

1 SECOND 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.

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12 DEPOSITION OF DON ANDERSON
13 September 26, 2005
14 10:05 a.m.
15 20 First Plaza, Northwest
16 Albuquerque, New Mexico

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18 PURSUANT TO THE NEW MEXICO RULES OF CIVIL
19 PROCEDURE, this deposition was:

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22 TAKEN BY: MR. LOWELL FINLEY
23 Attorney for the Plaintiffs

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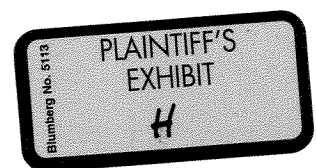
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28 REPORTED BY: Arlette McClain, RPR, CCR #85
29 Bean & Associates, Inc.
30 Professional Court Reporting Service
31 500 Marquette, Northwest, Suite 280
32 Albuquerque, New Mexico 87102

33 JOB NO.: 9414R (AM)



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 touch-screens, that are actually precinct devices
2 that are being used in early vote conditions, where
3 they are packing huge amounts of data in them, and
4 then taking these memory packs, reading those memory
5 packs in a receptor, and then processing the
6 information as a, quote, "report," that before the
7 state certified those devices, that they get modeling
8 done. And I don't know that that modeling was ever
9 done prior to the first use of the equipment in
10 Bernalillo County. And I think that that could be
11 evidence that the modeling didn't get done just
12 right.

13 But, then, again, I could be wrong, because
14 I'm not -- I know it is dangerous to take what is
15 otherwise a precinct machine and pack that limited
16 memory -- pack that limited processor, with more
17 information, and then try to get a report out, when
18 our state still requires tapes by legislative
19 district, or -- if you understand our state law, we
20 still -- we are going through some throes right now
21 of whether or not these devices that we have -- we
22 were kind of changing in the middle of the stream
23 here last year, to do, quote, "reports" by precinct,
24 as opposed to legislative district.

25 So we went from, essentially, 350 or so

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.