

NOVA

A BRIGHT STAR KEEPING
CALIFORNIANS AWARE

2007

Stephen Heller

“Sacrosanct” is the word reportedly used by a spokesperson for the Los Angeles District Attorney’s Office a little over a year ago, referring to the attorney-client privilege and announcing that Stephen Heller would be prosecuted on three felony charges for his actions in blowing the whistle. His alert tipped state officials and the press about Diebold Election Systems’ installation of uncertified software in the electronic voting systems of two of California’s most populous counties.

Several weeks before the March 2004 primary election Mr. Heller, a Van Nuys actor working as a 90-day temporary word processing employee at the law firm Jones Day in Los Angeles, came across a tape to be transcribed, containing a firm lawyer’s discussion of legal arguments that might be used to defend Diebold, a Jones Day client, from charges of having installed the software contrary to state law and its \$12 million contract with Alameda county. The following night Mr. Heller printed out about 500 related pages of memos, e-mails and other documents outlining Jones Day legal strategy in protecting Diebold from serious civil and criminal liability. He saw that the documents were passed to an elections watchdog group that had been critical of Diebold, and that group passed them on to the California Secretary of State’s office and the *Oakland Tribune*.

In April, a month after problems with Diebold machines surfaced in San Diego and Alameda Counties, leaving some voters turned away at the polls while others were forced to use paper ballots, the *Tribune* published an expose of the Diebold legal strategy. It published many of the documents on its website, despite an effort by Jones Day to get a judge to order them taken down and returned. The Secretary of State’s office then decertified Diebold touch-screen systems statewide.

But Los Angeles District Attorney Steve Cooley obtained a grand jury indictment of Mr. Heller on charges of unlawfully accessing and removing information from a computer system, second-degree burglary and receiving stolen property – three felonies that could have ruined the 44-year-old’s reputation and led to devastating civil liability. Late last year Mr. Heller, faced with these prospects, pled guilty to the first offense, apologized to Diebold and its lawyers, agreed to pay \$10,000 in restitution and began three years of probation.

Californians Aware cannot condone breaking the law and advises others who discover troubling information like Mr. Heller to consult an attorney before acting. But we consider the citizen’s duty to report crime and fraud on the government the real “sacrosanct” standard that preserves public integrity, and we salute Mr Heller for his impulse to live up to it.



JW August
President, Californians Aware

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