

Exhibit 23

1 SECND JUDICIAL DISTRICT COURT
2 COUNTY OF BERNALILLO
3 STATE OF NEW MEXICO

4 NO: CV 2005-00433

5 PATRICIA ROSAS LOPATEGUI, et al,

6 Plaintiffs,

7 vs.

8 REBECCA VIGIL-GIRON, in her capacity as Secretary of
9 State, et al.,

10 Defendants.

11

DEPOSITION OF DON ANDERSON

September 26, 2005

12

10:05 a.m.

20 First Plaza, Northwest

13

Albuquerque, New Mexico

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15 PURSUANT TO THE NEW MEXICO RULES OF CIVIL
16 PROCEDURE, this deposition was:

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TAKEN BY: MR. LOWELL FINLEY
Attorney for the Plaintiffs

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REPORTED BY: Arlette McClain, RPR, CCR #85
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JOB NO.: 9414R (AM)



1 ones making the choice, and then we like to
2 facilitate whatever it is they think is in their best
3 interest. And have I quietly and gently expressed
4 concerns? Absolutely. But do I aggressively try to
5 change minds? No.

6 Q. Are you aware that Rebecca Vigil-Giron has
7 served as the national head of the Association of
8 Secretaries of State?

9 A. Oh, absolutely.

10 Q. And are you aware that in that capacity she
11 has, for years, been a major proponent of DRE voting
12 technology?

13 A. Yes.

14 Q. Do you know of any incidents in voting in a
15 New Mexico County in which DRE voting equipment has
16 lost votes or malfunctioned in such a way that it is
17 not possible to determine whether votes entered by
18 voters have been saved or recorded?

19 A. Lowell, are you talking -- when you say
20 DRE, are you speaking of the new touch-screen DRE
21 technology.

22 Q. That's a good clarification. Let's break
23 it down, and first I'll ask you about the new
24 touch-screen DRE technology.

25 Are you aware of incidents in which those

1 machines, in voting in New Mexico, have lost votes?

2 A. Lowell, the only evidence that I personally
3 know of was Bernalillo County when, I believe, the
4 first use of the touch-screen took place, there was
5 an incident in which -- you know, having a
6 relationship with Sequoia at a -- let's say an arm's
7 length distance from the coding and programming that
8 went on in Denver for the local Bernalillo County
9 election, there was an incident, and I can't recall
10 exactly, but there are plenty of written accounts of
11 it that are available. So I can't account for the
12 defined condition, but there was an incident related
13 to taking the, quote -- what we call memory packs
14 from a certain number of touch-screen devices,
15 reading those memory packs into a memory pack
16 receiver, merging that information through a database
17 system that, as I recall, the database receptor was
18 overtaxed with too much information to process, and I
19 believe it seized up. I know that Howard Kramer and
20 the staff at Sequoia dealt with the issue.

21 It is my understanding that they recreated
22 what was lost. I, personally, didn't see the
23 evidence that it was totally recreated. I have been
24 an advocate for the State of New Mexico in speaking
25 to the issue related to these machines, such as the

1 legislative districts around the state, and getting
2 tapes out of these devices from those, to over 1400
3 precincts, to get tapes out instead of reports. And
4 I think there is still complexities going on with all
5 of that. I understand there may be some rethinking
6 at a law-making level about the possibility of
7 rescinding that requirement and maybe -- but, then,
8 again, I don't know. But that had to do with
9 absentee and early.

10 So am I exactly sure that votes have been
11 lost and never been able to be retrieved? I'm not
12 sure about that. I don't -- I just don't know. I
13 know the complexity in doing the coding and
14 programming is such to where all of these new federal
15 changes -- all of these new statewide changes are
16 putting more and more responsibility, just in time,
17 at the last minute. With these larger elections,
18 that is dangerous.

19 Q. You described the process that you
20 understand Mr. Kramer and his staff went through to
21 recreate the data in that incident, and said that you
22 didn't personally see evidence that it was totally
23 recreated.

24 Do you have reason to doubt that it was
25 totally recreated?

1 A. No. Probably not. Probably not, but when
2 something like that happens, I'm very suspicious.
3 I'm just very suspicious.

4 Continually, when the complexity is such to
5 where it is just to define what happened, and then if
6 you have to recreate something that is ill-defined,
7 or less than fully and completely defined, I'm
8 suspicious.

9 Does that mean something was wrong? Is my
10 suspicion enough? Absolutely not, because I'm still
11 involved in the process. Because I'm just like a
12 judge sometimes -- I want to sit there and I want to
13 say, show me hard evidence. And if you can't show me
14 hard evidence, I'm going to be suspicious.

15 So from that angle, the integrity of the
16 people doing the work has to come into play. So when
17 the integrity of the people doing the work, look at
18 me straight in the eye and say, Don, it is nothing to
19 be concerned about, then I'm going to go on and do
20 other things, because the integrity of the people
21 doing the work then comes into play.

22 But as we know when something such as we
23 are talking about with giving testimony today goes to
24 a court, any jury, any judge, wants exact evidence
25 and not just hearsay and not just opinions.

1 understands what happened.

2 Q. You mentioned earlier that because of this
3 very recognizable phenomenon of things not really
4 coming into focus until you are really doing the
5 thing, there were errors or glitches that needed to
6 be fixed that turned up only when early voting
7 actually got underway?

8 A. Sure.

9 Q. Are these things -- am I correct that the
10 logic and accuracy testing that any jurisdiction
11 does, has to be completed in advance of the start --

12 A. Absolutely.

13 Q. -- of early voting?

14 A. Absolutely. And they may or may not have
15 been discovered. My guess is they were not
16 discovered in the L and A. I know of no situation in
17 which something was discovered and just ignored. I
18 don't know that that existed. I doubt it.

19 Q. Do you know of any cases in which something
20 was discovered when early voting started, but, you
21 know, it is known for a fact that it wasn't
22 discovered during the L and A process?

23 A. No. No. I know of certain discoveries
24 that were made, and sometimes it took a few days for
25 the jurisdiction, along with the Secretary of State's

1 before I knew it, we had a touch-screen from Sequoia
2 and a touch-screen from ES&S.

3 ES&S, having been a paper ballot company,
4 suddenly had a touch-screen machine they wanted to
5 get certified. Hart Graphics also had one, and they
6 said, Help us get certificated. I said, Well, show
7 me what you've got. So I reviewed exactly -- long
8 before any county or state looked at the Sequoia's
9 touch-screen, the ES&S touch-screen, and the Hart
10 touch-screen -- I looked at them, and I felt, after I
11 looked at them, and evaluated them personally, as an
12 interested vendor -- only from the standpoint of
13 well, there is -- is there an opportunity? I thought
14 the only machine there was an opportunity with --
15 that made sense for New Mexico, was the Sequoia
16 touch-screen. Why? Because it had an on-board
17 printer. And with an on-board printer, it could meet
18 the requirements to have a tape attached to the
19 machine.

20 ES&S didn't have an on-board printer. It
21 had a module with a mode-demand printer. I didn't
22 think it would ever stand up under the scrutinization
23 of an inquiry on a zeros tape, because all it had was
24 a detachable module that I didn't think fit in our
25 state. So for that reason I kept silent and went on
