



Diebold Whistleblower charged with 3 Felonies

by [Vyan](#)

Mon Feb 27, 2006 at 10:31:18 AM PDT

From [Huffpost](#) via [Democratic Underground](#).

Two Years ago Stephen Heller, an actor in LA who worked part time for the law firm of Jones Day, discovered that one of the firm's clients, Diebold, was possibly going to disenfranchise thousands of voters in the next election.

Heller did the honorable thing, and provided this information to the California Attorney General and then Secretary of State Kevin Shelley - which ultimately resulted in the decertification of Deibold in California.

But last year Kevin Shelley was forced to resign as Secretary of State due to a [fundraising scandal](#). Ah-nald promptly appointed a new Republican Secretary of State who has proceeded to [Temporarily certify Deibold](#) despite the information provided by Stephen Heller, and Heller himself is now facing [criminal charges](#).

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Stephen Heller is alleged to have exposed documents in Jan. & Feb. 2004 which provided smoking gun evidence that Diebold was using illegal, uncertified software in California voting machines. The docs also showed that Diebold's California attorneys (the powerful international law firm Jones Day) had told them they were in breach of the law for using uncertified software, but **Diebold continued to use the uncertified software anyway**.

Heller is alleged to have come across these docs while temping as a word processor at Jones Day, and he is further alleged to have taken the docs and exposed them to the bright light of day. Now, after sitting on this for 2 years, the Los Angeles District Attorney, under pressure from Jones Day, is going after this whistleblower with 3 felony charges, each of which carries the potential of time in state prison.

So tell me is it a crime to report the commission of crime now? Apparently it is if the criminals include a large and powerful law firm like Jones Day.

Let's make this clear, folks. The docs Heller is accused of exposing were important evidence. First, they show that Diebold and their attorneys, Jones Day, conspired to mislead the California secretary of state, and that the lie they told was material, and resulted directly in the disenfranchisement of voters. Second, another document demonstrates that Diebold lied to the secretary of state when it represented that certain

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problems with its software were "fixed." This document, the release notes for the new software, showed that the problems were not fixed. Third, the documents showed that Diebold had been advised by Jones Day that what it had been doing with its uncertified software was illegal. Fourth, the documents show that Jones Day advised Diebold that it was subject to criminal prosecution. So in a nutshell, Diebold was defrauding the state government and taxpayers of California, and disenfranchising the voters of California. And the documents PROVE it.

The Huffpost article goes on to suggest that those who oppose the continued *illegal* certification of Diebold speak out in support of Heller. I concur. They suggest contact the relevant parties with the following talking points:

- Don't prosecute Stephen Heller. He's a whistleblower, not a criminal, and he should not be prosecuted.
- Diebold is the criminal here. Stephen Heller is alleged to have exposed Diebold's criminal activity, and that makes him a whistleblower. He should not be prosecuted.
- Diebold's election malfeasance strikes at the very heart of our democratic republic. Without clean elections, we don't have democracy anymore. Those who expose such crimes are whistleblowers and should not be prosecuted.
- America has a long history of whistleblowers exposing criminal activity, and prosecuting them is wrong; it puts a chilling effect on others who might see criminal activity and want to expose it.

You can email the Los Angeles District Attorney's office at lada@co.la.ca.us.

And of course, "a good old fashioned snail mail letter is very powerful tool":

District Attorney's Office
County of Los Angeles
210 West Temple Street, Suite 18000
Los Angeles, CA 90012-3210

Phone calls also help:

Telephone (213) 974-3512
Fax (213) 974-1484
TTY (800) 457-7778 (8:30am - 5:00pm M-F)

Vyan

Tags: [Diebold](#), [California](#), [Kevin Shelley](#), [Arnold Schwarzenegger](#) (all tags)

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by [Vyan](#) on [Mon Feb 27, 2006 at 10:30:28 AM PDT](#)

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The law is strange (4.00 / 2)

A woman in Kansas City was once prosecuted for practicing "random acts of kindness," by putting money in parking machines about to run out of time. Apparently it's a crime to do that for other people and of course the city loses out on the revenue for all those parking tickets. It's the same sort of twisted logic. They make an example, in this case, squeal and you will be prosecuted.

Winning without Delay.

by [Ijm](#) on [Mon Feb 27, 2006 at 12:23:46 PM PDT](#)
[[Parent](#)]

Just finished my printed letter, (none / 0)

and it will be off in the mail this afternoon. I've never written a letter to a DA before. Will letters like this honestly make a difference?

I listen to [Thom Hartmann](#)

by [RhetoricalRubberneck](#) on [Mon Feb 27, 2006 at 01:00:11 PM PDT](#)
[[Parent](#)]

I think they might, since they raise the overall (none / 1)

public awareness. But I can assure you that if you **don't** write one, it won't help at all.

*-6.88/-5.64 * You know what's happening. Fight it.*

by [John West](#) on [Mon Feb 27, 2006 at 01:18:03 PM PDT](#)
[[Parent](#)]

Why is Arnold afraid to have an honest election? (4.00 / 2)

Just as Schwarzenegger needed anabolic steroids to win his bodybuilding competitions and achieve success in Hollywood, he now requires the help of a corrupt voting machine company to assure re-election in California.

When will this outrage stop?

"And I hope you'll understand if any of us come before a court and we can't remember Abramoff, you'll tend to believe us." - Senator Lindsey Graham.

by [QuickSilver](#) on [Mon Feb 27, 2006 at 01:25:46 PM PDT](#)
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Recommended -- Important stuff (4.00 / 15)

Sometimes it seems that all we have between ourselves and the culture of corruption that permeates Washington and state/local systems of government are those honest people known as whistleblowers.

Whistleblowers are often vilified as people with chips on their shoulders, character disordered, or paranoid. But they are usually ordinary people who work hard, care about their jobs and their society, and believe they can make a difference.

Daily Kos readers should support Stephen Heller, a stand-up guy trying to save democracy in California.

Thanks for this diary.

"Fog everywhere."

by **Valtin** on **Mon Feb 27, 2006 at 10:35:41 AM PDT**

rep. Jim Mcdermott made this point (4.00 / 6)

at a house party fundraiser recently. His ongoing, lengthy & expensive court battle with Repubs is due to determination to make an example of him, to penalize a well-known whistleblower so severely, others will back off from doing the same. He frames it as a free speech issue.

I'm planning a benefit show by the Seattle performing arts community--an eccentric cabaret a step or two above "Let's have a show in my Dad's barn!"--to help him out.

by **dinazina** on **Mon Feb 27, 2006 at 11:39:54 AM PDT**

[**Parent**]

btw, M. Carvin of Jones Day is plaintiff's counsel (4.00 / 3)

... in *Boehner v McDermott*.

Michael Carvin is also THE point man nationally in strategic litigation to roll back affirmative action doctrine.

Not sure he's involved here -- Day Jones is a big, bipartisan DC shop -- but he does have an interest in voting systems. (Carvin led the Florida 2000 Bush team in oral argument at FL Supreme Court, in the run-up to Bush v Gore at SCOTUS.)

*None Dare Call It **Stupid!***

by **RonK Seattle** on **Mon Feb 27, 2006 at 12:00:18 PM PDT**

[**Parent**]

Classifieds

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"Free" Speech (none / 0)

is being privatized, y'know. Them's that got the bucks get the speech, the rest of us have to stay in the free speech pen and be ignored.

As we now see, the wrong kind of whistleblowers are to pay for their free speech with hard time.

However, blowing the whistle on Bill (or Bill's whistleblower), or any liberal for that matter, gets the whistleblower a free speech on national TV.

by [drofx](#) on [Mon Feb 27, 2006 at 01:46:17 PM PDT](#)
[[Parent](#)]

Sounds like they are (4.00 / 11)

going after him to make an example out of him. All too often this kind of thing happens to whistle-blowers. It's a damn shame. Maybe the taxpayers should go after Diebold and Jones Day.

If the people lead, the leaders will follow.

by [Mz Kleen](#) on [Mon Feb 27, 2006 at 10:38:38 AM PDT](#)

Let's hope he will found not guilty (4.00 / 5)

after a trail that digs deep into this issue exposing the crimes of Diebold and those that benefit from those crimes.

Where can I donate to a defense fund?

I've chosen quality-of-life over financial gain so often I'm now completely broke.

by [coldCanadian](#) on [Mon Feb 27, 2006 at 10:43:08 AM PDT](#)

-er- a TRIAL that is, one that follows the trail.. (none / 1)

I've chosen quality-of-life over financial gain so often I'm now completely broke.

by [coldCanadian](#) on [Mon Feb 27, 2006 at 10:44:10 AM PDT](#)
[[Parent](#)]

More education on jury nullification (4.00 / 3)

Spreading the message about jury nullification is probably the best way we can help folks who break the law as a matter of conscience.

But jury nullification is a knife that cuts both ways.

<http://www.law.umkc.edu/...>

<http://en.wikipedia.org/...>

My blog at <http://ThisIsWhatDemocracyLooksLike.com>

by Thom K in CA on Mon Feb 27, 2006 at 10:44:43 AM PDT

Not that the judge will ever (4.00 / 2)

let the lawyers argue that at trial

by Dgrishka1 on Mon Feb 27, 2006 at 10:47:58 AM PDT

[Parent]

I kind of doubt if an L.A. County jury (4.00 / 2)

can be found that would vote unanimously to convict on a felony count.

I wonder if there are any lesser included misdemeanors that they might settle for.

by lysias on Mon Feb 27, 2006 at 11:30:49 AM PDT

[Parent]

It's not just about conviction (4.00 / 2)

Although conviction is the worst that can happen. But the charges are already a blow to the person... because of the stress, the legal costs, the fact that you may have to explain on applications, etc. that you were arrested for a felony, or that it is on every cop's computer if you get stopped for a ticket, etc.

Do not underestimate the power of the state to screw up your life, even if you are later acquitted/redeemed, etc.

"Fog everywhere."

by Valtin on Mon Feb 27, 2006 at 12:27:33 PM PDT

[Parent]

Well it seems to me, that (4.00 / 6)

according to the article he did not disclose Diebold documents but rather internal attorney memoranda. That is quite different. The attorney work-product doctrine is as close to sacrosanct as we have. Even murderers and child rapists deserve to have their attorneys deliberate in confidence and even explore all sorts of caca-mamie theories of defense. We would all go ballistic if those documents were leaked to prosecutors.

by Dgrishka1 on Mon Feb 27, 2006 at 10:47:33 AM PDT

Well, that's a fair point... (4.00 / 8)

priveleged documentation is priveleged for a reason. However, the priveledge (as I understand it) extends to *past deeds*, not current or future crimes which are being deliberated and planned, as was the case with Deibold. I believe that Attorneys do have a responsibility to report potential future crimes, even those by their clients - and can be held liable for failure to divulge such information.

But then again, due to too many episodes of "The Practice" - I could be wrong.

Vyan

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