

[Print Page](#)

## The changing of the guards: Bay Minette, election night

**By Steve McConnell**

**Staff Reporter**

[smcconnell@gulfcoastnewspapers.com](mailto:smcconnell@gulfcoastnewspapers.com)

(Created: Friday, July 20, 2007 10:03 AM CDT)

Nearly five years later, the specter of the 2002 Alabama gubernatorial election lives on.

Republican Bob Riley edged out a narrow victory over incumbent Democrat Don Siegelman, but a midnight vote recount in Baldwin County, giving Riley the edge, stirred a firestorm controversy that still receives national attention to this day.

A recent New York Times editorial called into question "suspicious vote tabulations" that may have occurred at the Sheriff's department in Bay Minette – the county seat – shortly after 11 p.m., the eve of election day, Nov. 5, 2002.

And, Time Magazine published an article entitled "Rove Linked to Prosecution of Ex-Alabama Governor" by Adam Zagorin which touched on a controversial computer glitch: "Though Republican Riley...initially found himself behind by several thousand votes, he had pulled ahead at the last minute when disputed ballots were tallied in his favor."

Glynn Wilson, a former Christian Science Monitor correspondent who now publishes and writes for his news site locustfork.net, posted a piece in June stating that Dan Gans – Riley's chief of staff during the would-be governor's time as a U.S. Representative for Alabama's 3rd District – electronically changed the results, giving a razor thin edge to Riley, who went on to win the state by 3,120 votes.

An unidentified source, according to his report "How the 2002 Election Was Stolen in Bay Minette," reported that Gans was at the county courthouse and that he was "interested" in the final vote results.

Gans, who was assisting Riley's gubernatorial campaign at the time and then went on to serve as his Montgomery chief of staff, later left the governor's office to join the Alexander Strategy Group, a top Washington lobbying firm that disbanded in 2006 due to ties with incarcerated lobbyist Jack Abramoff.

Harper's Magazine columnist Scott Horton also claimed that Gans "is a Republican 'voting technology expert' who played a mysterious role in the 2002 gubernatorial election."

Horton's column "Abramoff and 'Justice' in the Heart of Dixie," published June 9, went on to say that Gans "was in Republican controlled Bay Minette, Alabama, when 6,000 votes inexplicably shifted from Siegelman's column to Riley's due to a 'computer glitch.'"

(Gans denies any involvement with switching votes later in this report).

What were exactly the chain of events which continues to irk Democrats, Siegelman supporters, election analysts and the national press when the power of the highest office in Alabama shifted in the middle of the night from incumbent Don Siegelman to Bob Riley?

On the eve of the election, the Siegelman camp believed the governor had secured enough votes in Baldwin County to win the election, but evidently a "glitch," according to probate court officials, caused Siegelman to lose 6,334 votes from his tally.

Riley, due to the "glitch," barely edged out the Democratic governor, who was considered a threat by Republican officials.

The following morning a recount seemed reasonable and evident to the Siegelman campaign as two men

laid claim to the governorship.

But, the recount was denied by then Attorney General William "Bill" Holcombe Pryor, who was appointed Feb. 20, 2004 - during a congressional recess - to the federal-bench, the 11th Circuit Court of Appeals by President George W. Bush.

Siegelman conceded November 18, and Riley was sworn in as governor January 21, 2003 at the state capital in Montgomery.

Today and for the unforeseeable future, Siegelman will remain in prison due to a lengthy and controversial federal investigation; although, his prosecution - now being deemed a "persecution" in some circles - was referred to House Judicial Committee Chairman John Conyers, Jr. (D-MI), by U.S. Representative Artur Davis, (D-AL), as a possible example of selective prosecution by the Department of Justice.

Siegelman was sentenced June 28 to more than seven years in prison mainly on charges that he appointed HealthSouth CEO Richard Scrushy to a state hospital regulatory board - an appointment he served with three previous governors - in exchange for Scrushy's \$500,000 donation to a Siegelman campaign supporting a state lottery to fund education.

Scrushy was sentenced to six years and 10 months.

While the election seems at best a distant memory for the history books perhaps, the Bay Minette debacle certainly turned the tides of power, disavowing Siegelman of the governor's office as federal investigations into his political career swelled.

### **Bay Minette - Nov 5, 2002: Election Night**

William L. Pfeifer, chairman of the Baldwin County Democratic Party, a minority group then and now in this staunchly Republican county, was sitting in the Sheriff's department break room waiting for the much anticipated results - a gubernatorial fight that both parties knew would be very close.

Siegelman, the Southern Democrat who previously held the state offices of secretary of state, attorney general and lieutenant governor, defeated incumbent Republican Forrest Hood "Fob" James in 1998 for the governorship and nearly took the county that year: 17, 389 for Siegelman versus 21,004 for James.

"We didn't expect Siegelman to win Baldwin County, but we certainly expected him to do better than the typical results for a Baldwin County Democratic candidate," Pfeifer said in an interview on July 12.

"Riley did very well...I think he did better than Fob James in terms of having support around the state, but it still would make sense that most of Siegelman's supporters from '98 would vote for him in the 2002 election."

In a nearby room, officials processed - or tabulated - data packs that contained digital results from the voting precincts.

When the polls were open, voters marked papers ballots that were slid through optical scanning machines. The machines converted the paper ballot votes into digital data, which was recorded on individual data packs from each precinct throughout the county.

Then when the polls closed, the data packs were picked up at the precincts by Sheriff's deputies, who delivered them to their office - a standard procedure.

Once all the packs were received, election officials inserted them into a tabulating computer which processed the results, producing a document called the "unofficial summary report."

"It's unofficial because it hasn't been certified but (the results) are supposed to be the same numbers that will be certified. The only change that should happen from these numbers and the final numbers (is) if there are some votes that haven't arrived yet" such as absentee votes, Pfeifer said.

But, the first report delivered at 10:45 p.m. to Pfeifer and other representatives from the Republican and Democratic parties in the break room revealed a glaring error: Libertarian candidate John Sophocleus somehow attained 13,190 votes, nearly 24 percent of the county gubernatorial total, beating Siegelman's count of 11,820, while Riley held about 54 percent of the vote at 30,142.

"When we were calling in the results...as soon as we got to the John Sophocleus number, it was pretty obvious that something was wrong," Pfeifer recalled, adding that "someone" with the Sheriff's department went back to the tabulation room and returned saying that "they figured out the problem."

Pfeifer could not identify who was tabulating the votes.

"We weren't standing there over their shoulders watching...we're sitting in an adjoined room just waiting for a printout," he said.

Pfeifer recalled that Baldwin County Probate Judge Adrian Johns was present during the tabulations, although he could not verify if Johns was there for the entire session.

"They didn't say what the problem was but they said that they fixed it," Pfeifer said, and at 11:04 p.m., the report that received all the attention in media outlets throughout the nation – the Sophocleus report remains virtually unknown – was delivered: Sophocleus total was reduced to an expected 937 votes, Siegelman's was upped to 19,070, and Riley's was slightly increased to 31,052, according to the reports obtained by the Onlooker.

"These were the numbers that we were told were correct," he said, and the summary report print-out was given to Associated Press and local media reporters and officials with both parties.

"Everything was being locked up for the night...we all thought it was over (and) looking at these numbers this was about what we could have expected it to be, no one expected Siegelman to carry Baldwin County."

At that time, he recalled, the county was one of the last in the state to report results.

With 19,070 votes in Baldwin County, Siegelman would have remained as governor.

### **The Third Report**

Returning home from Bay Minette, Pfeifer, a self described political junkie, watched the election wrap-up on TV, but he was intrigued with the broadcast's confusion over discrepancies in the vote totals.

"I'm sitting there on the couch with these two printouts sitting beside me thinking I may have some idea of what's happening here," he said in reference to Sophocleus unexpected 13,190 votes in the first report and the second report that corrected his total to 937 while upping Siegelman's to more than 19,000.

But, the coverage did not mention the Sophocleus mishap.

Instead, a third report was posted on the county probate court's website at 11:06 p.m. -according to the site's timestamp which specifies when new results are placed on the internet – showing that Siegelman's tally was changed again, reduced to 12,736, a difference of 6,334 from the second report.

Media outlets were picking up the changes between the second and third reports, Pfeifer said, and Riley now had a slight edge in the state.

Pfeifer and Siegelman supporters gathered in Bay Minette the following morning trying to make sense of three separate results, especially the final tally which pushed Riley ahead of Siegelman.

Around 8 a.m., they made their way over to the probate court building where reporters and lawyer's from both parties were "milling around," Pfeifer said, and he attempted to speak with probate officials in charge of the election – the canvassing board which included the probate judge, a representative from the Sheriff's department and the clerk of court – in order to figure out the sudden change in Siegelman's results.

He said their office doors were closed, and he presumed they were "trying to figure out what happened."

"No one could get back there to talk to the members of the panel for most of that time, and we didn't get to actually speak to them until just a few minutes before they went out and did the certification," Pfeifer said.

Just before the certification, he did speak with the board and tried to "persuade them to wait until Friday at noon (for final certification) like the statue said so that there was time to get this sorted out."

The county canvassing board, in this election, had until Friday at noon to certify the results. Certification can, however, occur before that deadline.

"They were very insistent," he said, "that the results were correct and that they were going to certify them that morning."

After 10:30 a.m., Pfeifer said that the board certified the election results, and around 11 a.m., Riley gave his victory speech in Montgomery.

Johns has held firm to this day that "a programming glitch in the software," which he reported to the AP that morning, effected Siegelman's tally and that the third report is unquestionably correct.

He was quoted by countless reporters for at least a week, reiterating the canvassing board's conclusion that a glitch during the tabulation process was responsible for the error. (See Bob Morgan's report: a recent interview with Probate Judge Adrian Johns where he describes the events that affected the results).

Pfeifer does not hold the position that anyone altered Siegelman's votes, but he felt a recount was reasonable considering the circumstances.

"My position has always been I don't know what happened. It just always seemed to me that when the same set of data produces three different results in one night, you need to have a recount. That's not accusing anyone of fraud, all that is saying is the obvious...it's just common sense," he said.

### **The Changes, the Glitch and Dan Gans**

Comparing the first and second summary reports, three races – state senate district 22, state representative district 64 and state representative district 66 – had the exact same tallies on both reports.

But, in five races – lieutenant governor, U.S. Senate (Sessions), U.S. Representative (Bonner), attorney general and state senate district 32 – votes changed from the first report – the Sophocleus anomaly - to the "fixed" second report with some candidates' tallies adjusting by about 100 to 1,300 votes, but without affecting the overall outcome of the race.

For example, Democrat Lucy Baxley's tally changed from 13,375 in the first report to 13,722 while her opponent, Republican Bill Armistead, dropped from 30,209 to 29,802.

However, comparing the second report and the probate court's website post, which became the certified results, none of the tallies changed, except Siegelman's reduction from 19,070 to 12,736 - even Sophocleus remained at 937.

James H. Gundlach, a professor of sociology at Auburn University, remains convinced that "electronic ballot box stuffing" occurred and that it is highly possible an individual with some computer programming knowledge accessed the tabulating computer, either directly or indirectly with a wireless connection, and changed the tallies.

His paper, "A Statistical Analysis of Possible Electronic Ballot Box Stuffing," presented at the 2003 annual meeting of the Alabama Political Science Association, makes a firm case that through "relatively simple statistical techniques" one can "identify apparent systematic electronic manipulation of voting results."

"I make the case that this is an extremely suspicious vote," he said in a phone interview on July 11, adding that he still stands with his findings to this day and that statisticians at the Massachusetts Institute of Technology said that his paper was the "strongest statistical evidence of election theft they've seen."

He suspects that someone altered the tabulating computer's software, allowing votes to be reduced from Siegelman's tally.

Among deeper analysis presented in the paper, he pointed to a simple example: the incumbent's vote shift from 19,070 to 12,736 raises suspicions since it is a nearly one-third reduction which is "commonly found in data that is intentionally changed but rarely the result of random errors."

As for the "glitch," Gundlach adamantly disagrees with the probate court's explanation of how Siegelman's tally dropped.

"The circumstances surrounding it are really hard to believe," he said. "The notion that the software is designed to count votes, (but that it) comes up with different results means somebody is messing with the software."

The glitch, he said, is "just made up stuff, just like the dog eating the homework."

"Computers do not accidentally produce different totals," he stated in the paper. "Someone is controlling the computer to produce the different results."

And that person is not Dan Gans, according to a phone interview with Gans on July 13.

"I've never been to Bay Minette, Alabama in all my life," Gans said, and on election night, when the election results changed three times, he said: "I was at the (Riley's) planned victory celebration in Talladega."

Talladega, known for its NASCAR superspeedway, is approximately 50 miles east of Birmingham in central Alabama and about 225 miles north of Bay Minette.

After Alexander Strategy Group's (ASG) dissolution in 2006, Gans co-founded Polaris Government Relations, a Washington-based lobbying firm.

Reports that Gans altered the election seem to be partly tied to his ASG internet bio which stated that he "implemented a state of the art ballot security program that was critical to securing Governor-elect Riley's narrow margin of victory (3,120 votes)."

Gans, who assisted Riley's 2002 campaign, said that the ballot security program was their effort to ensure that the election went smoothly state-wide such as monitoring some locations that were predicted to have a close vote margin between Siegelman and Riley.

He admits that the statement, written by the ASG public relations staff, was over the top, but the meaning, he said, has nothing to do with securing or rigging the Bay Minette election.

"We simply had attorneys at polling places throughout the state...as a safeguard," Gans said, adding that some locations had poll watchers while others had attorneys "in case there was an issue.

He also said poll watchers called-in the unofficial results from the polling precincts to the Riley campaign headquarters and relayed updates throughout the day such as voter turnout.

"We anticipated a close election (and) the Riley camp decided to take a more proactive role," Gans said. "I think it became more in vogue after the 2000 elections."

## **Recount?**

On Nov. 8, two days after the county canvassing board certified the votes, William L. Pfeifer issued a petition to the board for a manual recount of all paper ballots cast for the governor's race, citing the Alabama Administrative Code, Electronic Vote Counting Systems section, which states that "any person may petition a county canvassing authority for a recount of any or all precinct returns for offices in the election that the person was a qualified elector."

Under that law, Pfeifer, as a qualified elector, was required to post a security bond to cover the costs of the recount, and if the board's certified results were correct, the bond along with any additional recount costs would be his responsibility.

According to the petition submitted and signed at about 9 a.m. by the three members of the board - the deputy sheriff, clerk of court and probate judge - the "petitioner shows that the electronic equipment used in tabulating the results of (the) election malfunctioned, and that there is grave doubt whether such machines or their software is reliable."

Pfeifer said that the Democratic Party issued petitions in all 67 counties asking for recounts (not all counties used optical scanning machines), but "in Baldwin County in particular, we actually asked for a

manual recount (of the paper ballots) because of what appeared to be a number of problems with the equipment.”

Section 307-X-1.21 of the administrative code states that “the recount must be conducted under the supervision of a trained and certified poll official and/or Probate Judge of the County” and that “the box or envelope holding the ballots shall be delivered unopened to the supervising official in charge of the re-count.”

But before Baldwin County’s canvassing board could make a determination for a recount, Attorney General Bill Pryor issued an opinion that same day, citing Alabama’s constitution, that the sealed paper ballots could not be counted unless a court orders to break the seal.

Unless an election contest was filed in the courts by Siegelman or a grand jury investigation was formed, county canvassing board’s throughout the state did not have the authority “to break the seals on ballots and machines under section 17-9-31” of the constitution.

And, the opinion said it would be a crime to break the seals.

“The attorney general is the top law enforcement official in the state, and therefore if the attorney general says opening these boxes is a criminal offense, then of course that sends word down the line to the counties that don’t open these boxes or your arrested,” Pfeiffer said.

Siegelman conceded to Riley on Nov. 18; officials with his 2002 campaign have said that the former governor did not want to get entangled in a legal skirmish over the election, creating a long-drawn out court battle similar to Al Gore’s situation against George W. Bush in Florida.

They felt he could win again in 2006.

Riley’s tally remained at 31,052 as it would on the secretary of state’s official election books; he would go on to win by a hair’s breadth, by a margin of 3,120 votes, a two-tenths of a percent victory: 672,225 to Siegelman’s 669,105.

June 20, 2003, as Alabama’s 52nd governor, Riley signed legislation that called for an automatic recount of votes in a general election if the candidate was defeated by less than one-half of a percent.

The Baldwin ballots remained sealed.

---

Copyright © 2009 BaldwinCountyNOW.com