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First criminal convictions from Ohio's stolen 2004 election confirm recount was rigged



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The first felony convictions of two Cleveland poll workers stemming from Ohio's stolen 2004 election confirm that the official recount in that contested vote was, in the words of county prosecutors, "rigged." The question now is whether further prosecutions will reach higher up in the ranks of officials who may have been involved in illegalities throughout the rest of the state.

The convictions have come down in Cuyahoga County, where Democratic candidates traditionally run up huge majorities. Suspicious vote counts and other irregularities cut deeply into John Kerry's margins in 2004. Official vote counts gave the state---and thus the presidency---to George W. Bush by about 118,000 votes out of 5.5 million counted.

A statewide recount, paid for by the Green and Libertarian Parties, was marred in 87 of the state's 88 counties by the types of illegalities that led to this week's convictions. Only in Coshocton County was a full, manual recount performed.

Throughout the rest of the state, under the direction of Republican Secretary of State J. Kenneth Blackwell, mandatory random sampling was not done, as prescribed by law. Instead, poll workers illegally chose sample precincts for recounting where they knew there would be no problems, and then routinely recounted the rest of the ballots by machine, rendering the recount meaningless.

Blackwell simultaneously served as state co-chair of the Bush-Cheney campaign. This fall he was defeated in his campaign for governor by Democrat Ted Strickland.

County Prosecutor Kevin Baxter opened the Cuyahoga trial by charging that "the evidence will show that this recount was rigged, maybe not for political reasons, but rigged nonetheless." Baxter said three election workers "did this so they could spend a day rather than weeks or months" on the recount. "This was a very hush operation."

Jacqueline Maiden, the county election board's third-ranking employee, and Kathleen Dreamer, an assistant manager, have each been convicted of a felony count of negligent misconduct and a misdemeanor count of failing to perform their duties. Rosie Grier, the board's ballot department manager, was acquitted on all seven counts raised against the three. Sentencing is scheduled for late February. Defense attorneys have indicated they will appeal. The felony conviction carries a possible sentence of six to 18 months.

The county prosecutors have not yet alleged vote fraud. No do they say mishandling

the recount affected the election's outcome. Dreamer's defense attorney, Roger Synenberg, said the defendants "were just doing [the recount] the way they were always doing it."

But Cuyahoga's precinct-by-precinct vote counts and turnout numbers varied wildly and improbably. Several predominantly black precincts showed turnouts of less than 30% in a county where overall turnout was around 60%. One ward showed a 7% turnout as compared to surrounding precincts with turnouts nearly ten times as high.

Further prosecutions may now hinge on what Maiden and Dreamer might tell prosecutors about the role played by higher-ups. The assumption is widespread that the decision to consciously designate test precincts, rather than choose them at random, must have been at least tacitly approved by Secretary of State Blackwell.

In Cleveland, Robert Bennett, chair of the state's Republican Party, also served as chair of the Cuyahoga County Board of Elections. Cuyahoga BOE Executive Director Michael Vu was chosen by the county Democratic Party. Under Vu's direction, the county's elections have been rife with chaos, irregularities and apparent fraud. When the Democrats recently tried to remove him from his post, Vu was supported by Bennett and the Republican Party. He kept his job when Blackwell strategically abstained from a key removal vote.

There is growing evidence that what happened in Cleveland was the rule, rather than the exception, in Ohio's 2004 presidential recount. Sworn testimony at a public hearing in Toledo indicates Diebold technicians were involved in picking "random" precincts to be recounted there. A memory card was apparently lacking from at least one optiscan machines.

Miami County election officials admit they merely ran the optiscan ballots through the ES 550 counter, rather than doing the prescribed random recounts. Free Press reporters have found recount results varied significantly from official results, which should have triggered a hand recount of all the ballots in the county. This was never done in Miami or in any other Ohio County except Coshocton.

Handwritten field notes from Paddy Shaffer, the Green/Libertarian Recount Coordinator in Delaware County in 2004, call into question the role played by ES&S technician Sam Hogsett. On December 15, 2004, Shaffer recorded at 2:42pm that Hogsett was "...tapping tabulator machine on left. There are two machines in the room. Kim [Spangler] says he is doing this because the light/the switch keeps going out. He has now handled the machines multiple times."

At 4:25pm, Shaffer recorded "ES&S tech Sam Hogsett back on the machine and touching the ballots. They are working on Genoa precincts. My intuition is screaming get him away from the ballots and machines. ... He continued moving around the machines, stacking in the ballots."

At 5:05pm Shaffer noted "Sam is back loading and stacking. Throughout much of this time, Sam is the one to call out the precinct total and the name."

Sam Hogsett is more than an ES&S technician according to Shaffer and others who investigated him, who have found his letters to the editor quite alarming. Voting rights activists troubled by Hogsett's role in the recount found letters posted under the name Sam Hogsett, Crown City, at the southeastern Ohio newspaper website www.herald-dispatch.com (<http://www.herald-dispatch.com>). One of the letters begins as follows: "I recently read in this pitifully left-leaning editorial section that the spineless, thoughtless, moral less useless left-wing liberal America hater Robert Sheer is unsuccessfully attempting to use an apples-to-oranges comparison to wrongfully attack our Second Amendment rights." Hogsett goes on to write: "... He [Sheer] believes that if I were to take a Smith and Wesson and blast his little pea brain to bits, that his family should be able to sue the manufacturer and the gun dealer who sold it to me."

Initially, Delaware County Prosecutor Dave Yost obtained a temporary restraining order stopping the recount in Delaware County on November 23, 2004.

The Delaware Gazette noted a complaint from Shaffer about the role Hogsett played in the recount as a private voting machine company technician, and in a report dated January 1, 2005, Shaffer wrote the Delaware County Board of Elections that John Myers of the Delaware County Democratic Party said that, "He was very pleased that unlike many counties that are at the mercy of computer technicians, Delaware is not. He [Myers] said during both conversations, even repeated over and over, that they do

their own programming. So why was Sam Hogsett needed? Why involve the technician in the process of the recount?"

Board of Elections records in Fairfield County document that when the recount was not matching thus mandating a full handcount under Ohio law, the Secretary of State Kenneth Blackwell's office recommended that Sam Hogsett be brought in to deal with the discrepancies between the official count and the recount. After Hogsett arrived and took charge of the recount as a private ES&S technician, the vote matched perfectly for the first time.

In Athens and Auglaize Counties, BOE workers who attempted to blow the whistle on apparent election irregularities were forced out of their jobs.

Overall, the illegalities prompting these initial convictions in Cuyahoga County appear to be the rule rather than the exception in the handling of the Ohio 2004 recount statewide. The question now is whether parallel prosecutions will follow in other counties. And whether such prosecutions might include those who are likely to have ordered or approved the illegalities that marred the recount in Cleveland, and throughout the rest of the state.

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Bob Fitrakis and Harvey Wasserman are co-authors of HOW THE GOP STOLE AMERICA'S 2004 ELECTION & IS RIGGING 2008 (<http://www.freepress.org/> (<http://www.freepress.org/>)), and, with Steve Rosenfeld, of WHAT HAPPENED IN OHIO?, published by the New Press.