



Black Box Voting Special Report

Uh-Oh – Hammertime

The WinVote Shuffle: Vendors, Testers, Certifiers & the Creative Use of a Hammer



Anthony Sabo

Virginia
voting
machine



By Jim March and Bev Harris

A 52-year old carpenter from Arlington Virginia expressed frustration over losing his voting rights by taking a hammer to a voting machine. The WinVote machine succumbed to no less than an Estwing Supreme 22S, “the finest framing hammer known to mankind,” according to Sabo. Arlington has been forcing its citizenry to vote on machines of questionable pedigree, which count votes in secret, prohibit citizen oversight and for added fun, feature wireless capability throughout Election Day.

This Sabo vs. WinVote episode has unraveled a veritable Conga line of finger-pointing vendors, testers and certifiers, all shuffling away from answering tough questions about how this machine came to be capturing votes on Election Day at all.

Sabo’s act of outrage exposes the broken foundation of current electoral processes, and if history is any indicator, such incidents will get worse.

THE DAY THE HAMMER MET THE VOTING MACHINE

On Nov. 7, 2006, Anthony Sabo came to his polling place and smashed a voting machine into scrap. The deed that resulted in the voting machine’s demise he said, and still insists, was the theft of his vote inside the hidden workings of the machine.

Sabo’s dismay was expressed in spectacular fashion, but one the prosecutor could not allow.

On May 8, 2007, Mr. Sabo was convicted of felony tampering with a voting machine or ballot containing device, a class 5 felony carrying up to 10 years in prison. The jury stopped a step short of nullification, handing Sabo a sentence of only 90 days in the county jail with a \$2,500 fine. Contributing to their leniency was the fact that Mr. Sabo had gone out of his way to avoid any risk of harm to any human, and surrendered peacefully to the first officers on scene. Causing some jurors concern, though, was the fact that Sabo had done the deed late in the day when the machine contained votes; though officials claim the votes were recovered intact (if you trust that the votes were recorded accurately at all), the hammering they took may have put them at risk.

SECRET VOTE COUNTS UPSET CITIZENS

Sabo isn't the first American to get arrested for resisting a voting machine.



THE WOODLAND TEA PARTY

On May 20, 2004 a Teller, Colorado citizen named "Lotus" was sentenced to 10 days in jail and a \$548 fine for throwing tea bags at a voting machine in an incident that has come to be known as the Woodland Tea Party.¹

THE ELECTION FRAUD WAR OF 1946 – THE “BATTLE OF ATHENS”

Fifteen-hundred shots were fired before it was all over and the president's wife wrote it up in the newspaper.²

Election fraud and general political corruption used to run through the deep South like mud through a gully. Post-war, returning GIs who fought tyranny overseas were reluctant to tolerate it in their own back yards. Reforms of various sorts were common, but nowhere was the need for reform more apparent than the McMinn County, Tennessee town of Athens.

Standard practice was for the mayor and sheriff to hire “special deputies” (read: gangsters) to help “protect the vote” by taking it back to the jail for mass rigging out of the public's view.

On election day, in August 1946, things came to a head. Unarmed election watchers were beaten and one Black gent trying to vote was shot after beatings wouldn't dissuade him. It ended when the GIs retrieved guns from the local armory and pinned the criminals inside the jail – and then attacked the door with dynamite. No charges were ever filed, in large part because the captured jail also happened to hold voluminous evidence of election fraud.

By the 1948 and 1950 elections, the “GI Reform Party” swept Tennessee, supporting the forceful rebellion against corruption and threatening a repeat if necessary. One of the leaders in the post-battle period happened to be Al Gore Senior, who later led the re-merger of the GI Reform Party with a cleaned-up Democratic Party.

NEW INCIDENTS OF ELECTION OUTRAGE

The source of current citizen outbursts goes straight back to the Constitution and the Bill of Rights. Representatives shall be chosen by The People, they say. The People are sovereign over the government, they specify. Yet somehow, very large cracks appeared in the foundation of our country when votes, which had been counted in public, began being counted inside secret black

boxes (computers), disallowing the citizenry from either participation or oversight. Predictably, when the government and its private vendors began controlling everything, trust evaporated.

61-year old knocks out voting computer

In Cleveland on May 2, 2006 a 61-year-old man named Marc Fenster was arrested after he beat up a voting machine. Outraged at being forced to put his vote into a machine that would count it only in secret, he reportedly pummeled the machine to the ground.³



Nowadays, the Tommy guns and hastily deputized crooks from the Battle of Athens era have been replaced with secrecy and a veneer of professionalism, hiding a process that is corrupt, incompetent and ill-managed.

Voting in America is supposed to control the most powerful nation in the world. It controls the public safety – the sheriffs, the judges (who are either appointed by elected officials or elected themselves), and the prosecutors.

And yet, no one can tell Anthony Sabo whether the voting machines he was forced to vote on are really authorized, or not. No one claims to know whether they are certified, or not, as required by law in Virginia to even use the machines.

What would happen if the Federal Aviation Administration admitted that it was impossible to tell if a given Boeing 747 was in an authorized flying configuration or not? The certification process between commercial airliners and voting machines is not dissimilar (on paper). But in the case of voting machines, not only have the most widely used models been found to be in violation of their own certification standards, and no one seems to be able to show us that the less widely used machine, the WinVote used in Virginia and Pennsylvania, is even certified at all!

And even if it was certified, it would still be counting Anthony Sabo's vote in secret, without permitting citizens to oversee anything meaningful at all. And this is why Sabo decided it was so important to take a hammer to the situation.

THE CHARGES

Mr. Sabo was charged as follows:

Title 24.2 Elections - Chapter 10 - Election Offenses Generally; Penalties: Â§ 24.2-1009. Stealing or tampering with ballot containers, voting or registration equipment, software, records or documents. "Any person who (i) steals or willfully, fraudulently, or wrongfully tampers with any part of any ballot container, voting or registration equipment, records, or documents, which are used in any way within the registration or election process, (ii) steals or willfully, fraudulently, or wrongfully tampers with the software used to prepare and operate voting equipment or the software or hardware used to collect and disseminate election returns, (iii) steals or willfully, fraudulently, or wrongfully tampers with an electronic activation device or electronic data storage medium of the type used to prepare, operate or back-up electronic voting equipment, (iv) willfully, fraudulently, or wrongfully intercepts, alters or disrupts the electronic transmission of election returns or the posting of returns on the Internet, (v) fraudulently makes any entry, deletion, or alteration to any item listed in (i), or (vi) aids, abets, or permits any other person to violate the provisions of clauses (i) through (v), shall be guilty of a Class 5 felony."

The charge carries a 10 year maximum penalty.

NOW HERE'S AN INTERESTING QUESTION: WAS IT A VOTING MACHINE?

If a voting machine is unqualified to count votes, is it a voting machine? Virginia law is very clear that only approved machines are legally able to be used as “voting machines.” We would think that if a machine was in fact *not* able to be used legally, it wouldn't match the definition of “voting machine” and therefore, while Sabo may have hammered public property, he might not have hammered a legitimate “voting machine.”

By the time of Sabo's trial, at least some evidence had cropped up that the WinVote machines weren't properly certified for use. The judge refused to allow the jury to hear any evidence on this matter. Per the judge, whether or not the voting machine was legal was irrelevant. All she needed to know was that the voting machine was in use, and that's all she would allow the jury to know.

THE WINVOTE SCANDAL

Advanced Voting Solutions (AVS) is the company that makes the WinVote machine. AVS management has ties to the old management team from the elections company acquired by Diebold, called Global Election Systems. AVS is run by Howard Van Pelt, who in 2001 was among the executives at Global. In fact, Van Pelt engineered the purchase of that company by Diebold. Much has been said of Global; in a nutshell, four convicted felons and a swindler were involved in its management including three of its founders (stock and investment fraud) plus one 23-count embezzler and a stray coke dealer. There is no evidence Mr. Van Pelt has a criminal past, however his hiring and promotion in a company with such a checkered past is cause for concern.

VIRGINIA CERTIFICATION RULES

In Virginia, voting systems must be certified at the state level and per the long-standing policy of the VA State Board of Elections, federal-level oversight via NASED or the EAC and ITA review were required prior to state certification.

For those new to the issue, let's translate: NASED (“National Association of State Election Directors”) was a quasi-governmental group at the federal level that was checking to make sure private testing labs (“Independent Testing Authorities”) were properly reviewing voting machines. After a number of remarkable errors, oversight is slowly switching over to the new Election Assistance Commission (EAC)...except as we'll see, not quite.

Now Van Pelt and his motley band of programmers have brought us the WinVote machine, quite possibly the worst voting machine in America, and it takes a lot to earn the title “Worst of Breed” in e-voting today.

The WinVote is a paperless touch-screen, or “DRE” (Direct Recording Electronic) voting machine. You touch the screen, your vote allegedly ends up somewhere deep in the bowels of the machine, that's all anyone gets to know. All information on the votes it processes is stored in “read-write memory,” meaning that changes can be *written* into it. This type of system is vulnerable to both deliberately programmed changes and accidental mistakes. It uses **WiFi** (wireless networking, which is like a cordless phone for a computer, basically a party line which allows anybody else to connect in while walking by or on the street outside).

DR. BRIT “WILLCERTIFYANYTHING”



Dr. Brit Williams

When the Virginia Board of Elections hired a voting system evaluator in mid-2002 to review the machine, they turned to Dr. Brit Williams, notorious for his pro-vendor stance disparaging security concerns. At one point Williams referred to citizens who questioned e-voting as “terrorists.” He never met a Diebold machine he didn’t love, even though those machines have now been hacked by professors from at least six different universities, a Finnish entrepreneur, a gun nut, a presidential candidate, two 50-year old women and a chimpanzee, each using a different method.

In comes Williams to examine the WinVote. *But even the myopic Dr. Williams was taken aback by the WinVote WiFi elements*, and he suggested that this feature NOT be used in the field while any voting is going on, and that it should be restricted to use at the election department warehouse to upload results.

You might just be able to stand in front of Brit Williams with a big toe stuck to your forehead, confident that he’d never notice if you called yourself a voting machine. Williams managed to miss the plain fact that if you remove the WiFi card from the machine, it will no longer boot! That’s right, *you can’t turn it on* without violating his recommendations. The WinVote voting machines have to be shipped into the polling places with their WiFi components fully activated during the entire Election Day -- or whenever in use for any purpose -- at least one Virginia election official was honest enough to admit to Jim March of **Black Box Voting** that they had “scanned” the machines and found that WiFi was active, and determined that it used the older “WEP” (read: crackable) WiFi password security.



“CAN YOU HEAR ME NOW?”

WIRELESS COMMUNICATIONS AND VOTING MACHINES

Within the last year, WEP has been thoroughly broken. And while the WinVote WiFi is supposedly used only to communicate between stations at the precinct to compile the results from multiple voting machines, and in the warehouse to accept programming before the election, anyone who knows the protocols, such as current or former vendor staff, consultants and elections staff, can either “remote read” what’s in that voting machine (early votes and during Election Day -- or worse, can perhaps drop in little changes that affect vote results. The current WEP password is now little more than a “locked screen door.”⁴

And this isn’t theoretical. It has resulted in millions of dollars of real-world credit card theft.⁵

THEY CHANGED THE MACHINES – NO THEY DIDN’T – WELL THEY DID ...

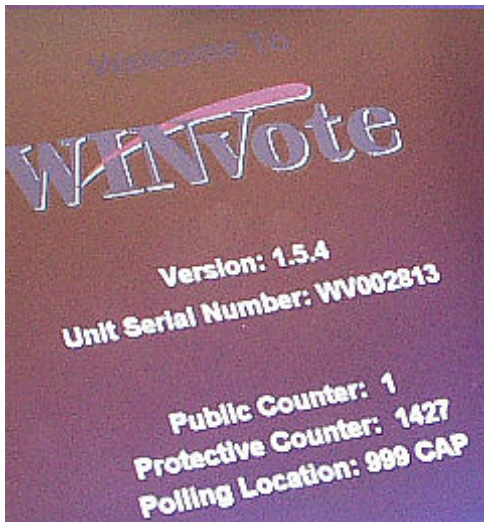
- Voting systems are assigned an ID number that identifies the version and configuration. (The version number on the WinVote machine we photographed was “1.54”)
- If the programming or configuration changes, it must be reported. (No reports of changes have been forthcoming)

- Each version requires a separate testing and certification process (Only one WinVote version is certified, the “1.54”)
- Most programming changes require a new version number. (No new version numbers appear to have been deployed anywhere)

Yet, **Black Box Voting** has learned that the software currently used in many Virginia counties, including Arlington where the hammering incident took place, was altered by programmers for Advanced Voting Solutions. This took place at the request of Fairfax county in 2004. While the changes were “minor” according to our Fairfax source, no code review was performed by anyone.

That means:

- The “1.54” version being used in Fairfax and Arlington is not the same as the approved “1.54” version.
- We should expect to see reports that the programming and/or configuration has changed, but no reports seem to exist.



A picture taken on May 9, 2007 by **Black Box Voting** shows an AVS WinVote machine in use in Fairfax County prominently displaying the version number “1.54” - which is the same version originally reported in both the federal and Virginia certifications of mid-2002, even though the code differs.

THE PONZI SCHEME

Nancy Tobi, co-founder of Democracy for New Hampshire, refers to the testing and certification system as a “Ponzi Scheme.”⁶ It involves investment of taxpayer money into a system that never quite catches up to itself; by the time local governments buy a voting system it is already in violation of changed guidelines, which carry with them the obligation to make new voting systems that comply, making the system you just bought obsolete as of preordained dates (usually just 24-36 months later), which will require a repurchase most purchasers were unaware of.

This hidden repurchase cycle requirement is secreted in a Byzantine interconnecting set of guidelines generated by an assortment of federal and state bodies.



In what has to be the citizen homework assignment from hell, Tobi ventured into the belly of the beast. She decided to attend voting industry and politician-laden meetings and read all the obscure documents and regulations. When she put the whole picture together, what she found was a Ponzi Scheme.

Nancy Tobi

Tobi wrote up her conclusions, annotated them with the evidence, and handed all this over in face-to-face meetings with various elections agency directors. They have never refuted or denied any of her findings.

“It might be a fraud,” one official confided to Tobi, “but please don’t call it a Ponzi Scheme.”

Well whatever it is, the election industry vendors know it; they are licking their chops over the next round of profits. But rarely are the local aware of the legally required but hidden repurchase cycles. Unreimbursed costs are forcing elections officials to close polling places, switch to forced mail-in voting, and dip into the county’s general fund.

ARE THE WINVOTE MACHINES REAL, OR ARE THEY MEMOREX?

Black Box Voting board member Jim March, aided by a nose for bulldroppings and a couple former WinVote employees who prefer to remain anonymous, traveled to Virginia to meet with the “Sabo the Hammer.” **Black Box Voting** got involved because Sabo’s story and its repercussions need to be made public. Jim March provided moral support at Sabo’s trial and interviewed various members of the Conga line trying to get answers.

Here’s what he found:

Per the *one* person now left at the Virginia State Board of Elections handling voting system certification (Barbara Cockrell), the state board approved WinVote changes *after* the changes had already been done.

What was involved in approving these changes?

Well, not code review, according to Cockrell. So literally anything could have been inserted into the voting machine programming purporting to be something else – a hidden midday wireless results broadcast, the digital notes for a small Bach partita -- the point is, no one examined what the changes really were at all.

It’s voting rights blasphemy. WinVote is used in Virginia, Pennsylvania and Mississippi. Citizens living in these locations only get to exercise their Constitutional right to choose their representatives if AVS programmers allow it. No citizen oversight whatsoever is permitted, forcing citizens to trust the government and its private vendors.

At no time since has AVS obtained updated certifications at the federal level for any product.

Reports of WinVote certification fraud

Troubling reports have surfaced about the deployment of the WinVote machines, showing that AVS has indeed made changes since 2002 both with software and hardware.

The people making the claims of frequent uncertified hardware and software changes are admittedly anonymous – they are ex-employees who would naturally be tied to nondisclosure agreements. However, they have gone so far as to leak pictures of the insides of WinVote boxes which differ in major aspects but sport the same federal/NASED qualification number.⁷

A number of factors support the likelihood that these anonymous reports may be true:

- * AVS has laid off staff and sales have been slow. The increase in rules requiring at least minimal paper backup systems in many states, and bans on WiFi use have hurt WinVote sales. Swapping to newer, cheaper hardware is a way to save money. However, this would not be permitted in a certified voting system.
- * We know of the software alterations in 2004. Per Fairfax, Virginia staff, the changes were copied to other counties including Arlington where Anthony Sabo and his favorite hammer reside (now sadly separated by the courts).
- * WiFi technology changed rapidly from 2002 to present. Any WiFi card sold commercially in mid-2002 would be likely off the market by mid-2003, almost certainly by 2004. Yet the WinVote system was produced and sold (at least in small numbers) right up to a fairly recent point, with systems shipping as late as 2006. Arlington claims AVS will sell them a replacement for Mr. Sabo's “victim” shortly. Unless AVS stockpiled a large stash of now-long-obsolete WiFi cards, or is scouring Ebay for used replacements for whatever they had certified mid-2002, AVS will be hard-pressed to supply fresh stock to create new certified systems.

ChaChaChaChaCha--KICK!
ENTER THE FINGER-POINTING CONGA LINE

With credible questions as to the certification validity of the WinVote in play, we attempted to determine at least whether or not officials *could* confirm whether the systems installed in Virginia are “fakes” or not.

Virginia’s Barbara Cockrell admits that the changes were never checked. She kicked the responsibility for answers to the technicians.

Unfortunately, Cockrell then mentioned to **Black Box Voting** that the state of Virginia doesn’t have anybody technical to even be able to check the code. Virginia is trying to hire someone.

So the question punts to Brit Williams. Williams, they tell us, has now retired. This kicks the questions over to Brit Williams’s reports.

But the necessary information is missing from the reports. The state certification report by Brit Williams that Cockrell has available doesn't list hardware or software components – not even in a sketchy fashion. So the Commonwealth of Virginia kicked it to the National Association of State Elections Directors (NASED).

NASED, which had Brit Williams on its technical committee, did the original certification of the WinVote. But NASED no longer has control over the process. According to Sandy Steinbach, a former NASED certification staffer now back with the Iowa state elections office, nobody connected with NASED has any certification papers that would show what the certified hardware list looked like. This kicks the question to the United States Elections Assistance Commission.

The Elections Assistance Commission (EAC) currently says it is looking for the old NASED certification documents on the WinVote, so far without luck. According to EAC Deputy General Counsel Gavin Gilmour, there is a fair chance the EAC doesn't have them at all. According to Gilmour, the EAC has *not* “taken over the NASED process,” rather they are creating a new process for voting system certification from scratch. That means new rules on certification with the assistance of NIST (National Institute of Science and Technology), a new test lab approval process, sallying forth into the Ponzi scheme. Mr. Gilmour claims that they are *not* maintaining a document archive from the NASED days and are not claiming to be a continuing source of oversight for old NASED-based certifications. Punt to Wyle testing labs.

According to Wyle labs, there were *attempts* to obtain updated WinVote certifications in 2005 and 2006, with additional testing, but no final new approval numbers were issued. Wyle is unwilling to discuss what might have gone wrong with the latest certifications but it adds to the picture of a company financially on the ropes. Kick it to the nondisclosure agreements.

According to a Wyle Labs source, Wyle is checking to see if they're even allowed to pass a copy to the EAC if *asked by the EAC*. There's a fair chance that only the Wyle Labs and the vendor (Advanced Voting Solutions) still have copies of the 2002 certification report. Punt to the vendor.

But the vendor is a private company claiming trade secret privileges. So to Congress we go.

Congress has been doing a series of hearings on the American voting situation recently. They bring in experts. One of the first on the list: Dr. Brit Williams. Not under subpoena and put under oath. Not cross examined, but an *expert*, and treated with deference and the utmost of respect.

Cogitate on that for a moment.

So if Brit Williams is the expert, let’s kick it back to him: The 2002 Brit Williams report for the state of Virginia on the WinVote makes clear that Williams thought the federal-level certification

had been done, but bears no evidence that he himself ever saw it. Except that he was on the federal certification committee. Adding to the mystery: Per Barbara Cockrell, the Wyle report isn't in the WinVote file where it should be sitting right next to the Brit Williams report.

At this time it is *flat impossible* for any government official to determine whether or not the WinVotes installed in Virginia are fakes.

THE STATE OF OUR DEMOCRACY

Anthony Sabo will likely be jailed for 90 days (and will be labeled a felon for life) for taking a step that forced sunlight into the WinVote voting machine scandal.

Whistleblower Stephen Heller was arrested and threatened with five years in jail for leaking documents that showed Diebold lying to the California Secretary of State.

Bruce Funk, an elections official from Emery County Utah, was given bizarre, discrepant machines and told they were brand new. This led to a **Black Box Voting** study by Harri Hursti, which ended up exposing a “nuclear bomb” sized security hole. Funk was locked out of his office and fired for his efforts.

Ion Sancho, the Leon County Florida elections official who was blackballed by suppliers for participation in security testing, was called “reckless” by the vendors, who claimed that only *they* should do the testing.

Taking on the voting machine industry will always be called “inappropriate” while efforts are underway to keep vote-counting secret and block citizen oversight, but note that when voting rights are trampled, it can get to a point – as it did in the Battle of Athens – where taking up guns and firing shots over it becomes a thing of honor. Until vote counting is once again done in public and with full public participation and oversight, we shouldn't expect conflicts to go away.

Sabo chose a path that exposed problems with machines used by hundreds of thousands of citizens. He's showing the backbone to take the heat for his decision, even though he has no means of income to pay the \$2,500 fine invoked when he took this dramatic, and hey – “inappropriate” course of action. He's not the first citizen to suffer some consequences in the fight to have a vote, and he probably won't be the last.

WILL WE HEED THE WAKE-UP CALL?

We should view this as a wake-up call, a powerful sign of public discontent over visibly non-transparent, non-democratic and in all too many cases non-sane black box voting systems. Will we wait for the individual acts of outrage to grow into 1500 shots? A national uprising?

When you change the fundamental structures that are the very essence of citizen sovereignty, you create destabilization of the whole system. That is exactly what we have right now with private systems that count our votes in secret. And until the foundational checks and balances are fully restored, our election system will continue to produce casualties.

“If a political machine does not allow the people free expression, then freedom-loving people lose their faith in the machinery under which their government functions.

In this particular case [Battle of Athens], a group of young veterans organized to oust the local machine and elect their own slate in the primary. We may deplore the use of force but we must also recognize the lesson which this incident points for us all. When the majority of the people know what they want, they will obtain it.” – Eleanor Roosevelt ⁸

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A note to our Angels: If you would like to help Anthony Sabo with the burden, which for him is crushing, of the \$2,500 fine, contact **Black Box Voting** and we will put you in touch with him. Nancy Tobi will be burrowing her way into several official meetings this summer and needs help with travel expenses (and/or airline miles). We will provide you with her contact information if you can help. Offers of assistance can be by telephone (425) 793-1030, e-mail angels@blackboxvoting.org, or mailed to the address below.

* * * * *

Thanks to attorney Paul Lehto for his analysis and framing of the voting rights issues, to Nancy Tobi for her amazing work untangling the testing and certification process, and to our own Jim March for doing the heavy lifting on Virginia WinVote certification problems, along with the historic framing of the issue through the Battle of Athens.

Footnotes

- (1) Woodland Tea Party: The Colorado Springs Gazette, May 20, 2004, "Voting stunt gets 10 days" by Jeremy Meyer
- (2) Battle of Athens: For a good timeline of the events surrounding the Battle Of Athens, see also: <http://www.constitution.org/mil/tn/batathen.htm>. The same source also has a set of period newspaper accounts. The long timeline and blow-by-blow account from the Chattanooga Daily Times of Aug. 8th 1946 is a must-see: http://www.constitution.org/mil/tn/batathen_press.htm. Finally, note that these events (and the connection to Al Gore Sr.) is documented in a set of official Tennessee state history pages: <http://www.state.tn.us/tsla/history/state/recordgroups/findingaids/rg238.pdf> - index <http://www.state.tn.us/sos/bluebook/online/hist9.pdf> - actual story starts bottom of 2nd page.
- (3) Cleveland voting machine pummeling: Cleveland NewsNet5.com, May 2, 2006 "Poll Rage? Man Breaks Machines At Polling Location" <http://www.newsnet5.com/politics/9146477/detail.html>
- (4) WEP security cracked: Security Focus, Dec. 14, 2004 - <http://www.securityfocus.com/infocus/1814>
- (5) Credit card fraud: Wall Street Journal, May 4, 2007: "Breaking the Code: How Credit-Card Data Went Out Wireless"
http://online.wsj.com/article_email/article_print/SB117824446226991797-IMyQjAxMDE3NzA4NDIwNDQ0Wj.html
- (6) Ponzi Scheme: Democracy for New Hampshire, Feb. 20, 2007;
<http://www.democracyfornewhampshire.com/node/view/3505>
- (7) Detailed reports on WinVote certification problems, including documents:
http://www.bbvforums.org/forums/messages/73/differences_in_machines-44965.pdf
and
<http://www.bbvforums.org/forums/messages/73/44891.html>
- (8) Eleanor Roosevelt article on the Battle of Athens: The Daily Post-Athenian, Aug. 7, 1946 pp 1 and 6, "Mrs. Roosevelt Grasps Local Facts Better Than Most"

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