

## OFFICIAL STATEMENT

**TITLE:** Official Response to Mesa DA Investigation

**OBJECTIVE:** Fact Check Rubenstein's Investigative Report

**SENDER:** Randy Corporon, Attorney for Tina Peters, 303-749-0062

**RELEASE:** Immediate

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Colorado District Attorney Dan Rubinstein has published findings of an investigation his office conducted into the allegations in [Mesa County Forensic Report 3](#). This investigation confirmed the substantive findings of report authors Dr. Walter Daugherty and Jeff O'Donnell, who collectively have over 80 years of computer systems engineering expertise, but the non-technical investigators reached very different conclusions than the experts.

This Official Response will address the numerous false assertions, misleading statements, and technical errors made by the DA's office in both their oral presentation as well as the written report.

## FINDINGS & INVESTIGATIVE LIMITATIONS

**The Claim:** In his oral presentation, District Attorney Rubinstein claimed his investigation into the third Mesa report had no connection to the criminal case against Tina Peters.



**The Truth:** It was legally and ethically improper for the DA's office to contact the authors of Report #3 directly, which Michael Struwe did multiple times despite being reminded that he needed to request the interview of Tina Peters' experts through her attorney. The second sentence of the report says, "The findings in this report were prepared by the authors as consultants to the legal team representing Tina Peters, the Mesa County Clerk and Recorder, pursuant to her statutory duties as Mesa County's Chief Election Official." From a legal perspective, any investigation of the evidence of fraud outlined in the report cannot be separated from Ms. Peters' legal case.

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**The Claim:** On page one (1) of the DA investigation report, the investigators claim, "There is no evidence of any other person, program, or outside influence leading to the anomaly referenced in Report 3."



**The Truth:** Report #3 goes into great detail, including the contents of activity logs and database tables, of the evidence that procedures inside of the machine caused the unauthorized recounting of over 20,000 ballots on October 21<sup>st</sup> 2021 and over 8,000 ballots on March 30<sup>th</sup> 2021. The DA's office discussed a possible method by which the new database *could* have been created, should a clerk perform a highly unusual procedure which is extremely dangerous when done in the middle of tabulating an election. The video presented as "evidence" shows absolutely no definitive screen detail to support the DA's claims that this "nuclear option" was ever performed. In addition, the EMS logs, which show in great detail the operations performed by both the clerks and the normal automated processes within the Dominion software application, show no corresponding commands being initiated. This fact alone is evidence that the unauthorized operations were triggered by code running within the EMS server but outside of normal procedure.

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**The Claim:** On page four (4) of the DA investigation report, it states, "The drafters of Report 3 were contacted."



**The Truth:** As previously stated, only improper contact was attempted. The DA and his investigator did not attempt to contact the authors of the report through proper channels. Rule 4.2 of the Colorado Bar Association Rules of Professional Conduct states that "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." District Attorney Rubinstein, upon reading the report, was aware that it was prepared as consultants to Tina Peter' legal team, and as such should have operated under the expectation that all communications about the report would need to go through that legal team. Both authors of the report were fully willing to cooperate with the District Attorney or his investigator when they were contacted through Ms. Peters' legal team, but no request was made in this manner. The DA is attempting to attack the highly convincing and well-researched evidence of the report by implying that, by demanding that the law be followed and that proper legal safeguards be applied, the report's authors were being uncooperative.

Investigator Struwe's three phone contacts to Mr. O'Donnell's wife (who is completely unconnected to the report or its evidence) and three phone contacts with Dr. Daugherty were violations of the above-cited code of ethics. Investigator Struwe's email to Mr. O'Donnell claiming that he should answer questions about the report because their investigation was not connected to Ms. Peters' case was an attempt to coerce him to answer questions without representation, and was disingenuous – another violation of the above-cited code of ethics.

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**The Claim:** On page seven (7) of the DA investigation report it states, “Dominion support advised that if they were contacted at this point, they may have coached Ms. Brown through another trouble-shooting procedure called ‘reject and delete.’”



**The Truth:** The Dominion manual (posted on the Secretary of State’s website) does not include a function or procedure named “reject and delete.” There are options entitled, “Reset in-Progress” which is followed by “Spoiling a Batch,” but not the procedure described in the DA’s report. None of these commands or anything similar to them are found in the EMS Logs on the days that the manipulation events occurred.

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**The Claim:** Also on page seven (7) of the DA investigation report it states, “...user logs confirm...”



**The Truth:** No operating system logs, of which user logs are a subset, were presented as part of the oral presentation or the written report. No user logs were available to review on the forensic images because, per the first Mesa Forensic Report, those logs were deleted. If the investigators have access to these user logs, where did they get them? There is an “EMS User Log” table in the Dominion database, but it logs only actions, not login events.

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**The Claim:** On page 10 of the DA investigation report, an image is shown of Sandra Brown replacing a computer, and above that the report details the action, including the statement “After approximately 15 minutes of processing, the system loads the new adjudication session and tabulation and adjudication operations resume, apparently without issue, for the remainder of the day.”



**The Truth:** While Ms. Brown is seen replacing a computer, she is not replacing the Election Management System server. This is obvious both from the size of the system she is holding and the fact that such a switch would have left indelible evidence within the server’s files and databases. All manipulation events proven in Report #3 occur within the server. Highlighting

this unrelated and irrelevant action either demonstrates serious lack of understanding of the findings of Report #3, or is an intentional act to cast further doubt upon Ms. Brown's actions.

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**The Claim:** On page 11 of the DA investigation report it states, "We have found extensive evidence that the conclusions in Report 3 are false."



**The Truth:** Investigator Struwe did not name a single conclusion in the report that was false, much less provide ANY evidence that a conclusion was false. In the third Mesa Forensic Report, the authors list three possible causes of the anomalies and give their expert opinions that on-site human action was the least likely based on interviews with those involved. The DA claims to have proven that it was on-site human action which caused the anomalies without ever looking at the databases involved or engaging an independent expert to do so, given that the investigators have no database expertise.

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**The Claim:** Also on page 11 of the DA investigation report it states that the DA's Office used "first-hand investigation using a test election environment".



**The Truth:** It is doubtful that the DA's office had the specific technical experience necessary to create such a test election environment. What environment was used? Were steps taken to verify that the test environment was set up in exactly the same way, with exactly the same hardware and exactly the same version of Dominion Voting Systems software? What person with experience in elections and Dominion Voting Systems software was consulted to set up the test and evaluate the results? The test could not have been performed using Mesa County's existing system, as the Dominion software was updated and all election files destroyed almost a year earlier. The DA's statement is only credible if the circumstances surrounding the test, the hardware and software used, and the identity and credentials of all technical election experts involved in the test are disclosed.

Additionally, did the DA's office or any of their technical experts access the publicly-available forensic image of the Mesa County server taken before representatives of the Colorado Secretary of State and Dominion Voting Systems erased all files on that server? If not, how can the DA plausibly investigate the findings and conclusions of Report #3, which were completely derived from that forensic image?

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**The Claim:** On page 12 of the DA investigation report it states, “As election judges tabulate batches, and separate judges adjudicate ballot images, the EMS client monitor is largely visible and it is clear that batches are properly processing through the system. New batches populate the ‘review’ and ‘in-progress’ categories accordingly.”



**The Truth:** This is an unproven conclusion with an unclear basis. How did Michael Struwe determine that batches of ballots are being processed properly when the computer screen text in the surveillance videos is completely illegible?

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**The Claim:** On page 13 of the DA investigation report it states, “At approximately 2:49pm on March 30, 2021, Ms. Sealey appears to highlight a batch or batches in the ‘review’ column but walks away before dragging the selected batch or batches to ‘review.’ Several minutes later the adjudication screens are not displaying ballot images even though batches containing ballot images needing adjudication continue to populate the ‘in progress’ column.”



**The Truth:** This is an unproven conclusion with an unclear basis. How did Michael Struwe determine this since the computer screen text in the surveillance videos is completely illegible?

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**The Claim:** On page 15 of the DA investigation report it states, “Over the next several minutes, Ms. Brown accesses a program screen that would allow her to try the next recommended trouble-shooting procedure – called ‘reject and delete’ – but it is clear from the user logs that she did NOT complete the procedure at this time.”



**The Truth:** As noted above, the Dominion manual (posted on the Secretary of State’s website) does not include a function or procedure named “reject and delete.” There are options entitled, “Reset in-Progress” which is followed by “Spoiling a Batch,” but not the procedure described in the DA’s report. Further, no user logs were available to review on the forensic images because, per the first Mesa Forensic Report, those logs were deleted. If the investigators have access to these user logs, where did they get them, and why didn’t they provide them for verification?

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**The Claim:** On page 15 of the DA investigation report it states, “Surveillance video at this point did not detect any motion, and stopped recording for 2 minutes and 34 seconds.”



**The Truth:** The conclusion that Sandra Brown sat motionless for 2 minutes and 34 seconds and that is why 2 minutes and 34 seconds of surveillance footage are missing does not make sense. According to [a study](#) by the National Institute of Health, the average adult touches their face 23 times per hour, and that's just the face. Human beings shift and move involuntarily – anyone who has ever attempted to stay still for an MRI can confirm this. It is highly unlikely that someone not trying to freeze their movements would be frozen in place for 2 minutes and 34 seconds. Did Mr. Struwe attempt to recreate this “lack-of-motion-detection” time out of the cameras to see if that surveillance video camera stopped recording him?

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**The Claim:** On page 15 of the DA investigation report it states, “When the video resumes, it is evident from the screen, and from the user logs, that Ms. Brown had stopped the previous adjudication session and started a new one. This would not be recommended by Dominion support.”



**The Truth:** Ms. Brown's actions are not captured on screen and the reasoning for this is that she wasn't moving so the camera stopped recording. Yet, during the period of time when the camera is not recording, the event in question occurs. Also, on what basis does the DA speak for Dominion? And from what set of facts does the investigator determine Ms. Brown's actions since those actions are not captured and, allegedly, she wasn't moving? How can someone perform an “action” without moving? And again, this conclusion is drawn from an illegible screen shown on video after the video resumed.

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**The Claim:** On page 15 of the DA investigation report it states, “When the new adjudication session loads, the ‘submitted’ batches column is *empty*, and the batches for ‘review’ and ‘in progress’ are seen populating. This is indicative of a new adjudication session. Below are before, during and after screenshots showing the ‘submitted’ batches during the first session, the new session while it's loading, and the empty ‘submitted’ column of the newly created session:”



**The Truth:** This is an unproven conclusion with an unclear basis. How did Michael Struwe determine this since the computer screen text in the surveillance videos is completely illegible?

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**The Claim:** On page 20 of the DA investigation report it states, “The below screenshots depict when batches move from ‘in progress’ to ‘review,’ indicating adjudication is working again.”



**The Truth:** This is an unproven conclusion with an unclear basis. How did Michael Struwe determine this since the computer screen text in the surveillance videos is completely illegible?

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**The Claim:** On page 24 of the DA investigation report it states, “Although adjudication resumes, for the remainder of March 30, 2021, it is not apparent that any batches move to the ‘in review’ column as they should.”



**The Truth:** This is an unproven conclusion with an unclear basis. How did Michael Struwe determine this since the computer screen text in the surveillance videos is completely illegible?

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**The Claim:** On page 24 of the DA investigation report it states, “The user logs show that the ‘reject and delete’ option was again completed on select batches on March 31, 2021 and April 5, 2021.”



**The Truth:** The EMS logs, the contents of which are included in Report #3 for the time periods before and after the manipulation events, do not support this claim.

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**The Claim:** On page 24 of the DA investigation report it states, “At this time it is unclear if Elections Manager Brown conducted any actions which resulted in the deletion of any election records that are required to be maintained. To date, we have found no evidence that she did. We have also found no evidence that anyone else has done so.”



**The Truth:** Report #3 does not claim that any records were deleted during the unauthorized reprocessing of ballots on October 21, 2020, or March 30, 2021. The report states that new databases were created, and that some records were selectively copied to those new databases and subsequently reprocessed and recounted, resulting in the extremely high likelihood of *alteration* of election records. The DA's reference to deletion of records is an intentional creation of a logical "straw man" argument.

However, the DA ignored the fact that ALL election records on the Election Management Server were deleted by Dominion and the Secretary of State before the required records retention period had expired. This is a direct violation of 52 USC 10308, which expressly forbids alteration of "any official record of voting in such election tabulated from a voting machine," and the database records in the Election Management Server were the only official record of the vote tallies. Further, the DA did not look at the databases, nor did he engage an independent expert to do so. Federal law uses the broad term "*all* election records," and the DA's statement that they did not investigate this issue because he made the sole determination that the digital election records which were deleted were not election records under *Colorado* law is another logical deflection.

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**The Claim:** On page 24 of the DA investigation report it states, "We have found extensive evidence that the conclusions in Report 3 are false."



**The Truth:** Investigator Struwe did not name a single conclusion in the report that was false, much less provide ANY actual evidence that a conclusion was false. In the third Mesa Forensic Report, the authors list three possible causes of the anomalies and give their expert opinions that on-site human action was the least likely based on interviews with those involved, and the complexity of the sequence of events demonstrated by the log files. The DA claims to have proven that it was on-site human action which caused the anomalies without ever looking at the databases involved or engaging an independent expert to do so, given that the investigators have no database expertise.

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**The Claim:** On page 24 of the DA investigation report it states, "This investigation is being closed with no finding of probable cause that a crime was committed by any person..."



**The Truth:** The self-imposed limits that DA Rubinstein placed on this investigation excluded an independent cyber forensic evaluation of the databases. ALL election records on the Election Management Server were deleted by Dominion and the Secretary of State before the required records retention period had expired. This is a direct violation of 52 USC 10308, which expressly forbids alteration of “any official record of voting in such election tabulated from a voting machine,” and the database records in the Election Management Server were the only official record of the vote tallies. Further, there was nothing presented to show that the DA’s Office examined the contents of the Mesa County server’s databases, nor did it engage an independent expert to do so. As stated above, Investigator Struwe did not name a single conclusion in the report that was false, much less provide ANY actual evidence that a conclusion was false.

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**The Claim:** On page 24 of the DA investigation report it states, “These actions were verified to have been done by her through video evidence, corroboration of records, audit of randomly selected ballot images...”



**The Truth:** There is no corroborating support for this alleged audit, such as file path names of the ballot image files that were examined. The video evidence presented in the May 19, 2022, hearing shows no readable screens.

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**The Claim:** On page 24 of the DA investigation report it states, “...prove that the conclusions of Report 3 are incorrect claims of what may have occurred.”



**The Truth:** Investigator Struwe did not name a single conclusion in the report that was false, much less provide ANY evidence that a conclusion was false. In the third Mesa Forensic Report, the authors list three possible causes of the anomalies and give their expert opinions that on-site human action was the least likely based on interviews with those involved. The DA claims to have proven that it was on-site human action which caused the anomalies without ever looking at the databases involved or engaging an independent expert to do so, given that the investigators have no database expertise.

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**The Claim:** On page 24 of the DA investigation report it states, “At this time, no evidence suggests that these actions negatively impacted the election.”



**The Truth:** The databases clearly show a shattered chain of custody in the April 2021 Grand Junction municipal election, where in some contests the winning margin was about 3,000 votes but 8,540 votes are unverifiable. The fact that these votes are unverifiable means that the true results of the election are unknown. This fact was excluded from the scope of the investigation, so the conclusion that the election was not impacted cannot be known based on the investigation limitations the investigators decided to impose on their own efforts. In addition, more than 25% of the ballots cast in the November 2021 general election are in serious question, a number which should alarm anyone performing a serious investigation.

In summary, the DA's report is lacking any evidence to refute any of the findings or conclusions of Report #3, and we find that the report is completely lacking any evidence or technical rigor of a serious, unbiased investigation.

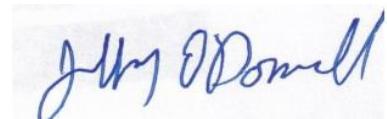
It should be noted that much of the "evidence" presented in the DA's report relies upon someone's interpretation of the illegible screens shown in the accompanying video and captures. Our contention is that even if all or some of this interpretation of these screens is correct, these interpretations still do not rise to the level of explaining the specific manipulations detailed in Report #3.

#### **Other questions Raised by the District Attorney's Report:**

1. Who were the technical experts used to produce the DA's report and its determinations, and what were their credentials, expertise, and company affiliations?
2. Why were time stamps added to the video, when some images show that there were already date and timestamps embedded in that video?
3. What were the technical specifications and requirements of the test environments listed in the report?
4. Why did the investigator fail to look for unauthorized databases in the test environment after re-running the election? A few simple SQL queries would establish what databases existed after re-running the election, whether or not the vote totals in the election results database matched the number of ballots in the second adjudication database, etc.
5. How were the activities attributed to the video images and captures determined, given that there is no clear rendering of the screens of any computer in the office at any time? If these activities were somehow determined by other Mesa County clerks, which clerks provided the information? If Dominion Voting Systems provided the information, was any attempt to verify their assertions made through any other expert?

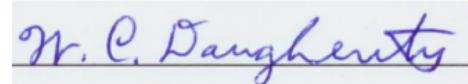
**The people of Mesa County deserve an independent, responsible, and ethical investigation into what happened in the Mesa County elections. Unfortunately, what they got was this non-technical, haphazard attempt to explain away manipulated vote totals, missing ballots, missing video footage, and other damning evidence of criminal behavior on the part of the Colorado Department of State and their selected Election Management System vendors.**

The authors of Report #3 still wish to cooperate with the Mesa County DA's office through proper legal channels should that office re-open the case and wish to do a serious investigation of the evidence presented. In addition, we will shortly be providing subsequent reports to further corroborate our findings.



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