

GARDNER DIGEST

09/09/06

(attorney objections and comments omitted)

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DISTRICT COURT DENVER COUNTY

CASE NO. 06CV6072

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DEPOSITION OF: JOHN H. GARDNER, JR. - VOLUME I

EXAMINATION DATE: August 29, 2006

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MYRIAH SULLIVAN CONROY, et al.,

Plaintiffs,

v.

GINNETTE DENNIS, et al.,

Defendants.

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PURSUANT TO THE SECOND AMENDED NOTICE, the deposition of JOHN H. GARDNER, JR., Volume I, was taken at 9:0A.m., on August 29, 2006, at 1801 California Street, Suite 3600, Denver, Colorado 80202, before Patricia S. Newton,

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JOHN H. GARDNER, JR.

The deponent herein, being first duly sworn to testify to the truth in the above cause, was examined and testified on his oath as follows:

EXAMINATION BY MR. HULTIN:

Q Please state your name and address for the record.

A My name is John Gardner. I live at 502 Spring Creek Court in Colorado Springs, Colorado.

Gardner John; 08/29/06 - Page 6:25 - 7:9

Q Mr. Gardner, are you the person who was in charge of writing the certification standards and procedures for electronic voting systems that are embodied in Election Rule 45?

A Yes.

Q Are you the person who wrote Election Rule 45.5.2, which established the minimum standards for electronic voting systems as required by Colorado Revised Statutes Section 1-5-616(1)(a) through (g)?

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A Yes, with advice from my superiors.

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Gardner John, 08/29/06 – Page 8:7-21

Q Are you the, quote, expert, closed quote, appointed by the Secretary pursuant to Section 1-5-617(2) to assist in the examination and testing of the four electronic voting systems that are challenged in this case which we will be referring to generally as the subject DREs?

A Yes, I believe so.

Q Did you personally examine each of the subject DREs and advise the Secretary that all of the mandatory requirements of Title 1, Parts 6, 7, and 8 of the Colorado statutes and the Election Rules of the Colorado Secretary of State were satisfied in that each of the subject DREs should be certified?

Gardner John; 08/29/06 - Page 8:24 - 9:16

A. Okay. I presented a recommendation, and some of those recommendations had certain conditions to the Secretary.

Q (BY MR. HULTIN) So you recommended, subject to certain conditions, that each of the subject DREs satisfied all of the requirements of Colorado law, Colorado statutes, and the election rule that you drafted?

A Yes, with the exceptions as noted.

Q As noted in the certification qualification reports?

A Correct.

Q And I take it, then, based on your expert examination and your recommendations, that the Secretary did so certify each of the subject DREs?

A Yes.

Gardner John; 08/29/06 - Page 17:21 - 18:10

Q And then I take it you went to the University of Miami in Coral Gables, Florida, for two years and studied architecture; is that correct?

A Yes.

Q And then you transferred to Montana State University in Bozeman, Montana; is that correct?

A Yes.

Q And when did you graduate from Montana State?

A 1994.

Q So it took you seven years to complete your undergraduate degree?

A Yes.

Gardner John; 08/29/06 - Page 20:15-21

Q While you were in college, did you take any courses in computer science?

A No.

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Q Since you've graduated from college, did you take -- have you taken any technical courses in computer science?

A Not in computer science, no.

Gardner John; 08/29/06 - Page 21:9-20

Q Are you a computer programmer?

A No.

Q Other than the Executrain Microsoft certification, do you have any other training in information technology?

A I don't believe so, no.

Q Do you have any technical training in computer security?

A Not to my knowledge, no.

Q Do you have any technical training in the evaluation of computer systems?

A I don't believe so.

Gardner John; 08/29/06 - Page 22:9-14

Q So your real-world experience would have been whatever you learned as the director of information systems for The Larson Group and the information systems manager for El Paso County; is that correct?

A Yes.

Gardner John; 08/29/06 - Page 23:17-19

Q And how many employees did The Larson Group have while you were employed there?

A As low as seven and as high as 50.

Gardner John; 08/29/06 - Page 24:2325

Q And what was your position in El Paso County?

A Information systems manager.

Gardner John; 08/29/06 - Page 43:3-20

Q (BY MR. HULTIN) Okay. Have you ever published any papers involving electronic voting systems or electronic voting-systems security?

A No.

Q Have you ever spoken in any public forums other than in connection with your job for the Secretary of State on issues pertaining to electronic voting systems and electronic voting-systems technology and security?

A No, I have not.

Q So I guess it would be -- Would it be fair to say, Mr. Gardner, that you have no formal academic training involving electronic -- rather, computer science, computer programming, or the evaluation and security of data-processing systems?

Gardner John; 08/29/06 - Page 43:24 - 44:10

A I believe that is correct.

Q (BY MR. HULTIN) And all of your expertise, to the extent that you possess expertise, would have been expertise that you gained while working for The Larson Group and El Paso County prior to your employment by the Secretary of State?

A Yes, that is correct.

Q Have you ever been qualified as an expert in any court or administrative proceeding?

A I don't believe so, no.

Gardner John; 08/29/06 - Page 46:23 - 47:1

Q And that's Rule 45, right?

A Yes.

Q And that's the rule that you wrote?

Gardner John; 08/29/06 - Page 47:5-6

Q (BY MR. HULTIN) You were the principal --

Gardner John; 08/29/06 - Page 47:8-9

scrivener of that?

A That is true, yes.

Gardner John; 08/29/06 - Page 51:23 - 53:5

Q (BY MR. HULTIN) Mr. Gardner, could you please explain why you were qualified by education, training, or experience to write the minimum standards for electronic and electro-mechanical voting systems regarding functional requirements, performance levels, physical and design characteristics, documentation requirements, evaluation criteria, audit capacity, security requirements, telecommunications requirements, and accessibility?

A Sure. My experience is really what's dictating the ability to know how these systems are used in a -- a real voting environment where -- where the machine will be used. So having the understanding of how the machines are set up, what kind of environment that should be in, how the machines are deployed, and the situations around that, how the judges operate the machines, what's required at the end of election day, what information comes back, having that perspective of the full scope of the election process assists with the ability to

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understand what is required in a voting system not only from a computer perspective, but probably more importantly from the state's perspective, of the -- the election environment that is in use.

Q So your answer is really your experience in El Paso County?

A Yes.

Q Is this the first time you've ever written any standards or regulations?

A Yes.

Gardner John; 08/29/06 - Page 53:22 - 54:6

Q And I believe you testified earlier that you are the expert appointed by the Secretary of State to do this work, correct?

A I believe that is true.

Q Are you the person that produced the written report on each system?

A Yes.

Q And those are the reports that were produced dated May 30 of 2006?

A Yes, that's correct.

Gardner John; 08/29/06 - Page 54:15-22

Q Now, you're not an expert in mechanical engineering, are you?

A I don't believe so.

Q And you're not an expert in public administration, are you?

A I am not familiar with the definition of "public administration." I don't know what that means.

Gardner John; 08/29/06 - Page 55:5-8

Q Are you an expert in data processing?

A Same thing: I don't know what that definition is for "data processing."

Gardner John; 08/29/06 - Page 55:25 - 56:18

Q (BY MR. HULTIN) But you are the expert that was appointed by the Secretary of State pursuant to this Section 1-5-617(2) to assist in the examination and testing of the subject DREs, correct?

A Yes, I believe so.

Q Okay. So you must be an expert in something, correct?

A I would believe so.

Q And what is it -- what is your claim to expertise, Mr. Gardner?

A I don't believe I claim an expertise. My experience is what it is, and I was brought on by the Secretary of State's office as the expert. I don't know which of the two outstanding

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(attorney objections and comments omitted)

areas they are claiming I am an expert in. I just don't -- I don't want to speak to what the definition is since I'm not really sure.

Gardner John; 08/29/06 - Page 56:22 - 57:1

Q Do you, as you sit here today, believe you are an expert in data processing?

A I wouldn't lean that way.

Q So you are saying you are not an expert in data processing?

Gardner John; 08/29/06 - Page 57:7 - 58:9

A I personally wouldn't say that, but I may have the wrong view of what "data processing" means in this statute.

Q (BY MR. HULTIN) So as we sit here today, you don't consider yourself an expert in data processing; is that correct?

A In the context of this statute and what they're asking for, from my understanding, I would say no.

Q Do you consider yourself as an expert in public administration?

A And, again, this is from my understanding: In this context of this statute and the intent -- keeping in mind I'm not a lawyer, didn't write this statute -- but I would say yes, based on this context.

Q You're saying that for purposes of subsection (2) of 1-5-617, it's your understanding that you are an expert in public administration for purposes of the statute?

A By that definition and my understanding of that definition, yes.

Q What is your understanding of that definition?

A To me, I understand that "public administration" and this definition would be the public administration of elections and tabulation of votes cast in an election.

Gardner John; 08/29/06 - Page 60:20-24

Q (BY MR. HULTIN) Did you understand -- did you understand that the legislature had commanded that the Secretary of State promulgate a certification rule?

A Yes.

Gardner John; 08/29/06 - Page 65:12-15

Q But you couldn't certify a voting system if it didn't meet all of the explicit requirements of the statute, correct? Would you agree with that?

Gardner John; 08/29/06 - Page 65:21

A That was our intent, yes.

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(attorney objections and comments omitted)

Gardner John; 08/29/06 - Page 65:22 - 66:3

Q (BY MR. HULTIN) But is that your understanding of the way the law works: If the statute says the voting system shall do something, then if your testing and evaluation shows that the voting system doesn't do what the statute says "shall" about, then you cannot as a matter of law certify the voting system?

Gardner John; 08/29/06 - Page 66:7-25

Q (BY MR. HULTIN) Is that your understanding?

A I have two understandings: I have the understanding on July 26th of 2005, when this was written, and I have an understanding now.

Q Well, let's talk about your understanding in July of 2005.

A At the time of this, that was my understanding: If it didn't meet everything, it couldn't pass.

Q What's your understanding now?

A Now, because of the -- the way the certification process has evolved and has continued on, I understand that there could be exceptions, and there are times where you look at substantial compliance or a -- you may have to make a judgment call on some things. Those situations are clearly noted.

Gardner John; 08/29/06 - Page 68:22 - 70:3

Q So here what you're saying is that the Automark is going to be probably disqualified from certification because it requires a step that, in your interpretation, violated the final step of casting a ballot without assistance, correct?

A That is the question I am posing here to Len.

Q Right. Right. And that in fact is what happened with the Automark, isn't it?

A Yes, after review by other folks -- you know, the folks that are identified there, Patti, as well as Len, Bill Hobbs, the AG's office.

Q And that's because there was a specific subsection of Section 704 that did not -- it did not meet, correct?

A Yes, it's paragraph (n) of Section 704.

Q (n)(I) says, "Audio ballots shall meet the following standards: (I) After the initial instruction from an election official, the elector shall be able to independently operate the voter interface device through the final step of casting a ballot without assistance," correct?

A Yes, that is correct.

Q And because the Automark -- the ES&S Automark optical-scan system did not meet that requirement, you did not certify it, correct?

A Yes, that is correct.

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(attorney objections and comments omitted)

Gardner John; 08/29/06 - Page 70:18 - 71:13

Q So for a system to qualify as an accessible voting system, it had to meet each and every minimum standard specified in 704(1), correct?

A That was the intent, yes.

Q That's your understanding of what the legislature required?

A I -- yes, I believe so.

Q And is that the process that you followed in certifying each and every of the subject DREs that's been certified?

A Yes.

Q Can you identify Exhibit 10?

A Yes.

Q What is Exhibit 10?

A This is the qualification report for the ES&S package that was certified by our office.

Q Okay. Did you prepare that report?

A Yes.

Gardner John; 08/29/06 - Page 71:25 - 72:14

Q Go to page 7 of Exhibit 10. Okay. And you see "iVotronic DRE" with "RTAL printer"? Do you see that?

A At the top of the page, yes.

Q Okay. And then the first warning under "Audio" says, "The iVotronic DRE when used for audio ballots does not provide the ability to use the audio and video components at the same time." Was that your finding?

A Yes.

Q And that was based on your functional testing and evaluation of the machine, correct?

A That is correct.

Gardner John; 08/29/06 - Page 72:23 - 73:3

Q So you're saying that the fact that, in your opinion, as the so-called expert who was evaluating and certifying the machines, recommending -- making recommendations to the Secretary, that this was a minor deficiency, correct?

Gardner John; 08/29/06 - Page 73:13-14

A Yes, I made a judgment call on that, correct.

Gardner John; 08/29/06 - Page 73:23-25

Q Did you discuss that with the Secretary?

A Yes, I did.

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(attorney objections and comments omitted)

Gardner John; 08/29/06 - Page 74:18-22

Q When you reviewed Appendix M with the Secretary, did you advise the Secretary of the requirements of 1-5-704(d) that "Devices providing audio and video access shall be able to work both separately and simultaneously"?

Gardner John; 08/29/06 - Page 75:1-5

A I presented this document to her with the understanding that all of the issues identified were insufficient to either rule or statute. I wasn't specific as to which one was what.

Gardner John; 08/29/06 - Page 78:1-15

Q And notwithstanding the fact that it did not meet that requirement, you recommended to the Secretary that she certify that voting system because, in your opinion, that was minor, correct?

A After the discussion, the determination was made to certify the system, yes.

Q And you characterized that as "minor," didn't you?

A Yes, I did.

Q And on your test notes you say that was minor?

A Yes, it does appear in my test notes.

Gardner John; 08/29/06 - Page 79:12-21

Q (BY MR. HULTIN) I'm asking for -- in plain English what does the word "shall" mean to you, Mr. Gardner?

A Must, the same as must. Must.

Q Must?

A Must do, must have, must be.

Q Mandatory, correct?

A Yes.

Q Required?

A It's a requirement, yes.

Gardner John; 08/29/06 - Page 80:24 - 81:7

Q You didn't certify the Automark because it didn't meet the requirements of 1-5-704(n)(I), correct?

A I see what you're saying. Yes.

Q Correct?

A Yes, that's correct.

Q And that's the reason -- the explicit reason that you didn't do that, correct?

A Yes.

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(attorney objections and comments omitted)

Gardner John; 08/29/06 - Page 81:14-16

Q So my question is: Why is subsection (d) of 1-5-704(1) worthy of less respect than subsection (n)(I) of 1-5-704?

Gardner John; 08/29/06 - Page 81:20-25

Q (BY MR. HULTIN) In your mind, you said one is okay, one isn't. Why?

A I made a value judgment on that.

Q What was the basis for that value judgment?

A I don't -- do not know.

Gardner John; 08/29/06 - Page 82:7-11

Q And the fact of the matter is, isn't it, Mr. Gardner, that you were in a big hurry to certify the ES&S Unity system 3.0 because Jefferson County and Mesa County wanted to use it in the primary election?

Gardner John; 08/29/06 - Page 82:15

A Yes, that's sort of true.

Gardner John; 08/29/06 - Page 84:22-24

Q Mesa County bought a bunch of new ES&S equipment, correct?

A That is correct, yes.

Gardner John; 08/29/06 - Page 86:1-14

Q (BY MR. HULTIN) Yeah, there were, in your words, complications involving the certification of the ES&S, correct?

A Yes, that is correct.

Q And that's because there were a number of areas where the system did not meet the requirements of the statute and/or Rule 45; isn't that right?

A Yes, that is correct.

Q And at least with respect to the audio requirement, you recommended to the Secretary that she certify the machine notwithstanding the explicit and mandatory requirements of Section 1-5-704(d)?

Gardner John; 08/29/06 - Page 86:18-19

A I believe the answer is "yes" to that.

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(attorney objections and comments omitted)

Gardner John; 08/29/06 - Page 86:20-25

Q (BY MR. HULTIN) And you recommended, and the Secretary accepted your recommendation, that the Automark not be certified because it did not meet the mandatory requirements of 1-5-704(n)(I)?

A That is correct, as well.

Gardner John; 08/29/06 - Page 92:21 - 93:6

Q Yeah, right. And isn't it a fact that Senate Bill 206 was effective on May 28 of 2004?

A I don't know that date. Sorry.

Q You knew that the law had been around for a while when you got there, right?

A Yes.

Q And you knew that the Secretary of State hadn't done anything to promulgate these rules from the effective date of the law until the time you got there, right?

Gardner John; 08/29/06 - Page 93:10-11

A Yes, I believe so. That is correct.

Gardner John; 08/29/06 - Page 93:22 - 94:6

Q But you knew that you were playing catchup, weren't you?

A Yes.

Q And that you were -- through no fault of your own, you were sort of starting behind the eight ball, so to speak?

A Yes, except there were no applications for systems to be certified at that time, and any requests that we had were asked to be put on hold until the adoption of the rules.

Gardner John; 08/29/06 - Page 99:20 - 100:2

Q Where are the minimum standards regarding evaluation criteria?

A I believe the evaluation criteria is covered in the functional testing that's identified in 45.6.

Q So you're saying 45.6 testing is the evaluation criteria?

A I would consider it so, yes.

Gardner John; 08/29/06 - Page 101:1-9

Q And isn't that the evaluation criteria of Rule 45 that you go through when you do these tests and you've got to pass all the tests? And if you don't pass all the tests, then you fail, correct?

A That is correct.

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(attorney objections and comments omitted)

Q Okay. Where does it say you only have to pass the tests that John Gardner thinks are not minor tests?

Gardner John; 08/29/06 - Page 101:13

A It does not state that.

Gardner John; 08/29/06 - Page 101:21-25

Q (BY MR. HULTIN) But the fact of the matter is, John, you didn't follow your own rules and your own procedures in evaluating at least the ES&S certification application; isn't that right?

Gardner John; 08/29/06 - Page 102:5-9

A I presented documentation to the Secretary of requirements that weren't met; and through that discussion, it was determined that the system should be certified with the conditions that were placed on the document.

Gardner John; 08/29/06 - Page 106:7 - 107:4

Q But there were phone calls that were made during the course of that meeting?

A Yes.

Q Who made the phone calls?

A Well, it would be the Secretary and myself.

Q Were you on the speakerphone with her?

A Uh-huh, yes.

Q Who did you speak with?

A At a minimum, I know we spoke with Mesa County. I don't recall if there were others or not.

Q Who did you talk to at Mesa County?

A The clerk and recorder and some of her staff. Janice Ward is the clerk for Mesa County. Sorry.

Q And who else?

A At Mesa County?

Q Yes.

A I'm not sure what other staff she had. I don't recall.

Gardner John; 08/29/06 - Page 109:5-22

Q So tell me about this conversation with the Secretary. Tell me what -- you went in. What did you say to her? I want a back-and-forth as much as we can on the substance of everything that was discussed.

A I -- I -- I don't recall the exact details of the conversation. As I said before, the -- in the back of the document, I provided the tables that I used, page 63 and 64, Exhibit 10. This is what I presented to Gigi. We went through these item by item to talk about them and the impact of each one.

Q Uh-huh.

A From there, the specifics of what she came back to me on, I don't recall that conversation.

Q You don't recall what she said?

A No.

Gardner John; 08/29/06 - Page 112:3-10

Q So what was their take on the table?

MR. HULTIN: Mesa County's take.

A I think overall, they felt that none of the issues that we had were realistic issues; that they --

Gardner John; 08/29/06 - Page 112:11-19

Q (BY MR. HULTIN) Even though the legislature had said they were mandatory?

A Remember, I'm answering from Mesa County from my limited recollection of the call, but I believe that they did not have much concern about any of the issues.

Gardner John; 08/29/06 - Page 114:3 - 115:9

Q (BY MR. HULTIN) I'm having trouble understanding why you were calling these people, because surely, the Secretary was going to -- because you were her expert, she was going to accept your report on your tests, correct?

A I believe so, yes.

Q So I don't understand. Why call Mesa County?

A I think because this was a unique situation where the number of issues outstanding was greater than any of the other systems we had looked at, and here maybe she felt she could trust another county to bring additional perspective into the conversation. But I'm speaking for the Secretary as to -- And I don't recall exactly how we got to calling Mesa County, as I've already said, so, you know, I'm kind of guessing at these sort of things here.

Q So in effect, really, the only person who could answer these questions is the Secretary, correct?

A I -- I believe so, yeah.

Q As to why -- because you don't recall anything about the meeting other than you talked about those two pages of your report, right?

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(attorney objections and comments omitted)

I don't remember the back-and-forth dialogue we had, correct.

Q And all you remember is the outcome?

A Correct.

Gardner John; 08/29/06 - Page 117:20 - 118:3

Q Now, talking about the test requirements, page 118, we go to 45.6.2.2, Secretary of State's "Requirements for Testing." Do you see that?

A Yes, I do.

Q We've already talked about the failure criteria, which is, the voting systems shall successfully complete all of the requirements of this rule, right?

Gardner John; 08/29/06 - Page 118:8

A Yes, right.

Gardner John; 08/29/06 - Page 119:1 - 120:13

A It begins -- I'm not sure what page number, but it's Appendix G. It starts with Form 9.1, continues on to Form 9.3.

Q Appendix G and H?

A Correct. Yes. Sorry.

Q 9.1 is the "Demonstration Checklist," and 9.3 is the "General Testing Matrix - Cumulative" summary, correct?

A Oh, yes. Yes.

Q Rule 45.6.2.3 says that the test log shall, among other things, show the test number and a test description. Show me in Form 9.3 where there is any test description.

A Well, it's -- Form 9.3 has a section for instructions. So we may not have spelled out, you know, step-by-step instructions to do the test; but we have the instructions of what the test needs to accomplish.

Q If a test is to be a test, doesn't the test have to be repeatable, Mr. Gardner?

A Yes, I believe so.

Q Okay. If there aren't any, you know, written test protocols, how is the test repeatable?

A Well, by our understanding of the voting system and our understanding of how elections work. So, you know, you could identify one of these test numbers; and from our knowledge, we know how -- you know, if you have to add precincts to the tabulation system, we didn't write out the steps to go through to add precincts, but you would notice it at the laptop and add precincts. So it's from our knowledge of the voting-system environment that we know how to sit down and do these on a repeatable basis.

Gardner John; 08/29/06 - Page 121:12 - 122:4

Q Let's go over to 9 -- Test No. 9.3.3.5. Do you have that in front of you?

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(attorney objections and comments omitted)

A I do.

Q This is a test for unauthorized changes. It says, "Demonstrate the systems' ability to prevent unauthorized changes to: DEFINING BALLOT FORMATS." What is the test that you did to determine that that passed?

A If the system allows for a multiuser environment -- so I can assign an administrator and a poll worker or election judge or something like that -- by restricting the permissions that that user group would have or that specific user would have, they would be an unauthorized person. So if I log onto the system as that unauthorized person, can I make a change to a ballot definition or the format of a ballot?

Gardner John; 08/29/06 - Page 123:13 - 124:1

Q Uh-huh. So I take it for the rest of these through 9.3.3.14, the unauthorized changes to the eight things, basically you did the same thing: You determined that if the computer had the administrative preferences set to limit the casting and recording of votes to a specific person, if you weren't that person who was authorized, you couldn't make those changes; is that -- did I understand you correctly?

A Right. I mean, there's some -- there's some fine tweaking you can get into in there for each of the different systems; but that's the essence of what we're doing for those tests, yes.

Gardner John; 08/29/06 - Page 126:6-11

Q Now, the Rule 45.5.2, "State Standards," which we talked about, do you agree that these are minimum standards that are prescribed by Rule 45.5. And its subparts that must be met -- each of them must be met in addition to the federal standards?

Gardner John; 08/29/06 - Page 126:14

A That is the objective, yes.

Gardner John; 08/29/06 - Page 126:15-25

Q (BY MR. HULTIN) That's your understanding of the rule. And when you're administering the rule, you have a set of federal standards that have to be met. And in addition to those federal standards and supplemental to those federal standards, you've got the state standards. And those all have to be met, and the question of whether or not they're met sufficiently is ultimately up to the Secretary, correct?

A I think that's correct, yes.

Gardner John; 08/29/06 - Page 128:12-17

Q Mr. Gardner, I've given you Exhibit 13. Have you seen that before?

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(attorney objections and comments omitted)

A I have.

Q This is an affidavit that you signed on August 9 of 2006, correct?

A Yes.

Gardner John; 08/29/06 - Page 128:23 - 129:2

Q This was an affidavit that you were submitting in support of the Secretary's assertion of privilege in an attempt to prevent the plaintiffs in this case from gaining access to --

Gardner John; 08/29/06 - Page 129:4-15

Q -- certain security documents relating to the subject DREs, right?

A Yes.

Q Do you know whether or not any of the documents that are over in the Attorney General's office that are being kept from -- or are subject to a stringent protective order and that are not allowed to be copied by the plaintiffs in this action or their counsel, do you know whether any of those documents are in the public domain?

A Oh. I don't know.

Gardner John; 08/29/06 - Page 131:6 - 132:2

Q Now, you were responsible for working with the Attorney General for all assertions of confidentiality with respect to the documentation of the various DRE systems, correct?

A I believe so, yes.

Q Not only the documents that were subject to the attorneys' eyes-only protective order but the general designation of confidentiality, correct?

A I believe so, yes.

Q You personally went through and looked at those and made a determination that it was necessary to protect that information for that information -- to protect the security of Colorado elections, correct?

A Yes, I believe I went through all of them.

Q So as to any of those documents that are in the public domain, you would have to say that you were negligent in the performance of that duty, correct?

Gardner John; 08/29/06 - Page 132:5-10

A I am not aware of what documents are in the public domain and did not research which documents were in the public domain. All I did was go through the documents we had to look at to determine if there was a security issue at stake.

GARDNER DIGEST

09/09/06

(attorney objections and comments omitted)

Gardner John; 08/29/06 - Page 133:22 - 134:12

Q Now, isn't it a fact that when you go through your certification report, the first part of it, Appendix 8.1, Appendix F, 8.1 -- and that's the documentation review, right?

A Yes, that's correct.

Q -- basically, that's a paper review where you go through all of this stuff that's submitted by the vendor in support of their application, and all you do, so far as security is concerned, you see that they have something in their documentation that addresses it; you don't make a qualitative evaluation to see if their documentation meets any minimum standards, correct?

A If they provide the documentation that's listed in 45.5.2.6, we move on.

Gardner John; 08/29/06 - Page 134:18-21

Q So you don't make a substantive or qualitative or informed review of the content of the documentation, correct?

A That is correct, yes.

Gardner John; 08/29/06 - Page 136:17 - 137:9

Q Let's go to 45.5.2.6.2. Now, it says, "The voting system provider shall submit to the" Secretary of State "its recommended policies and guidelines governing software access controls, hardware access controls, data communications, effective password management, protection abilities of a particular operating system, general characteristics of supervisory access privileges, segregation of duties, and any additional relevant characteristics." Do you see that?

A I do.

Q What are the minimum standards that are set forth there?

A Well, I think the rule is asking for the voting-system provider to give documentation explaining each of those characteristics.

Gardner John; 08/29/06 - Page 137:23 - 138:15

Q What is the minimum standard that is prescribed by Rule 45 for software access controls?

A I -- I think this is the only place you'll find it: in Rule 45.

Q What is the minimum standard that is provided for hardware access controls?

A My answer is the same: It's what is requested here.

Q So whatever a voting-system provider submits is good enough, correct?

A That is all that's requested by the rule.

Q And all that you do to determine that it's good enough is you look and see that it's present in the documentation, correct?

A Yes.

GARDNER DIGEST

09/09/06

(attorney objections and comments omitted)

Gardner John; 08/29/06 - Page 146:21 - 147:1

- Q Yeah. Do you see any conflict of interest in the vendors setting security standards for their voting equipment when they're trying to sell it to political subdivisions of the State of Colorado for a profit?
- A No, I don't believe there's any.

Gardner John; 08/29/06 - Page 150:25 - 151:16

- Q (BY MR. HULTIN) Do you have any -- You're required to approve the county procedures for security for electronic voting systems, aren't you?
- A Yes.
- Q What standards do you apply to determine whether or not to approve those?
- A I'm going to call from recollection, but there's two rules that address the checklist of items that have to be contained in their security document, and that's what we check off: Do they have this in their security document?
- Q Okay. What rule is that?
- A Not the rules -- here are the rules: Rule 4 And Rule 38.

Gardner John; 08/29/06 - Page 152:1-11

- Q Where does the Rule 43 deal with software access controls?
- A I don't -- well, 43.7(i) -- 43.7.1(i). Sorry.
- Q Okay. What are the minimum standards there?
- A That they submit this document to us that identifies the controls that they're using.
- Q That they have controls?
- A Right.

Gardner John, 08/29/06 -- Page 158:22 -- 159:15

- Q Do you have any minimum standards that you utilize when reviewing and approving these security procedures that the counties are required to send to you?
- A We use this list as a checklist to make sure their security plan addresses each of these items.
- Q And do you do that personally?
- A I did this year.
- Q So you get a plan, you go through, and if they are lacking -- the same kind of review that you do with the documentation of the vendors?
- A It's similar.
- Q Similar. You don't review it substantively; you just see that they address each of these subjects?
- A That's mostly correct, yes.

