANG/FORFEITURE CASES
 - (W) MARICOPA HIDTA/PROVISIONAL HIDTA
 - (X) Other Drug Related Cases (non-meth)
 - (Y) DRUG ENDANGERED CHILDREN
 - (Z) PHOENIX POLICE DEPT/COPS
 - (AA) GANG
 - (BB) FORFEITURE
- (12) (CC) SEXUALLY VIOLENT PREDATOR (SVP)
- (13) (DD) CONFLICT CASE
- (14) (EE) HUMAN SMUGGLING
- (15) OTHER: _____

From: John Evans
 To: Shamos, Michael
 Subject: Re: Pima County Elections issue

Thanks for your thoughts. We need to get this done in the next two months or at least well along, so we have to move on.

Regarding your questions, the initial issue is about the absentee ballots that were run before the first summary report. The next question is whether after the summary report there was a flip of the fields. So the accuracy of the absentee ballots is questioned and the accuracy of the subsequent ballots may be an issue.

? [

As for the white wash, I would agree with you but the party to the civil law suit that discovered this problem is very much on board. They want the data base to be looked at and they have approved the scope of the project. The most vocal local naysayers have bought into this process.

We were never onboard with NOT counting ballots. JB

Running the absentee ballots which were run by May 10 may be an option, but there has not been a confirmation that the ballots were saved in a way that will identify them. They are supposed to be so identified, but no one has confirmed this fact. Also there is no way to do things informally, because getting access to the ballots requires a court order which is not a quiet thing to do. In addition, we would still need to recreate the summary report that was run on May 10 through GEMS to make the comparison. There is a question whether that can be recreated on the back up machine or whether it is available on the machine that was reformatted.

If you have any other thoughts let me know. I appreciate your time. Thanks.

>>> "Michael Shamos" <shamos@cs.cmu.edu> 6/28/2007 4:54 PM >>>

Michael I. Shamos, Ph.D., J.D. Wrote:

I'm still puzzled. Is the alleged problem only with absentee or with everything? What systems were used for precinct and absentee? I can advise in this project but I won't have availability in the next two months to perform the functions listed below for the "consultant."

"Ultimately the proof of the pudding is in the Ballots"

→

My suspicion is that no review by the elections division or the state purporting to claim that no manipulation occurred or was possible will be accepted by naysayers and will instead be viewed as a whitewash. Ultimately the proof of the pudding is in the ballots. There may not be grounds yet for an official recount but would Arizona law forbid running the absentee ballots through again (unofficially) as a check on the machine? If no discrepancy is observed there, then there's not much more you would have to do. If there's a discrepancy of any significance it would help pinpoint where to look for manipulation.

John Evans wrote:

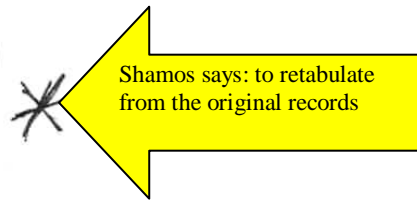
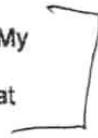
Summary report for May 10th was over written and destroyed. Than all database were move in July of 06 to a new computer, also destroying any ghost copies. John Brakey: See our notes on iBeta report below. If there were any copies of May 10th they were on the SoS Backup.

It was opscan for the most part. The retabulation may be necessary, but the question remains, what information was brought up by the summary report on May 10. If, for example, it showed the bond issue going down, then we look at where the information might have gone. Second issue is, was there any computer manipulation such as file flipping between or after the second summary report. The major focus is on the acts of the elections division computer people. If there is no evidence of any computer issues, then the recount, which requires, court orders, getting observers from both parties and hand counting processes will be unnecessary. More importantly, it will raise the confidence level in the process.

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"Michael Shamos" <shamos@cs.cmu.edu> (mailto:shamos@cs.cmu.edu) 6/27/2007 7:11 PM >>>

have a simple question. GEMS tabulates unofficial results from one or more original official ballots. How were the original votes on the bond issue cast? Opscan, DRE, both or other? (I see reference below to a "card count," by which I assume you mean opscan ballots.) My suggestion would be to retabulate from the original records. This should tell us very quickly whether the GEMS results were fudged. What is the difficulty with this approach?



John Evans wrote:

Dr. Shamos, Prof Dank Tokaji of the Ohio State Law School suggested you be contacted regarding a criminal investigation of an election using the Diebold GEMS system. This office is looking for an expert to evaluate the data base used to count a bond election for a Regional Transportation Authority in May, 2006. The controversy relates to the activities of one employee of the Pima County board of elections who ran two summary reports after 8K absentee ballots had been run but 10 days before the polls closed. The employee says he ran the report, but only printed the first page to get a card count. He doesn't remember now why he ran the second report. Since the RTA bonds passed with a surprising margin, there are allegations of manipulation of the data base. Because disseminating the summary report is a criminal violation, this matter was referred to the Attorney General's office of an investigation. To complicate the matter further the original computer had all its data copied to a new system, was reformatted and then stored. Mirror images of the present computer and the old computer are being made by computer forensic detectives on Thursday. The following scope of project has been developed by the various parties.

The scope of the project is the following:

Task 1: Forensic Examination of Storage Media

This will include the examination of an image of the hard drive used to tabulate the Pima County election results for the May 2006 RTA Election.

It is understood that that hard drive has been re-formatted and may offer limited information. Nonetheless, the hard drive will be examined to determine what, if any, information can be found relating to the events of May 10 where potentially suspicious activity has been questioned. The consultant shall attempt to recover data and shall present a report of any findings. Additionally, the consultant shall examine the contents of a hard drive image taken from a hard drive containing the database and related files from the May 2006 election. the consultant shall correlate data among those database files to determine whether the data is consistent with normal election practices.

The consultant shall then present a report of any findings and the procedures undertaken.

To support this effort, the OAG or its designate will provide a forensic image of the hard drives described in "dd" image format using sound forensic duplication practices. The OAG or its designate will also provide the installation media necessary to install the required software on a test machine that the consultant will supply. The test machine will be used to help the consultant engineers understand how and when files are generated by the software and for what purpose. Software

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documentation should also be provided to the consultant, which can be returned when the consultant work is complete.

Task 2: Vulnerability Assessment of Voting Tabulation Software Package

The consultant shall install and configure an instance of the voting tabulation software used by Pima County to determine whether someone could manipulate the results undetected. The consultant shall run simulated tabulations to determine what log files are created and what other artifacts are generated when loading results and running reports. The consultant shall then attempt to circumvent any logging or information generating functions and manipulate the vote totals contained in the database, change candidate IDs, and related actions. This includes complete replacement of a Microsoft Access database file manipulated elsewhere and copied onto the system. Any vulnerabilities found and steps undertaken shall be documented and included in a report.

The project would be financed by the State of Arizona and Pima County.

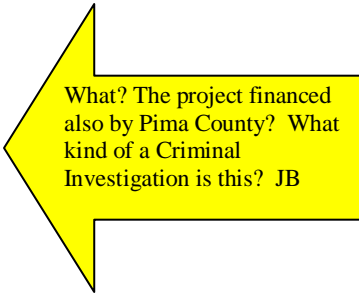
We would like to have this report by the end of August, if possible. The GEMS (1.18.24) is the version we will want to license for any consultant. Diebold has informed us that there would be no problem providing the necessary software for the a consultant hired under these circumstances.

Obviously there are many questions that must be resolved if you are interested in under taking the assignment, which would be best resolved through a phone conference.

Please let me know if you are able to consider this project. We are looking to make a consultant decision by July 6, 2007.

Thanks for your attention to this matter.

CC: crintern



What? The project financed also by Pima County? What kind of a Criminal Investigation is this? JB

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June 18, 2007

John R. Evans, Esq.
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400 West Congress Street, #S-315
Tucson, Arizona 85701-1367

Dear John:

Thank you for your prompt response to my inquiry about SAIC. We believe SAIC does not fit the profile you suggest of a neutral corporation with a reputation that would be helpful in resolving the issues in this investigation. Their suggestion of a "risk assessment" is not what is required.

If the goal is to determine whether the RTA election results were manipulated, we have a couple of suggestions. Your office is no doubt aware of the multiple security holes in the Diebold product line and, if not, I have attached four reports that deal with those issues. You may not be aware that Pima County purchased a "hack tool" known as a "cropscanner" that would enable them to tamper data before it goes into the central computer.

The Diebold precinct optical scan machines can be "electronically pre-stuffed." The Black Box Voting Report of July 4, 2005 by Harri Hursti which is attached discusses this possible method. While the memory card format in the Diebold precinct optical scanner is very obscure, a card reader sold by Cropscanner, Inc. can be used to program the memory cards and "pre-stuff" them electronically so that they will produce fake records of both the electronic vote and end-of-day tally tapes. After the publication of that report, Pima County bought one of the machines that would allow them to program the precinct memory cards. We strongly recommend that your office identify the purchase orders for this device, determine where it was stored and whether or not there were any access controls for it. This device is essentially a burglary tool for elections.

You should also note that per the BBV/Hursti report, falsifying the end-of-day precinct scanner printouts by way of hand-editing the memory card contents with a cropscanner is unusually difficult. See Appendix D of the report for what the programming looks like. It is very easy to introduce typos into the output and a pattern of such typos is cause for concern. If you then have GEMS generate the cards normally via the pre-election RTA database and

create paper tape output based on those, you will be able to determine if the typos are simply due to mistakes in configuring GEMS. If not, (in other words, if the GEMS-based output looks good), typos in the actual election tapes would be evidence of hand-edits.

We have a specific suggestion for an examination of the database relating to the RTA. Our suggestion for testing the central tabulator data files is as follows:

- 1) Write a program in Visual Basic that takes all versions of a particular election's MDB data files and produces reports as to which items in which tables have changed between iterations. In other words, for every election there is a Logic & Accuracy test beforehand, then various "snapshots" of the data as scanning progresses, then the final data file containing all votes, then the post-election L & A. Some of these will, of course, legitimately change (vote totals and audit log, maybe more) but other tables should remain identical throughout: candidate information and IDs, ballot layouts, ballot rotation information and much more. The small custom program would scan through all variations of the data and report variations by table, field and line number ("record"). A human could then check each variation and determine whether or not it's an indicator of fraud. Flipping candidate ID numbers is the single easiest hack and might be caught quickly with this process if the pre-election L&A wasn't faked or edited to match later.
- 2) In December of 2006, the Pima Democratic Party obtained a public record we will be happy to share with you: a complete directory listing of both central tabulator stations. These tell you the date/time stamps and file sizes for all the data files. When you obtain access to the same thing, compare with our December 2006 data. If file date/time/size numbers related to the RTA race have changed between 12/06 and present, it means somebody tampered with the files between those dates, probably to cover up prior misconduct. We will supply any declarations from our tech people needed to establish chain of custody on the 12/06 date/time/size data.
- 3) Find the paper results from the original pre-election and post-election L&A tests on file with the office. Take the L&A data files and run what their results should be (summary reports and cards cast reports). Compare the paper from that time period with the electronic results today. If somebody was a very careful hacker and tampered with the main data files, they'd go back and make the L&A data files match. But then the current versions of the L&A files won't match the old paper. If the old paper isn't available, the election configuration file (GEMS data file) is supposed to be recorded with Secretary of State Jan Brewer's office – you might try locating that file to determine if the county L&A data file was modified later to conform with hacking of the main vote tally data.

- 4) For each iteration of the data throughout the election that contains votes, print the "cards cast" report and build a line graph showing the progression of votes taken in. Then do the same for summary reports and graph the rising swing of each candidate over time. What you're looking for are instances of candidates "spiking" outside the normal pattern. They should progress upward fairly steadily. "Spikes" are cause for concern-look carefully at what people are doing in the elections office at the moment a "spike" happens. Do the same for other elections just to note what the patterns look like. In our experience, they vary by no more than a percent or two throughout the election.
- 5) Tally the results for the mail-in vote as compared to precinct voting. The methods available for tampering with votes varies between them. Significant disparities can be indicators of trouble, or at least a starting point for further digging. As one example: Mail-in votes are never stored on an optical scan memory card of the type the "Cropscanner" can manipulate, so that whole class of tampering isn't available for mail-in votes. It would be very possible to see tampering in one vote pool or the other leading to big shifts between them, or tampering in both but with different techniques and hence different amounts and patterns of swing.

The suggested procedure we have outlined is quite simple and does not require a corporation like SAIC. The Arizona Senate last session hired Professor Douglas W. Jones of the University of Iowa Department of Computer Science to consult with them concerning the LD20 Republican Primary of 2004. He produced a report that I have not seen but should be available to your office and would serve as an example of the kind of independent review he is capable of.

The University of Connecticut, John Hopkins University, Princeton University and the University of California at Berkeley are all quite capable of the type of independent review you are seeking.

SAIC is a huge corporation with unsolvable conflicts of interest. In 1991, SAIC was charged with falsifying data submitted to the E.P.A. Ultimately the company plead guilty to ten counts of making false statements or claims and paid \$1.5 million in fines and restitution. With regard to the electronic voting industry, we feel that SAIC has too many conflicts of interest for them to perform a truly independent examination – they have consulted on electronic voting matters for both county clients and voting system vendors. They can be described as having a vested interest in the "status quo" of electronic voting. Any proof of fraud in an electronic voting system would harm the status quo within that industry.

I was unclear if your reference to a simulation project was what our experts refer to as a "red team attack," also known as a planned intrusion attempt. I have delivered with this letter a 200 page unredacted report prepared by SAIC for the State of Maryland. That report answers many of the risk assessment questions that their offer seems to contemplate and strongly indicates that no "risk assessment" is necessary. My experts assure me that Diebold's security issues have not changed significantly since 2003, with the exception of a hard-coded password for the touchscreen voting machines (formerly "1111" nationwide). The 2003 SAIC report is still

timely.

The Ohio report that I provided to your office is an example of another type of collaborative and independent examination of an entire election.

As you are aware it may be difficult to demonstrate the RTA election was manipulated or flipped. Based upon testimony we know that one person operated the computer during the RTA ballot counting process. We have reason to believe that data may have been exported from GEMS during the counting process. That same person has been in charge of the computer ever since including more than six months after the Democratic Party asked for copies of the database over six months ago. We know that he has in fact been testing the database. Whether alterations or deletions have been made we have not been able to check.

Christopher Straub claimed in a pleading filed with the Superior Court that everyone having anything to do with the county elections computer system had a real risk of criminal exposure. I'm sure he did not mislead the court and I do not want to misquote him, so I will quote the county's pleading.:

Indeed, during the Attorney General's investigation, any attempt by counsel for either side to elicit testimony from anybody involved with Pima County's Division of Elections or the Pima County elections computer system runs a significant risk of impacting that witness's constitutional rights and eliciting an assertion of the Fifth-Amendment privilege.

(P.4, Defendant's Reply in Support of Motion for Stay of Proceedings)

Accepting the truthfulness of that assertion to Judge Miller means that caution should be exercised in collaborating with the county on the scope of an examination. They have spent months analyzing their data base as they have opposed any examination by the Pima County Democratic Party. Furthermore, that examination has been conducted by the same persons who are expected to refuse to answer questions because it would incriminate them in criminal activity. You may take responsibility for the selection of SAIC, but we are concerned that Pima County may have suggested a known compromised potential examiner for an examination of their misconduct.

We think that serious consideration should be give to a full hand count of the RTA ballots which County Administrator Charles Huckelberry claims are still in a secured facility. A hand count could be done with volunteers or hired persons from the election pool of workers. The hand count could be done in public and certainly would give the public the re-assurance they need that the vote count was accurate. Such a count would be less expensive and much more certain than a computer data analysis. An expert such as Profession Jones who has seen a lot of ballots could examine the paper ballots and readily determine the likelihood that those are the genuine ballots.

In 1997, I was an attorney in a lawsuit concerning the City of Tucson General Election for the election of three council persons. The City joined us in requesting a hand re-count of all the City's ballots. The hand recount proceeded quickly and without incident. The problem in that election turned out to be defective paper that resulted in some 9,000 votes not being counted by the machine. I mention that example because the recount of three council races on punch cards

that required determining the voters intent from "dimples" was not difficult. Certainly a yes/no election like the RTA with filled in bubbles would be much easier to accomplish.

The Democratic Party and our experts are ready to assist in any way useful to your investigation. Neither the party nor its experts have any stake in the outcome of your investigation. We have identified serious anomalies that need to be investigated and we are pleased that they are being investigated. We do believe, however, that the result should have the confidence of the public that it was not a whitewash. That is why we have made specific recommendation to accomplish that result.

In any case: we ask that you hold this document in confidence and not allow the county to review it. If there is evidence of misconduct hidden within the databases or in the paper output tapes from the precinct scanners, it might still be possible to destroy data. My clients and I are handling this letter with extreme care and to a very limited audience for review.

Sincerely,

RISNER & GRAHAM



William J. Risner
Attorney at Law

WJR/pmm
Enclosures

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July 5, 2007

Via Facsimile (628-6530) and U.S. Mail

John R. Evans, Esq.
OFFICE OF THE
ARIZONA ATTORNEY GENERAL
400 West Congress Street, #S-315
Tucson, Arizona 85701-1367

RE: *DPPC v. Board of Supervisors*

Dear John:

Thank you for your letter of June 26, 2007.

Our view of the SAIC proposal is that there is too much emphasis on the formatted disk of the older computer. We feel that whether or not Microsoft Access was on that computer and the Windows Event Log are the two pieces of evidence that can likely be found and be of use, considering reasonable and cost effective work.

We still feel there is too much emphasis on security risks when those risks are known. Those two aspects of the proposal seem likely to run up the price in our view.

We previously offered a copy of the directory given to us by Pima County. We feel that the size of those files would be a good check on whether or not those files have been manipulated since they were given to us.

In sum, we continue to view that the correct focus should be on whether there is evidence of manipulation of data. I must confess that I don't understand the term "consistent with normal election practice" that you used in your letter.

Will any report be made public or provided to us?

Sincerely,

RISNER & GRAHAM


William J. Risner
Attorney at Law

WJR/pmm



Office of the Attorney General
State of Arizona

Terry Goddard
Attorney General

Main Phone: 520 628-6504
Facsimile: 520-628-6530

Criminal Division

July 5, 2007

William Risner
Risner and Graham
100 N. Stone, Suite 901
Tucson, AZ, 85701

Re: Pima County Elections

Dear Bill:


Thank you for your letter of this date. It would be great if we can eliminate the vulnerability examination. That issue was placed into the project based upon the concern your group raised about whether there could be a field flip and how could it be discovered. If that is not a concern, then the first phase of the project is to find out whether there was any data manipulation of the RTA election..

In the near future, an initial decision will be made on which consultants to work with to finalize the contract. When the final scope of the project has been developed, I may contact you again.

As for release of the report, I assume that at some point the report will be available. When and under what circumstances, I don't know at this point.

Thanks for your input.

Sincerely,


JOHN R. EVANS
Assistant Attorney General

JRE/ds
TUC-#3475-v1-OCI07-0044_RISNER_LTR_2.DOC

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July 6, 2007

John R. Evans, Esq.
OFFICE OF THE
ARIZONA ATTORNEY GENERAL
400 West Congress Street #S-315
Tucson, Arizona 85701-1367

Via Facsimile: 628-6530

Dear John:

I am not sure that I understand your July 5, 2007, letter so let me restate our concerns:

A "flip" or other tampering with the contents of the election is a major concern of ours. That is why I questioned Mr. Bryan Crane about how a "flip" works and about the audit log that was inconsistent with the operation of the GEMS software but consistent to what one might see if a "flip" had occurred. Establishing whether or not a flip is possible is not a concern because it has already been done by SAIC in its Maryland study.

We think the best use of the limited funds your office will spend is to find out what did happen in the RTA election. I may be misunderstanding your use of the term "vulnerability examination" just as you may be misunderstanding my use of "data manipulation." In my view, a flip would be one form of data manipulation.

Our concern about SAIC's conflict of interest, that we previously expressed, was reinforced by our view that they were asking the wrong questions by focusing on threats which are known and not on evidence to show what happened.

Sincerely,

RISNER & GRAHAM



William J. Risner, Esq.

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August 6, 2007

John R. Evans, Esq.
OFFICE OF THE
ARIZONA ATTORNEY GENERAL
400 West Congress Street #S-315
Tucson, Arizona 85701-1367

**Via Facsimile: 628-6530 and
Regular United States Mail**

Dear John:

We have a "role" problem and I need your help in understanding what is going on. I was flabbergasted when you told me Friday that the Pima County Democratic Party could not get a copy of an investigative report on an examination of Pima County's Elections Division's computer data. Instead you suggested that we could get a copy from Pima County as your office would be prohibited from giving us a copy.

Here is how I see the Democratic Party's role. The Party has been actively pressing Pima County to increase its voting security. Party volunteers have analyzed audit logs to determine what county election personnel have done in the past. The Democratic Party is the first and only group to ever audit the Pima County Elections Department. It is the role of political parties to observe and audit elections in Arizona.

The Pima County Board of Supervisors has never audited the activity of its own division. The Secretary of State has never done so. Based upon sworn testimony no one has done so but the Pima County Democratic Party. The Party firmly believes that its work in ensuring election integrity is in the public interest. It believes its role and that of other political parties is to ensure honest elections.

The Pima County Board of Supervisors has strongly opposed our efforts to examine voting data. They have opposed our legal requests to take limited depositions but the court has approved some depositions. Those few depositions revealed a pattern of violations of criminal laws that we brought to the attention of your office. Your office then agreed to open an investigation into the early printing of tally reports. We urged that anomalies in the RTA election needed to be examined and your office has concurred.

August 6, 2007

RISNER & GRAHAM

I am not sure what term should be used for the "role" of the Democratic Party in your investigation. I am sure, however, that the "role" of the Pima County Board of Supervisors is "suspect." I am also sure that the "role" of the Attorney General is "prosecutor" or "investigative" agency. Given those roles, I am disturbed at the astonishing cozy relationship your office has with the suspects.

You personally attended a court hearing where Mr. Straub, the Board of Supervisors lawyer, claimed that "any attempt" by lawyers from either side to question "anybody involved with Pima County's Division of Elections or the Pima County elections computer system runs a significant risk of impacting that witness's constitutional rights and eliciting an assertion of the Fifth Amendment privilege." The Board's lawyer was asking for a stay of our civil case based on the proposition that no one in the Elections Division could answer questions without subjecting himself or herself to a real and appreciable risk of self-incrimination. That is an astonishing statement from the Board's own lawyer and unless you have contrary information we assume that his statement to the court that put his clients in such a bad light was truthful.

I recently deposed John Moffat, the Board of Supervisors designated person to oversee the Elections Division. Mr. Moffat said the County has made no inquiries of its personnel in order for the Board to know what happened in its elections department:

Risner: Is there an investigation going on in your office about whether wrongful conduct has occurred or criminal activities have occurred with your people?

Moffat: We're waiting - - well no.

Risner: So, whatever the Attorney General's doing, you are all waiting on the Attorney general; is that right?

Moffat: I don't control that, but I would say that's probably correct.
(94:5-12)

John Moffat said he "has been asked not to talk to" Bryan Crane about his practice of printing election results from counted early ballots well before election day. Mr. Moffat had been personally provided with a report from the Democratic Party detailing those improprieties months before our lawsuit and any investigation began by your agency and, nonetheless, has never asked any questions of Mr. Crane.

So here is the posture today. Pima County has not asked any questions of its employees but believes that all its election division personnel have reasons to refuse to answer questions based upon their Fifth Amendment privileges. Pima County wants to first see the report that is being prepared by a company jointly hired by the "suspects" and the "investigators." Once Pima

August 6, 2007

RISNER & GRAHAM

County learns what the investigators have learned then, they can decide on what questions to ask, if any, of their own employees. In other words, once they see the cards they will decide how to play their hand.

Frankly, this seems like an upside down process to us. Does you office share information with other suspects in other criminal investigations? We think not.

If I understood you correctly, you said that after the County received a copy of your investigative report your office would then take some statements. We certainly would not want to tell your office how to conduct an investigation but I must confess that your outlined process seems quite wrong to me. I first defended a criminal case thirty-nine years ago in 1968. For decades I was primarily a criminal defense lawyer. This investigation is the first I have seen where the prosecutor and the suspect jointly finance an investigation and questions of witnesses are delayed until the suspect reviews the investigative report. However, since I became a personal injury specialist criminal investigative techniques may have changed.

The relationship between Pima County, the Secretary of State and the Attorney General is quite interesting from our perspective. Pima County has collaborated with the Secretary of State in its defense of the Democratic Party's pending public record lawsuits. The Pima County Board of Supervisors has formally requested that the Secretary of State intervene in those lawsuits as a party and not merely assist them in their defense. Pima County in its current defense is claiming that all "information" about elections is secret based upon a manual approved by the Arizona Attorney General.

The manual written by your client, the Secretary of State, and that your office approved, says, according to Pima County, that all election "information" in its database is secret. Mr. Moffat was quite clear about the County's legal position.

Risner: What would be in your database that wouldn't be covered by this paragraph?

Moffat: I don't -- I don't think there's anything that's not covered by the paragraph.

Last Thursday, August 2, 2007, I deposed in Phoenix the State Elections Director, Joe Kanefield, who was the Rule 30(b)(6) designee of that office. The Attorney General's office attempted to prevent the taking of that deposition but Judge Miller permitted us to proceed. We were interested in election tapes that Pima County sent to the Secretary of State's Office. We wanted to know what the Secretary did with these tapes and when and how they were returned. Mr. Kanefield gave us incorrect information that was later partially corrected by his attorney, Barbara

August 6, 2007

RISNER & GRAHAM

Bailey, Assistant Attorney General. She sent my office a letter later that same day which is partially quoted below:

Following the Rule 30(b)(6) deposition this morning in which Mr. Joseph Kanefield testified in the above-referenced matter, Mr. Kanefield checked again on the question of the significance of the "Return Date" column on Exhibit 1 to that deposition. Mr. Kanefield testified in his deposition that his understanding, which was based upon his research in preparing for today's deposition, was that the "Return Date" column reflected the date the Secretary of State's Office actually mailed the computer software back to the respective jurisdictions pursuant to A.R.S. § 16-445.

Although Mr. Kanefield testified based upon his preparation for the examination, he has since determined that his testimony regarding the information reflected in the "Return Date" column was not accurate. Upon further checking, Mr. Kanefield determined that the "Return Date" column of Exhibit 1 reflects the Secretary of State's determination of the date on which the computer software may be returned to the respective jurisdictions. You asked specifically about the return of computer software submitted by Pima County and Town of Oro Valley for a May 16, 2006, election. That software was mailed by the Secretary's Office via U.S. certified mail on November 27, 2006.

The letter artfully omitted to whom the tape had been returned. It took me all day Friday to find out who received the tape that the Secretary's Office returned to "Pima County." After a letter and a couple of phone calls I received around 5:00 p.m. a copy of a certified mail receipt showing that the tape had been returned not to the Pima County Elections Department but instead to the Pima County Recorder, an office that had not sent the tape nor was supposed to receive it. Due to the lateness of the disclosure by the Office of the Attorney General I was unable to follow-up on the whereabouts of a potentially important piece of evidence. This morning I learned that the tape had promptly been delivered by the Recorder's Office to the Pima County's Elections Division. You may or may not be aware that Pima County has denied having possession of this potentially critical piece of evidence.

I have some understanding of your office's built-in conflicts because of your role as a lawyer for the Secretary of State. Your cozy collaboration with the same Board of Supervisors that you are investigating befuddles me, however.

At a minimum, I request that the Pima County Democratic Party receives the same material you are intending to provide to the suspects. Finally, I wish to be clear that I think it is fundamentally

August 6, 2007

RISNER & GRAHAM

wrong for your office to provide investigative reports to the County before you investigate them.

Sincerely,

RISNER & GRAHAM

William J. Risner, Esq.

WJR/ml

c: Terry Goddard, Esq.
Arizona Attorney General

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August 9, 2007

John R. Evans, Esq.
OFFICE OF THE
ARIZONA ATTORNEY GENERAL
400 West Congress Street #S-315
Tucson, Arizona 85701-1367

Dear John:

For your information I previously sent you a subpoena, deposition notice and associated materials for the "RTA" tape returned by the Secretary of State's office to Pima County. Pima County has previously denied they have this tape but they may simply have not looked hard enough for the tape.

Chris Straub called me this morning and asked me what I wanted to do if they found the tape. I said the first thing I wanted was for him to tell me if they have it. My next step would be to let your office know of the tape's existence. It is potentially an important piece of evidence and I want it secured by either the judge or your office.

We have been denied access to computer data so we are shooting in the dark. Nonetheless, the audit log from the RTA is consistent with a "flip" where the position of yes and no votes could have been reversed. The "RTA" tape sent by the Election's Department to the Secretary of State before any votes were counted should show the original ballot layout that could be compared with the later data that you have.

We, of course, do not know what any of these answers are and we are fully aware that county personnel have had ample time to alter computer data. We also do not know if Pima County has destroyed that tape, misplaced it or altered it. All we are able to do is chase it down. If Pima County does let me know if it is in their possession, I will then let you know.

Sincerely,

RISNER & GRAHAM

William J. Risner, Esq.

WJR/ml



Office of the Attorney General
State of Arizona

Terry Goddard
Attorney General

Main Phone: 520-628-6504
Facsimile: 520-628-6530

Criminal Division

August 14, 2007

William Risner
Risner and Graham
100 N. Stone, Suite 901
Tucson, AZ, 85701

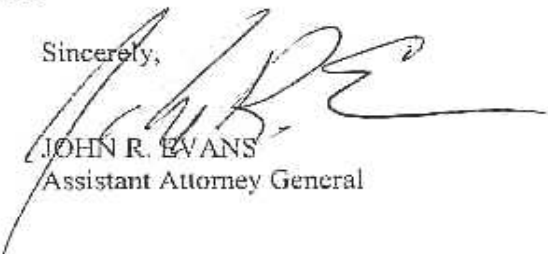
Re: Pima County Elections

Dear Bill:

Your letters of August 6 and 9 raise a number of issues which I hope to address. Obviously, an important part of the Attorney General's investigation is the report from iBeta. Since the Attorney General's office is conducting a criminal investigation, the report could not be disclosed until either charges have been filed or the office decides that it can not proceed and the case is closed. If charges are filed then disclosure of the report would be governed by Rule 15.1, Arizona Rules of Criminal Procedure. Should no charges be filed then most of the investigation documents would be subject to a public records request.

The "DAT" tape is of interest. If it is found, I expect I will have no difficulty getting control of the original. I understand the key use of this information would be to compare the election fields in the "DAT" with the fields found in the actual election data base to see if there was any field switching. Should Pima County find the tape and the Attorney General's office get control of it, I will have to decide what steps to take.

Sincerely,



JOHN R. EVANS

Assistant Attorney General

JRE/ds
TUC-#4787-v1-OC107-0044_RISNER_LTR_3.DOC

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August 23, 2007

John R. Evans, Esq.
OFFICE OF THE
ARIZONA ATTORNEY GENERAL
400 West Congress Street #S-315
Tucson, Arizona 85701-1367

Via Facsimile: 628-6530
& Regular U.S. Mail

RE: Public Records Request

Dear John:

Your letter of August 14, 2007, again makes the legal claim that you can not disclose the report from iBeta because the Attorney General's office "is conducting a criminal investigation." I previously expressed my dismay that your office intended to share the report with the suspects but not the Democratic Party. My astonishment at that unusual procedure has not abated.

The purpose of this letter, however, is to advise you that what you have said is not the law. There is no blanket exemption for a criminal investigation under the public records act. *Cor Arizona Publications, Inc. v. Collins*, 175 Ariz. 11, 852 P.2d 1194 (1993); (The court held that reports of ongoing police investigations were not generally exempt from public records law and that it was incumbent upon the county attorney to specifically demonstrate how the production of the documents would violate rights of privacy or confidentiality or would be detrimental to the best interests of the state. The court said that in this case, the county attorney had not even made an effort or attempt to partially comply as he had not provided the records to the trial court for an in-camera review. The county attorney just refused to give the records to anyone at all which was unacceptable under the court rules. Finally, the court said that because the state set itself up as sole judge and jury, it took the chance that its decision would be viewed as arbitrary and capricious, and it would be subject to sanctions it now faced.)

Another case in point is *Star Publishing Co. v. Pima County Attorney's Office*, 181 Ariz. 434, 891 P.2d 899, 901 (App. 1994); ("The argument of the county attorney on appeal is that it ought to not be required to produce the tapes because of the material there recorded might not be a public record, might be protected by a deliberative process privilege, might be immune from disclosure in order to protect the public employee privacy rights, or might impede a pending criminal investigation. While these concerns might on occasion permit secrecy, no showing has been made on this record why they should preclude revelation. All that is offered is speculation. No one has examined the actual records in this case to demonstrate why any particular individual record ought not be revealed for one of these reasons. If we were to accede to the county attorney's argument, we would effectively repeal the public records statute. Because it is always

August 23, 2007

RISNER & GRAHAM

possible to argue that public records contain nondiscoverable matter, argument alone would always allow nonrevelation. Our Supreme Court, however, has made it clear that public records are presumed open to the public for inspection unless the public official can further demonstrate a factual basis why a particular record ought not be disclosed to further an important public or private interest. *Cox Arizona Publications, Inc. v. Collins*, 175 Ariz. 11, 852 P.2d 1194 (1993)”)

I invite your office to specifically explain why the iBeta report is not a public record that should be provided pursuant to this request. In order to be quite clear please accept this letter as a public records request pursuant to A.R.S. § 39-121 *et seq.* I request:

1. Copies of all correspondence with iBeta concerning the investigation they are conducting for your office.
2. Copies of all documents relating to your office's communications with the Pima County Attorney's Office concerning this investigation.
3. Copy of the iBeta contract.
4. Copy of any iBeta reports.

Please accept this public records request as an ongoing request for such documents as they may be created or received in the future. See *West Valley View, Inc. v. Maricopa County Sheriff's Office*, 1CA-CV 06-0549, filed 8-16-07. This request has not been made for a commercial purpose and I will pay all copying charges.

If your office can explain why the provision of the report to the suspects before conducting any interviews would not interfere with your criminal investigation but the provision of the same material to those who have brought evidence of wrongdoing to your attention would interfere, we will consider your explanations. As we understand the law, that is your burden to explain.

Sincerely,

RISNER & GRAHAM



William J. Risner, Esq.

WJR/ml



Office of the Attorney General
State of Arizona

Terry Goddard
Attorney General

Main Phone: 520 628-8504

Facsimile: 520-628-6530

Criminal Division

August 28, 2007

William Risner
Risner and Graham
100 N. Stone, Suite 901
Tucson, AZ, 85701

Re: Pima County Elections

Dear Bill:

In response to the letter of August 23, 2007 which was entitled a public records request, I respectfully disagree with your interpretation of the ability of the public to obtain information regarding pending criminal investigations. Only the *Arizona Publication Inc. v Collins*, 175 Ariz. 11, 852 P.2d 1194 (1993) applies to the present situation. The key to the court's analysis was that the County Attorney Tom Collins had announced the indictment of several members of the Phoenix Suns. No where in the case is there a discussion of the circumstances of the present matter, which is a pending criminal investigation. My letter of August 14, 2007 describes the circumstances under which the materials you seek will become available.

Sincerely,


JOHN R. EVANS

Assistant Attorney General

JRE/ds
TUC-#5357-v1-OCT07-0044.DOC

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August 31, 2007

John R. Evans, Esq.
OFFICE OF THE
ARIZONA ATTORNEY GENERAL
400 West Congress Street #S-315
Tucson, Arizona 85701-1367

RE: Democratic Party of Pima County
Public Records Request

Dear John:

Your letter of August 28, 2007 agrees with us that Cox Arizona Publications v. Collins, 175 Ariz. 11 (1993) "applies to the present situation." After that agreement, however, you then fail to "apply" the case.

The Arizona Supreme Court in that case overruled the lower court decision of the Court of Appeals in Cox Arizona Publications v. Collins, 169 Ariz. 189 (app.). The Court of Appeals had accepted the argument of *amici*, including the Arizona Attorney General, that the media had no right to inspect criminal investigative files during an investigation and prosecution. In rejecting that argument, contrary to your view, the Arizona Supreme Court did not place any emphasis on the fact that an indictment had been announced and certainly that event was not a "key" to the case.

The opinion of the Arizona Supreme Court on this issue highlights a statement from the Court of Appeals with which they disagree and therefore they reverse the opinion of the lower court.

In upholding Collins' position, the court of appeals stated:

Neither reporters nor the public. . . are entitled to examine and photocopy police reports in an active ongoing criminal prosecution, because the countervailing interests of due process, confidentiality, privacy and the best interests of the state make disclosure inappropriate.

Mr. Evans
Re: Democratic Party of Pima County
August 31, 2007
Page Two

RISNER & GRAHAM

169 Ariz. At 201, 818 p.2d at 186. We cannot support such a sweeping exemption from the public records laws of this state. Although the balancing scheme described in *Mathews*, 75 Ariz. at 80-81, 251 P.2d at 896, might, in a particular and exceptional case, lead to a conclusion similar to that reached by the court of appeals, the blanket rule advanced by that court contravenes the strong policy favoring open disclosure and access, as articulated in Arizona statutes and case law. The legislature has not carved out such a broad exemption, nor do we.

The burden fell squarely upon Collins, as a public official, to overcome the legal presumption favoring disclosure. *Mitchell v. Superior Court*, 142 Ariz. 332, 335, 690 P.2d 51, 54 (1984). In his correspondence to the media and his arguments to the trial court, Collins argued in global generalities of the possible harm that might result from the release of police records. However, because reports of ongoing police investigations are not generally exempt from our public records law, it was incumbent upon Collins to specifically demonstrate how production of the documents would violate rights of privacy or confidentiality, or would be "detrimental to the best interests of the state." He did not attempt to make such a showing. Cf. *Arizona Board of Regents*, 167 Ariz. At 258, 806 P.2d at 352 (Board of Regents demonstrated specific instances where publicity proved detrimental to university president search process..)

The Court's opinion is not ambiguous. "The burden falls squarely upon you" to "specifically demonstrate how production of the" documents we have requested "would be detrimental to the best interests of the state."

Perhaps your office can explain why giving the report to the suspects serves the public interest whereas giving the report and other documents to the Pima County Democratic Party would harm the public interest. The law places the burden squarely upon your office, however.

Sincerely,

RISNER & GRAHAM

William J. Risner
Attorney at Law

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*Certified Specialist in Personal
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September 7, 2007

John R. Evans, Esq.
OFFICE OF THE
ARIZONA ATTORNEY GENERAL
400 West Congress Street #S-315
Tucson, Arizona 85701-1367

Via Facsimile: 628-6530

Dear Mr. Evans:

I intend to file a lawsuit against the Attorney General if your office does not comply with my public records request for the iBeta report. I note that Mr. Moffat has been perusing Pima County's own copy.

As you know, the Pima County Democratic Party has been forced to file two lawsuits that are still pending against Pima County for their refusal to provide public records. To date you have suggested that we request documents you are obligated to provide from the very entity that flouts its responsibilities under our public records laws. Such a cynical passing of the responsibility to another agency is not a defense with which I am familiar.

It is inexcusable that your office would refuse to follow your legal obligations.

Sincerely,

RISNER & GRAHAM



William J. Risner, Esq.

WJR/ml



OFFICE OF THE
Pima County Attorney
Civil Division
32 N. STONE
SUITE 2100
Tucson, Arizona 85701-1412

Barbara LaWall
PIMA COUNTY ATTORNEY

(520) 740-5750
FAX (520) 820-6558

September 11, 2007

Hand-delivered

Mr. William J. Risner, Esquire
100 North Stone, Suite 901
Tucson, AZ 85701

Re: Public records requests: July 11, 2007 and August 6, 2007

Dear Bill:

On July 11, 2007 you requested e-mails between Dr. John "Moffatt to individuals at Diebold including Tab Iredale" and e-mails between elections staff and employees and Diebold agents and employees. Your request covered the period between January 1, 2005 and July 11, 2007. In response to that request I am providing 371 pages of records. These include e-mails between Diebold and Dr. John Moffatt, Brad Nelson, Bryan Crane, Tomas Kalesinskas, Isabel Araiza and Anne Loving. There are a few redactions in these e-mails (a Fed Ex account number and a personal cell phone number).

On August 6, 2007 you requested a copy of the contract between Pima County and the Attorney General in relation to the RTA election investigation and all correspondence between Pima County, including the County Attorney, and the attorney general regarding that investigation. In response to that request, I have provided 24 pages. (We still have to complete the search of e-mail records in our office for documents.) One proprietary, copyrighted Diebold document was withheld. The Attorney General has asserted his work product privilege for anything relating to the contract with iBeta and the actual conduct of the investigation (post-July 19). Consequently, those documents are not provided. If you believe you are entitled to this information, please contact John Evans directly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen S. Friar".

Karen S. Friar
Deputy County Attorney

KSF



Terry Goddard
Attorney General

Office of the Attorney General
State of Arizona

Main Phone: 520 628-6504
Facsimile: 520-628-6530

Criminal Division

September 13, 2007

Via Facisimile: 624-5583

William Risner
Risner and Graham
100 N. Stone, Suite 901
Tucson, AZ, 85701

Re: Pima County Elections

Dear Bill:

The Arizona Attorney General's office has completed its investigation and determined that there was no basis to believe any criminal activity was involved in the RTA election of 5/16/06. As a result of this decision, this office is in the process of gathering all the materials necessary to respond to your public records demand.

The initial disclosure of materials will be available at 9:00 a.m. September 14, 2007 at our offices. There will be a 20 cent per page charge for copying, as there are 285 pages, please bring with you a check in the amount of \$57.00 made out to the Office of the Attorney General to cover the cost of reproductions.

Sincerely,



JOHN R. EVANS
Assistant Attorney General

JRE/ds
TUC-#5902-v1-LTR_TO_RISNER.DOC

STATE OF ARIZONA)
) ss: **AFFIDAVIT OF ZBIGNIEW OSMOLSKI**
COUNTY OF PIMA)

Zbigniew Osmolski, being first duly sworn upon his oath deposes and states:

1. On January 27, 2008 I went with friends to the Boondocks Lounge at 3306 North First Avenue for a celebration of the life of Pat McAndrews, a well known Tucson musician and school teacher who had recently died.


2. During the course of the evening I was in the patio area smoking a cigarette where I had a candid conversation with Bryan Crane, the computer operator of the Pima County Elections Division.

3. During that conversation Bryan Crane told me that he "fixed" the RTA, or Regional Transportation Authority election on the instructions of his bosses and he did what he was told to do.

4. Mr. Crane expressed his concern about being indited and said he would like to talk but couldn't trust anyone.

5. I have signed this Affidavit under oath. I am willing to cooperate with an investigation by the Arizona Attorney General's Office or any other competent investigation and will provide them with complete information.


FURTHER AFFIANT sayeth not.



ZBIGNIEW OSMOLSKI

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

SUBSCRIBED AND SWORN TO before me by Zbigniew Osmolski on this 27th day of July, 2008.

MY COMMISSION EXPIRES Jan. 24, 2011




NOTARY PUBLIC

The iBeta reports say a lot if you read it carefully and fact check it with what we have and know.

Review by John R Brakey and Jim March of the iBeta report. Friday, Dec. 28, 2007 Brakey's and March's remarks are all indented and italicized.

Link to iBeta report:

[http://www.electiondefensealliance.org/files/iBeta Election Forensic Report Pima Co.pdf](http://www.electiondefensealliance.org/files/iBeta_Election_Forensic_Report_Pima_Co.pdf)

iBeta Software Quality Assurance

Pima County Final Report

Created For:

Program Name PIMA
Final Version N/A
Client Pima County, Arizona
Project Lead Kathleen Kempley

Created By:

Project Lead William Miller
Test Lead William Miller
Date July 2007

3131 S. Vaughn Way. Suite #650, Aurora, Colorado, 80014
Phone: 303-627-1110 Fax: 303-627-1221

Table of Contents:

Table of Contents.....	2
Executive Summary.....	3
Summary of Testing.....	4
Setup & Planning	4
Test Execution	4
Test Specifics	5

Executive Summary

iBeta was approached to perform a quantitative investigation for Pima County, Arizona of a specific Diebold GEMS electronic voting system version and associated hard drive data with regard to alleged vote tampering.

The investigation took place at iBeta's certified testing facility in Aurora Colorado.

iBeta received a sealed Seagate Barracuda 7200, ST3250820A, 250 gigabyte hard drive (s/n 6QEoNTQZ) from Pima County which contained four drive images in Symantec Ghost format.

iBeta staged the images for investigation and analysis using an external IDE to firewire converter. Of these images it was discovered that only two, "Item 1" and "Item 2" contained useable data and "Item 1" was 10.2 gigabytes in size while the "Item 2" image was 204 gigabytes in size.

The target file of the investigation was a Diebold GEMS database backup file called "pima consolidated 051606 EARLY DAY1.gbf" which, according to the audit log of the GEMS software was initially created 05/10/06 at 12:27:27, and then overwritten 05/11/06 at 09:56:30.

Ed: The data over-write in question can be seen in the audit logs:

```
05/10/06 08:21:41 User admin: Reset election
05/10/06 08:22:08 User admin: Printing Summary Report
05/10/06 08:38:47 User admin: Printing Summary Report
05/10/06 12:27:27 User admin: Backed up election to      D:\Program
Files\GEMS\Backup\pima consolidated
051606 EARLY DAY1.gbf
05/10/06 12:27:38 User admin: Previewing Cards Cast Report
05/10/06 12:28:04 User admin: Backed up election to      D:\Program
Files\GEMS\Backup\pima consolidated 051606.gbf
05/10/06 12:28:05 User admin: Closing GEMS
```

Now look at the next day:

```
5/11/06 9:55AM  User admin: User Login
5/11/06 9:55AM  User admin: Open Election: Consolidated Election,
May 16, 2006 (pima consolidated 051606)      admin Host
5/11/06 9:56AM  User admin: Backed up election to      D:\Program
Files\GEMS\Backup\pima consolidated 051606 EARLY DAY1.gbf
5/11/06 9:56AM  User admin: Printing Summary Report
5/11/06 10:06AM User admin: Printing Summary Report
```

This from file allocation table we received by a record request.

In plain English, a backup of the day's worth of scanning on 5/10 was performed at the end of that day (12:28pm). Everything on 5/10 looks proper. The morning of 5/11 a copy of the data file was opened and there's no way to tell where it came from – it could have been copied in from other media such as a CD. One minute later the previous night's backup was overwritten – note that the filename is the same. And then somebody made two illicit printouts of running vote totals on a precinct detail level (summary reports) effectively stealing data on how the election is going. This is all consistent with a copy of the data going home on 5/10, getting altered, being brought back in 5/11, bad data overwriting good and then printouts are made proving the hack.

The focus of the investigation was to determine the validity of the target file and to look for evidence of tampering. The investigation consisted of several tests:

1. R-Studio scans of the two hard drive images "Item 1" and "Item 2" to look for partial, ghost, or deleted evidence of a different version of the DAY1 file, which came back negative.
2. Date and timestamp checks on all of the available copies of the DAY1 file. This showed some irregularities, but these were later explained away by the troublesome installation and backup of the new GEMS systems on July 20th 2006 and the normal copy and cleanup process on July 27, 2006 in preparation for the next election.

3. CRC comparisons on the five available copies of the DAY1 file, which showed all of the files to be identical across the two systems.

Ed: We have the file allocation tables and there are NOT 5 copies of day 1! See below. What are the time stamps for these files?

4. CRC comparisons of the Preference tables in the 051606 databases which show that the programming was not altered from the initial “L and A” run for the 051606 event.
5. Backing out the deck data in the DAY1 database to uncover any discrepancies in votes coming in and votes total which would pinpoint the addition of votes. This showed no variation in vote totals.

During testing it was discovered that the GEMS software exhibits fundamental security flaws that make definitive validation of data impossible due to the ease of data and log manipulation from outside the GEMS software itself. [Emphasis added]

Ed: This is actually the most important item in the report. The first consultant Pima County and the AG's office tried to hire told them the same thing, and that reference back to the original paper was the sole method of reliably looking at the election's true outcome.

Ultimately, it is the determination of iBeta that the overwriting of the target file can be attributed to human error. iBeta arrives at the “human error” conclusion for two reasons:

- iBeta was unable to detect any manipulation of the 051606 event data across the multiple copies of the data discovered.

We told the AG's office that if they were going to do data analysis, looking at how the data changed across time was the only possible route to the truth and that wasn't guaranteed. Instead, iBeta looked at multiple copies of a single “time slice”.

- The basis of the investigation is that there are log entries that point to tampering - but it is far easier to remove evidence of tampering from the logs than to actually tamper with the vote totals in the Microsoft Access database that the GEMS software uses. So it does not follow that someone with the knowledge to manipulate the GEMS data would neglect to alter the log file to remove the evidence of the manipulation.

In other words, iBeta discounts the idea of tampering because covering up the tampering evidence that IS there would be dead easy. What iBeta had no way of knowing is that the main computer operator for Pima County's elections office and the main “suspect” (Brian Crane) is barely PC competent at all. Watching his mouse movements on-screen, it's obvious he's “hesitant” - he has to think about every action even where basic operating system commands are involved. This is the kind of guy who easily could leave traces that are otherwise easy to cover.

Summary of Testing

Setup & Planning

The focus of the investigation was to determine the validity of the target file and to look for evidence of tampering.

Test Execution

The investigation consisted of several tests:

1. R-Studio scans of the two hard drive images "Item 1" and "Item 2" to look for partial, ghost, or deleted evidence of a different version of the DAY1 file, which came back negative.
2. Date and timestamp checks on all of the available copies of the DAY1 file. This showed some irregularities, but these were later explained away by the troublesome installation and backup of the new GEMS systems on July 20th 2006.

Only if you believe what Dr John Moffatt says and he been caught to many time covering up. On two separate occasions now he has threatened each of us (Jim March in December '06, John Brakey in June '08) with cutting off cooperation if we continued to examine past practices in the Pima elections office. He only says this to one person at a time and will likely deny it.

3. CRC comparisons on the five available copies of the DAY1 file, which showed all of the files to be identical across the two systems.

What if all five were clones? Made from the same file? Where else could they got the 5 day ones?

4. CRC comparisons of the Preference tables in the 051606 databases which show that the programming was not altered from the initial "L and A" run for the 051606 event.
5. Backing out the deck data in the DAY1 database to uncover any discrepancies in votes coming in and votes total which would pinpoint the addition of votes. This showed no variation in vote totals.

Crane backs over the "day1" file of 5/10, it's gone. We're never said vote were added, we believe votes were flipped or manipulated.

Test Specifics

Test 1 - R-Studio was used to perform a drive-wide scan for deleted, partial, and ghost copy data. While RStudio did find and recover a great deal of interesting data, none of it was relevant to the investigation at hand.

- This test can be defeated by repeated loading, deleting, and defragmentation of the hard drive, which repeatedly overwrites the deleted data with parts of other files and makes recovery very difficult. Based on iBeta's observations of the drive images this defeat was not performed.

Test 2 - The date and time stamp checks of the files did turn up what appeared to be evidence of tampering as the files pertinent to the investigation showed a pattern of irregularities in either the date/time created or modified. John Moffatt did some investigation on his end and discovered that there were some issues in the backup, installation, and recovery of data during a July 20th 2006 GEMS system update followed by the normal copy and cleanup process on July 27th. This explained the oddities discovered in the file timestamps.

- This test can be defeated by altering the date/time stamp data for the files. There are utilities which will do this, but it appears that this was not done because the files still exhibit non-uniform dates/times. It is unlikely that that defeat was performed because if one of these utilities would have been used, there would have been no alert as all of the date/time stamps would have been sequential to the event - leaving no clue that the files had been altered or replaced.

Test 3 - Ultimately five copies of the target file were discovered or recovered. These five versions were run through a CRC32 process which is used to determine file changes at a bit level. The CRC

check returned that all five of the files were identical. The CRC32 value of the target files was "FAD8C70E".

- **It is possible to defeat this test by replacing all of the copies of the target file with a prepared version.** It is unlikely that the defeat was employed due to the various modification date/time stamps on the target file - if this defeat had been deployed all of the replacements would have the same create/modify timestamp. Additionally the file residing in multiple locations on multiple computers makes this defeat very difficult as access to the various machines and knowledge of the locations would be required.

The boldface in the above paragraph tells all...

Test 4 - John Moffatt proposed a test to determine if the programming used in the 051606 event which compared the "preference" table of the initial L and A test to the various saves of the 051606 event. The compare showed that the programming never changed from the initial L and A event.

- **It is possible to defeat this test by way of replacing the preference table in all of the 051606 event data sets after the event was over.** This defeat being used is unlikely due to the modify date/time stamps of the original L and A data being from the day preceding the event and every copy of the L and A data exhibiting the same date time stamp. **A blanket replace of the entire 051606 event dataset would have had to take place to defeat this test, which encounters the same issues as Test 3.**

We had another piece of data available that we told the AG's office about: sets of complete directory listings for the servers as of December '06 and April '07. These show filenames, file locations, timestamps and above all sizes. It was months later before the data went to iBeta. If alterations were made just before the data went to iBeta, the file sizes may not have matched the directory listings. Even when informed that this evidence existed, the AG's office never even mentioned it again.

Test 5 - John Moffatt also proposed a test to determine if any votes were added to the vote totals from an external source. This test used the GEMS software to list the decks for each segment of the 051606 event and when backing those decks out, a total of zero votes remained. This means that all of the votes seen came from the central count scanners or precinct voting machines and not some other source.

We're never said vote were added, we believe votes were flipped or manipulated!) The next line says it all!

- **As with other tests it is possible to defeat this test by ensuring that any vote modification keeps the vote totals the same.** This means that if you add 1000 votes to one candidate, you subtract a total of 1000 votes from one or more other candidates. This defeat has a low probability of being deployed based on the fact that it only works for the total number of votes. Any report run that shows the votes at a precinct level, when compared to a total votes report, will show the data modification.

Bill Risner was 100% right when he wrote a letter AG office to John Evans Aug 6, 2007 and stated:

"We have a "role" problem and I need your help in understanding what is going on.

The RTA Election of 2006: Suspicions Outlined - Jim March

1) The county ran the election and had a strong interest in the outcome, going so far as to pay consultant James Barry at least \$75,000 in support of the bond measure. Barry also took money from the “official” pro-RTA bond people (basically developers). \$13,000 Link to testimony of James Barry, mainly to illustrate that the Pima County government had a deep, vested, and motivated interest in the outcome of the RTA election.

<http://video.google.com/videoplay?docid=1282511168148207359>

2) The bond measure had failed four times previously and was losing in the pre-election polls. (There was no exit poll.)

3) On the evening of the election (5/16/06) Dr. Ted Downing (a legislator at the time) noted Bryan Crane reviewing an open MS-Access manual on the table next to the central tabulator station. Brakey found op-scans breaking down and called Downing.

4) In the weeks that followed, in meetings with (among others) the Pima County Democratic Party chair (Donna Branch-Gilby), Brad Nelson refused to allow even basic oversight – such as a visual inspection to make sure that additional PC stations weren't wired into the central tabulator via the network cable clearly visible snaking under a locked door. This refusal was interpreted at the time as Nelson's practical declaration that he had an unfettered right to manipulate elections, and nothing he's done since has alleviated that apparent stance. (It's true that since that event, John Moffatt has managed to push through some transparency measures – but all the while Nelson and Crane have systematically sabotaged Moffatt's efforts while Moffatt has acted to try and block investigations of past misconduct.)

5) The actions of Bryan Crane on the morning of 5/11/06 have been rehashed ad nauseum. Yet the fact remains that the official story (at least the version in court on the witness stand) has Crane making **two** mistakes rapid-fire on the morning of the 11th: he over-writes the previous day's backup file (ignoring GEMS' warning about same) and then prints TWO copies of the summary report **within 10 minutes** of each other – and again, for each summary report he has to confirm his selections manually. Either mistake would be remarkable. Both happening within minutes? It **looks** like hacking. Period. The appearance is that bad data from outside the shop was brought in, uploaded, then an over-write of the previous day's good data with the bad occurred. And then two summary reports were printed moments later - to confirm a successful hack and/or in order to prove to parties unknown that the hack had occurred? **He lied about how he dose backup in the trial.** Mina Clip Testimony of Bryan Crane on the RTA and iBeta report 17 minutes: <http://video.google.com/videoplay?docid=7304338799617243809>

6) There is still a timestamp anomaly. Granted, the file “creation” and “last accessed” timestamps would have been re-written by the exchange of file servers in June of 2006 due to how Windows handles those timestamps. But our tests show that the “modified” time/date-stamp would not change due to a simple file copy operation. According to the iBeta report and associated Email traffic behind it (public records after the fact) the “early day 1” filename has a “last modified” date of the morning of May 11th 2006. But according to Email traffic back and forth to John Moffatt, the timestamp was **10:56am.**

In December of 2006 the Democratic Party obtained a complete directory listing of both current servers. We show a timestamp for that file of 9:56am – which in turn matches the time and date that the GEMS audit log says the “overwrite” of the morning of 5/11/06 happened.

We have confirmed that if a file is created and has a “last modified” date of, say, 3:00pm, and the file is shipped across time zones by ANY means, the timestamp doesn't “auto-correct” for the new time zone. Such functionality just isn't there – the Windows file system has literally no place to record the timezone in which a file was created. So iBeta's Colorado location wouldn't have adjusted the file “last modified” time by an hour.

The implication is that somebody adjusted the file before it got to iBeta.

7) The “five files” situation. According to iBeta, they were unable to read any data off of the original pair of GEMS systems (the ones actually used on the RTA just before their retirement). From the other newer pair of systems they extracted five identical copies of the “early day 1” RTA file involved in the over-write of 5/11/06.

Our copy of the directory listings of Dec. '06 shows only two copies.

This bolsters the possibility that the RTA data files were modified prior to being shipped to iBeta. *At a minimum, we can state that the files were being looked at and duplicated between Dec. '06 and their duplication for iBeta around June '07.*

8) Testimony under oath from lower level staff in the elections office during the public records case claimed that printing the “who's winning and losing” reports pre-election based on the mail-in data was common practice, AND that these reports made their way out of the elections office. Printing them would be improper. Distributing them would be a felony. The system audit logs confirm habitual peeking at this confidential data pre-election from 2004 through 2006.

Conclusions:

The court has already been provided with a schedule of tests we believe should be performed on the complete data set for any given election – most definitely including the RTA '06 Special Election. We feel that some of these tests would be particularly beneficial in this case, such as checking the internal timestamps on the MS-Access tables and looking at the “vote totals flow” throughout the mail-in vote processing.

Thomas Denker

From: John Moffatt [John.Moffatt@pima.gov]
Sent: Friday, August 10, 2007 9:38 AM
To: John Evans
Cc: Chris Straub
Subject: RE: iBeta report

I have a few comments on the report. I cannot edit it so will paste in excerpts here. Overall, I think the report is fine, but we will be criticized by Mr. March and the Democrats with some of the wording, so I am pointing those areas out where I expect criticism.

General comment on test number 2 - Page 6 and summarized earlier.

Test 2 - The date and time stamp checks of the files did turn up what appeared to be evidence of tampering as the files pertinent to the investigation showed a pattern of irregularities in either the date created or modified, or the times of the same. John Moffatt did some investigation on his end and discovered that there were some issues in the backup, installation, and recovery of data during a July 20th 2006 GEMS system update. This explained the oddities discovered in the file timestamps.

- **This test can be defeated by altering the data/time stamp data for the files. There are utilities which will do this, but it was unlikely that this was done.**

The way this is stated will generate another inquiry from the Democrats as to what happened and how we explained this away. That may be simply the way it is. What my research discovered is that the dates of the GEMS installation coincided with the dates of the files on the recovered disks. The anomaly was that the target file was not in the backup area on the 20th, but shows up on the 27th. I was able to confirm with the Diebold installer the dates he was in Tucson. I also was able to confirm that the normal procedure used by the Election staff when they are "Cleaning up" an election is that they make one more copy to the backup disk, and then delete the election from the primary disk. The Elections staff spent the week following the installation of the GEMS system working on the TSx machines as they could not do anything with them until this upgrade was installed. On the 27th, they started their cleanup. When the copy occurs the system tells them about duplicate files and they have to tell it to overwrite those files. The copy process does not create any kind of message if the file was not there in the first place - it simply copies it and puts that date on the file. What is NOT explained is why the file was not copied over in the first place. This will be exploited. Other than citing the reasons provided, I don't think the report can avoid further questions.

This next section will definitely be refuted by Mr. March and the Democrats as they are advocating using individual user logins in GEMS to know what user did what steps - both in GEMS and in the actual Windows environment. The statement here is more correct if the wording is restated to say that "... In order to take advantage of all features of the GEMS system, "administrator" privileges are required in the host operating system..." William is commenting on the Operating System Privileges in the report, not the GEMS login - but it could be misconstrued as saying the USERS in GEMS can only be the Administrator. I am told that the difference in the GEMS system is that the "Administrator" login in GEMS has full rights to run ALL programs, for example Setting Elections (Freezing the files), and I believe doing backups; whereas other GEMS users have more limited rights. The reason the staff used Administrator was it gave them full rights without having to log out and back in to do certain functions. Again, the comment in the report is accurate, but can be misused as this is a major point they constantly make.

Conclusions and Findings

During testing it was discovered that the GEMS software's security structure makes a definitive validation of data impossible due to the ease of data and log manipulation. In addition, the GEMS software will only operate correctly under "administrator" privileges in the host operating system which defeats its security as well.

9/24/2007

Final Page: This is a true statement and can probably stand as is without criticism. My concern is that more can be proven if the examination is done at the Precinct level. Maybe too much detail for this environment, but I wanted to at least provide some details below to explain how this works. I have inserted "and the precinct details" below as a possible modification.

- As with other tests it is possible to defeat this test by ensuring that any vote modification keeps the vote totals *and the precinct details* the same. This means that if you add 1000 votes to one candidate, you subtract a total of 1000 votes from one or more other candidates. This method of defeat is also unlikely.

Explanation: It is my understanding that since the "DECKS" have detail votes for precinct and candidate/propositions, that backing them out should detect a switch in the votes even though the total number of votes is the same. This assumes an analysis at the Precinct level, not the total vote level. The "Statement of Votes Cast" report prints the results by individual precinct and candidate.

Example:

If the decks are processed normally and the value for the "YES" vote is 120,000 and the "NO" vote is 90,000. The database TOTALS are modified at the summary level to say YES = 90,000 and NO = 120,000, the total number of votes stays the same, but the precinct details have not been changed to reflect the new numbers so the Statement of Votes Cast should not add up. If you change the individual precinct numbers to make the reports add up properly, when you back the decks out, the votes in the individual precincts will not result in a zero balance. So there are two ways to cross check this kind of tampering.

Hope the comments help. I know the items above are too much detail for the report. I do not have any problem at all with the processes described, nor the findings. I simply want to identify points where criticism is likely.

John H. Moffatt, Ph.D.

Office of Strategic Technology Planning

520-740-8463

john.moffatt@pima.gov

-----Original Message-----

From: John Evans [mailto:John.Evans@azag.gov]
 Sent: Thursday, August 09, 2007 5:35 PM
 To: John Moffatt
 Subject: RE: iBeta report

this is better

>>> "John Moffatt" <John.Moffatt@pima.gov> 8/9/2007 5:33 PM >>>
 I only got the cover letter sent to the EAC

John Moffatt

John H. Moffatt, Ph.D.

Office of Strategic Technology Planning

9/24/2007

520-740-8463

john.moffatt@pima.gov

-----Original Message-----

From: John Evans [mailto:John.Evans@azag.gov]
Sent: Thursday, August 09, 2007 5:31 PM
To: John Moffatt
Subject: RE: iBeta report

I thought I sent it to you

>>> "John Moffatt" <John.Moffatt@pima.gov> 8/9/2007 4:06 PM >>>
Can you please send a copy of the report? I have not seen it.

John Moffatt

John H. Moffatt, Ph.D.

Office of Strategic Technology Planning

520-740-8463

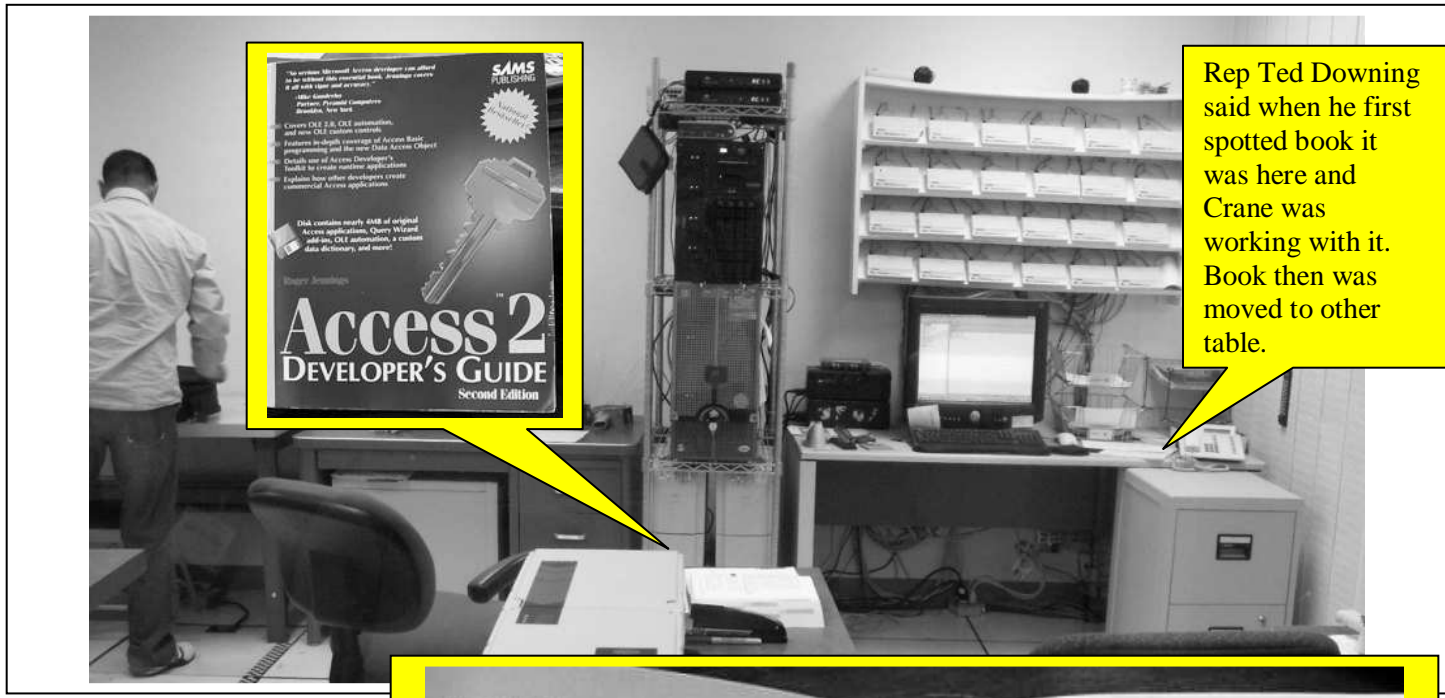
john.moffatt@pima.gov

-----Original Message-----

From: John Evans [mailto:John.Evans@azag.gov]
Sent: Thursday, August 09, 2007 3:26 PM
To: Chris Straub; John Moffatt
Subject: iBeta report

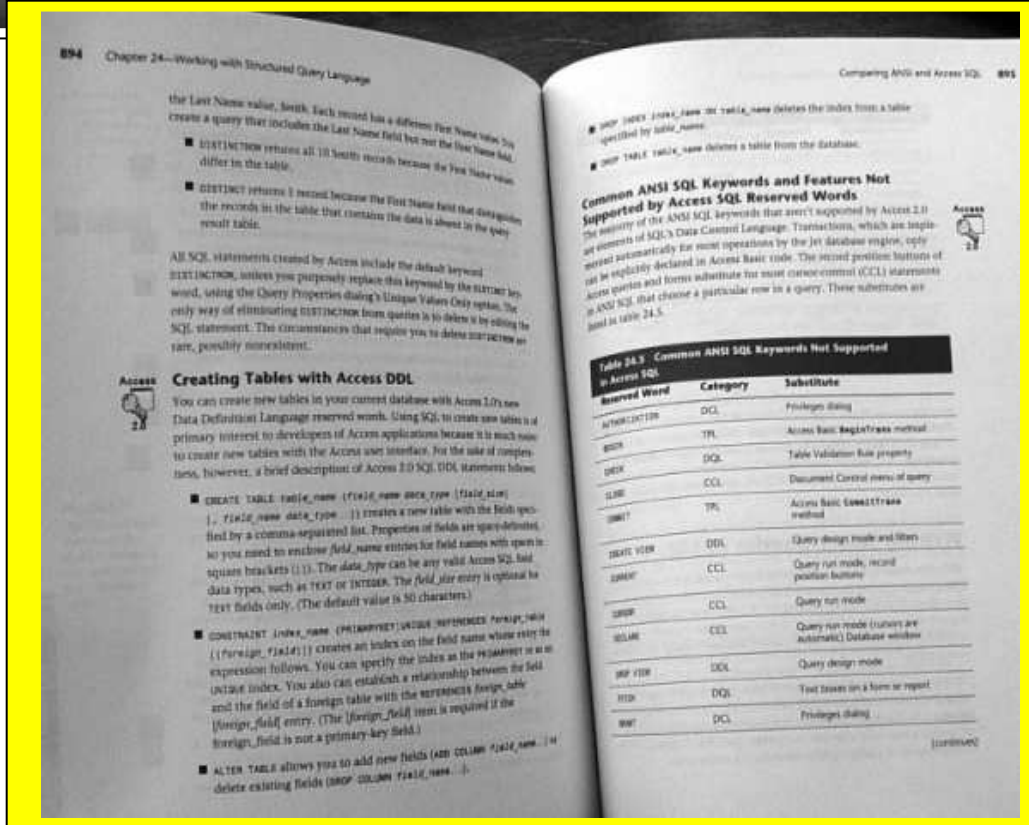
Do you have any additions or suggestions for the final report. The AG has some semantic issues with the executive summary and the test summary. He thought the second paragraph of the conclusion and findings didn't make sense, since the "target file" is not defined. Is there anything else we want them to clarify.

9/24/2007



Rep Ted Downing said when he first spotted book it was here and Crane was working with it. Book then was moved to other table.

Photo taken of Access manual while it was open on a desk in computer room election night.



- DROP INDEX index_name [ON table_name] deletes the index from a table specified by table_name.
- DROP TABLE table_name deletes a table from the database.

Common ANSI SQL Keywords and Features Not Supported by Access SQL Reserved Words
 The majority of the ANSI SQL keywords that aren't supported by Access 2.0 are elements of SQL-3 Data Control Language. Transactions, which are implemented automatically for some operations by the Jet database engine, can be explicitly declared in Access Basic code. The second-position buttons of Access queries and forms substitute for most cascade-control (CCL) statements in ANSI SQL that choose a particular row in a query. These substitutes are listed in table 24.5.

Reserved Word	Category	Substitute
AUTHORITY	DCL	Privileges dialog
BEGIN	TPL	Access Basic BeginTrans method
CHECK	DQL	Table Validator Rule property
DESC	CCL	Document Control menu of query
END	TPL	Access Basic EndTrans method
CREATE VIEW	DQL	Query design mode and filters
INDEX	CCL	Query run mode, record position buttons
GROUP	CCL	Query run mode
ISOLATE	CCL	Query run mode (runners are Automatic) Database window
NOF FROW	DQL	Query design mode
TEXT	DQL	Text boxes on a form or report
VIEW	DCL	Privileges dialog

This picture is of the same pages of the same manual and was taken several days later by Jim March of BBV at meeting with Brad Nelson of Pima Co Election Department. At meeting was Donna Branch-Gilby, Bill Risner Esq, Jim March and John Brakey.

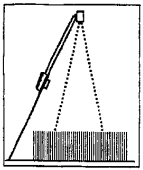
What we believe happened in the May 16, 2006, Regional Transportation Authority (RTA) bond election in Pima County, Arizona. By John R Brakey 7.18.2008

In our opinion, this account reveals profound problems in the Pima County Election Department.

Please watch this video from the HBO movie, *Hacking Democracy*: It has been re-edited with additional information about Pima County. If you read this article after watching the video, you'll have a good understanding of how we believe the RTA bond election was stolen.

<http://video.google.com/videoplay?docid=3172794162427293743&hl=en>

In the film, a device called a Cropscanner, a memory card-reader/programmer, is used to modify the memory card in the Diebold Accu-Vote Precinct-Based Optical Scanner (PBOS), the same vendor and equipment used in Pima County. On July 4th, 2005, Black Box Voting (BBV), an election integrity organization, published the results of this Tallahassee, Leon County, FL voting system test. After the release of the BBV report, there was a spike in Cropscanner sales.



CROPSCAN, Inc.
Multispectral Radiometry and Data Acquisition/Control Systems

1932 Viola Heights Lane NE
Rochester, MN 55906-6924 USA
Tel: (507) 285-9230
Fax: (206) 339-5770
Email: Cropscan@compuserve.com
Internet: www.cropscan.com

Fed Emp. Id: 45-0391371

INVOICE 0507182

To: Pima County Governmental Center
Department of Elections
ATTN: Isabel Araiza
130 W. Congress St. 8th Floor
Tucson, AZ 85701

SHIP TO: Pima County Governmental Center
Attn: Bryan Crane (Tel: 52-740-4270)
Department of Elections
130 W. Congress St. 8th Floor
Tucson, AZ 85701

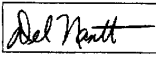
Reference Number	Date Shipped	Shipped Via	Col/PP FOB Point	Terms	PO Number	Sales Person	Date
	7/18/2005	UPS 2nd Day	Rochester, MN	Net30	None, Order by Email - 7/18/2005	Del Nantt	7/18/2005

NOTE: Price/Amount in U.S.A Dollars

Quantity	Part No.	Description	Unit Price	Amount
PURCHASE				
1	MCR	DLC Memory Card Reader/Programmer	\$365.00	\$365.00
1	RS9M9F-5	RS232 Serial Cable, DLC/MCR to Terminal/PC, DB9 male - DB9 female (5 feet)	\$22.50	\$22.50
1	DLCPS-12	12 Volt Power Supply/Charger for DLC or MCR (110VAC U.S.)	\$25.00	\$25.00
1	MCRUM	MCR User's Manual	\$12.50	\$12.50
1	RWCARDSW	Memory Card Read/Write Software - on Diskette	\$75.00	\$75.00
Invoice Subtotal:				\$500.00
Shipping & Insurance				\$21.71
TOTAL:				\$521.71
Made in United States of America				
Terms: C.I.F. (Cost, Insurance, Freight - Prepaid)				
Package 1: 11 x 8 x 7 inches				
Weight: 2.5 lbs				

Remit Payment (by bank wire transfer/EFT, U.S.A. dollars) to:

Bank of the West
Main at Broadway
 Fargo, North Dakota 58124 U.S.A.
SWIFT Code: BWSTUS66 ABA Number: 121100782
CROPSCAN, Inc. Account Number: 926002817



Or Remit Payment (U.S.A. Funds) to:

CROPSCAN, Inc.
1932 Viola Heights Lane NE
Rochester, MN 55906-6924
USA

Beside vote manipulation, the original use for this device is measuring moisture content in corn.

The Pima County Election Department bought a Cropscanner on July 17, 2005, less than two weeks after the report and ten months before the RTA election.

In the opinion of computer security expert Harri Hursti, the Diebold Accu-Vote system is compromised in its very design and architecture. Incorporated into the foundation of the Diebold PBOS 1.94w system used by Pima County is the mother of security holes, and no apparent cure will produce system safety. This design would not be characterized as a house with an unlocked door, but rather, in this author's view, a house with an unlockable revolving door. The complete report is at: www.blackboxvoting.org/BBVreport.pdf

Mark Kimble of the Tucson Citizen wrote an article August 11, 2005, "Kimble: 'Mother of security holes' in state voting system" http://www.tucsoncitizen.com/news/opinion/081105b5_kimble

We learned that Pima County had purchased the "Cropscanner" in a deposition of Bryan Crane. The question was brought up due to the fact that Jim March had learned from Bev Harris (founder of Black Box Voting) that the "Cropscanner vendor told Bev that after the July 4th report a number of election departments had order the devise.

During the RTA election, more than 70 scanners failed at various precincts on Election Day. We believe this may have happened due to tampering with or incorrectly programming memory cards. As Harri Hursti demonstrates in altering these memory cards, a variety of typos and changes can be introduced, but the process is complex and tricky.

While inspecting precincts on May 16th, 2006, John Brakey discovered many Diebold PBOS scanners failing. Brakey called Representative Ted Downing, Chair of the State Party Election Integrity committee, and asked him to go to the Pima County Election Department. After he arrived, Brakey told Downing to call Jim March in Seattle and describe what he saw in the room. Downing described a Microsoft Access manual being referenced by election department technician Bryan Crane, a blatant violation of election law. Downing then called Donna Branch-Gilby, at that time the Chair of the Pima County Democratic Party, and asked her to bring a camera. Donna came with her husband, Bob Gilby, and took pictures of the open manual sitting right next to the central tabulator.

At that time, Rep. Downing requested of Pima County Elections Director Brad Nelson that an immediate backup “snapshot” of the election data be made and that it be left with the Pima County Sheriff’s Office until the situation was resolved. This request was refused.

Both Ted and Donna were told that they had no oversight rights because it was a nonpartisan election, thus stopping them from discovering if the central tabulator was networked to other computers in the office and if the Microsoft Access program was being used to read the system.

By the time we were able to check the computer almost a year later, the program was gone.

The Diebold Global Election Management System (GEMS) software is built on the Microsoft Access consumer-grade database program. It is illegal by state law for election departments to use software such as Microsoft Access which has not been approved and/or certified by the Secretary of State’s office. This is because the Microsoft Access program can be used to bypass security measures, including the GEMS audit log and the login security, and introduce unauthorized and illegal changes.

Microsoft Access is not legal anywhere near a certified voting system. It is a known election burglary tool, able to subvert all of Diebold’s inadequate-at-best security measures. The same is true of the Sequoia voting system. We did find Microsoft Access in the Maricopa County Election Department, which counts 58% of the vote statewide.

For the RTA election, Bryan Crane processed 13,618 early ballots on 5/10/06, six days prior to Election Day. He did a backup at 12:27 PM, then ran the “CARD CAST report,” the correct way to check the tally without revealing election results. He left at the end of the day.

Diebold GEMS Audit Log From The May 16, 2006 RTA Election

5/10/06 8:21 AM	User admin: Reset election
5/10/06 8:22 AM	User admin: Printing Summary Report (Brakey Note: these two summaries are called Zero reports and are OK)
5/10/06 8:38 AM	User admin: Printing Summary Report (Brakey Note: these two summaries are called Zero reports and are OK)
5/10/06 12:27 PM	User admin: Backed up election to D:\Program Files\GEMS\Backup\pima consolidated 051606 EARLY DAY1.gbf
5/10/06 12:27 PM	User admin: Previewing Cards Cast Report (the proper way to verify that the 13,618 ballots were counted)
5/10/06 12:28 PM	User admin: Backed up election to D:\Program Files\GEMS\Backup\pima consolidated 051606.gbf
5/10/06 12:28 PM	User admin: Closing GEMS

In open court, it was shown that Crane was illegally taking home database backups and during the RTA counting, Crane had at least one other computer networked with the central tabulator.

The next morning, 5/11/06, at 9:55 AM, Crane began an unusual procedure that led to the destruction of the original vote tallies and database from the day before, and their replacement with another database of identical name. Crane then illegally printed two copies, ten minutes apart, of the election “SUMMARY report,” a detailed outline of who’s winning and losing. By law, these reports are NOT to be printed until one hour after the polls close on Election Day.

To summarize, Crane ran what looked like normal actions on 5/10/06 and made a “snapshot backup” of the file when counting was done for the day. On the morning of 5/11, he WROTE OVER the database from the day before, destroying its integrity. He then printed two copies of the “who's winning and losing” summary report, ten minutes apart.

This pattern of illegally making off with database backups, then overwriting data and printing summary reports is the model for hacking an election. First a false database is created or obtained, then the false data is used to replace existing data, and last, the winning and losing summary reports are printed to confirm that the hack was successful.

Crane later said under oath that morning backups were standard, but a review of the audit logs shows that to be false. He never did them as he stated to Judge Michael Miller in Court. (More on this below)

5/11/06 9:55 AM	User admin: User Login (Note time in the next 5 rows)
5/11/06 9:55 AM	User admin: Open Election: Consolidated Election, May 16, 2006 (pima consolidated 051606) admin Host
5/11/06 9:56 AM	User admin: Backed up election to D:\Program Files\GEMS\Backup\pima consolidated 051606 EARLY DAY1.gbf
5/11/06 9:56 AM	User admin: Printing Summary Report (NOT supposed to be printed until one hour after the polls close)
5/11/06 10:06 AM	User admin: Printing Summary Report
5/11/06 12:06 PM	User admin: Previewing Cards Cast Report (proper way to check if ballot are counted correctly)

In a meeting Attorney Bill Risner, Donna Branch-Gilby, Jim March of Black Box Voting and I had with Director Brad Nelson several days after the RTA election, he was asked if Jim March could enter the election counting room, take pictures, inspect the cables and look around but touch nothing. The reason for this request was that the network-connected printer was not in the count room and we wanted to know if the central tabulator's network was connected to any other PCs. Nelson refused saying, “Ladies and gentlemen, I can’t do that, I have a live election going on.” Nelson was referring to the Oro Valley election. We have pictures of the count room from that meeting. The lights were off and no one was in that room. Nelson apparently didn’t want us to inspect. Much later in the lawsuit we learned from Robbie Evens of Pima County that the central tabulator station was cross-connected to Bryan Crane’s computer at that time.

We believe this connection allowed Crane to load the database on to his office computer. Then using MS-Access, make changes to the database and if necessary at home that night and then overwrite the original database the next morning.

Nothing in our analysis conflicts with this theory.



Some 18 Anomalies Related to the RTA Election



1. The RTA passed by a surprisingly large margin. Polls taken before the election showed it losing. Sales tax increases for roads had lost badly in four previous elections.
2. Election Division staff printed unauthorized vote total summary reports after the first day of RTA early ballot scanning.
3. Before the second day of RTA early ballot scanning, Election Division staff erased the first day's database backup by over-writing it. This required responding to two warning messages, one from GEMS and one from Windows.
4. Election systems expert Michael Shamos of Carnegie Mellon advised the AG investigator of possible RTA fraud to hand count ballots, echoing advice from local election activists.
5. The AG Investigator lied to Shamos in an email, saying that "local naysayers" were onboard with not looking at ballots. The opposite was true and the investigator knew it, because he had engaged in a shouting argument with local naysayers about this issue.
6. IBeta tests conducted under contract with the AG investigator of the RTA election should have included looking for possible swapping of yes and no votes, but did not.
7. County staff directed all aspects of the IBeta testing, and led the testers to look at irrelevant items and to disregard potentially important items.
8. A whistleblower has come forward saying in a sworn affidavit that Bryan Crane told him privately that he had "fixed" the RTA election, under direction from his bosses.
9. The County Treasurer has announced a plan to destroy the RTA ballots ASAP.
10. A Microsoft Access manual was seen and photographed in the vote tabulation room on election night. Use of MS Access on an election computer was and is illegal.
11. Democratic Party observers were prevented from investigating cables connected to the tabulation computer after the RTA on the pretext that it was a non-partisan election.
12. A tape of ballot layout held by the Secretary of State for use by the Attorney General in any fraud investigation was never examined during the RTA fraud investigation where it was potentially key evidence. Instead it was returned to the suspects, who "lost" it.
13. The Pima County Board of Supervisors, through their lawyers, claimed there was a substantial risk that all election employees handling the election computer would "take the fifth" and refuse to answer questions based on a fear of criminal prosecution.
14. The Pima County Board of Supervisors has never requested an internal investigation of the Election Division.
15. Neither Brad Nelson nor Bryan Crane nor any Election Division employee has been reprimanded for any violations of rules or procedures.
16. At the end of the RTA Election Day, the database was NOT backed up, as it has been in virtually every other election. The database was not backed up until three days later, after all results had been published.
17. The Pima County Election Division purchased a "crop scanner" computer-hacking tool ten months before the RTA election. This tool had no other purpose in the Election Division than to illegally alter the programming of precinct voting machines.
18. Jim Barry retired from his job as the County Administrator's assistant in early 2005 and was immediately hired by the County to do a precinct by precinct study of how Pima voters had voted in bond elections, and "other duties" as assigned. Mr. Barry collected \$75,000 from the County for this contract, while at the same time collecting \$12,000 from a pro-RTA group for helping them with the RTA campaign.