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Who's Minding the Store?

A free press? Public officials? Anyone?

“Our citizens may be deceived for awhile, and have been deceived; but as long as the presses can be protected, we may trust to them for light.”¹

—Thomas Jefferson to Archibald Stuart. 1799.

Has the free press been reined in by corporate interests? Certainly not, I would have told you a year ago. You just have to make sure that you give them something newsworthy. Journalists are seekers of the truth, a balanced truth — this I still believe.

Managing editors understand that our government will become corrupt without critics, and that an honest and fearless press is the only method available to our citizenry to get at the truth — a year ago, I believed that they had such an understanding. But having seen the reluctance of some of our most important editors to consider issues of vested interests and electronic ballot fraud, I have to say that mainstream press support for investigative reporting barely has a pulse.

More insidious than failure to cover important stories as soon as they come out is this: Some members of the press now use their own failure to cover an issue as proof that the issue has no merit.

“If what you say is true, why hasn't it been in the *New York Times*?”

Well I don't know. You'll have to ask the *New York Times* — in the meantime, I have a tape recording I'd like you to take a look at,

a document you should see, some internal memos that someone should examine.

“The press [is] the only tocsin of a nation. [When it] is completely silenced ... all means of a general effort [are] taken away.”²

—Thomas Jefferson to Thomas Cooper
November 29, 1802

Our press is far from “completely silenced,” but its voice in matters of great importance has become, at the very least, muffled.

Investigative reporter Greg Palast did an important investigation into the illegal purge of more than 50,000 citizens, who were not felons, from the Florida voter roles.³ If your name was Bob Andersen of Miami, and Robert Anderson of Dallas was convicted of a felony, there was a nasty possibility that you might not be allowed to vote in Florida.

Explosive stuff. Proven stuff. Stuff that should be on the CNN news crawler, especially since these wronged voters, even after the case was proven, did *not* get their right to vote back in November 2002. These facts were documented, confessed-to, and validated in a court of law, but they were not covered at all by most news outlets.

One reason: Early on, some reporters called the office of Governor Jeb Bush and asked whether Florida had purged voters whose rights had been restored in other states, and Jeb’s office told them it wasn’t so. That was a lie, and documents proved it to be a lie, and an important part of the news story was, in fact, the uttering of that lie, but here’s what happened: Reporters decided not to report the story at all, justifying their decision not to cover it by pointing to the lie, without checking to see if it was the truth. After all, it was a statement from the office of the governor.

That is *not* what our founding fathers had in mind when they envisioned the role that a free press must play to protect democracy.

“No government ought to be without censors ... and where the press is free, no one ever will ... it would be undignified and criminal to pamper the former [the government] and persecute the latter [its critics].”⁴

—Thomas Jefferson

But in today's media age, a Nebraska senator can have his votes counted by a company that he chaired and still partially owns, but even while he is actively running for office, the Nebraska press will not inform Nebraska citizens of the conflict of interest (the lone exception: Lincoln TV *Channel 8 News*).

Atlanta Journal-Constitution reporter Jim Galloway told me he felt that it was more important to write about a state flag controversy than to inform Georgia voters that an illegal program modification had been made to 22,000 voting machines right before an election.⁵

CNN, Fox News, MSNBC, ABC, CBS and NBC were unable to tear themselves away from promising us weapons of mass destruction in Iraq (a story that turned out to be false) in order to spend five minutes asking a single question about the integrity of our voting system, even after a Stanford computer-science professor and more than one thousand computer-security experts insisted that it could not be trusted.

When Diebold, with machines in 37 states, left its voting system out on the Web for six years (free for the hacking), not a single editor from the *Wall Street Journal* or *USA Today* or *Newsweek* magazine bothered to assign anyone to look at the files so they could form an opinion as to the importance of this security gaffe.

It wasn't because they didn't know. I sent more than 100,000 bulletins directly to the appropriate editors and producers, in which I offered documents, cited sources and listed phone numbers of many experts to call. Everyone got the material — investigative, political, government, high-tech, national-news journalists — many have been receiving regular updates since October 2002. Not only has most of the press done a poor job (or at least a delayed one) of informing American citizens about this issue, most reporters didn't even look at the documents to assess the credibility of this story.

So much for the mainstream news media minding the store. If you want to know where the free press is nowadays, here it is:

Alastair Thompson was a reporter for many years before starting his Internet news site, *Scoop Media* (www.scoop.co.nz) — which was launched out of a garden shed in Wellington, New Zealand, and won the New Zealand Internet Awards for “Best Online Writing” and “Best Content.” Yeah, I know: It's just New Zealand and only the Internet.

Thompson didn't wait for the *New York Times*. He covered the story of the insecure Diebold FTP site on February 10, 2003, just 18 days after the site was discovered.⁶

On February 13, I sent the “rob-georgia” story about last-minute program modifications on Georgia voting machines. *Scoop Media* covered it, but not the *Atlanta Journal-Constitution* (where it happened) — even though I provided phone numbers so reporters could call election officials themselves to confirm the story.⁷

Since the story broke, some good work has been done. Van Smith of *The Baltimore City Paper* published a detailed statistical analysis of anomalies in the November 2002 Georgia election,⁹ even though he was working for a local paper in Baltimore. He realized it was important: Maryland was planning to buy the same machines.

Salon.com has been writing about concerns with electronic voting for some time now, and Salon's tech writer, Farhad Manjoo,¹⁰ continues to write accurate and groundbreaking investigative stories.

Rachel Konrad of The Associated Press has been covering this issue fearlessly since February, 2003.

Kim Zetter of *WiredNews* wrote a series of e-voting articles.¹²

Julie Carr-Smyth of the *Cleveland Plain Dealer* broke the news about Diebold CEO Wally O'Dell's promise to “deliver the votes” for Bush in 2004.¹³

Erika D. Smith of the *Akron Beacon Journal* reported that Diebold's Mark Radke said that the new Diebold TSx machines will substitute wireless communication of votes for land-line modems. Radke all but admitted the system could be hacked when he made a startling (and cavalier) admission:

“But even if that burst of election data were intercepted, all the hacker would get are unofficial results.”¹⁴

(Um, Mr. Radke? Hacking can put data in as well as take data out.)

If you want to find the free press nowadays, look to these folks, who prove we do have one, though it may not be quite where you've been looking for it. And if you really want to locate the free press, don a pair of hip boots and get one of those caver's hats with a light on it, wade into the Internet, shove the crud aside and you'll find some of the best investigative reporting ever.

Given the abundance of leads, the wealth of information on this

topic and its importance, this issue has largely been ignored. Is the paucity of news coverage because reporters have just now learned of the vulnerabilities of electronic voting? Is it because electronic voting is new?

Not exactly. The first major article about electronic voting appeared in *The New Yorker* fifteen years ago, by investigative reporter Ronnie Dugger.¹⁵ He wrote of many of the same concerns you are reading about in this book, but no one paid attention.

Though not covered in the mainstream press until late 2003, word of the Diebold FTP site spread through the Internet as soon as New Zealand's *Scoop Media* broke the news in February. And this, you see, is why true freedom of the press is so important: It informs the citizenry, and galvanizes us to engage in the scrutiny that is our duty. Thank goodness for the Internet, for without it this story would never have been fully exposed.

Despite a virtual blackout by major media outlets for nearly a year, ordinary people like you, many of whom had never done any activism in their lives, decided to get involved in this issue.

* * * * *

Efforts by just a handful of people have gotten us to this point, where problems with voting machines are at last reaching public consciousness. Drs. Rebecca Mercuri and Peter Neumann have put forth Herculean efforts, toiling nearly in the dark for fourteen years, while newspapers often chose to print press releases about how much "fun" it is to vote on machines instead of examining the more difficult subject matter brought to light by these computer scientists.

When news of the 22,000 illicit patches in Georgia broke, a small contingent of Georgians decided to do something about it. I'm going to refer to them simply as "Georgia activists" because they have asked me not to call them out by name. They discovered that asking questions about our voting system is like trying to walk up the down escalator.

One of the Georgia activists hunted up the law pertaining to putting modifications on the voting system:

"11. Any modification to the hardware, firmware, or software of an existing system which has completed Qualification, Certification, or Acceptance testing in accordance with these Rules will invalidate the State certification unless

it can be shown that the change does not affect the overall flow of program control or the manner in which the ballots are interpreted and the vote data are processed, and the change falls into one or more of the following classifications:

- (i) It is made for the purpose of correcting a defect, and test documentation is provided which verifies that the installation of the hardware change or corrected code does not result in any consequence other than the elimination of the defect.
- (ii) It is made for the purpose of enhancing the utility of the system or adding additional audit or report generating capability.
- (iii) It is made for the purpose of enabling interaction with other general purpose or approved equipment or computer programs and databases, and procedural and test documentation is provided which verifies that such interaction does not involve or adversely affect vote counting and data storage.
- (iv) It is made for the purpose of enabling operation on a different processor or of utilizing additional or different peripheral devices, and the software is unaltered in structure and function.

(From RULES OF OFFICE OF THE SECRETARY OF STATE ELECTION DIVISION, CHAPTER 590-8-1: CERTIFICATION OF VOTING SYSTEMS¹⁶)

When you change software to correct for a problem, the procedure is to assign a bug number. You test it. You document everything. You append a new number to the end of the release. Then it has to be approved. And according to Georgia law, it must be certified. Writing up a fix, sticking it on the Internet, and then running around putting it on voting machines is not legal. Georgia citizens have a right to be incensed, because the state violated the law, and Georgia taxpayers now realize that their votes may have been thrown out the window.

The Carter Center, under the auspices of former President Jimmy Carter, seeks to prevent and resolve conflicts, protect freedom and enhance democracy. One of the activists approached them, but was told that, according to its charter, the Carter Center can only monitor elections *outside* the United States.

Computer programmer Roxanne Jekot contacted Lieutenant Governor Mark Taylor's office, who told her to send information. She sent details about the FTP site, rob-georgia, Georgia law and the unexamined program modifications. After that, they quit taking her calls.

Georgia legislators were not enthusiastic about discussing computer-security issues and usually were willing to give up no more than three minutes in the hallway, between sessions, to listen to concerns.

Several attempts were made to meet with Secretary of State Cathy Cox, but citizens were only allowed to speak with Assistant Director of Elections Michael Barnes, who was not helpful. They met with Tom Murphy, a former Speaker of the House in the Georgia state legislature.

“He knows where all the bones are buried,” confided a self-appointed helper named Chris Hagin, who said he was an ambassador under President Clinton. Tom Murphy called upon Cox to meet with the activists, but she didn’t; instead, Barnes told them on March 6 that Cox would be booked up “until July.”

What about the American Civil Liberties Union? Activists met with ACLU attorney C. Knowles, but he told them he couldn’t take on electronic voting machines because he had fought against the punch cards. ACLU attorney Laughlin McDonald, Director of the Voting Rights Project, was unconvinced.

“Where’s the harm?”he said. (“Harm” is a legal requirement needed for some types of lawsuits.)

Citizen concern continued to grow. In New York, author Mark Crispin Miller asked what he could do to help. One of Miller’s Georgia contacts, Denis Wright, began joining the agitation to have someone — anyone — look into irregularities with Georgia’s voting system.

Wright filed a formal request to produce Georgia documents, which yielded this odd response to his simple query about the certification documents:

From Denis Wright to Kara Sinkule, March 19, 2003:

“Hi Kara. Hope you are doing well. I need some more help, please. I am hoping that I can get hard copies of the following documents, per the Freedom of Information Act: (1) According to state law, any changes in the voting machine software (GEMS and Windows) require documentation in writing. I would like to get copies of any such documentation. (2) A copy of the actual certification letter from the lab (certifying the version of the software which was used on election day) as well as any related memos, letters, etc...

* * * * *

From Clifford Tatum, Assistant Director of Legal Affairs, Election Division To Denis Wright, March 25, 2003; Open Records Request
 “Our office has received your request under the Georgia Open Records Act, O.C.G.A. § 50-18-70 regarding electronic voting information... In response to your first category, we have determined that no records exist regarding a change to software used by the voting system. In response to your second category, we have determined that no records exist in the Secretary of State’s office regarding a certification letter from the lab certifying the version of software used on Election Day. Please be advised that any records of this type may have been submitted to the Georgia Technology Authority (GTA) in response to the Request for Proposal that was issued by GTA. Accordingly, a request for this type of information should be submitted to Gary Powell with GTA for response. By copy of this letter, I am advising Mr. Powell of your potential request ...”

What have we learned so far?

Uncertified program modifications can allow a single programmer to penetrate election security for millions of votes, a critical breach of electoral integrity.

Georgia requires certification and reports for program modifications, according to the Rules of Office of the Secretary of State Election Division Chapter 590-8-1, Certification of Voting Systems, No. 11.¹⁶

Diebold knew Georgia required recertification for modifications, according to a Diebold internal document titled “Certification Requirement Summary.”¹⁷

Assistant Director of Elections Michael Barnes; Chris Riggall, press secretary for Cathy Cox; Kara Sinkule, press secretary for Cathy Cox; and Dr. Britain Williams, chair of the NASED Voting Systems Board Technical Committee all admit that modifications were done.

Michael Barnes and Dr. Britain Williams admit that the program modifications were not certified. Clifford Tatum admits there is no documentation for the program modifications.¹⁸

Dr. Britain Williams later reversed himself and claimed that uncertified patches were impossible in Georgia. On April 23, 2003, Dr. Williams wrote:

“... This comment [“A patch to Windows can slip through without scrutiny.”]

assumes that the State of Georgia allows changes and/or upgrades to the Microsoft operating system. This is not the case.

"The vendor, Diebold, submits to the ITA a specific version of the operating system and a specific version of the election software. This specific version of the operating system and the election software undergoes ITA testing and State Certification testing. The State Certification is for this specific version of the Microsoft operating system and the Diebold election system. After State Certification any change to either the Microsoft operating system or the Diebold election system voids the State Certification.

"If a change to either the Microsoft operating system or the Diebold election system becomes desirable or necessary, this change voids the State Certification. The revised system must then go back through the entire ITA Qualification and State Certification."¹⁹

Michael Barnes and Dr. Britain Williams say no one downloaded anything from the FTP site.²⁰

Diebold officials decided that modifications were not done at all. In an interview with *Salon.com*, Joseph Richardson, a spokesman for Diebold, denied that a patch had been applied to the Georgia machines, saying, "We have analyzed that situation and have no indication of that happening at all."²¹ I was so incredulous when I read this that I decided to call him to see if he was misquoted:

Harris: "Did you say, when interviewed by *Salon.com*, in reference to whether patches were put on machines in Georgia, 'We have analyzed that situation and have no indication of that happening at all'?"

Richardson: "Well, that is what I said at the time; however, we have continued to investigate the matter and ... (very, very long pause) Yes that is what I said to *Salon.com*."

Harris: "Do you stand by that now?"

Richardson: "We have continued to look into the matter."

Harris: "As you have continued to investigate this, do you have any new information as to whether patches were put on in Georgia?"

Richardson: "No."

Harris: "Has anyone thought to just call them up and ask? The Secretary of State's office?"

Richardson: "I can't say."

Harris: “What was the rob-georgia file? Who is responsible for it?”

Richardson: “I’m not privy to that information.”

Harris: “Who would be able to answer that question?”

Richardson: “I can’t tell you. ²²

* * * * *

Blessed are the whistle blowers. They may save this democracy yet. On March 13, 2003, I received this e-mail:

Hi Bev;

I read your recent article about Diebold Elections systems. Just wanted to let you know that I am the Rob in Georgia that they claimed they didn?t [sic] know about.

Thanks,

Rob Behler