

## Diebold and the National Federation for the Blind

From June 16, 2004 article which originally appeared on <http://www.blackboxvoting.org>

Wally O'Dell and Mark Maurer of the NFB cut a deal



### The inside story on Diebold and the NFB

In June 2004, a story about Diebold's million-dollar payment to the National Federation for the Blind (NFB) ran in the *New York Times*. At the time, Diebold was trying to get its voting system into the state of Ohio and the NFB was helping out by threatening to sue counties that didn't execute contracts for Diebold touch-screens.

### Here's the story behind that story.

In the spring of 2004, before the Black Box Voting nonprofit group was formed, its founder, Bev Harris, was meeting with Ohio citizens to fight an impending decision to buy paperless touch-screens. Ohio Senator Theresa Fedor had made a skillful move in the state senate, forcing Ohio counties to "reaffirm" the contracts they'd signed if they really wanted touch-screens. The NFB stepped in and threatened to sue on civil rights violations unless the counties reaffirmed their touch-screen contracts.

With CASE Ohio activist and lawyer Susan Truitt, Harris went to Mercer County, a small jurisdiction with just 28,000 voters, and just one voter who is visually impaired. It seemed bizarre for Mercer County to consider spending \$300,000 on Diebold touch-screens instead of a hundred bucks for a single tactile ballot.

In Mercer County, prosecuting attorney Andy Hinders came down and read a settlement offer from the National Federation of the Blind into the record at an Elections Board meeting. This seemed a little odd -- usually pending litigation matters go into executive session and settlement offers aren't available to the public.

Harris did a public records request for that document; Mercer County Board of Elections Director Toni Slusser refused to fulfill the request, claiming the settlement letter was a private document. It cannot be considered a private document after it is read into the public record, but Slusser refused to turn it over.

The Mercer County Board of Elections also violated Ohio sunshine laws by discussing their decision on the Diebold purchase, and coming to a decision, and writing the decision up in a letter -- outside of and before the public meeting.

The NFB settlement letter was worded only slightly more politely than this:

***"We'll make our lawsuit go away if you hurry up and buy those touch-screens."***

Since almost 31 counties were considering touch-screens, Harris started to wonder

about the relationship between the National Federation for the Blind and Diebold. There had been an earlier lawsuit by the NFB over ATM machines, followed by a large payment from Diebold.

Here's more on the NFB/Diebold ATM case:

1. The NFB sued Diebold and NCR over ATMs that weren't accessible. The NFB settled with NCR and Diebold, and the two firms retrofitted -- but only Diebold paid money to the National Federation of the Blind. Diebold paid \$1 million.
2. Then the NFB went on a lawsuit spree, suing a whole string of banks to get them to buy retrofitted ATMs.
3. Then National Federation for the Blind announced a formal partnership with Diebold on the ATMs. This was announced by NFB president Betsy Zabrowski on Dec. 7, 2000 in an interview with the Daily Record, of Baltimore, MD. The NFB embarked on a partnership -- or a shakedown cruise, depending on how you look at it. NFB sues over ATM machines -- then says "We make this go away if you buy Diebold."

NFB/Diebold deal:

<http://www.nfb.org/Images/nfb/Publications/bm/bm00/bm0012/bm001202.htm>

4. The banks that got sued then bought Diebold.
5. Later, in Mercer County Ohio, an eerily similar scenario was unfolding: Diebold was trying to sell its voting machines, the Ohio legislature and some counties were balking, the NFB steps in and sues, and offers a quick settlement for counties who will reaffirm the Diebold contract.
6. The NFB should have disclosed that they have taken a \$1 million payment from Diebold on an earlier ATM deal when they lobbied for Diebold voting machines, and especially should have disclosed their partnership agreement.
7. The NFB lawsuits were selectively filed and didn't say to get an accessible option but said only to get affirm the contract for Diebold touch-screens. And the lawsuits weren't filed against all counties that don't have touch-screens, just against those who were in the process of purchase negotiations.

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Enter the *New York Times*.

Adam Cohen, head of the editorial board of the New York Times, called Harris wanting to do a story on the vendors who hired former public officials.

"You should do a story on the blind," Harris suggested. "It's politically incorrect, though."

She sent him the lawsuit from the NFB and he uncovered more information on financial transactions, including, significantly, \$26,000 to the group represented by Jim Dickson of the American Association for Persons with Disabilities (AAPD), a loud advocate who touts particularly erroneous information.

On Thursday June 11, the article appeared in the New York Times. The very next day, the NFB dropped its lawsuits in Ohio.

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quote:

From the New York Times

"...What's even more troubling is that the group [National Federation for the Blind] has accepted a \$1 million gift for a new training institute from Diebold, the machines' manufacturer, which put the testimonial on its Web site. The federation stands by its "complete confidence" in Diebold even though several recent studies have raised serious doubts about the company, and California has banned more than 14,000 Diebold machines from being used this November because of doubts about their reliability.

"Disability-rights groups have had an outsized influence on the debate despite their general lack of background on security issues. The League of Women Voters has been a leading opponent of voter-verifiable paper trails, in part because it has accepted the disability groups' arguments.

..."Some supporters of voter-verifiable paper trails question whether disability-rights groups have gotten too close to voting machine manufacturers. Besides the donation by Diebold to the National Federation of the Blind, there have been other gifts. According to Mr. Dickson, the American Association of People with Disabilities has received \$26,000 from voting machine companies this year.

"The real issue, though, is that disability-rights groups have been clouding the voting machine debate by suggesting that the nation must choose between accessible voting and verifiable voting. It is well within the realm of technology to produce machines that meet both needs. Meanwhile, it would be a grave mistake for election officials to rush to spend millions of dollars on paperless electronic voting machines that may quickly become obsolete..."

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Following the *New York Times* article, the National Federation for the Blind(NFB) withdrew its lawsuit against Ohio counties.

Blind group withdrawing voting machine lawsuit:

<http://web.archive.org/web/20040625065642/www.lancastereaglegazette.com/news/stories/20040615/localnews/647659.html>

After our original story on the relationship between Diebold and the NFB, we learned of **Kelly Gutensohn**, a blind mother of eight who had — entirely independently from Black Box Voting and much earlier — discovered the same pattern of behavior, payments, and partnership between Diebold and the NFB. This courageous woman had contacted the Justice Department to file a complaint, and filed her own lawsuit on racketeering grounds.

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quote:

"...On October 6, 2003 I filed, pro se, case number 03-1276A, a civil racketeering complaint, in the United States District Court, Eastern District of Virginia, (Alexandria). I named the following as defendants; the National Federation of the Blind (NFB), Diebold, Inc. and ten banks.

My complaint alleges that the NFB and Diebold, Inc., formed an association in fact, when they signed a partnership agreement several years ago. The partnership agreement was a condition of a settlement of an ADA complaint filed against Diebold, Inc. by the NFB. That complaint, brought forth by the NFB, was filed against Diebold, Inc., Chevy Chase Bank, and Rite Aid Corp. The NFB alleged that the ATMs owned by Chevy Chase Bank, located in Rite Aid Stores and manufactured by Diebold, Inc., were not accessible to the blind.

"The complaint was settled out of court, in addition to the partnership agreement with the NFB, Diebold, Inc. agreed, as a condition of the settlement, to "donate" one million dollars to the NFB. The donation, as a condition of settlement was extraordinary, not because of the size of the "donation", but because damages in ADA cases are limited to the actual damage caused to the complainant and punitive damages are generally not allowed.

"Following this settlement, the NFB began filing complaints against bank after bank over ATM accessibility, all of these were settled out of court, and each time partnerships between the NFB and the banks were announced. ... Since ... the beginning of this series of lawsuits, the NFB has built a nineteen million dollar technology center, Diebold, Inc.'s revenues have increased dramatically in an industry where growth has remained relatively flat.

"...In every state the NFB or its members have been lobbying ruthlessly for the Diebold, Inc. machines on the basis of "accessibility" to the exclusion of equally accessible equipment. There have been numerous threats of lawsuits if Diebold, Inc.'s machines are not purchased. I am sure that you have an excellent staff and are already aware of the problems with the Diebold, Inc. machines, so I apologize for taking valuable time explaining the issues, as a blind person, it is important to me to be perfectly clear, so I will explain. The Diebold, Inc. machines have no accountability, no way of verifying votes ... I have also spoken to state election board officials in several states ... Election officials feel that they have been bullied by the members of the NFB, many feel that they have no choice but to acquiesce.

"In short, the NFB is using its nominal advocacy position for the blind to cover for its economic and partnership interests with Diebold, Inc. in the placement of these voting machines. Diebold, Inc. is not the only manufacturer of accessible machines, other manufacturers make machines that are accessible AND accountable.

"On the subject of my RICO suit, I filed pro se, I am not an attorney, I need help. There have been two hearings on pretrial motions so far. At the last hearing, fourteen attorneys representing the defendant banks, Diebold, Inc. and the NFB were present. Several made motions for dismissal, Judge T.S. Ellis, III, refused to hear these motions, he ordered a stay on all motions for three, and then changed it to four weeks, he stated that my complaint was "not without merit", but that I need an attorney, he said repeatedly that he could not appoint me an attorney, but that I

needed an attorney.

"I have contacted the United States Department of Justice for help in this matter, I have received no response. I have contacted many attorneys in the Washington D.C. area, most have stated that the case is too complex, many have conflict of interest reasons for not taking the case. If I do not have an attorney, my complaint may be dismissed, even if it is not dismissed, I cannot possibly continue this on my own, I have said all along that I would take this as far as I could by myself and I will, but I am getting very close to my self imposed line.

"... This is now no longer just an issue that affects the blind, it carries serious consequences for our free and fair elections."

Sincerely,  
Kelly Gutensohn

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This article originally appeared on Black Box Voting (<http://www.blackboxvoting.org>).  
Subsequent coverage includes an article in WiredNews.com:  
<http://www.wired.com/news/evote/0,2645,65292,00.html#csrc1>