

1 SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
2 STATE OF NEW MEXICO

3 NO: CV 2005-00433

4 PATRICIA ROSAS LOPATEGUI, et al.,
5 Plaintiffs,

6 vs.

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

8

9 Defendants.

10

11 DEPOSITION OF JONATHON RYAN
September 23, 2005
12 9:50 a.m.
20 First Plaza, Suite 700
13 Albuquerque, New Mexico

14

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

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17

18 TAKEN BY: MR. LOWELL FINLEY
Attorney for the Plaintiffs

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23 REPORTED BY: Arlette McClain, RPR, CCR #85
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1 JONATHON RYAN,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 EXAMINATION

5 BY MR. FINLEY:

6 Q. Would you state your full name for the
7 record, please.

8 A. Jonathon Ralph Ryan.

9 Q. And your residence address?

10 A. 6 Siempre Verde, Northeast, Albuquerque,
11 87123.

12 Q. I am Lowell Finley, and I'm one of the
13 attorneys for the plaintiffs in this lawsuit. You've
14 met Holly Jacobson, who is assisting me.

15 There is also a representative of the New
16 Mexico Attorney General's Office here. They are
17 representing the Secretary of State, one of the
18 defendants in the case.

19 Have you ever had your deposition taken
20 before?

21 A. Yes.

22 Q. Approximately how many times?

23 A. Once.

24 Q. And when was that?

25 A. Give or take, 1980.

1 Q. And just, in general terms, what kind of
2 case was it?

3 A. One of my employees died and his family was
4 suing the company.

5 Q. Over an employment-related issue?

6 A. Well, they were trying to say that it was.

7 Q. Since you've had your deposition taken, I
8 won't need to spend long with this, but there's a
9 court reporter taking down everything we say, so it
10 is important that we speak clearly and not speak over
11 each other. It is also important that we use words
12 rather than gestures to respond to each other. So if
13 you can use "yes" and "no," or similar answers rather
14 than head nods, that will help make a good record; do
15 you understand that?

16 A. I do.

17 Q. Even though we are not in court, you are
18 under oath and your testimony has the same solemnity
19 that it would if we were in court, in a trial. And
20 the testimony you give is subject to the penalties of
21 perjury should you knowingly offer false testimony on
22 something that is material to this case; you
23 understand that?

24 A. Yes.

25 Q. Could you describe for me your general

1 educational background?

2 A. I'm a high school dropout. I've taken some
3 college courses since then, some training in the
4 Navy.

5 Q. Have you had training specifically related
6 to software programming?

7 A. Yes.

8 Q. What sorts of training?

9 A. I've taken one or two courses in
10 programming at a junior college in California, and a
11 little bit of machine level programming on navigation
12 computers used by the Navy.

13 Q. When you say "machine level programming,"
14 how is that distinct from other types of programming?

15 A. Machine level programming deals in ones and
16 zeros, whereas most programming these days is in
17 higher level, third or fourth generation languages.

18 Q. And I take it you have some familiarity
19 with those higher-level languages?

20 A. I do.

21 Q. Is that largely self-taught?

22 A. Yes.

23 Q. Rather than spend a lot of time on this, I
24 have seen a resume that is posted for you on your
25 company's website. After we take a break in the

1 deposition, I'll enter that as an exhibit.

2 Can you describe for me the circumstances
3 of the formation of your company, Auburn Seewolf?

4 A. I was working for a defense contractor in
5 California, and myself and my wife decided we
6 couldn't stand California much longer, so we started
7 looking for a way to support ourselves somewhere
8 else.

9 We started a software company in 1994,
10 didn't get serious about it for the first couple of
11 years -- just sort of collecting ourselves. About
12 '96, I quit and went to work full time for the
13 company. We continued looking for places to relocate
14 to and we ended up down here and liked it.

15 So it took us, oh, a year or so, to get
16 situated and moved down here. And then as soon as we
17 could, my wife quit working for other people, and we
18 are operating Seewolf at this point.

19 Q. What is the basis for the two words in your
20 company name?

21 A. Do you want the short version or the long
22 version.

23 Q. Let's start with the short one?

24 A. Auburn is taken from Auburn, California,
25 which is where we were first going to relocate to.

1 We decided that wasn't far enough away from the rest
2 of California, but we kept that portion of the name.
3 It was originally Auburn Software, but there was a
4 conflict with a business in Auburn, called Auburn
5 Software, so we ended up with Auburn Seewolf.

6 Q. And the spelling of the word Seewolf in
7 your company name with two Es, rather than S-E-A, is
8 unusual. Can you tell me what the background of that
9 is?

10 A. I can. We had purchased a URL, which was
11 Auburn SW when we first started the company. Now you
12 are getting the long version.

13 When we switched from Auburn, or when we
14 figured out that we couldn't use Auburn Software, we
15 had already spent a whole \$50 to get this URL and
16 didn't want to waste it.

17 We had Auburn SW and had to come up with
18 something for that name. We thought and thought
19 about that, and after a couple of weeks we hadn't
20 come up with anything. And my wife is -- loves
21 anything to do with wolves, so we decided the W would
22 be "wolf," and all we had to do was deal with the S.

23 So we thought and thought about that for a
24 while, and after a couple of weeks we hadn't come up
25 with anything, so one night we were watching a copy

1 of Young Frankenstein, and if you remember the movie,
2 there is a scene where they get off the train and
3 Terri Garr is in the back of the wagon, and Igor is
4 driving across the moors, and they go through this
5 werewolf, their wolf routine, and we looked at each
6 other and said, "see wolf," so the company became
7 Auburn Seewolf, which very few people forget after
8 they have had heard that story.

9 Q. I would say so.

10 Well, it has cleared up a mystery for me,
11 certainly.

12 MR. FINLEY: Off the record.

13 (Mr. Landers enters the deposition.)

14 Q. The reason we've sought your testimony in
15 this case is because of the work you did for
16 automated Election Services or Ink Impressions in
17 developing a web interface for use by New Mexico
18 counties in reporting their election results to the
19 state.

20 Prior to your work with Automated Election
21 Services on that project, had your company done any
22 work with Automated Election Services?

23 A. Prior to the work on that election, was
24 that the question?

25 Q. On that particular facility or application?

1 A. Yes.

2 Q. And what was that related to?

3 A. Several projects. One of them is a program
4 that is used by the Native American tribes for
5 tracking voters, and another one was a -- it is a
6 similar version of what we used on the general
7 election that was done for the primary.

8 Q. And when you refer to the "primary," this
9 would be the 2004 primary election?

10 A. Yes.

11 Q. How did the first contact between Auburn
12 Seewolf and Automated Election Services occur?

13 A. Telephone.

14 Q. Who called whom?

15 A. They called us.

16 Q. And do you recall, approximately, when that
17 was?

18 A. I'm going to say around the first of 2004,
19 give or take a month or two.

20 Q. Had you completed the work on the tribal
21 vote tracking program before Automated Election
22 Services asked you to work on the primary election
23 program?

24 A. No.

25 Q. What operating system and software and

1 application software were used in the creation of the
2 vote tracking program?

3 A. The program for the state?

4 Q. No, this would be the tribal one.

5 A. The tribal one?

6 Q. Yes.

7 A. That is a program that is -- uses
8 Microsoft.net technology. Most of the program is
9 written in visual BASIC, and uses various of their
10 servers to support that environment.

11 Q. How did the idea of the project for
12 creating programs for use in the state primary
13 election first arise?

14 A. To our knowledge?

15 Q. Yes.

16 A. Terry Rainey asked if we could do a program
17 for them, and we, of course, said "Yes."

18 Q. When did he first make that request?

19 A. That, I don't remember.

20 Q. Backing up from the primary election date,
21 can you estimate?

22 A. A couple of months.

23 Q. And just to be as clear as we can be here,
24 would you say that it was within a range of six to
25 ten weeks prior to the election when you say "a

1 couple of months"?

2 A. I'm guessing, but, yeah.

3 Q. Not as much as three months?

4 A. It could have been.

5 Q. Okay.

6 A. But it wasn't -- it was fairly short,
7 because we were griping about it.

8 Q. And when you say "we," who does that
9 include?

10 A. My wife. She has to listen to me gripe all
11 the time.

12 Q. When Mr. Rainey asked you to work on this
13 project, how did he describe what it was that he
14 wanted?

15 A. I'm not sure how to answer that. I'm not
16 sure what you are asking. Do you want the technical
17 requirements, or do you want how they addressed the
18 technical requirements?

19 Q. I guess from a layperson's standpoint, did
20 he describe for you what -- the end result they
21 wanted by way of capabilities?

22 A. Yes.

23 Q. And what was that description?

24 A. That, in general terms -- and I may confuse
25 a little bit of the primary election and the general

1 election. The two programs are different, but they
2 are the same -- one evolved from the other. But, in
3 general terms, the programs needed to allow the
4 county clerks to enter voting results and provide an
5 interface for the public as to what the current
6 results were.

7 Q. Were there any features Mr. Rainey
8 discussed that were specifically related to the
9 process of either the county canvass of the vote, or
10 the statewide canvass of the vote?

11 A. I'm sure it may have been discussed, but
12 that was really not what our software was directly
13 involved with. We were what we called "election
14 night functionality," more than anything else, which
15 was collecting unofficial results and trying to
16 provide timely information to the public, and then
17 capture that information for them to use during the
18 canvass, but it was not the canvass. Our involvement
19 pretty much stopped after the -- that initial
20 collection phase. What happens after that, I don't
21 know.

22 Q. With respect to the data collection aspect
23 of the project, did Mr. Rainey at any point provide
24 specifications as to what form that data needed to be
25 in at the end of your program's operation, so that it

1 would be usable in the canvass process?

2 A. Without quibbling over the argument of what
3 a specification is, what we agreed to is that as much
4 as possible, we would use their existing table
5 structure that they used to support the Secretary of
6 State's office during the canvass process, such that
7 there wasn't a lot of machinations that had to go on
8 between the two; though that could be done to some
9 extent in other places, it couldn't for various
10 technical reasons -- but we tried to stay as close to
11 their table definitions as possible.

12 Q. The existing table definitions, what
13 application had the state used in developing that?

14 A. They were done in Access, but beyond that,
15 whether there was a name for an application that was
16 riding on top of Access, I don't know.

17 Q. When we first started describing this -- or
18 discussing this project, you asked whether I wanted a
19 response in terms of the technical specifications.

20 First of all, can you explain for me what
21 that means in your business, when it is applied to a
22 project like this?

23 A. Explain what a technical specification
24 would be.

25 Q. Yes.

1 A. A technical specification could be any
2 number of things, and it all depends on the level and
3 the complexity and the associated costs of the
4 project. If you go into formal development, there
5 are several different models that are used. One is
6 typically called the water phone model, where you
7 attempt to start with general specifications and then
8 expand those into more detailed specifications, and
9 then use the detailed specifications to design the
10 product.

11 In today's terms that is not done very much
12 because no one can afford it, so everyone has gone to
13 various different types of specifications that all
14 revolve one way or another around a buzz word, which
15 is "extreme programming."

16 The extreme programming is an environment
17 where the specifications change over time and you
18 reprogram continuously to meet the changing
19 specifications. So, you know, in sort of a nutshell,
20 there is that. There are many different modeling
21 tools you can use for doing specifications, and when
22 you talk about the physical attributes of a
23 specification, you might be talking about use case
24 technology, or you might be talking about more of the
25 standard mil-spec formats for specifying

1 requirements. There are all kinds of programs that
2 are used to support this, such as RDD100 and various
3 others that are -- all revolve around the problem of
4 trying to capture and present specifications in some
5 meaningful way. It is not an easy problem.

6 Q. When you mentioned Mil-Spec, did I hear
7 that correctly?

8 A. Probably.

9 Q. And how is that spelled?

10 A. M-I-L hyphen S-P-E-C.

11 Q. In this project, which type of development
12 model did you use, the primary election project
13 first?

14 A. There was no contractual requirement for
15 any formal development and there was certainly not
16 the time nor the money to support that type of a
17 project. The closest thing that you can say that we
18 used was a variation of the extreme programming that
19 is more in vogue today. You set an initial set of
20 goals and you program that and see if it works, and
21 if not, change it until it does.

22 However, if you say "extreme programming,"
23 you do invoke certain things, depending on which book
24 you want to read on extreme programming, and probably
25 none of those technical aspects really apply here.

1 Q. In connection with that, did you use a UML
2 diagram?

3 A. No. There may be -- there were a few
4 diagrams that we used -- I don't believe any UML was
5 used.

6 Q. What type of diagrams did you use?

7 A. Well, I know of one, because I have it with
8 me. It is what I would call a bubble chart. Various
9 people would call it various things. The original
10 concept was developed by Gabriel Ricoh, R-I-C-O-H, at
11 the University of San Jose, as a technique for
12 modeling written documents, and we use it more for
13 modeling requirements.

14 Q. Could you show me that document now?

15 A. I can.

16 MR. FINLEY: I would like to mark this as
17 Plaintiffs' Exhibit 1.

18 (Exhibit 1 marked.)

19 MR. FINLEY: Let's take a break for a
20 minute so I can make copies so they can follow along.

21 (A recess was taken.)

22 Q. Is Exhibit 1 the bubble chart that was used
23 for the general election, 2004 project?

24 A. Exhibit 1 is what I found in my notes, and
25 it is marked "General Election 2004 Users and Tasks,"

1 so my assumption is that that is -- the answer to
2 that is yes.

3 Q. Who created this bubble chart?

4 A. It looks like my handwriting.

5 Q. Do you have any recollection of creating
6 this?

7 A. No. I do these all the time, so that
8 doesn't say anything. I just don't remember doing
9 this, but it certainly looks like my handwriting, so
10 I believe I did.

11 Q. Do you have a standard practice as to what
12 stage in a development process you would first create
13 a bubble chart like this, if you were using bubble
14 charts on that project?

15 A. There is no standard time. You do it
16 whenever you need to, preferably after you get the
17 initial information and before you commit to code,
18 you want to understand the requirements as much as
19 you can, and this is simply a tool for helping to do
20 that.

21 Q. Did the same programmer or team of
22 programmers do the work on both the primary and
23 general election applications?

24 A. Yes.

25 Q. And which person or persons was that?

1 A. I'm raising my hand. I am the programmer.

2 Q. For any aspect of these two projects, did
3 any other person do any sort of secondary
4 programming, or did you do everything?

5 A. My wife helps me. She does more of the --
6 well, she does the administrative side of the
7 business, the accounting and all of those types of
8 things, and she helps out where she can, though she
9 is the first that will tell you she is not a
10 programmer. But she does do server administration
11 and those types of things and helps out, you know,
12 setting up the databases and that type of thing. The
13 hard core programming I do.

14 Q. You mentioned that there was not time or
15 money sufficient to use a more formal model for
16 this -- for these projects.

17 What was the contractual arrangement, in
18 terms of your fees for this -- for these two
19 projects?

20 A. We work on a time-and-materials basis.

21 Q. And did Automated Election Services set any
22 kind of cap at the outset on what you could bill?

23 A. Not in terms of dollar amounts. There was
24 certainly a cap on the amount of time that was
25 available to do the job.

1 Q. I've experienced that.

2 A. There are different ways of capping things,
3 right.

4 Q. Sometimes you are just sure that the client
5 knew exactly what they wanted and waited until two
6 days before just for that reason.

7 So would it that fair to say, then, within
8 your company, there was no sign-off procedures or
9 requirements on completion of this project?

10 Let me put that differently. There was no
11 one -- no second person whose review was required in
12 order to make an internal company decision that the
13 product was ready to deliver to the client?

14 A. I would say yes to that.

15 Q. In developing the primary election
16 application, who was your contact person at Automated
17 Election Services?

18 A. Terry Rainey.

19 Q. Was there anyone else that you worked with
20 during the primary project at AES?

21 A. You are taxing my memory. There are
22 several people that we worked with over there on
23 various things. One of them is John, and I'm trying
24 to remember --

25 Q. Does Bylsma sound right?

1 A. Yes.

2 Q. B-Y-L-S-M-A.

3 A. He's probably the primary other person for
4 the election stuff. On the other programs we worked
5 with other people.

6 Q. On -- would it be fair to say that on both
7 the primary and general election projects, your
8 primary contacts, then, at ASE were Terry Rainey and
9 John Bylsma?

10 A. Yes.

11 Q. And with Mr. Bylsma, what was the nature of
12 your dealings with him on these projects?

13 A. He's the one that we deal with in terms of
14 getting the table definitions that they use, and
15 trying to understand those tables so that we can try
16 and stick as close as possible to what they are
17 doing. So he is the technical contact when it comes
18 to that level of information.

19 Q. And what was your understanding as to who
20 had developed those table definitions? Was it
21 Mr. Bylsma or someone else, or did you not know?

22 A. I guess I don't know. I guess that would
23 be my assumption, but it is purely a guess.

24 Q. Did Mr. Bylsma play any role, to your
25 knowledge, once working versions of the application

1 had been provided to Automated Election Service in
2 evaluating the application?

3 A. I don't know.

4 Q. Did you deal directly with any personnel in
5 the office of the New Mexico Secretary of State on
6 either of these projects?

7 A. Yes.

8 Q. And who was that?

9 A. David. I should know his last name.

10 Q. Does Caldwell sound like it?

11 A. Yes.

12 Q. And what were your communications with
13 David Caldwell about?

14 A. Mostly, if one of the county people had a
15 problem, then he would try to answer it. And if he
16 couldn't answer it, he would call us and we would
17 answer it through him, or we would in some cases get
18 on a conference call with the county in order to help
19 them resolve whatever problem they had.

20 Q. Did the counties do any preelection testing
21 of the application in which you were brought in to
22 answer questions like this?

23 A. I don't remember being asked to answer any
24 questions like that before the election. Maybe, but
25 I don't remember any.

1 Q. How far in advance of the primary election
2 did you deliver the final version of the primary
3 election application to Automated Election Services?

4 A. That's an interesting question. We were
5 making changes on the night of the election, but
6 those changes all had to do with just caching
7 requirements for the public site, in order to make
8 the performance acceptable.

9 Q. So I take it these were not changes that
10 were related to the basic operation of the
11 application?

12 A. No. There were changes up to close to the
13 election, but I don't remember the time frame. I
14 mean, it was not done weeks in advance; I can tell
15 you that.

16 Q. Did you participate in development of any
17 instructional or orientation materials for the county
18 officials for the application?

19 A. I know that we did on the general election,
20 and we -- I think we did on the primary. I think
21 what we did was to write a sort of a couple of pages,
22 sort of draft of what it was, and then somebody else
23 took that and edited it and did whatever they did
24 with it -- I assume they sent it to people, but I
25 don't know that for a fact.

1 Q. This draft that you prepared, is this
2 something you turned over to someone with Automated
3 Election Services, or directly to anyone in the
4 counties?

5 A. It was not to anyone in the counties.

6 Q. Was it to someone or than Automated
7 Election Services?

8 A. I don't remember. I don't remember whether
9 it went to them or David, or who it went to. I don't
10 remember.

11 Q. I'd like to go back now and talk about the
12 actual structure and components of the applications
13 you created for the primary and general elections.

14 Am I correct in understanding that there
15 was a web interface component, as well as a database
16 component?

17 A. Yes.

18 Q. What programming languages or tools were
19 used -- did you use in creating the web interface
20 portion of the product?

21 A. I think both of those were done in ASP.net.

22 Q. And what software tools were used in
23 development of the database portion?

24 A. The two tools that were used were Visual
25 Studio and Enterprise Manager, though I don't

1 remember how much of the database was done in Visual
2 Studio. I simply don't remember the answer to that.
3 You can sort of use both of those tools and they are
4 interchangeable for certain things.

5 Q. Did the product, as a whole, use Sequel
6 Server?

7 A. Yes.

8 Q. And explain for me how -- what role the
9 Sequel Server plays in the operation of the products
10 for the two elections?

11 A. It is the data store.

12 Q. In prior testimony in the case the
13 employees of the Secretary of State's office have
14 indicated they worked with the data at the back end
15 of each of these elections in Microsoft Excel. Do
16 you know how the data in the Sequel data store was
17 made usable in Access for that purpose?

18 A. I do not know how they did it.

19 Q. What are the typical options?

20 A. Well, you can export data from Sequel
21 server to an Excel spreadsheet.

22 Q. And then is there another method?

23 A. I'm sure there are, but that's the only one
24 off the top of my head I'm familiar with. There are
25 various -- there is DTS and various other ways of

1 getting data in and out of Sequel server, but I'm not
2 familiar enough with them to know whether they would
3 be appropriate or not for that job.

4 Q. With respect to the web interface, did the
5 interface function so that the county personnel
6 entered their results directly into the web
7 application, or did they unload a file to the
8 application?

9 A. The application was designed for them to
10 enter it directly.

11 Q. Is there an alternative mode of operation
12 by which they could unload a file?

13 A. There was no interface for doing that,
14 though, it can be done. And I'm trying to
15 remember -- it seems to me like somebody like
16 Bernalillo County wanted to explore that. I don't
17 remember whether anything was done with it or not. I
18 can't remember now.

19 Q. Are you clear that it was Bernalillo
20 County?

21 A. Not that clear.

22 Q. If a file unload capability had been
23 developed for any county, is that something that
24 would have required your involvement, or is it
25 something that the county or the state's computer

1 people might have done?

2 A. I guess that would depend on when it was
3 done. Our involvement was up through election night,
4 and then for the first few days after that, and then
5 we sent, you know, a copy of the data to the state,
6 and what was done with it after that, I have no idea.
7 So if it were before that, technically, they could do
8 it without our involvement. It would be a lot of
9 work.

10 Q. What was the mode of delivery that you used
11 to provide the data at the end of your involvement to
12 the Secretary of State's office?

13 A. We provided a backup of the database. As I
14 recall, it was FTP'd.

15 Q. And was the same process used for both the
16 primary and general elections?

17 A. I think so.

18 Q. When you participated in responding to
19 questions posed by the counties about the
20 application, what kind of questions were raised?

21 A. A typical question might be, you know, how
22 do I log on to the system? How do I -- what happens
23 if I switch between the summary mode and the precinct
24 mode? I know I put this stuff in there, but it is
25 not in there now -- typical user questions.

1 Q. Did any of the questions that were brought
2 to your to attention lead to -- lead you to make
3 changes in the application that you developed for the
4 general election; that is, any questions that were
5 raised based on the primary election application?

6 A. There were changes made between the primary
7 and the general. Where, exactly, the stimulus was
8 for those changes, I don't remember.

9 Q. Did you participate in any joint meetings
10 or conference calls with representatives of Automated
11 Election Services and the Secretary of State's office
12 between the two elections, to discuss changes that
13 would be desirable for the general election?

14 A. Not that I remember. We could have, but I
15 don't remember any.

16 Q. Do you recall Mr. Caldwell, at the
17 Secretary of State's office, requesting any
18 particular changes?

19 A. I don't recall anything attributed directly
20 to him.

21 Q. And when you say "attributed," do you mean
22 by someone at Automated Election Services?

23 A. That's what I was thinking, or him calling
24 us or something. Obviously, there had to have been
25 some discussions, but I don't remember any particular

1 person as saying, "I want this changed."

2 It was, you know, here was something that
3 went on last time; we ought to do it better this
4 time, type of thing.

5 Q. Did Mr. Rainey or Mr. Bylsma, or both,
6 convey some of those requests to you?

7 A. That type of thing would generally come
8 from Terry Rainey. He was sort of the contact with
9 the state. We were a subcontractor to him.

10 Q. And what level of knowledge of the
11 application's technical specifications do you believe
12 Mr. Rainey had?

13 A. I'm sorry, say that again?

14 Q. What level of knowledge did Terry Rainey
15 have about the programming structure of the two --
16 the primary and general election applications?

17 A. My impression is, very little. Terry knows
18 a tremendous amount about elections and what has to
19 happen during the election, but if you are talking
20 about at the program level, the coding level, I don't
21 think he spends much time there at all. The
22 requirements, yes, the coding, no.

23 Q. I'd like to go through, now, each of the
24 changes that you recall making in the application
25 following the primary election, and developing the

1 general election version.

2 A. That is going to be very difficult. Let's
3 see what I can remember. The biggest problem that we
4 had during the primary was response time, when the
5 very first time we went live and the site was
6 swamped. And so we had to put in caching to prevent
7 the public users from getting a "site not available."

8 When we went to the general election, we
9 contacted Microsoft because some of their caching
10 didn't work as they promised it should, and they
11 could not solve the problem, so we had to write our
12 own caching mechanism in order to insure that we
13 would not have that problem on the general election.
14 So that was a major portion of the change.

15 There were other little changes in buttons
16 and things, but I don't remember the details of
17 those. The rest of the functional requirements were
18 pretty much the same. Let me refresh my memory just
19 on one little thing here.

20 Q. You've handed me a one-page document in
21 handwriting that says "General Election 2004 New
22 Functionality" at the top left?

23 A. This is one of two pieces of paper I found
24 with my hand scratches on it, and I just remembered,
25 while you were asking me those questions, that this

1 would shed some light on some of the new things or
2 different things, and clearly, it looks like it does.

3 MR. FINLEY: I'd like to have this marked
4 as plaintiff Exhibit 2.

5 (Exhibit 2 marked.)

6 MR. FINLEY: We'll take a moment just to
7 get this copied and then we'll proceed.

8 (A recess was taken.)

9 Q. Under the heading "New functionality" on
10 Exhibit 2, the numbered paragraph 1 says, "Print PDF
11 reports of any displayed summary by precinct
12 showing" --

13 A. Only.

14 Q. -- "only the correct category"?

15 A. Correct category.

16 Q. Having read that, do you recall what
17 required that change?

18 A. I think that these PDFs were done to
19 provide the counties with a printed report so that
20 they could check their information that they input --
21 I think, was the idea behind it. The problem was
22 that in the -- this is as best I can remember, but in
23 the primary the only way they could print was to do,
24 essentially, screen prints, and screen prints,
25 depending on your printer, don't work very well. So

1 we switched those to a PDF format, which is much more
2 able to give you a usable printed copy off of
3 different printers.

4 Q. Looking back at Exhibit Number 1, in the --
5 in the bubble for county, does this indicate anywhere
6 that the county user access was to include a PDF or
7 other printing option?

8 A. Yes.

9 Q. And where is that?

10 A. It says "Print PDF."

11 Q. I see, directly above "county" with the
12 arrow pointing to it?

13 A. Yes.

14 Q. And directly above that bubble -- the
15 "Print PDF bubble" is a bubble labeled "Unlock
16 counties," which comes off of the "State" bubble.

17 What is your understanding of that
18 function?

19 A. Unlock counties function?

20 Q. Yes.

21 A. The program allows the county to input
22 their data, and when they are through they can click
23 a button which locks it and basically says, I'm
24 through, and they can't change anything unless it is
25 unlocked, and they don't have the ability to unlock

1 it, but the state does. So if they want to unlock it
2 and make any changes, they have to go to the state
3 and ask them to do it. And that, if I recall -- yes,
4 is a change that was made between the primary and the
5 general. During the primary we had to unlock it by
6 literally going into the data, and in the general
7 election we put in a function for the state to be
8 able to unlock it.

9 Q. Was that change made to remove a timing
10 bottleneck?

11 A. It was made mainly because people click
12 buttons before they should click them, and lock
13 things before they are finished, and then can't do
14 anything. At least that is my understanding of it.

15 Q. But, specifically, changing the function so
16 that the state could perform it, rather than your
17 company having to perform it?

18 A. It would cut down on the response time if
19 they hit the wrong button. Before, they had to call
20 somebody at the state who may or may not have to call
21 us, or call somebody at Ink, who then would call us,
22 and by that time, you know, they have forgotten what
23 they were doing; whereas with this, the state could
24 do it very quickly and keep the flow going.

25 Q. And when you referred to "Ink," that is

1 short for Ink Works?

2 A. Ink Impressions.

3 Q. Ink Works is a company I deal with in
4 another jurisdiction, so my apology.

5 A. Now, once again, that is my understanding
6 of this, but I just program what I'm told to program.
7 So my understanding could be -- when it comes to --
8 you know, I can tell you what the bubble chart means,
9 but why it says that, other than just hearsay
10 knowledge of what is going on -- I mean, I'm not the
11 one who generates the requirements.

12 Q. On the left side of the page on Exhibit 1
13 is the "Public" bubble. Extending out from that is a
14 "Reports" bubble. Moving down to "Election night"
15 bubble and finally to "No PDF reports."

16 Do you have any recollection why that was a
17 specification, not to have PDF reports for public
18 access?

19 A. I can tell you what my guess is, but it is
20 purely a guess. It is not direct knowledge of it.

21 Q. Then there is no need.

22 A. I have no direct knowledge.

23 Q. Turning back to Exhibit 2, the second
24 numbered paragraph reads, "Print PDF reports of all
25 categories at the currently displayed summary or

1 precinct." In what way did that represent a change
2 from the primary election, if you recall?

3 A. The primary, as I recall, did not have any
4 PDF reports, so the reports you could print were not
5 very pretty, and sometimes wouldn't fit on the page,
6 depending on the printer and whatnot. I don't recall
7 whether this particular report was available under
8 the primary or not or whether it was a new report. I
9 don't know.

10 Q. And then item three we've already
11 discussed. Item four is "Separate summary/precinct
12 mode to each category"; is that correct?

13 A. Yes.

14 Q. And what do you recall about that change?

15 A. I think I know what it means, but I'm not
16 sure I know what the change was.

17 Q. What is your understanding of what it
18 means?

19 A. I think what it means is that -- maybe I
20 don't know. It has to do with -- the categories are
21 like absentee votes and early absentee, and election
22 night, and what this is saying is to separate --
23 there are two input modes for the system, a summary
24 mode and precinct mode, and they wanted each one of
25 those modes to be further separated by the category

1 of votes. But beyond exactly what change this
2 caused, I don't remember. I guess I don't totally
3 understand it at this point.

4 Q. Then item number five, the last item, reads
5 "Add display of number of precincts reported" and has
6 a subcategory A, "If input mode equals summary, count
7 all precincts as reported."

8 Can you make sense of that for me?

9 A. What that had to do with was the fact that
10 most of the news people report the election night
11 results in terms of the number of precincts reported.
12 And as I recall on the primary, we didn't have that.
13 We only had the number of counties reported. So they
14 wanted to change that to be more useful to people.
15 But then the question becomes, well, if you are in
16 the summary mode, which means you are not putting in
17 by precincts, then what do you count? Do you count
18 all of them, none of them. The answer was, that if
19 they were in the summary, go ahead and just call
20 it -- count them all as reported, under the
21 assumption that they wouldn't have put in anything in
22 the summary mode if they didn't have all of the
23 information.

24 Q. I see.

25 When you were describing the caching issue

1 that came up in the primary with slow access for
2 public users, was there any problem with slow access
3 in the primary for the state and county users?

4 A. Not that I recall. We, basically, have the
5 counties on a separate website than the public, so
6 the two do not necessarily interact that way.

7 Q. Describe for me, more fully, how those
8 websites were separated in the application?

9 A. One of them was a website that,
10 essentially, fed data into the database -- the data
11 store, and that was the county side, or the private
12 side. And the public side simply took data out of it
13 and displayed it. So there were two separate web
14 functions, both talking to the same data store, one
15 of them with the ability to input data, and the other
16 one with only the ability to read the data out.

17 Q. On that point, were there any potential
18 security concerns that you were aware of with respect
19 to the public website, in terms of any possibility of
20 malicious use of that site to alter the data?

21 A. No.

22 Q. And for the county website, am I correct
23 that both the state and the counties had access to
24 that same site?

25 A. Yes.

1 Q. Did you -- were you aware of any potential
2 security issues with unauthorized alteration of data
3 on that website?

4 A. Explain what you mean by "issues"?

5 Q. Did you take steps in the design of the
6 application, specifically for the private or
7 governmental website access, to guard against
8 unauthorized data changes?

9 A. Yes.

10 Q. What were those steps?

11 A. We required strong passwords with the
12 credentials, did not publicize how to get to that
13 site to the general public, and we used, as best as I
14 recall -- on that site we used a mechanism such that
15 you could not bypass the log-on function and go to
16 a -- directly to any page. There are several
17 different ways of doing that. I don't remember how
18 we dealt with it in that particular application.
19 There were other things, clearly, in the structure of
20 the network, the separation -- the different layers
21 within the network that prevented direct access to
22 the data store.

23 The general security on the network
24 itself -- I mean, there is a lot that goes into
25 security on anything dealing with the internet, and

1 even then, it is not perfect, as Microsoft can well
2 tell you.

3 Q. Did you use any form of encryption on this
4 site?

5 A. We used SSL for -- okay, let me rephrase
6 that. I don't recall the specifics, but I believe
7 that in this case we used SSL for the encryption for
8 the private side of it. I don't remember the details
9 of that. There is a lot of different technical
10 implementation details that I don't remember off the
11 top of my head. But normally we would use SSL.

12 Q. Whether or not it was SSL, are you clear
13 there was some form of encryption?

14 A. 99 percent clear, but I don't remember the
15 details of it.

16 Q. Given your general statement about the
17 imperfection of any security measures in a web
18 application, would it be fair to say that,
19 notwithstanding the security measures you built into
20 this website application, it was possible that
21 unauthorized access to -- that included the capacity
22 to alter data could occur.

23 MR. LANDERS: Object to the form.

24 Q. With the security measures that you took in
25 creating the private website for the use of the

1 counties and the state, did vulnerabilities remain
2 that could make possible unauthorized access to the
3 data?

4 MR. LANDERS: Object to the form.

5 Q. You can go ahead and answer.

6 A. Could I ask what that means?

7 MR. FINLEY: Sure.

8 THE WITNESS: What does "object to the
9 form" mean?

10 MR. LANDERS: I'm objecting to the form of
11 Mr. Finley's questions to you. In terms of the
12 significance to you and your role in the process, I'm
13 not asking the court to intervene and decide the
14 issue at this time, so you are free to answer the
15 question if you can.

16 A. I do not know directly of any
17 vulnerabilities that there were to this, but I don't
18 remember all of the details of the coding at this
19 point, either.

20 I can tell you, in general, for the things
21 that we do, the amount of vulnerability is minimized
22 by using the various encryption and coding
23 techniques, and in the security layers that we use.
24 It is certainly acceptable to the level of bank
25 transactions at a low dollar value amount, but it is

1 not the type of encryption or safeguards that you
2 would use for transferring millions and millions of
3 dollars. You would certainly go far beyond the type
4 of things that you do in this type of a situation.

5 I would also point out, though, that all of
6 the results that we collected, and everything that we
7 did was unofficial results. And it was specified as
8 unofficial results, and was not used without going
9 through an additional process after we gave it to the
10 state, and I am not familiar with what that
11 certification process is.

12 But, you know, our problem was to collect
13 that instant snapshot data right at the time of the
14 election and provide that to them. And I certainly
15 couldn't say that it is not impossible for somebody
16 to have changed something, but I think the
17 probability that someone could have done that is
18 pretty darn small.

19 Q. Did Mr. Rainey provide you with any
20 requirements for the primary or general projections,
21 specifically related to security on the private
22 website used by the state and the county?

23 A. Not that I recall.

24 Q. Did anyone else provide specific
25 requirements on that?

1 A. Not that I recall.

2 Q. At any point did you discuss security
3 issues with respect to the private website used by
4 the county and the state, with Mr. Caldwell from the
5 Secretary of State's office?

6 A. It is possible that I did, but I don't
7 recall a conversation about that.

8 MR. FINLEY: We've been going for an hour
9 and ten minutes. Let's take a ten-minute break and
10 then we'll resume.

11 (A recess was taken.)

12 MR. FINLEY: Okay, let's get going again
13 here.

14 Q. Earlier in your testimony you said that for
15 the primary election, you were still making some
16 changes right up through the eve of the election; is
17 that correct.

18 A. Yes.

19 Q. For the general election, at what point did
20 you complete preelection changes, or were you still
21 making changes on the night before the election?

22 A. No. It was a lot -- it wasn't -- it worked
23 a whole lot better on the general. I don't remember,
24 you know, when the last change was made, but even on
25 the primary the changes were made -- that were made

1 were not to the structure of the program. They were
2 to the presentation of the information. I don't
3 recall any last-minute changes to the general
4 election, but like I said, I also don't recall
5 exactly when it was finished.

6 Q. How long after the primary election was it
7 that you started working on the changes that would
8 lead up to the general election version?

9 A. Looking at it the other way, it was, again,
10 a month or two before the general election that we
11 started working on it.

12 Q. In developing the primary and general
13 application, what testing procedures did you use?

14 A. We did testing during the development,
15 which is -- call it whatever you want to call it,
16 unit level or modular level testing, and then once we
17 had finished the complete application, we tested it
18 at that level.

19 Q. And describe for me the testing that you
20 did at the modular level?

21 A. When we would complete a particular piece,
22 we would either simulate a county person or a state
23 person or a public person and check the functionality
24 and the results of the program.

25 Q. And did your wife participate in the

1 testing with you?

2 A. Yes.

3 Q. Would it be fair to say that she played the
4 role of the everyday person not familiar with the
5 system to see if it worked, or had she developed
6 greater knowledge as you went along in the process so
7 that she understood more than the typical user would,
8 how it was designed and was supposed to work? That's
9 a pretty broad question, but was this sort of --

10 A. I must say she is very intelligent. She is
11 much more intelligent than I am. Now that I have
12 said that, I think, clearly, just being there and
13 familiar with it, she probably knew more than the
14 public would know, but -- that's -- that being said,
15 I think we both tried to do the testing at all
16 levels; though unit level testing or modular level
17 testing is really more of a programming function,
18 which is something that I would do. And, yes, I
19 would try to get another pair of eyes on it whenever
20 I could, and get her to look at it also.

21 Q. In the testing of the integrated product,
22 was an aspect of your testing sort of usability as
23 opposed to just whether the application performed the
24 functions that had been specified?

25 A. Only from the standpoint of, did the

1 functionality work and did it meet the requirements.
2 I think we did learn some things on the primary that
3 we tried to, you know, tweak some of it in the
4 general election to make it more usable, though I
5 don't remember any specifics on that. But clearly,
6 the primary was a first learning exercise and we were
7 better at the general election.

8 Q. In the product development cycle, would you
9 call the use of the program in the general election a
10 beta test?

11 A. No. Though you can define those things in
12 so many ways that -- I guess you could define it any
13 way that you wanted to. But, if anything, I would
14 say that the primary was more of a beta, and by the
15 time we got to the general election we had it down
16 pretty well.

17 Q. Okay. I may have misspoken. I intended to
18 ask about the primary?

19 A. Maybe you did, but I didn't hear it that
20 way.

21 Q. So just to reframe the question: Do I
22 understand you as saying that you could reasonably
23 characterize the primary election as having a been a
24 beta test?

25 A. You could characterize it that way, or you

1 could simply say that the program was not near as
2 mature as it was in the general election. "Beta" is
3 such a loose term and can be defined in umpteen
4 different ways.

5 Q. In the language of the programming
6 community, does "program maturity" have a special
7 meaning?

8 A. It has a special meaning which is different
9 to different people. There is a formal program or
10 software maturity model which is published by, if I
11 recall correctly, the University of -- no, it is by
12 Carnegie-Mellon, and it is a whole body of work that
13 is designed to make companies spend millions and
14 millions of dollars on something that returns very
15 little value. However, maturity is also used simply
16 in terms of what version number you are on, so it
17 depends on who you are talking to.

18 Q. In the case of the primary and general
19 election applications, did you use version numbers?

20 A. I think by default there is a version
21 number, but did we do formal version control, no.

22 Q. From my own experience as a user of
23 applications, it is my understanding that there is a
24 convention of relatively minor version changes being
25 denoted through a decimal fraction, whereas more

1 major version changes are in the initial digit
2 version number. Is that a correct understanding of
3 the convention?

4 A. That is one way of doing it. There are
5 lots of ways of doing it. Lots of people, like, use
6 four different fields separated by decimals, and each
7 one denotes a different level of complexity of the
8 change. Other people use letters. I mean, there's
9 umpteen ways of doing it, but most of them use some
10 sort of a hierarchical numbering system.

11 Q. Earlier I asked you about sign-off issues
12 within your company. Was there any formal sign-off
13 requirement with respect to the general contractor
14 here, Automated Election Services, in which they
15 signed off at stages of the development of the
16 applications, or upon final delivery?

17 A. No.

18 Q. And do you know if there were any sign-off
19 procedure for either the Secretary of State's office
20 or the counties?

21 A. I don't know.

22 Q. Did you demonstrate the functionality of
23 the primary election application to Mr. Rainey prior
24 to the election?

25 A. I don't remember, but I assume so. I can't

1 imagine not.

2 Q. That makes sense. And after the decisions
3 were made about which functionality changes to make
4 for the general election, did you make the
5 functionality demonstration to anyone prior to the
6 election, that you recall?

7 A. I don't recall. Again, I would assume so,
8 but on the other hand, we were -- we knew a lot more
9 about what we were doing for the general election, so
10 I don't think there was quite as much concern.

11 Q. How many programming projects have you done
12 that involved use of Sequel servers?

13 A. I have no idea. My guess is it would be in
14 the range of -- of course, you get -- are we talking
15 about real projects and big product things, or are we
16 talking about quick little uses of sequel server for
17 auxiliary function? If you are talking about all
18 totaled the number of times that we've interfaced to
19 Sequel server, it would probably be going back in
20 versions and over the years, maybe 100. We also work
21 in Oracle, and so how much of our work has been in
22 Oracle versus the other; I don't have an exact
23 number.

24 Q. In terms of projects of the scale or level
25 of this election application project, approximately

1 how many of those have you been involved in as a
2 programmer?

3 A. Well, this was a small project. Things
4 that were of roughly this magnitude, dozens.

5 Q. And projects involving Sequel servers that
6 you programmed for that ere a larger magnitude,
7 approximately how many of those have you done?

8 A. Fewer, but obviously, taking a lot more
9 time and being a lot more detailed. We've got one
10 on-line catalog that has 300,000 parts in it, all
11 running off sequel server. Of that we have done
12 multiple versions, or multiple major revisions to
13 that. That's probably the -- about the biggest
14 formal program that we have done. We've done -- you
15 know, if you slid over to Oracle, which uses very
16 similar stuff, then we've done a number of large
17 programs there for insurance agencies, but they tend
18 not to use Sequel server because of the political
19 pressures.

20 Q. What kind of political pressures affect
21 that?

22 A. Interestingly enough, you may recall that
23 IBM, before they almost went out of business -- which
24 is a slight exaggeration, but in a way not a great
25 deal -- had a very strong marketing campaign whereby

1 if you were an IT manager, you couldn't get fired as
2 long as you used IBM equipment and software. It may
3 not work and be any good, but it was sort of the best
4 that was out there. When IBM lost that positioning
5 in, oh, I forget, '70 something or another, Oracle
6 was smart enough to pick up on that and stepped into
7 that position and became the safe choice for an IT
8 manager.

9 So until probably -- and you'll get a lot
10 of arguments from different people when, but within
11 the last five to eight years, then you could hardly
12 go wrong -- you couldn't get fired using Oracle. And
13 because of that, a lot of the banks and financial
14 institutions used it. All of this is my own personal
15 opinion, by the way. I doubt if I could back this up
16 with a great deal of statistical evidence. But at
17 any rate, Oracle is now losing that, and it is sort
18 of a free-for-all with -- you know, IBM has gained
19 market share, again, and Microsoft certainly has a
20 niche market, and the result is that Oracle is no
21 longer quite as -- doesn't have the mystique that it
22 did before. But, still, financial institutions are
23 sort of locked into it. All of that has nothing to
24 do with what we are talking about.

25 Q. Actually, the reason I followed up on that

1 was your use of the term "political," and I thought
2 maybe it was a different meaning of political?

3 A. No.

4 Q. But it is a very interesting explanation.
5 It sounds a little bit like the game of -- the auto
6 rental companies trying to position themselves --
7 Hertz most prominently -- in the same way.

8 Just to try to place the point in time in
9 which the bubble chart that you did -- which we've
10 labeled Exhibit 1, I'd like you to look -- to compare
11 Exhibit 1 and Exhibit 2 -- the items of new
12 functionality that are listed on Exhibit 2, and tell
13 me if each of those items on Exhibit 2 is shown as a
14 bubble on Exhibit Number 1?

15 A. Item 3 on Exhibit 2 is shown. Items 1 and
16 2 are not shown directly, but at least there is
17 something that clearly states PDF, which is stated in
18 both places. I don't see the fifth one anywhere
19 specifically called out. I don't see anything right
20 offhand on the fourth one, but a bubble chart like
21 this would not necessarily cover those details.

22 Q. Thank you.

23 MR. FINLEY: Off the record.

24 (A discussion was held off the record.)

25 Q. Mr. Ryan, I'm showing you the first page of

1 a many-page exhibit. It appears to be more than a
2 couple of inches thick, that was marked as Rainey
3 Exhibit C in a prior deposition in this case.

4 A. Yes.

5 Q. Do you recognize that?

6 A. Yes.

7 Q. Could you describe what it is?

8 A. It is a graphical representation of tables
9 within a database that some people might call an ERD,
10 but it is really not an ERD, because it doesn't
11 express any relationships between the tables. It
12 simply states that there are tables and that there
13 are fields within those tables.

14 MR. FINLEY: Counsel, would you like to
15 take a look at this?

16 MR. TOUREK: I saw it yesterday.

17 Q. And does this page identifying tables and
18 fields within the tables, relate to the election
19 applications that we've been discussing for the New
20 Mexico primary and general elections last year?

21 A. I think so.

22 Q. Let me show you the next page from Exhibit
23 C, which is printed on both sides in landscape mode
24 and has a heading of "Sig Roster."

25 Do you recognize that?

1 A. It is a printout of a sig roster table.

2 Q. Is there anything about this that connects
3 it in your mind with the applications you developed
4 for the elections in New Mexico last year?

5 A. The name of the table.

6 Q. Okay. I will represent to you that this
7 Exhibit C was produced by Terry Rainey in his
8 deposition in response to a request for any documents
9 he had that referenced any part of the applications
10 that were used in collecting the results data for the
11 2004 elections.

12 So I believe that this entire exhibit bears
13 some relation to the programming that you did for
14 these two elections. Assuming that that is the case,
15 what is the relationship of this type of printout to
16 the underlying application that you would have
17 developed?

18 A. That particular printout would show data
19 that is in that particular table. So it is a
20 representation of the actual data.

21 Q. I'm showing you now another page from
22 Exhibit C. Printed in landscape mode on both sides
23 with the heading "TBL precincts"?

24 A. Stronger glasses. Okay.

25 Q. What does this appear to be?

1 A. It appears to be the data in a table called
2 "TBL precincts."

3 Q. And one of the columns has the initials in
4 all caps AMAFCA. Do you know what that refers to?

5 A. Special two is the column.

6 Q. And then the entries under it are AMAFCA?

7 A. I haven't the foggiest.

8 Q. Let me retrieve that page from you, but ask
9 you to keep the first page.

10 I'm now showing you, from Exhibit C, a page
11 printed in landscape mode on both sides of the sheet
12 marked page 1 at the bottom and with the heading "TBL
13 canvass"?

14 A. Okay.

15 Q. What does this appear to be?

16 A. The contents of the TBL canvass table.

17 Q. And looking at the column headings there,
18 does that give you any indication as to what election
19 this particular table relates to?

20 A. Well, I suppose you could figure that out.
21 Obviously, there is an office column, which says
22 things like "president" and "vice-president," and
23 then has a candidate name and a party. I suspect
24 that you could compare that to the election -- to the
25 ballots -- and figure it out. I don't see anything

1 on here that states what election this belongs to.

2 Q. So is it fair to say that this relates to
3 an election in which presidential candidates were on
4 the ballot, but doesn't identify which election that
5 was?

6 A. I don't see anything that identifies which
7 election this was.

8 Q. If you could return that to me. Thank you.

9 I'm showing you now a page from Exhibit C
10 that is marked page 677 at the bottom with the
11 heading at the top "TBL canvass," also printed on
12 both sides, but I'll ask you to look at the side
13 labeled page 677.

14 A. Okay.

15 Q. A little bit below midway down the page, do
16 you see the names of presidential candidates listed
17 there?

18 A. Yes.

19 Q. And which are those candidates?

20 A. Well, it is truncated so you only get the
21 first -- on this printout, you only get the first
22 eight or nine characters, obviously "Ralph N-A," is
23 going to be Ralph Nader. "George," I believe is
24 pretty obvious, would be George Bush. The others --
25 this is, you know, printed so if you expanded that

1 column you could see the whole name and you would
2 know which ones the other ones were.

3 Q. But from the way this one is printed it is
4 not possible?

5 A. There are two Michaels, so other than going
6 someplace else and figuring out which one was the
7 Libertarian party and which one was the Constitution
8 party, I mean could you tell by that, but can you
9 read the whole name here, no.

10 Q. In the category for the Democratic party,
11 what is entered in the name field?

12 A. John F-K.

13 Q. And do you associate that with any
14 candidate?

15 A. I would assume it is Kerry and not Kennedy.

16 Q. Because of the presence of a Bush candidate
17 on the same sheet?

18 A. And because of the timing of the
19 election -- a few years' difference.

20 Q. Yes. So without holding you to it, given
21 the shortened --

22 A. Truncated.

23 Q. Truncated names, does this appear to be a
24 page showing data fields for the election -- the
25 general election of 2004 in which John Kerry and

1 George Bush were candidates for president?

2 A. I would assume that to be the case. This
3 particular one is showing a particular -- what
4 precinct -- if you hand me the first page so that I
5 can read the column headings.

6 Q. Yes.

7 A. Actually, I can read them off of here by
8 county.

9 Q. You are now referring to the first page of
10 Exhibit C?

11 A. Yes. But it would be easy if you would
12 hand me that one.

13 Q. Sure. Here it is.

14 A. Okay there are candidate codes, which I
15 think probably tie all of these offices together on
16 the different rows of the table.

17 Yeah, it looks like these are vote numbers
18 in the four, five or six columns over here. There is
19 a county and a precinct code.

20 Q. Looking at these three pages from Exhibit C
21 together -- the first page that was the tables of
22 database and the first page of the TBL canvass, and
23 the later page -- I've now forgotten the number --

24 A. 677.

25 Q. -- do these all appear, then, to relate to

1 the application that you developed for the November
2 2004, New Mexico election?

3 A. That would be my assumption.

4 Q. Do you have a stored version of the primary
5 application and the general election application that
6 you developed in 2004?

7 A. I know I have a stored version of the
8 general. I don't know about the primary.

9 Q. And is there a reason that you are unsure
10 about the primary?

11 A. I didn't look for the primary. I wasn't
12 asked to.

13 Q. Have you brought with you anything
14 concerning the stored version of the general election
15 program?

16 A. What I have with me is the intellectual
17 property of someone else, and I am not a lawyer, and
18 I do not know whether I -- I know in the subpoena it
19 talked about trade secrets, and I assume intellectual
20 property is lumped in with that, though I am not a
21 lawyer, and I don't even know who owns the
22 intellectual property -- whether it is the State, or
23 whether it is Ink, but I do have a copy of it.

24 Q. I will ask you to show me that copy. It
25 would require a formal objection by counsel to

1 temporarily block that, and so I would like to see
2 that document.

3 A. I don't believe that -- well, I'm speaking
4 out of turn there. I can speak for myself. I
5 certainly have no problem with you seeing it, or
6 having it, or whatever. Are you considered an
7 officer of the court who has the authority to have me
8 hand that over, or does the judge have to make the
9 decision as to whether somebody else's intellectual
10 property should be given to you?

11 Q. Well, I can't provide you legal counsel,
12 acting as your attorney?

13 A. No, I'm asking from the court's standpoint.

14 Q. From the court's standpoint, under the
15 statutory discovery process I have the right to
16 request and receive any documents that are material
17 to or may lead to the discovery of evidence material
18 to the issues in this lawsuit. And it is only if a
19 formal objection is raised by counsel for a party
20 that the court would become involved in making a
21 decision as to whether I have a right to receive that
22 at this time.

23 So the short answer to your question is,
24 yes, I am, under the law, authorized to request and
25 receive the document?

1 A. So when somebody sues me, I can point to
2 the record that is here and say you told me to?

3 MR. TOUREK: You can get an attorney -- and
4 I'll check on it at lunch. We'll file a protective
5 order if, in fact, that information -- or if you have
6 an attorney, you can have a protective order filed so
7 that he has to go to court and prove to the judge why
8 that information should be disclosed.

9 THE WITNESS: Okay. I do not have an
10 attorney to do that.

11 MR. TOUREK: What I'll do -- the
12 information, I understand -- I had to use the
13 restroom briefly, but the information, I understand,
14 based on counsel, is that information you may have
15 stored which may be intellectual property under your
16 belief.

17 THE WITNESS: Yes.

18 MR. TOUREK: I can file a protective order
19 and he can make a ruling on whether it is necessary
20 to be disclosed, or whether counsel has to prove the
21 merit to it.

22 MR. FINLEY: Actually, we don't need to
23 resolve that now, but --

24 MR. TOUREK: If we own it, and if that is
25 the information.

1 THE WITNESS: Now, you've seen it.

2 MR. TOUREK: If what you are representing
3 is information that was -- has --

4 THE WITNESS: I believe this is someone
5 else's intellectual property.

6 MR. TOUREK: Whose?

7 THE WITNESS: Well, it would go from me to
8 Ink, because they are the ones who had me.

9 MR. TOUREK: I'm sorry, I came in. It was
10 my understanding this was information that was at the
11 behest of the Secretary of State.

12 THE WITNESS: Well, but, does the Secretary
13 of State own it? I don't know the answer to that.

14 MR. TOUREK: Where did you get it from?

15 THE WITNESS: I wrote it. It is software.

16 MR. TOUREK: It might be yours.

17 THE WITNESS: No, it is not mine because I
18 did it for hire, which means that the rights to it go
19 to whoever is paying me.

20 MR. TOUREK: Who paid you?

21 THE WITNESS: Ink Impressions.

22 MR. TOUREK: And that is Terry Rainey?

23 THE WITNESS: Yes. And Terry Rainey was
24 paid by the State.

25 MR. TOUREK: Do you know that?

1 THE WITNESS: No, I don't. All I'm saying
2 is, I don't know who owns this. I believe it is not
3 me.

4 MR. TOUREK: You know it is Terry Rainey,
5 though, or his company?

6 THE WITNESS: That's who it would make
7 sense to me that would be the owner of it.

8 MR. TOUREK: And you feel concerned --

9 THE WITNESS: Unless they are being paid,
10 in which case somebody else might claim it.

11 MR. TOUREK: I misunderstood.

12 If, in fact, Terry Rainey's company would
13 probably want to issue or file a protective order of
14 some sort, and you can -- if you can find out during
15 lunch -- we'll have a lunch and you can find out from
16 whomever if they want to allow you to disclose
17 that -- that intellectual property. That is up to
18 the purchaser, I believe.

19 If they have a problem with it, they can
20 file a protective order, but that company should have
21 an attorney.

22 THE WITNESS: Do they file the protective
23 order before I give it to anyone?

24 MR. TOUREK: If what you are telling me is
25 that is information that you are disclosing which is

1 the property of someone else --

2 THE WITNESS: Yes.

3 MR. TOUREK: Are you saying that?

4 THE WITNESS: Yes.

5 MR. TOUREK: And I understand you -- we
6 want to make sure it is on the record -- then my
7 concern would be -- and I'm not your attorney, that's
8 the problem. He has the right to depose witnesses,
9 and if you wanted to bring an attorney, that is up to
10 you. But if you are concerned about getting sued
11 yourself because that is owned by someone else, then
12 you may want to discuss it with Mr. Rainey.

13 If, in fact -- if you tell me that that is
14 stuff that he was hired by the State to create, and
15 it is owned by the state -- if that is what you are
16 telling me.

17 THE WITNESS: I don't know. All I know is
18 it is not mine.

19 MR. TOUREK: Well --

20 MR. FINLEY: Let me say this: I'm not
21 going to insist on taking the disks that Mr. Ryan has
22 shown me at this time, and trying to examine what is
23 on them?

24 MR. TOUREK: You are interested in the
25 information.

1 MR. FINLEY: But I'm also happy to allow
2 both of you to use the lunch hour to confer with
3 anyone you believe is appropriate and determine
4 whether you seek to interpose, or someone else to
5 interpose an objection and seek whatever relief they
6 might want to from the court.

7 MR. TOUREK: If you can tell me -- and I'll
8 find out if that is, in fact, information or a
9 program or some type of property that you created for
10 the Secretary of State, or that Rainey had, and --

11 THE WITNESS: What this is, literally, is
12 the software.

13 MR. TOUREK: This is his deposition. I'll
14 ask you at the end, but let him continue on with his
15 deposition.

16 MR. LANDERS: Let me do this for purposes
17 of the record, so that at least this point is clear:
18 Assuming that Mr. Rainey or the State or somebody
19 intends to contact the judge or to file a protective
20 order in this case, the reality is that in terms of
21 this deposition I'm not sure that is likely to be
22 ruled on today, in light of the fact that, at least
23 my office, back in February, filed a motion to
24 dismiss -- that has yet to be scheduled for a hearing
25 by the court.

1 I know the Secretary of State's office has
2 filed at least two notices of nonappearance and
3 motion for protective order that the court never
4 heard in advance of the deposition -- that the
5 likelihood of having the issue resolved today
6 before --

7 MR. TOUREK: They would have to come back,
8 and if we were right, they would have to pay the
9 cost. If they are wrong, they would eat the cost.

10 MR. FINLEY: My position is, let's see
11 where things stand after lunch, and we may not have
12 to cross that bridge.

13 MR. LANDERS: Okay.

14 MR. TOUREK: Right.

15 Q. (By Mr. Finley) At this point I'm not
16 going to ask you about the contents of the disks that
17 you have shown counsel, but I would like you to just
18 describe how they are labeled and what they contain
19 in terms of names of files?

20 A. Sure. One of them is labeled "General
21 Election 11/3/04, 7:00 a.m.," and what it contains is
22 a snapshot of the software at 7:00 a.m. on the 3rd.

23 Q. And when you say a "snapshot," what does
24 that mean?

25 A. A copy.

1 Q. So if this disk were placed into a
2 computer, would this allow the user of that computer
3 to actually operate the program?

4 A. No. If you took this and set up a complete
5 system with all of the servers and everything else,
6 then you could operate the program.

7 Q. Does the snapshot of the software contain
8 any election results data from that election?

9 A. I believe -- I'm not sure, that there is a
10 file on here that looks to me like a backup of the
11 database at some point in time, but I don't know for
12 sure that that is what it is, or that -- exactly when
13 it is. I think the name of the file has a date in
14 it, and no file extension, but it is not a very big
15 file so I'm not exactly sure, but it might be.

16 Q. And could you describe for me disk two?

17 A. Disk two says "Database as of 9/23/05," and
18 that contains a backup of the database as it sits on
19 my computer today.

20 Q. And the backup of the database, does that
21 consist solely of data, or does it also include what
22 you understand to be intellectual property?

23 A. I have absolutely no idea. I'm sorry, I
24 just don't know what the legal definition of that
25 would be.

1 Q. The data contained on the disk, is it your
2 understanding that that is election results data?

3 A. It is the results as of a certain point in
4 time. It is not necessarily the results -- the
5 certified results.

6 Q. That leads to a question, which is, at any
7 point subsequent to the November 2004 general
8 election, did you receive from the State of New
9 Mexico or from Automated Election Services a -- any
10 data files showing the state of the election count at
11 a time later than the time when you had handed off
12 the data to the State?

13 A. I did not receive any such data. I have
14 viewed the data that was published on the State's
15 website.

16 Q. Were you asked at any point after the
17 election to perform any services that would make it
18 possible for the Secretary of State's office to
19 provide election results data to a member of the
20 public in a form that the Secretary of State's office
21 could not produce it without your assistance?

22 A. Not that I recall. Can I comment on that?
23 Once we got finished with all of this, we did a
24 snapshot of the database, gave it to Ink, or to the
25 state. I don't remember who got it. And on that --

1 from that point on we had no involvement in the data.

2 Q. Do you have any recollection of an issue
3 arising concerning a public request for a break out
4 of provisional voting results from the official New
5 Mexico statewide canvass following the November 2004
6 election that the Secretary of State had been asked
7 to provide to a member of the public?

8 A. If I understand what you are asking me, the
9 answer is no. We did have a couple of requests to
10 change the order of some things on some reports and
11 things, but that was -- I don't think it would have
12 anything at all to do with what you are asking me.

13 Q. Do you know who Steve Fresquez is?

14 A. No.

15 Q. Following the election, were any of the
16 requests that were made to you, that you have just
17 identified, concerning format changes or order
18 changes initiated by someone at the Secretary of
19 State -- the office?

20 A. As best as I recall, those were not, quote,
21 "after the election." In other words, they were not
22 after we turned the data over and it was out of our
23 hands. That was more during the process. I don't
24 remember the details, but there was something about
25 the state had always listed things in a certain

1 order, and our order happened to be different and it
2 was confusing to people, and things like that. But
3 it was -- but that was during the process, during the
4 election, not afterwards. After we turned it over to
5 them, I don't think we had any more involvement. I
6 don't remember anything that we were asked to do once
7 we gave them that final snapshot, that I remember at
8 all.

9 Q. I'm going to read you a file name and ask
10 whether you have ever heard this file name before, or
11 seen it, Seewolf canvass data 2-4-05.MDB?

12 A. 2-4-05.MDB -- dot MDB is a database file,
13 and that date would indicate, I think, that that was
14 part of the primary election.

15 Q. But it is 05.

16 A. 05, obviously -- Seewolf, it obviously had
17 something to do with us, but, no, it doesn't ring --
18 that would be in February. That doesn't ring any
19 bells to me at all.

20 Q. Do you recall, in this project of
21 developing the primary and election databases, seeing
22 any file that had been labeled with a name including
23 the words Seewolf, but where the name was spelled
24 S-E-A-W-O-L-F, rather than S-E-E-W-O-L-F?

25 A. No. Obviously, we spell it differently.

1 MR. FINLEY: Let's take our lunch break
2 now.

3 MR. TOUREK: Sure.

4 (A recess was taken.)

5 Q. You are aware you are still under oath?

6 A. Yes.

7 Q. When you did the development of the
8 applications for the primary and general elections of
9 2004, did you use bug tracking?

10 A. No.

11 Q. So there would be no bug tracking logs as a
12 result of that?

13 A. There were no logs, since we didn't use bug
14 tracking.

15 Q. Did you maintain the servers on your own
16 facilities that were used for the public and private
17 websites for the elections?

18 A. Yes.

19 Q. And did you maintain a user access log for
20 the private website designed for use by the counties
21 and the state?

22 A. By that do you mean a log of who logged in.

23 Q. Who logged in or attempted to log in?

24 A. On the primary, as I recall, there was not
25 any type of audit records.

1 On the general election, I think one of the
2 things that we added was an audit table, because I
3 see it on that drawing, but I don't know what is in
4 it. I don't remember. If you want me to look at it,
5 I will, to see if I can jog my memory for a second.

6 Q. Sure.

7 A. It looks like it is a log of some sort of
8 user actions because it has a user ID. It has an
9 action code, so it would be -- without looking at it
10 and whatnot, it seems to give a date and a time, and
11 some indication that something was done, but what
12 those things were, you would have to look in the code
13 to figure out.

14 Q. Just for the record, can you tell me which
15 table you are looking at?

16 A. That is the audit table, and I'm assuming
17 there is something in it. It has been way too long.
18 I don't remember the details.

19 Q. One of the fields is "successful." What
20 does that indicate to you?

21 A. To me it would indicate there wasn't a
22 problem with the action that was taken. In other
23 words, if they logged on, it would say they
24 successfully logged on, or something like that.

25 Q. Do you recall whether there was any feature

1 that would limit the number of unsuccessful log-in
2 attempts?

3 A. I don't recall. We do that on some things.
4 I don't remember on this one whether it was done or
5 not.

6 Q. This morning we talked about how Mr. Rainey
7 originally came to you with the request for
8 development of this set of applications. Did he at
9 any time provide you with requirements in written
10 form?

11 A. Not that I recall.

12 Q. And just to be clear, do you recall anyone
13 else providing you with requirements in written form?

14 A. No.

15 Q. In the functionality testing that you did
16 on the software, did your testing include attempts
17 to, in colloquial terms, break the software?

18 A. You would normally try to put in invalid
19 data. I don't recall, specifically, doing that, but
20 that is a normal thing to do while you are testing
21 it. So I would assume that most likely there was
22 some of that testing done.

23 Q. But as you sit here today, you don't recall
24 having done that?

25 A. I do not recall the details of -- anywhere

1 near that level of the detail.

2 Q. Is there any other type of testing that
3 would normally be done, besides trying to input
4 invalid data, in an attempt to determine whether the
5 software could be rendered dysfunctional or
6 overloaded?

7 A. There is as much testing as there is money
8 in the world. There is always more testing that can
9 be done, and one more thing you could check, so sure,
10 I mean, you could go hire 5000 people and have them
11 all sit there and try and bang on it at once, but
12 clearly, we did not go and hire 5000 people.

13 Q. I'm going to show you now a multipage
14 document with the heading "subpoena." Do you
15 recognize that?

16 A. Yes.

17 Q. Is that a copy of the subpoena that you
18 were served with to appear for this deposition?

19 A. It certainly looks like it.

20 Q. If you would turn to the page that is
21 titled "Notice to take deposition duces tecum of
22 Jonathon Ryan." Do you see there the -- under the
23 words "Please bring with you the following
24 documents," the paragraph numbered one?

25 A. Yes.

1 Q. This request is for "All documents, whether
2 on paper or in electronic form that identify, refer
3 to, or relate in any way to the New Mexico statewide
4 canvass of the vote for the November 2nd, 2004
5 election, including any draft or preliminary
6 versions, corrections or changes made to the
7 statewide canvass of the vote, or the database on
8 which it is based, whether before" -- and then there
9 is a typo, I believe, should be "of" but it reads --
10 it should be "or" but it reads "of" -- "or after it
11 was certified by the New Mexico state canvassing
12 board"; is that correct?

13 A. Yes.

14 Q. Do you have any documents with you that are
15 responsive to that request -- and that would include
16 any document that you've already provided?

17 A. Yes.

18 Q. And what are those documents?

19 A. I'm not trying to segregate between the
20 four different types of documents that you asked for.
21 The documents that I have are the two exhibits that
22 you already have, and I have two CDs that we
23 described earlier, and I have a set of e-mail
24 correspondence that occurred primarily right during
25 the election night.

1 Q. And other than the documents you've just
2 described, it is your belief that you do not have in
3 your possession or control any other documents that
4 are responsive to the subpoena?

5 A. I believe that is correct.

6 Q. The second document request concerned
7 contracts between the New Mexico Secretary of State,
8 State Finance Board or any other state agency and
9 Auburn Seewolf or related companies. You have no
10 such documents?

11 A. Not that relate to this -- to the election.

12 Q. And category four is a request for
13 contracts relating to state or local elections
14 between Ink Impressions, Automated Election Services,
15 the New Mexico State Finance Board or any other
16 agency of New Mexico state government and Auburn
17 Seewolf or related companies.

18 Do you have any documents that are
19 responsive to that request?

20 A. No, I do not.

21 Q. Did you at any point have a written
22 contract with either the State of New Mexico or
23 Automated Election Services for the election
24 application projects?

25 A. Not for the general election.

1 Q. For the primary election did you have such
2 a contract?

3 A. We did not have a legal contract. What we
4 did have for the primary was we -- after we looked at
5 it, and we put together our thoughts and sort of
6 rolled up our proposal and said, "This is what we
7 think we need to do." And that was sort of the
8 starting point, but it was never -- there was no
9 order acknowledgment or any of the things you would
10 expect to convert that into, any more than a verbal
11 contract.

12 Most of the stuff -- I don't know, I
13 haven't read it in, what, almost two years now. But
14 most of the stuff that was in it was very -- was sort
15 of our first cut at what we thought it was all about,
16 and was not necessarily what got done.

17 MR. FINLEY: I'd like to have the subpoena
18 marked as plaintiffs next in order, please.

19 (Exhibit 3 marked.)

20 MR. FINLEY: And then the disk, which is a
21 CD-ROM disk in a white envelope with a transparent
22 window labeled 11/3/04 7 a.m., I would like to have
23 marked as Exhibit 4.

24 (Exhibit 4 marked.)

25 THE WITNESS: Is this the right time?

1 MR. TOUREK: Let him lay that out first and
2 then we can get it all clear.

3 MR. FINLEY: The next CD-ROM disk, also in
4 a white envelope with a transparent window, is
5 labeled Database as of 9/23/05, and I would like to
6 mark this as Plaintiffs' Exhibit 5.

7 (Exhibit 5 marked.)

8 MR. FINLEY: I believe counsel for the
9 Secretary of State may want to put an agreement on
10 the record as to these disks.

11 MR. TOUREK: Correct. As we discussed,
12 counsel has agreed -- both counsel for plaintiff and
13 counsel for the defendant Secretary of State,
14 insomuch as that is the purpose we are here -- have
15 agreed to enter into a confidentiality agreement, and
16 all documents or -- let me qualify it: All
17 information contained on those disks, we would object
18 and we have a proprietary interest in. We did pay
19 for it, and counsel for the plaintiffs has agreed to
20 enter into a confidentiality agreement that it will
21 not be disseminated to anyone, other than parties in
22 this case, that it will not be duplicated or copied,
23 and at the conclusion of this litigation it will be
24 destroyed or returned back to the provider, Mr. Ryan,
25 or the Secretary of State. And we'll enter into a

1 formal confidentiality agreement -- a written one at
2 a later hearing or a later deposition.

3 I don't know if I missed anything. That
4 is, basically, what we are concerned with.

5 MR. FINLEY: The only qualification I would
6 make is that for practical purposes, it may be
7 simplest for plaintiff's counsel to make copies of
8 these disks for defense counsel, so that with that
9 proviso, I agree to the prohibition on copying.

10 MR. TOUREK: Dissemination.

11 MR. FINLEY: And, certainly, the
12 prohibition on dissemination outside of the parties
13 in this case and any proceedings before the court.
14 Before offering evidence from the contents of these
15 disks in court, I would agree to confer with counsel
16 as to any appropriate protective orders.

17 MR. TOUREK: And I don't know who else is
18 going to be here, Gary, or whatever, but any other
19 information -- we will not -- I wouldn't be turning
20 that over. You would be signing the confidentiality
21 agreement.

22 MR. LANDERS: That's fine. The county --
23 Mary Herrera is the defendant in this case, and as
24 counsel for her, I would agree that she would enter
25 into, or her office, would enter a confidentiality

1 agreement on the same terms.

2 MR. TOUREK: And any other parties, some
3 that aren't here today, we will not be, obviously,
4 making copies and providing it to them until they
5 have agreed to that confidentiality agreement.

6 MR. FINLEY: And I agree to the terms as
7 well.

8 Q. Could I see the e-mails that you have
9 brought -- these printouts of e-mail messages at the
10 top of this stack of documents. Are these printouts
11 from electronic files that are stored on a Seewolf
12 computer?

13 A. Yes. Actually two computers, but, yes.
14 I'm sorry, that's a copy of another document. I'm
15 sorry. It got shuffled in there.

16 Q. I see. Do you want to extract that?

17 A. Let me try to pull it out. There is one
18 more document, then. That looks like all e-mails.

19 MR. FINLEY: And before I move to marking
20 these e-mails as an Exhibit, I would just like to add
21 one more thing to the agreement concerning the
22 computer disks, and that is that following this
23 deposition I would propose that as plaintiff's
24 counsel I would take these disks with me rather than
25 having them made part of the transcript.

1 MR. TOUREK: I was going to ask Mr. Ryan if
2 he could make duplicates and bring them to the AG's
3 office. We can turn it over to Jeff and I'll give
4 them to Mr. Thompson, but to the other parties, until
5 they have agreed to the confidentiality, we would
6 want to make sure that they are not turned over. I'm
7 not sure how you might use them. But the fact that
8 they paid so much for it, I have to protect them.

9 Q. The e-mails you have given me, could you
10 describe these?

11 A. Yes. Those are e-mails that we received
12 primarily from the Secretary of State's office, but
13 also from a bunch of other people that you'll see in
14 there, people in the county clerk's office that
15 somehow we got on the mailing list for, and most of
16 them occurred, you know, either election night, or
17 within a day or two of the election and were just
18 administrative functions going back and forth of,
19 making the site work for them.

20 Q. For now, that is sufficient.

21 MR. FINLEY: I'd like to mark this loose
22 set of e-mail message copies as plaintiffs'
23 Exhibit 6.

24 (Exhibit 6 marked.)

25 A. I have found one more document -- actually,

1 two more.

2 Q. Can you tell me what those two documents
3 are?

4 A. This appears to be two copies of the same
5 thing, which is the -- called the New Mexico Election
6 Results Application User's Guide, updated 11/2/04.
7 This was the draft information that we provided that
8 I assume was edited and became something that was
9 sent out to the counties, but I don't know that for a
10 fact. And I don't know why I have two copies
11 exactly --

12 Q. They are printed in a different type face?

13 A. Yes. Different type size.

14 Q. But just in case, since I don't have time
15 to review them thoroughly now, I'll make both of them
16 exhibits.

17 MR. FINLEY: I'd like to mark as
18 Plaintiffs' Exhibit 7 a six-page document printed
19 front and back, titled New Mexico Election Results
20 Application User's Guide, updated 11/02/04.

21 (Exhibit 7 marked.)

22 MR. FINLEY: And I would like to mark as
23 Plaintiffs' Exhibit 8, another six-page document
24 printed on front and back bearing the same title,
25 that appears to be printed in a smaller font, but

1 otherwise similar to Exhibit 7.

2 (Exhibit 8 marked.)

3 A. I think I remember why there was two. I
4 think one of these we sent off and somebody looked at
5 it and sent back, so there may be a few word changes
6 in it. There may be a few minor differences, or not,
7 but I think that is why there were two, is because it
8 was a review copy, and the copy that came back or
9 something.

10 Q. I would like to ask you to take a moment
11 and compare the two and see if you can confirm your
12 hunch on that?

13 A. The copy that is the smaller type font is a
14 printout from a Word document that has "change
15 tracking" turned on, so the very last page has a
16 paragraph added at the bottom that is marked as a
17 change. So I believe that somebody, you know, wanted
18 this changed for one reason or another and sent us a
19 copy back, is what I think happened here.

20 Q. And the document you are referring to is
21 marked as Exhibit 8?

22 A. Yes.

23 Q. Did you prepare the original document using
24 Word Perfect?

25 A. Using Microsoft Word, I believe.

1 Q. I believe you said Word Perfect tracking?

2 A. If I said Word Perfect tracking, I
3 misspoke, it is Word change tracking. It tracks
4 changes in different versions of the same document.

5 Q. I'd like to ask you to look at page 1 of
6 Exhibit 7, under the heading "Access"?

7 A. Yes.

8 Q. The second sentence reads, "This portal is
9 secured using initial Secure Socket Layer 128 bit
10 encryption."

11 Does that refresh your recollection as to
12 the encryption that was used in the November general
13 election version of the application?

14 A. Yes.

15 Q. And was it, in fact, SSL 128?

16 A. I'm sure it was if we wrote it here.

17 Q. On page 3 of Exhibit 8, underneath the
18 graphic is a passage which reads, "If you change the
19 input type, a warning message will pop up stating
20 changing the input type will delete all votes for
21 this county for this results category," with an
22 exclamation point. "You will need to reenter all
23 votes. Click okay to continue and delete the results
24 or cancel to cancel the request."

25 Below that is a note indicating that this

1 was a change from the primary election.

2 Can you describe for me what you recall
3 about that change and the use of that warning
4 message?

5 A. I'm trying to recall in detail, but I
6 suspect that this is the item on that list of changes
7 that I was stumbling over earlier today, and what
8 it -- this provides more information on it. What
9 this says is that the way the application works is
10 that on election night you can either enter results
11 in the summary mode, which means for the whole
12 county, or precinct by precinct. But as soon as they
13 get the initial, you know, hullabaloo out of the way,
14 then you have to go back and put all of the
15 information in by precinct. And different counties
16 want to do it different ways, so the application has
17 to allow you to do it either way.

18 Well, to prevent having double counts of
19 votes, if you first put the information in, in the
20 summary mode, and then go to switch to the precinct
21 mode, then we have to take out all of summary
22 information that you put in, so that you can put in
23 the detailed information. That caused no end of
24 confusion, especially to people looking at the
25 results of the -- of what was going on during this

1 process.

2 Q. Are you referring here to public observers?

3 A. Yes. So what this -- or this message does
4 is to try to warn the user, if they accidentally
5 click on that, that, yes, it really is going to take
6 out all of stuff you put in, so that you can put it
7 in in detail. And if you clicked on it and took it
8 out, even if you didn't mean to, then you would have
9 to put it in, either at the summary level again or at
10 the precinct level, but one way or another it has
11 been taken out. This was an attempt to force them to
12 go through one more step before they could mess
13 themselves up.

14 Q. Had this problem of the people doing input,
15 messing themselves up, occurred in the primary
16 election?

17 A. I don't recall that it really occurred
18 there, but it was a great fear, because of,
19 obviously, what was going to happen is they were
20 going to lose all of their work. And whenever that
21 happens we try to put something in to try to get them
22 to think about what they are doing before they go
23 ahead and do it, so I don't remember whether it was a
24 problem or not. I don't remember whether this
25 warning was in the other one or not. I don't

1 remember that.

2 Q. When you say it was a great fear, are you
3 referring to a fear on your part?

4 A. Yes.

5 Q. Do you recall receiving any form of
6 communication from any of the counties that they
7 anticipated difficulties with this for the primary
8 election?

9 A. I don't remember any. I don't remember it
10 being a problem. It was just something I was afraid
11 was going to be a problem. Maybe the error message
12 worked, or maybe I was just overconcerned.

13 I found one more document in that stack.

14 Q. Yes.

15 A. This may have been an attachment. I don't
16 know why it was in there, or whether it just got
17 shuffled in. All this is, is four items that David
18 Caldwell, obviously, wanted to capture as things to
19 look at for the next time. That is just a little
20 note -- like I say, my guess is it may be an
21 attachment to one of those e-mails.

22 MR. FINLEY: This is a single page document
23 with the date 11/3/04 in the upper left. Underneath
24 that are the words "From David Caldwell, SOS." Below
25 that, the heading "Election night application upgrade

1 requests." I would like to mark this as Plaintiffs'
2 Exhibit 9.

3 (Exhibit 9 marked.)

4 THE WITNESS: Do we need to make any
5 statement regarding this confidentiality thing?

6 MR. TOUREK: No, I talked with -- our
7 concern was the intellectual property that was on the
8 disks. That information in there is -- Mr. Rainey
9 talked about it yesterday. It is similar in nature,
10 but it is fact-specific. We were more concerned with
11 the disclosure of a generic product that we own being
12 disseminated without a confidentiality agreement.
13 That is not as big a deal, and they are aware of
14 that.

15 THE WITNESS: I was referring to the
16 confidentiality statement on all of the e-mail.

17 MR. TOUREK: You would be prosecuted by us.

18 THE WITNESS: Which is why I'm mentioning
19 it.

20 MR. TOUREK: I can tell you I checked with
21 the Secretary of State and the supervisors above me,
22 and they are not concerned with that information.
23 Since we are the ones who would be prosecuting you,
24 you should not be so concerned.

25 THE WITNESS: Thank you.

1 MR. FINLEY: Let's take a break for a few
2 minutes for me to quickly look through these e-mails.

3 And as I'm looking here, it appears that I
4 had separated out approximately ten pages of the
5 e-mails from the main stack, and so just for the
6 record the Exhibit 6 label may have been placed on a
7 page other than the first page, as originally handed
8 to me, and I'm going to take this small stack, which
9 has as its top, the message from David Caldwell, sent
10 Sunday October 31, 2004, 1:27 p.m., to Belinda Chavez
11 and multiple other recipients, and just add that to
12 the back of the stack.

13 (A recess was taken.)

14 MR. FINLEY: Back on the record.

15 Q. On the first page of Exhibit 6, the Exhibit
16 of e-mails, it is a message from David Caldwell to
17 Sandy Ryan and Jon Ryan, dated November 3rd, 2004.
18 Would you look at the quoted message at the bottom of
19 the page, the one addressed to Jon and Sandy?

20 A. The quoted --

21 Q. The one with the carrots that this e-mail
22 is responding to?

23 A. Yes.

24 Q. Is this a message quoted within the e-mail
25 message in which David Caldwell had advised you and

1 Sandy that he had made some track changes in the
2 instructions for the application?

3 A. I believe this refers to the two documents
4 that we were looking at before, where one had the
5 changes that we saw, and the other one didn't. I'm
6 assuming that this is that what this is referring to.

7 Q. And that would be Exhibits 7 and 8.

8 A. Yes.

9 Q. Thank you. This is a message from David
10 Caldwell, dated Thursday, November 4th, 2004, to
11 Belinda Chavez and many others. "Subject: Rebooting
12 canvass server at 12:15 today." This message says
13 that Ink impression needs to -- "Ink Impressions
14 needs to reboot the electronic canvass server today."

15 Did Ink impressions itself have the
16 capacity to reboot the server, or is this something
17 that your company would have done?

18 A. This is -- Ink did not have the capacity to
19 do that, and this was simply referring to us as Ink.
20 We were subcontractors, and they didn't necessarily
21 separate us.

22 Q. I'm handing you a message from David
23 Caldwell, Friday, November 5th, 2004, to Belinda
24 Chavez and many others. Subject: Election Canvass
25 application.

1 Would you read the first paragraph.

2 A. "Ink has added a new report to the canvass
3 software that will help you find errors. It is
4 called the 'Results Summary' report. I have attached
5 a sample of the statewide summary as it stands now.
6 As you can see, the report breaks down each race by
7 the five vote types. You can run this report for
8 your county as a whole or for each precinct."

9 Q. Thank you. Is the new report function in
10 the canvass software something that you programmed?

11 A. I believe that that is one of those items
12 on that list, item two, I think it was, but I'm not
13 absolutely sure of that, but it certainly sounds like
14 it. Yes, that would be something I programmed.

15 Q. Looking at Exhibit 2, it appears it may be
16 item four -- does that appear to be accurate?

17 A. Not item four. It would be item -- if I
18 had to guess, I would say it was item two.

19 Q. I'm handing you a message from David
20 Caldwell, dated Friday, November 12, 2004, to Jon
21 Ryan, Sandy Ryan, Terry Rainey and John Bylsma, with
22 copies to Denise Lamb and Steve Fresquez, with the
23 subject "Problems."

24 Could you read through that full message?

25 A. Out loud?

1 Q. No, you can just read it to yourself.

2 A. Okay.

3 Q. Having reviewed that e-mail, what is your
4 recollection regarding the problems that it
5 described?

6 A. I don't remember this specific problem.
7 I'm sorry, I don't remember it. I could guess at
8 things, but it would be purely a guess.

9 Q. That's fine. Is it accurate that the first
10 line of the e-mail reads, "Steve tells me seems to be
11 a problem converting from the web canvass database to
12 the SOS electronic canvass"?

13 A. I'm assuming that that is exactly what it
14 was, that when they took what we sent them, and then
15 were putting it into their stuff, there was something
16 wrong in that conversion and they caught it. And I
17 don't know what the result was, or if we were even
18 involved in it. I don't know the answer to that.

19 Q. I'm showing you now an e-mail from Sandy
20 Ryan, dated Wednesday, September 13th, 2004, to
21 Gary Thompson. "Subject: Re: Election." Could you
22 review that?

23 A. Yes.

24 Q. Is this a message in which -- first of all,
25 is Sandy your wife?

1 A. Yes.

2 Q. Is this a message in which she was seeking
3 from Automated Election Services further
4 requirements, definitions, as well as a purchase
5 order number for the work for the upcoming
6 November 2004 general election?

7 A. Can I see the dates? I believe that is
8 true. We normally try and get a PO number from them
9 so we can separate out, when we are working on
10 multiple projects, because we want them to be able to
11 charge their customer correctly, as well as we want
12 to give them visibility to know what we are doing.
13 So it looked like she was asking for a PO number so
14 that she could bill them, and then it looks like she
15 was asking the general question of, did you find out
16 anything else about the requirements.

17 Q. Given the September 13th, 2004 date of
18 this e-mail, is that consistent with your memory of
19 when you began work on the project for the general
20 election?

21 A. That would be all of October and a half of
22 September -- yeah -- we said a couple of months, so,
23 yeah, that would be about right.

24 Q. I'm showing you an e-mail from Sandy Ryan
25 dated Sunday, October 17th, 2004, to John Bylsma,

1 copy to T. Rainey. Subject: Final canvass
2 spreadsheet. Could you just read the message?

3 A. Out loud?

4 Q. Yes, out loud.

5 A. "Jon, Terry mentioned that we also need to
6 do the Excel spreadsheet report. If you want us to
7 pull that from the database, then will you please
8 send it to me. If you are going to return the
9 report, then that's okay, too."

10 Q. After reading that, does that refresh your
11 recollection as to whether you ended up doing that at
12 your company, or whether it was done elsewhere?

13 A. I'm guessing that this means that it was
14 done elsewhere, and I'm guessing that -- you know,
15 what this was is, Hey, we'll be happy to pull out the
16 Excel stuff for you, but you have to send us back
17 whatever you have done to the database since we sent
18 it to you originally, because otherwise it won't have
19 whatever you have been doing in it. That is my guess
20 as to what that means. I don't remember doing that,
21 so I suspect that they said, No, we'll just do it,
22 but I'm not sure of that.

23 Q. I'm handing you an e-mail message from
24 Sandy Ryan, dated Monday, October 25th, 2004, to
25 John Bylsma. "Subject: Re: New canvass table."

1 Could you read that message out loud -- the
2 top message?

3 A. The top message?

4 Q. Yes.

5 A. "Thanks, Jon. I feel better having a
6 complete table from you. Hope you are feeling
7 better. Terry mentioned that you were going to send
8 the canvass spreadsheets. Is that true, or did I
9 misunderstand? Possibly my head hasn't been here
10 lately, either."

11 Q. And then the original message that that was
12 responding to?

13 A. The original says, "Forgive me but I have
14 been ill the past couple of days. I found an error
15 in the Bernalillo data and fixed it. Also, I made
16 sure 18 Union County was in the table incorrect, so
17 here is the new canvass table." It sounds like at
18 some point we got some of the stuff back.

19 Q. And given the October 25th, 2004 date on
20 this e-mail, does that refresh your recollection as
21 to when -- how close to the election changes were
22 still being made to the application?

23 A. Only the obvious that I can draw from that.

24 Q. Would that be that at least up through
25 October 25th, 2004, changes were still being made?

1 A. That would certainly be a conclusion that I
2 could draw from that, but I have no idea whether that
3 is true or not. It sounds like we got something back
4 at some point, but when and what was done to it, I
5 don't know.

6 Q. I'm handing you an e-mail message from
7 Sandy Ryan, dated Thursday, October 28, 2004 to T.
8 Rainey at electionpeople.com, with the "Subject:
9 Demo system."

10 Could you read that message out loud?

11 A. "Terry, would you like to stop by here with
12 the system and show us the problems you are having,
13 or let us borrow it and try to reproduce what you
14 saw."

15 Q. Do you know what problems Mr. Rainey was
16 having that are referred to there?

17 A. I'm 99 percent sure, this refers to the
18 Indian voting registration program, because he has a
19 demo that he takes on a laptop when he goes
20 traveling. And he would not have had this system on
21 anything that he could have brought to us, so my
22 guess is that she printed this out, and my guess is
23 that it is the wrong program. That's my guess.

24 Q. I'm handing you an e-mail from Sandy Ryan,
25 dated Friday, October 29, 2004, to John Bylsma.

1 "Subject: Re: Canvass change." Could you read,
2 first, the original message at the bottom that this
3 responded to?

4 A. "Bernalillo county made a change in the
5 order of questions. The AMAFCA bond question will
6 now be after the storm sewer bond question. Anyway,
7 attached a whole new canvass table."

8 Q. And then could you read the response
9 message at the top?

10 A. It says, "Thanks, John. I've updated the
11 system."

12 Q. And that message, is then signed by Sandy
13 Ryan?

14 A. Yes.

15 Q. Does that refresh your recollection as to
16 how close in time to the November 2nd election
17 changes were still being made in the application?

18 A. Only the obvious conclusion that you can
19 draw from that. I don't have any recollection of any
20 real changes going on there. It sounds like they
21 made a change to one of their base tables, and so we
22 just put it on our system, too. I don't know beyond
23 that.

24 Q. But it wouldn't be a structural change in
25 the program?

1 A. No. I don't think so. What it sounds like
2 is this is one of those questions where "we always
3 want this one before that one." This was the
4 question before, what was AMAFCA? Apparently, it was
5 a bond issue, and what they are saying is they
6 changed the order of them. It would have nothing to
7 do with the way voting information was collected or
8 presented or displayed or anything else I don't
9 think, other than the order.

10 Q. I'm showing you now an e-mail from John
11 Bylsma, dated Monday, November 1st, 2004, to Sandy
12 Ryan. "Subject: New canvass." Can you look at the
13 "attachments" line on that e-mail and the name of the
14 file listed there?

15 A. Yes.

16 Q. I notice that word "Seewolf" is spelled
17 S-E-A rather than the way your company spells it,
18 S-E-E. Do you recall anything about this file, or
19 having noticed the incorrect spelling?

20 A. I don't recall noticing it. We wouldn't do
21 that, obviously, because it is our name, and we
22 actually get a lot of mileage of it being spelled the
23 way we spell it. So it is some file that somebody
24 else did on 11/1. That would be, what, one day
25 before the election, so it sounds like they made some

1 changes to one of the tables.

2 Q. And what is the content of the message --
3 could you read that?

4 A. "New canvass table."

5 Q. And signed that?

6 A. John Bylsma, if I got that right.

7 Q. Bylsma is the way I've been saying it?

8 A. Okay.

9 Q. And he is listed on the e-mail as the
10 elections systems manager for Automated Election
11 Services; is that correct?

12 A. That is correct. One comment on that.

13 Q. Yes.

14 A. Just for perspective, some of those tables
15 we used to look up information, so that we get their
16 table and are not duplicating the information or
17 copying it and making mistakes when we copy it or
18 anything like that. It would sound like that there
19 were some changes made the day before the election on
20 that table and he sent it to us so it would
21 automatically be reflected in our stuff. That would
22 be the typical type of thing you would expect from
23 that.

24 Q. I'm showing you now an e-mail from Terry
25 Rainey dated Monday December 13th, 2004, to Sandy

1 Ryan. The subject is "Re: Bernalillo County." There
2 is an attachment listed as "InterScan_SafeStamp.txt",
3 and it quotes a message from Sandy Ryan to Terry
4 Rainey of the same date, with a copy having gone to
5 John Bylsma. Could you read the original message at
6 the bottom to which this e-mail responded, out loud,
7 please?

8 A. "Terry, John sent me Steve's update to
9 Bernalillo County's election numbers. Do you want me
10 to add the two fields and update my database? Then I
11 could create the official results (assuming you tell
12 me they are official) and send the PDFs to you and
13 David."

14 Q. And then could you read out loud the
15 response?

16 A. "Hi Sandy, as usual, you have summarized
17 our discussion well. Let's look at the PDFs and I
18 will speak to David. Thanks, Terry Rainey."

19 Q. Earlier I was asking you whether you
20 remembered any changes that you were involved in
21 making in the results data following the
22 November 2nd, 2004 election. This exchange appears
23 to concern a change both in the numbers for
24 Bernalillo County, but also the addition of two
25 fields to the official results database. Does that

1 appear to be correct?

2 A. What date was that.

3 Q. December 13th, 2004?

4 A. That appears to be correct.

5 Q. Did your wife, Sandy, have the ability to
6 add fields to the election application?

7 A. Technically?

8 Q. Yes.

9 A. Yes.

10 Q. And would she also have had the ability to
11 update or correct numbers for a particular county?

12 A. Yes.

13 Q. Having read this e-mail exchange, does that
14 refresh your recollection as to whether you had any
15 involvement in the changes that are discussed there?

16 A. I cannot remember this, so, no, it doesn't.
17 I'll take it at face value, but I do not know. I
18 cannot remember what was on them.

19 Q. I'm showing you now an e-mail from David
20 Caldwell, dated Sunday, October 31st, 2004 to Jon
21 Ryan, with copies to a list that includes Terry
22 Rainey and Steve Fresquez, as well as Francis De La
23 Maza. Is that last name familiar to you?

24 A. No. But we keep hearing this Steve
25 Fresquez. Who is that?

1 Q. He is the graphics GIS person in the
2 Secretary of State's office, but also someone who is
3 involved in the statewide canvass process.

4 A. Okay. What was the other name?

5 Q. Francis De La Maza?

6 A. No.

7 Q. Just for your information, at that time he
8 was the voting machine supervisor for the Secretary
9 of State?

10 A. So he was another person up there?

11 Q. Yes. The subject of this e-mail is
12 "Election Night," and the attachment is "SOS Election
13 Results Input System.doc."

14 Could you read the first paragraph of that
15 message out loud, please?

16 A. The first paragraph?

17 Q. Yes.

18 A. "Hi Jon, I played a little with the
19 election results reporting software. I found that
20 data in precinct mode was not saved if I log out or
21 go to another precinct. Perhaps the latest build is
22 not loaded."

23 Q. The first question is: As you had designed
24 the program, would it have been consistent with the
25 design for data in the precinct mode not to be saved

1 upon logging out or going to another precinct?

2 A. Upon logging out or going to another
3 precinct, it should save it, is my recollection. And
4 that vaguely rings a bell that, you know, when we
5 were finishing it off -- and that's the type of thing
6 you found out -- oh, it doesn't automatically save
7 this. But I don't remember the details of it. But
8 that one, at least, vaguely rings a bell to me. Now,
9 there are other issues with web programs where you
10 don't get that luxury. But if the user takes a
11 specific action, then it should save it.

12 Q. The last sentence of that paragraph is the
13 question, "Perhaps the latest build is not loaded?"
14 Does that ring any bells for you?

15 A. Yeah, right at the end of things, when you
16 are picking up any little errors that people are
17 finding and whatnot, then it sounds like that that
18 is, indeed, something that we had found before, but
19 it wasn't yet up on the system, so they were pointing
20 it out, that it wasn't there, and he is saying, don't
21 you need to put the latest build up. That's what it
22 sounds like.

23 Q. Do you recall needing to put a later build
24 up at this stage in the process, October 31st,
25 2004?

1 A. I don't recall it. That wouldn't at all
2 surprise me. Unfortunately, until you get users --
3 to the last minute they don't really look at things.
4 And all of a sudden people do start taking time to
5 look at them, and then you to have scurry around on
6 anything they find and you have to deal with it.

7 Q. It sounds like my appellate briefs.

8 A. Same problem whenever you ask anybody to
9 edit something.

10 Q. In the course of the -- strike that.

11 MR. FINLEY: I don't have any further
12 questions at this time.

13 MR. TOUREK: Go for it, Jeff.

14 MR. LANDERS: No questions.

15 MR. TOUREK: Sir, do you know what "read
16 and sign" your deposition is? That means you can
17 have the opportunity -- you can waive it, but you
18 have the opportunity to review your deposition for
19 any inaccuracies or typos that you think need to be
20 corrected. You sign a correction sheet and it is
21 attached at the end of the deposition, so that later
22 on if you were to be called, perhaps at some other
23 proceeding, or it might be used in some subsequent
24 proceeding unrelated to this -- I've done that
25 personally, using other depositions, that you have

1 the opportunity to correct that so you are not -- it
2 is not used against you.

3 If you want to, you can. If you don't want
4 to, you can tell her you waive it.

5 MR. FINLEY: And the period you can do this
6 in is 30 days after the transcript is made available
7 to you. If you don't purchase a copy, the way you
8 have to do that is to go to the court reporting
9 firm's office to review it.

10 MR. TOUREK: It is your choice. It is
11 whatever you want to do.

12 MR. FINLEY: There is actually no need for
13 you to waive it at this time.

14 THE WITNESS: If I say yes now, I can
15 change my mind?

16 MR. TOUREK: Yes.

17 THE WITNESS: Yes, I want to read it. I do
18 not want to waive.

19 MR. FINLEY: Thank you.

20 (The deposition concluded at 3:30 p.m.)

21

22

23

24

25

1 SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
2 STATE OF NEW MEXICO

3 NO: CV 2005-00433

4 PATRICIA ROSAS LOPATEGUI, et al.,
5 Plaintiffs,

6 vs.

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

8

9 Defendants.

10 CERTIFICATE OF COMPLETION OF DEPOSITION

11 I, ARLETTE McCLAIN, New Mexico CCR #85, DO
HEREBY CERTIFY that on September 23, 2005, the
12 deposition of JONATHON RYAN was taken before me at
the request of, and sealed original thereof retained
13 by:

14 MR. LOWELL FINLEY
Attorney for the Plaintiffs
15 LAW OFFICES OF LOWELL FINLEY
1604 Solano Avenue
16 Berkeley, California 94707-2109

17 I FURTHER CERTIFY that copies of this
certificate have been mailed or delivered to the
18 following counsel of record and parties not
represented by counsel:

19 MR. DAVID TOUREK
20 Attorney for the Defendant Secretary of State
STATE OF NEW MEXICO
21 Attorney General's Office
111 Lomas, Suite 300
22 Albuquerque, New Mexico 87102

23 MR. JEFFREY S. LANDERS
Attorney for the Defendant Bernalillo County
24 BOARD OF COUNTY COMMISSIONERS
520 Lomas, Northwest, 4th Floor
25 Albuquerque, New Mexico 87102

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I FURTHER CERTIFY that examination of this transcript and signature of the witness were required by the witness and all parties present.

On _____, a letter was mailed or delivered to Mr. Jonathon Ryan regarding obtaining signature of the witness.

I FURTHER CERTIFY that the recoverable cost of the original and one copy of the deposition, including exhibits, to MR. LOWELL FINLEY is \$_____.

I FURTHER CERTIFY that I did administer the oath to the witness herein prior to the taking of this deposition; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcript of the proceeding had upon the taking of this deposition to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with (unless excepted by the rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

Arlette McClain, RPR
Certified Court Reporter #85
License Expires: 12/31/2005

Job No.: 9473R (AM)
Date Taken: September 23, 2005
Proofread by: JH

1 LOPATEGUI v. VIGIL-GIRON

2 WITNESS SIGNATURE/CORRECTION PAGE

3 If there are any typographical errors to your
4 deposition, indicate them below:

5 PAGE LINE

6 _____ Change to _____

7 _____ Change to _____

8 _____ Change to _____

9 _____ Change to _____

10 Any other changes to your deposition are to be
11 listed below with a statement as to the reason for
such change.

12	PAGE	LINE	CORRECTION	REASON FOR CHANGE
----	------	------	------------	-------------------

13 _____

14 _____

15 _____

16 _____

17
18 I, JONATHON RYAN, do hereby certify that I have
19 read the foregoing pages of my testimony as
20 transcribed and that the same is a true and correct
transcript of the testimony given by me in this
deposition on September 23, 2005, except for the
changes made.

21

22 _____
JONATHON RYAN

23 JOB NO.: 9473R (AM)
Date Taken: September 23, 2005
24 Proofed by: JH

25

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

4
5 NO: CV 2005-00433

6 PATRICIA ROSAS LOPATEGUI, et al.,

7 Plaintiffs,

8 vs.

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

11 Defendants.

12 AFFIDAVIT

13 Deposition of: JONATHON RYAN

14 Date taken: September 23, 2005

15 The witness in this case was notified of the
16 need for signature on _____.

17 Failure of the witness to timely sign this
18 deposition has resulted in the filing of this
19 deposition on _____.

20 _____ BEAN & ASSOCIATES

21

22

23

24

JOB NO.: 9473R (AM)

25

1 DATE DELIVERED: _____

2 Mr. Jonathon Ryan
3 6 Siempre Verde Drive, Northeast
4 Albuquerque, New Mexico 87123

5 RE: LOPATEGUI v. VIGIL-GIRON
6 DEPOSITION OF: JONATHON RYAN
7 DATE TAKEN: September 23, 2005

8 Dear Mr. Ryan:

9 At the time of the above deposition/sworn statement,
10 it was requested that the witness read and sign
11 his/her transcript.

12 _____ Enclosed is your copy of the transcript with the
13 original signature page. Please ask the
14 witness to read the transcript, make any
15 corrections on the signature page, and return
16 the original signature page to our Albuquerque
17 office.

18 _____ Enclosed is your copy of the transcript. Please
19 read it, note any corrections on the signature
20 page, and return the original signature page to
21 our Albuquerque office. You may keep the
22 transcript for your files.

23 _____ The transcript is now ready to review. Please
24 contact our Albuquerque office, 505-843-9494,
25 to make arrangements to have the transcript
26 read and signed. If you are outside the
27 Albuquerque area, please call 800-669-9492.

28 _____ The transcript is now ready for review. Please
29 remit payment in the amount of \$_____ to our
30 Albuquerque office. As soon as payment is
31 received, your transcript will be delivered.
32 If you choose not to pay, please contact our
33 Albuquerque office, 505-843-9494, to make
34 arrangements for signature.

35 _____ Trial in this matter is set for _____. If
36 the transcript has not been read and signed
37 before that date, the original will be filed
38 without a signature.

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Other: _____

The New Mexico Rules of Civil Procedure provide the witness 30 days in most instances from the receipt of this letter to read and sign his/her transcript. If he/she has not read and signed the transcript in that time, we will file the original transcript without the signature page.

Sincerely,

BEAN & ASSOCIATES, INC.

JOB NO.: 9473R (AM)

1 RECEIPT

2 JOB NUMBER: 9473R (AM)

3 DATE TAKEN: September 23, 2005

4 WITNESS NAME: JONATHON RYAN

5 CASE CAPTION: LOPATEGUI v. VIGIL-GIRON

6 *****

7 ATTORNEY: MR. LOWELL FINLEY

8 DOCUMENT: Transcript / Exhibits / Disks / Other _____

9 DATE DELIVERED: _____ DEL'D BY: _____

10 REC'D BY: _____ TIME: _____

11 *****

12 ATTORNEY: MR. DAVID TOUREK

13 DOCUMENT: Transcript / Exhibits / Disks / Other _____

14 DATE DELIVERED: _____ DEL'D BY: _____

15 REC'D BY: _____ TIME: _____

16 *****

17 ATTORNEY: MR. JEFFREY S. LANDERS

18 DOCUMENT: Transcript / Exhibits / Disks / Other _____

19 DATE DELIVERED: _____ DEL'D BY: _____

20 REC'D BY: _____ TIME: _____

21 *****

22 ATTORNEY: MR. JONATHON RYAN

23 DOCUMENT: Transcript / Exhibits / Disks / Other _____

24 DATE DELIVERED: _____ DEL'D BY: _____

25 REC'D BY: _____ TIME: _____

