IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION
Civil Action No. 1:13-CV-00949

DAVID HARRIS; CHRISTINE          )      D E P O S I T I O N
BOWSER; and SAMUEL LOVE,         )
                                 )              O F
                Plaintiffs;)
        -v-                      )      STEPHEN ANSOLABEHERE, PH.D.
PATRICK MCCRORY, in his capacity)
as Governor of North Carolina;   )
NORTH CAROLINA STATE BOARD OF    )
ELECTIONS; and JOSHUA HOWARD, in)
his capacity as Chairman of the )
North Carolina State Board of    )
Elections,                       )
                Defendants.)
_____)

APPEARANCES:
For the Plaintiffs:   Poyner Spruill
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                      Edwin M. Speas, Jr., Esquire, appearing.
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                      Thomas A. Farr, Esquire, appearing.



                      N.C. Department of Justice

                      P.O. Box 629

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                      Alexander McC. Peters, appearing.

In Attendance:        Dalton Oldham and Thomas Hofeller

At Raleigh, North Carolina.

Tuesday, May 6, 2014.

T A B L E   O F   C O N T E N T S

E X A M I N A T I O N

The following deposition of STEPHEN ANSOLABEHERE,

PH.D., called as a witness by the Defendants, was taken

before Glenda F. Hightower, Certified Verbatim Reporter and

Notary Public, at the law offices of Ogletree, Deakins,

Nash, Smoak and Stewart, 4208 Six Forks Road, Suite 1100,

Raleigh, North Carolina on Tuesday, May 6, 2014 beginning

at 12:25 p.m.

S T I P U L A T I O N S

Prior to the taking of the testimony, counsel for the

respective parties stipulate and agree as follows:

1.   That the deposition shall be taken and used as

permitted by the applicable Federal Rules of Civil

Procedure.

2.   That any objections of any party hereto as to the

notice of the taking of the deposition or as to time or

place thereof, or as to the competency of the person before

whom the same shall be taken, are deemed to have been met.

3.   Objections to questions and motions to strike

answers need not be made during the taking of this

deposition, but may be made for the first time during the

progress of the trial of this case, or at any pretrial

hearing held before any judge of competent jurisdiction for

the purpose of ruling thereon, or at any other hearing of

said case at which said deposition might be used, except

that an objection as to the form of a question must be made

at the time such question is asked, or objection is waived

as to the form of the question.

    4.  That the witness reserves the right to read and

sign the deposition prior to filing.

    5.  That the original transcript of this deposition

shall be mailed Priority Mail Postage to the party taking

the deposition for preservation and delivery to the Court.

1  Whereupon,

2       STEPHEN ANSOLABEHERE,

3  Having been first duly sworn, was examined and

4  testified as follows:

5  Direct Examination by Mr. Farr:

6  Q.    Henry Higgins, I presume?

7  A.    (Laughs.)

8  Q.    Could you please state your name for the

9  record?

10 A.    Stephen Daniel Ansolabehere.

11 Q.    And during the course of this deposition,

12 would you object if I called you Professor or

13 Steve?

14 A.    Not at all.

15 Q.    Okay.  Thanks a lot.  Professor, I don't

16 -- I've got a copy of your report which has

17 been marked as Exhibit 9, and I apologize; but

18 the copy that I have does not have a copy of

19 your vitae attached to it.

20 A.    Oh.

21 Q.    So, I'm just going to ask you a few

22 questions about your background.

23 A.    Okay.

24 Q.    So, could you tell me how -- when you

25 received your education, and the type of

1  degrees you received and when you received your

2  degrees?

3  A.      In 1984, I received a Bachelor of Arts

4  and a Bachelor of Science from the University

5  of Minnesota.  In 1989, I received by Ph.D. in

6  Government from Harvard University.

7  Q.      And is that --

8  A.      Those are my degrees.

9  Q.      Do you have a master's degree?

10  A.      Well, I get a master's in passing in the

11  Ph.D.  program, so --

12  Q.      Okay.  So, let me --

13  A.      -- as you qualify, you get a master's.

14  Q.      Okay.  Have you had your deposition

15  taken before?

16  A.      I have.

17  Q.      Okay.  Just a few ground rules,

18  Professor:  because of the court reporter,

19  would you let me finish my question before you

20  answer?  A lot of times, people who are in this

21  situation start having a conversation, and you

22  know what I'm going to say, and I think I know

23  what you're going to say; but to benefit the

24  court reporter, try to let me finish my

25  question.  And I will try very hard not to

1  interrupt your answer.  Is that okay?

2  A.    I will try my best.

3  Q.    Okay.  I'm looking at your -- your first

4  -- you've done two expert reports in this case,

5  is that right?

6  A.    Correct.

7  Q.    Okay.  I'm looking at the first one,

8  which I think has been marked as Exhibit 9,

9  which you have in front of you.  I want to ask

10  you about some of the experiences that you've

11  listed in the first few pages of this exhibit.

12       So, could you tell me -- in the first

13  paragraph, you say you directed the Caltech/MIT

14  voting technology project from 2000 to 2004.

15  Could you give me an explanation of what that

16  was?

17  A.    Following the 2000 election controversy,

18  the President of Caltech and the President of

19  MIT initiated a project to study voting

20  technology to try to help find technical

21  solutions to various problems that were

22  discovered during the elections.

23       And I organized a team of engineers,

24  computer scientists and social scientists to

25  try to develop new voting technologies, new

1   registration procedures and so forth, and to

2   help advise different organizations,

3   governmental and non-governmental.

4         And as Director, I was responsible for

5   raising the funds for that, organizing the

6   activities, helping prepare reports and

7   coordinating any kind of consulting with

8   government.

9   Q.    Okay.  Was that your first job after you

10  got your Ph.D.?

11  A.    My first job after my Ph.D. was I taught

12  at UCLA, and I was a Professor of Political

13  Science.  Then, they didn't have a statistics

14  department; they had a social statistics

15  program.  So, that eventually became the

16  statistics department.

17        And then I moved to MIT in 1995, and I

18  taught at MIT.  I was appointed in '94, but I

19  moved there in '95.  I taught at MIT until

20  2007/2008, and then I moved to Harvard.

21  Q.    Okay.  What were your positions at MIT?

22  A.    I was -- I started as an Assistant

23  Professor and was immediately promoted to

24  Tenured Associate Professor.  I was then

25  promoted to a full Professor, and then given an

1    endowed Chair.   I served as the associate head

2    of the department, largely in charge of

3    personnel matters.

4         At MIT, I did various activities,

5    including running a seminar for senior

6    congressional staff on technology politics, and

7    running the Caltech/MIT voting technology

8    project and other programs and projects.

9    Q.    Okay.   Did you -- at UCLA or MIT, did

10   you teach any classes?

11   A.    Yes.   I teach everything from Intro to

12   American Government to Social Science

13   Statistics to advanced graduate classes largely

14   in elections and voting behavior; some in

15   Congress and representation.

16   Q.    And tell me what you mean by voting

17   behavior.

18   A.    Voting behavior covers a range of -- of

19   research activities from public opinion

20   research to study of elections and election

21   outcomes, both in the U.S. and other countries,

22   to various questions -- even engaged in things

23   like election law, problems of representation,

24   redistricting and so forth.

25        So, it really runs the gamut from the

1   very micro to the aggregate macro.

2   Q.     Have you ever taught a class, or have

3   you ever been engaged to predict election

4   results?

5   A.     I work for CBS News on election night.

6   So, the job there is to actually call the

7   elections on election night as we're getting

8   real-time data.  So, it's processing the

9   election returns as they come in, trying to

10  resolve discrepancies; trying to make a

11  forecast so we're reasonably sure when an

12  election is going one way or the other.

13         So, that's actually real-time forecasting;

14  you know, what will happen when the election

15  count is over and how sure are we that this is

16  a finished, you know, election.  Before that,

17  though, we do a lot of forecasting for about a

18  year and a half to try to get a sense of which

19  elections are likely to come out which way and

20  why.  And that helps us manage election night

21  and which races are we going to have to pay a

22  lot of attention to and which ones should we

23  not worry so much about.

24  Q.     Okay.  What sort of -- and how often

25  have you done this for CBS News?

1    A.    I started at CBS in 2006.  Well, I

2    started in 2005, but the 2006 election.

3    Q.    And have you been employed by CBS since

4    then?

5    A.    Yeah.

6    Q.    Okay.  So, every general election since

7    2006?

8    A.    And primaries, yeah.

9    Q.    And primaries, okay.  What sort of data

10   have you looked at for -- you said you do

11   election day predictions and then forecasting

12   before the election.  What sort of data did you

13   look at to forecast el- - or do you look at to

14   forecast elections before election night?

15   A.    Okay.  We use surveys; surveys of

16   different forms.  Some are horse-race surveys,

17   who is ahead in the race.  Others are surveys

18   having to do with, like, basic demographics or

19   political orientations of the public: how many

20   Democrats and Republicans are they, how they

21   are trending; economic surveys.

22         Consumer confidence is a very good

23   predictor of how the aggregate will come out at

24   the end of the year.  Then we also look at

25   registration data at the precinct level and

1    past vote returns at the precinct level.  And

2    from that, we build a model to predict which

3    precincts are likely to go toward which party

4    given our model of how the electorate is

5    trending that year.

6    Q.     When you say you look at past vote

7    returns at the precinct level, could you

8    amplify on that a little bit?  What do you mean

9    by that?

10   A.     So, we take precinct level election

11   returns from prior elections.  Like, for 2014,

12   we'll look at the 2012 presidential, governor,

13   senate elections and so forth in any state as

14   reported by the secretary of state or whatever

15   the election office is in that state.  Usually

16   it's the secretary of state, but some states

17   have a board of elections like North Carolina.

18          And we'll take those data mapped into the

19   precincts.  Most of the states now work with

20   the census voter tabulation district system, so

21   that makes it easy to merge that into census

22   data such as racial demographics, income

23   statistics and so forth.

24          And then we'll use all that information

25   merged in at the precinct level to do some

1  statistical modeling to form forecasts.

2  Q.    Okay.  And you've said that you use

3  presidential, governor and senate to --

4  A.    Yeah, we use a lot of elections:

5  lieutenant governor, attorney general;

6  secretary of state.

7  Q.    So, are those elections typically

8  statewide elections that you use?

9  A.    Yeah.  Our team -- I work with a team of

10  -- of researchers that come from different

11  domains.  There's a Democratic consultant on

12  the team, a Republican consultant on the team,

13  another academic and then two in-house people.

14      And we have a discussion about each

15  state, thinking about which -- given the

16  context in which the election is happening,

17  which election is likely to be a very good

18  predictor of what will happen in this given

19  context.

20      So, it depends on who the candidates are

21  running; what the economic context is.  If it's

22  a bad economy, we might think about when was

23  the last time that, say, a Republican president

24  -- when a Republican was president and it was a

25  bad economy, we'd go back and look at those and

1 how do the precincts shape up.

2   So, it's very context dependent in terms

3 of which elections we will use as a -- kind of

4 a bellwether election.  We also take all those

5 elections and average them so that we come up

6 with, like, a party support score.  So, the

7 average of those will help us protect against

8 there being an odd election that you can make a

9 wrong inference based on.

10 Q. Okay.  I guess my question was, are --

11 are statewide elections more useful than, like,

12 district elections in predicting election

13 outcomes?

14 A. Well, a lot of what the CBS folks design

15 -- because that's the national nightly news --

16 are the national elections.  So, they really

17 care about the federal races.  So, we -- and

18 since most of those elections are really

19 senate, some governor and then president,

20 that's what we tend to use for those races.

21   For the U.S. House races, we don't --

22 we'll do an ongoing tabulation and count --

23 have a model that's using a lot of different

24 elections to come up with a forecast.  So, the

25 average vote is used -- is what we'll use more

1   often in making our forecasts for the House

2   districts.

3   Q.      Do you use the statewide elections to

4   evaluate the congressional elections?

5   A.      Yeah.

6   Q.      What sort of --

7   A.      Well, there are some statewide elections

8   we wouldn't use where it's just an

9   idiosyncratic election.  We would look at it

10  and say, this is not correlated at all with the

11  ten other elections that happened in this state.

12  Q.      Unh-hunh (yes).

13  A.      An example would be the Blackwell's -- the

14  secretary of state election in Ohio was really

15  uncorrelated with -- really had a low

16  correlation with everything else.  We didn't

17  use that one.

18  Q.      What do you mean by low correlation?

19  A.      Well, in that case, it was about .6.

20  These elections at the precinct level -- the

21  precinct election returns tend to be very

22  highly correlated with each other, .9, .8 or

23  somewhere in there.

24  Q.      Okay.  So, I guess one question I have

25  is if you have a statewide election where the

1  candidate wins by a very large margin, however

2  you would define that, is that as useful as a

3  statewide election where there's a closer

4  margin of victory?

5  A.    It depends on the state and what you're

6  trying to do.  I know that in -- it's called

7  swing vote analysis or party bias analyses that

8  all -- that researchers will tend to use a lot

9  of different elections and try to predict out.

10  But the ones that are closest to 50/50 in the

11  outcome are the most useful for that kind of

12  analysis.

13        So, which races you're using depends a

14  little on what kind of analysis you're doing.

15  For forecasting purposes, every state has its

16  own average of -- like, Massachusetts is pretty

17  Democratic; Wyoming and Utah are pretty

18  Republican.  We want to find which ones are

19  going -- you know, which races are going to be

20  close to the average vote.

21        For forecasting the key -- North Carolina

22  is a pretty evenly divided state.  So, the

23  50/50 races are pretty good indicators, you

24  might guess.

25        But for forecasting purposes, at the

1  precinct level, what we really care about is

2  getting a good prediction of the order of the

3  precincts.  And what we look for is, is there

4  -- is there a precinct or a county that has an

5  early return that's kind of a bellwether

6  county, and it's going the wrong way or it's

7  going towards one candidate or another.

8  Q.    Unh-hunh (yes).

9  A.    An example would be Ohio.  This last

10  election in 2012, we saw that Ohi- -- Hamilton

11  County in Ohio which is in the Cincinnati area

12  --

13  Q.    I'm from Cincinnati.

14  A.    Okay.  It's a really closely divided

15  county, but it tends to be -- it tips toward

16  Republican.

17  Q.    In the good, old days.

18  A.    Yeah.  So, if the Republicans aren't

19  winning that county early in the night, it's --

20  it's kind of bad news for Republicans as a

21  predictor.

22  Q.    Okay.  I've got you.

23  A.    So, what we're looking for is the rank

24  ordering of the counties in the prediction, and

25  if we see something early in the night that's

1  trending in the wrong direction for one of the

2  parties, that helps us to make a judgement

3  about how all the other -- all the other races

4  are going to go -- all the other counties, all

5  the other precincts are going to go.

6      And the reason is that because the

7  precincts are so highly correlated, election

8  returns from one -- elections are highly

9  correlated as long as you don't have an

10  idiosyncratic election in that mix.

11  Q.    Unh-hunh (yes).

12  A.    Then you -- you can sort of rank order

13  things and see where -- where you are relative

14  to expectations.  And Hamilton would be an

15  example of a county where we'd just say, "Oh,

16  that's our 50/50 bellwether county.  Let's

17  watch that one tonight and see where it goes."

18  Q.    Okay.  Now, just -- has it been your

19  experience that in states that are controlled

20  by a particular party, that the legislative

21  districts are often drawn to favor the party

22  that drew the districts?

23  A.    Yeah, that tends to be the case.

24  Q.    Okay.  And --

25  A.    Not entirely, but tends to be.

1    Q.    Okay.  And does that raise any issues

2    about using legislative races to predict either

3    legis- -- state legislative or congressional

4    races -- are there any issues that are raised

5    by that in terms of trying to predict elections?

6    A.    The usual problem with using legislative

7    races to predict congressional races or a state

8    legislative race to predict a congressional

9    election is that you have different candidates

10   running in different legislative races, and you

11   have to somehow figure out how the candidate

12   effect -- well, you might have an incumbent in

13   one race -- so the other congressional district

14   that has, say, three legislative districts in

15   it, you might have a cong- -- an incumbent in

16   one legislative district and he's doing better

17   than the party average -- right?

18   Q.    Unh-hunh (yes).

19   A.    So, what we're doing for forecasting is

20   thinking about how well a typical Democrat or

21   Republican will do in this specific area.  So,

22   if we -- if we used the state legislative

23   races, we'd have to think a little bit about

24   what's the incumbency effect and how do we

25   subtract that out or account for it.

1        So, using statewide offices tends to be a

2   little bit easier because you've got the same

3   two candidates everywhere.  So, it makes it a

4   little easier to do the forecasting.

5   Q.    And is it not true that the -- aren't

6   there a lot of legislative or congressional

7   races where the incumbent often runs unopposed?

8   A.    Yes.  And some states like Florida don't

9   report any election returns for unopposed or

10  traditionally didn't.  So, we don't even have,

11  like, a total number of people who voted in

12  that race.

13       So, for unopposed, that creates an issue.

14  Q.    That would not -- the sort of race like

15  that would not be a good one to use to predict

16  election results?

17  A.    Well, you just wouldn't use the year in

18  which the data was an unopposed because there's

19  no information.  So, it's called missing data,

20  and you would use other elections for that seat

21  or elections in other offices in that year to

22  construct an average.

23  Q.    Unh-hunh (yes).

24  A.    And that's one reason why you might

25  construct an average party score because it

1    just omits those cases where you don't have an

2    observation.

3    Q.      How many -- what about the funding of

4    respective candidates?  Can that make a

5    difference in terms of whether, you know, a

6    very well-funded candidate defeats an

7    under-funded candidate?  Does that have any

8    impact on the utility of that race for

9    predicting election results?

10   A.      It can.  It's interesting that the

11   academic literature on the effect of money on

12   elections is -- is all over the place.  We

13   don't have a good sense of, like, what the

14   effect of money is; and when you do a

15   correlation between your vote and how much is

16   spent, it turns out the correlation between how

17   much is spent and your vote is negative if

18   you're an incumbent.

19          That's an indication that vulnerable

20   incumbents are the ones who have to spend the

21   most amount of money.  And that's been a very

22   difficult -- very difficult to figure out how

23   much money actually matters for the final

24   outcome and what the net effect is.

25          So, the money -- money is a very

1    complicated thing, and we don't -- at CBS, we

2    don't do anything to correct for that.   In

3    other academic work, I've researched that --

4    that question; but, typically, in swing-vote

5    analyses and so forth, people do not correct

6    for money.

7    Q.      Unh-hunh (yes).   Have you ever done any

8    research as to whether or not candidates who

9    are substantially better funded than their

10   opponent have any sort of edge in --

11   A.      Yeah.

12   Q.      -- a legislative or a congressional race?

13   A.      Yeah.

14   Q.      And what is your conclusion from that?

15   A.      My conclusion is that it -- the -- that

16   research has -- well, my colleague, Jim Synder,

17   and I estimated that the elasticity; in other

18   words, the percent changing your vote for a

19   percent changing your money is about four or

20   five percent.

21          So, if I have a hundred percent increase

22   in how much money I spent; or if I spent a

23   hundred percent more than the other guy, I get

24   about a four percent advantage.   But that's --

25   that's a contested conclusion.   Other academics

1  have written other things, so --.

2  Q.    Other academics think it's a bigger

3  advantage to have more money?

4  A.    Some people think it's bigger.  Some

5  people think it's smaller.  Some people think

6  it only matters for challengers and not for

7  incumbents.  Some people think it matters only

8  for incumbents and not for challengers.  So,

9  the literature is a mess.

10  Q.    So, the effect of money on campaigns is

11  contested?

12  A.    Yes.

13  Q.    Okay.  Got you.  All right.  Looking --

14  I think you've explained to me what you do as a

15  consultant for CBS News.  I now wanted to ask

16  you about your role as consultant to the

17  Brennan Center in the case of McConnell v. FEC.

18  A.    Unh-hunh (yes).

19  Q.    Could you tell me what the Brennan Center

20  is?

21  A.    The Brennan Center is a nonprofit

22  organization in New York City.  It has an

23  affiliation with NYU.  It was created, I think,

24  in memory of Justice Brennan, and it works on

25  voting rights issues -- a variety of them and

1   other issues as well.

2   Q.    Okay.  Is the Brennan Center involved in

3   redistricting cases?

4   A.    Probably.  I -- I don't have any

5   personal knowledge of it.

6   Q.    Okay.  And when you say you were a

7   consultant in McConnell versus FEC, could you

8   elaborate on that a little bit?

9   A.    So, they approached me -- Brennan Center

10  approached me about being the testifying expert

11  in that case, and I passed because I was

12  involved with other research, and I wanted to

13  devote myself to that.

14        But they had asked me if I would consult

15  with them, helping them think through things,

16  show me data analyses; study, you know, kind of

17  the merits of their own research that they were

18  putting forth for the case.

19  Q.    And could you describe the issues that

20  were involved in that case?

21  A.    The Brennan Center -- I think one of the

22  things that was a main focus of their work was

23  the Brennan Center prepared a series of reports

24  on issue ads and what kind of words are used in

25  issue ads, and how often -- how much money is

1    spent on those issue ads and so forth.

2         And most of my time I spent analyzing the

3    data that they had collected, and I actually

4    had them bring in an outside consultant, Anna

5    Greenberg, to do an independent evaluation of

6    that study where they just did a complete

7    replication of the -- of the results.

8         So, we, like, really were getting into

9    the nuts and bolts of how did they do their

10   research and what are the problems with it and

11   what are the strengths of it.  Issue ads were

12   -- I think they were the centerpiece for what

13   the Brennan Center was focused on because that

14   was the issue that they had sort of been

15   pushing the most.

16   Q.    Did that case McConnell v. FEC involve

17   any matters related to redistricting?

18   A.    No.

19   Q.    Okay.  All right.  Then you say you

20   testified before the Senate -- various Senate

21   committees and a House committee, and the

22   Congressional Black Caucus and you say on

23   election administration in the United States.

24        Could you give me an idea of what that

25   testimony has entailed before all those

1   committees?

2   A.      Most of it involved testimonies related

3   to the Caltech/MIT Voting Technology Project,

4   what we knew about performance of voting

5   machines and -- and we issued several reports;

6   one important report called Voting, what is;

7   what could be.

8         And various committees in Congress were

9   very interested in that because they were

10   considering legislation at the time.  So, I and

11   others in my team were pretty active responding

12   to requests from Congress to hear what we had

13   to say.

14         Later -- that -- a lot of that was in

15   2001, 2002, 2003.  Later in 2009, I testified

16   on registration.  Senator Schumer and Senator

17   Bennett were having -- holding hearings on a

18   potential voter registration bill that would

19   have been some sort of comprehensive voter

20   registration system for the United States.

21         I'd done a lot of survey work on who has

22   trouble voting in the United States, and one of

23   the things that popped out in that survey, just

24   unbeknownst to me, was that the people who had

25   the most problem voting -- when you get to the

1  point of requesting of a ballot -- say, an

2  absentee ballot, or going to the polls or

3  something like that or some problem with your

4  registration -- were the U.S. Military

5  personnel.

6      So, that's what I was testifying about.

7  And that helped the Senators move forward to

8  embrace the MOVE Act in 2009.  So, that's where

9  we ended up moving.  And then --

10  Q.    What was the MOVE Act?

11  A.    I don't remember what the acronym stands

12  for, but it was basically an act to improve the

13  ability of overseas military personnel to cast

14  ballots.

15  Q.    Okay.  That's a worthy project.  Thank

16  you.

17  A.    You're welcome.

18  Q.    Can you think of any other testimony

19  before the committees that you mentioned here

20  on -- in paragraph 2?

21  A.    Those committees, no, but since I filed

22  this report, I've been helping the Presidential

23  Commission on Election Administration that just

24  finished its work.  It was headed by Bob Bower

25  and Ben Ginsberg, and I testified for them on a

1     few things.

2          But, mainly, I was serving a purpose of

3     trying to facilitate a lot of academic

4     researchers to come together and help them

5     answer specific research questions that that

6     commission had.  That's the most recent public

7     testimony.

8     Q.     And if this is going to take an hour, I

9     don't want you to do it, but --

10    A.     No.

11    Q.     -- can you tell me what -- what the

12    commission is looking at, what the issues that

13    they are examining that you facilitated

14    testimony on?

15    A.     Okay.  The commission was looking at what

16    are the things that the United States,

17    especially states and counties, can do without

18    the passage of new legislation to improve the

19    technical administration of elections in the

20    United States.

21          And that included things like how do you

22    reduce lines and so forth.  So, one of things

23    that I -- I built for them was a web page that

24    just has different tools that county

25    administrators can use to manage their lines.

1        You type in a few -- you type in some

2   parameters, and then it tells you how many

3   voting machines and how many voter registration

4   places you should have in a given precinct

5   given its turnout and so forth.

6   Q.      Well, explain to me how do you manage

7   lines?

8   A.      So, it turns out it's an operations

9   research problem.  Like Disneyland has lines

10  and how do they manage their lines.  So, we --

11  I worked with my colleague Steven Grades who

12  I've known since the beginning of the Voting

13  Technology Project, and he's an operations

14  research person; and he developed a simple tool

15  for -- for line management.

16       And it's basically an optimization

17  problem, given the flow over the course of the

18  day and the number of people who come to the

19  polling place, and the backlog that happens

20  from a bottleneck at any moment from the --

21  from not having enough poll workers to check

22  people in or not having enough machines to vote

23  on.  How many poll workers and machines should

24  you have in order to minimize lines?

25       And it's a little complicated problem

1  because once a line starts, it creates

2  feedback, and the line lengthens, so it will

3  take some time to clear it out.  So, we're

4  developing some operations research tools to

5  help people manage.

6      And the idea was, "Let's just put these

7  tools out there for free so that anybody can

8  look at them, criticize them, but also any

9  county administrator can use 'em."

10      Most of the counties in the United States

11  that administer elections are rural, poor,

12  don't have resources; and that's a big part of

13  the problem.  So, they can't hire a consultant

14  to come in and do this.  This needs to be free

15  for those people.

16      The other aspect of this is that Darren

17  Shaw, who is my -- who is my colleague in

18  Texas, and he -- he and I were helping to

19  organize the research team for this commission,

20  ran a survey of election administrators in the

21  United States just to hear from them what they

22  think is problem -- what the problems are, and

23  what they think we can do better, and to get

24  that information into the commission's hands.

25  Q.    Okay.  Does that cover your testimony --

1   A.     Yeah, that's the --

2   Q.     -- with the committees and working with

3   the committees?

4   A.     Yes.

5   Q.     Okay.  And then you say that you filed a

6   brief with a couple of professors in the case

7   of Northwest Austin Municipal Utility District

8   v. Holder.

9   A.     Yeah.

10   Q.     Could you tell me about that?

11   A.     That brief had to do with the question

12   of racially polarized voting in the different

13   states and questions of coverage under Section

14   5, which was the issue at stake in that case.

15   Q.     Okay.  Did you testify in that case?

16   A.     I did not.  That brief was an Amicus

17   brief for neither party.  It was accepted by

18   both parties.

19   Q.     Okay.  Then you were a consultant for

20   the Rodriguez plaintiffs in Perez v. Perry?

21   A.     Correct.

22   Q.     Which is in the District Court in the

23   Western District of Texas?

24   A.     Correct.

25   Q.     Could you tell what you did in that case?

1    A.    I'm the expert witness in that case, and

2    I've been --

3    Q.    For which side?

4    A.    For the Rodriguez plaintiffs; not the

5    State of Texas, which would be Perry.

6    Q.    Have you given any testimony in this case?

7    A.    I have.

8    Q.    Could you tell me what your tes- --

9    again, I don't want to keep you here to examine

10   you on your testimony in that case.

11   A.    No, no.

12   Q.    I just kind of want to know what you

13   testified about.

14   A.    That was in 20- -- that started in 2011,

15   so it's becoming --

16   Q.    What the subject of your testimony?

17   A.    The subject was racially polarized voting

18   in the State of Texas in specific congressional

19   districts, the likely electoral performance of

20   those districts, the demographic characteristics

21   of those districts, the quality of the American

22   Community Survey; questions about projections

23   of citizen voting age population in states and

24   localities.

25   Q.    Okay.

1    A.    There's details, but --

2    Q.    That's good enough.   Okay.   And then the

3    next case you have listed is the Department of

4    Justice in State of Texas v. Holder?

5    A.    Right.

6    Q.    And that case is in the District Court of

7    the District of Columbia?

8    A.    There are two cases.   I'm not sure which

9    one you're referring to.   There are two cases

10   that --

11   Q.    I'm just -- I want you to follow along

12   in your expert report.

13   A.    Okay.   One is a Section 5 case in Texas

14   on redistricting.

15   Q.    Right.   Is the Section 5 case in the

16   District of Columbia court?

17   A.    Yes, it is.   There were two Section 5

18   cases.   One is -- right, so there's -- working

19   on behalf of the Gonzales intervenors in the

20   State of Texas versus the United States.

21   Q.    Unh-hunh (yes).

22   A.    That's the Section 5 redistricting case,

23   and that concerned whether there had been

24   retrogression or reduction in the number of

25   black and hispanic districts in the State of

1    Texas.

2         And the kind of analyses done, again,

3    were racially polarized voting analyses,

4    demographic analyses and assessment of the

5    likely performance of those districts.

6    Q.    Yeah, I want to ask you a question about

7    that.  You say the reduction in the number of

8    black and hispanic districts.  What's -- in the

9    context of that case, what was a black district?

10   A.    There are several categories.  One is

11   whether it's a majority CVAP district; that is,

12   whether the demographics of the district are

13   such that a majority of the citizen voting age

14   population, CVAP, was above 50 percent hispanic

15   or 50 percent black.

16   Q.    Unh-hunh (yes).

17   A.    And then there are a set of districts

18   that might be considered coalitional districts

19   where it's black plus hispanic.

20   Q.    Do the black and hispanics equal the

21   amount that's over 50 percent of those

22   districts?

23   A.    Correct.  But it's citizen voting age

24   population.  And then there is a further

25   question -- it's an open question about whether

1    or not cross-over districts and districts where

2    the black or hispanic preferred candidate can

3    win but not with the vote -- but they're not a

4    majority; and the whites are voting against

5    them, but there are enough whites who cross

6    over and vote with the minorities so it's an

7    effective minority district.

8         And that's the -- that's actually a live

9    -- a very live question in the courts right

10   now, and it's a highly disputed question, I

11   think.

12   Q.    Is that a live question under Section 5?

13   A.    It was a Section 5 question.  Should the

14   Department of Justice count that -- that

15   district in making its retrogression analysis.

16   Q.    Yeah.

17   A.    And then under Section 2, it becomes a

18   question as well, which what's the legal status

19   of such a district if it exists.  And then

20   that's -- that's -- those are, I think, the

21   central issues.

22   Q.    Okay.  And you have testified in that

23   case?

24   A.    Yes.

25   Q.    Okay.  And then you said there was

1  another Texas case that's pending actually in

2  Texas?

3  A.    Well, that case is coming back currently.

4  I've not yet testified in that, and that is

5  Perez v. Perry again, and that will be mid-July

6  in the District Court, I think, in Corpus

7  Christi.

8  Q.    Have you made any reports in that case?

9  A.    I just did the reports in that case.

10  Q.    Well, just give me the --

11  A.    The --

12  Q.    -- highlights --

13  A.    Yeah.

14  Q.    -- of your report.

15  A.    Yeah, the reports in that case were "See

16  all my earlier reports" because it's all the

17  same old issues.  And then there were a few

18  specific questions about Congressional District

19  23 and Congressional District 25, and about the

20  American Community Survey and the calculation

21  of citizen voting age population.

22  Q.    Okay.  All right.  And then I think the

23  next one that's on your list is Guy v. Miller.

24  A.    There's a second State of Texas v.

25  Holder case.

1   Q.      Okay.

2   A.      That's the Texas voter I.D. case.

3   Q.      Okay.

4   A.      And that was a Section 5 case.

5   Q.      What's the status of that case since

6   Section 5 has gone away?   Do you know?

7   A.      The Department of Justice is suing Texas

8   under Section 2.

9   Q.      Okay.

10  A.      And I've been retained as their expert

11  in that, but no reports have been filed.

12  Q.      Okay.   What about -- am I right that the

13  next case is Guy v. Miller?

14  A.      Unh-hunh (yes).

15  Q.      What's that case all about?

16  A.      That was redistricting in the State of

17  Nevada.   The State Legislature passed a plan,

18  the governor didn't sign it.   Nevada had

19  received an additional congressional district,

20  and they didn't have the process for creating

21  it.

22          So, the judge in the state court created

23  a panel to consider the voting rights

24  questions, draw a new plan; and the different

25  parties in the case had to weigh in on what

1    were the voting rights issues in the state and

2    what the likely consequences of alternative

3    plans that had been proposed.

4    Q.    Are you a witness in that case?

5    A.    I was a witness in that case.

6    Q.    And for which side?

7    A.    I'm trying to -- the Guy plaintiffs, yeah.

8    Q.    What's that?

9    A.    The Guy plaintiffs.

10   Q.    Okay.  Were the Guy plaintiffs minority

11   plaintiffs or -- can you describe the

12   demographic status or --

13   A.    I think they were Democratic plaintiffs.

14   Q.    Okay.

15   A.    Democratic Party plaintiffs.  It was a

16   very confusing case because, like, there wasn't

17   a plan and all sorts of maneuvers were going on

18   that were -- one of the motions was that they

19   just adopt a plan and ignore the veto of the

20   governor, and was that constitutional in the

21   state.  Yeah, it was a very confusing case.

22   Q.    In these other cases that we've

23   mentioned, have you testified for other

24   Democratic plaintiffs?

25   A.    The plaintiffs in Perez v. Perry are

1  Democrats, I believe.

2  Q.    In any of these cases that are on

3  Exhibit 9, did you ever testify for Republican

4  plaintiffs?

5  A.    No.  I've never been asked.

6  Q.    Okay, Tom, don't feel so bad.

7  (Addressing Mr. Hofeller)  Just kidding.

8       What about Florida Democratic Party in re

9  Senate resolution of legislative appointment?

10  Were you a witness in that case?

11  A.    I filed a report.  I did not testify.

12  That is ongoing.  The continuation of that is

13  Romo v. Detzner.  In re Senate joint resolution

14  is a, kind of, preliminary process that was set

15  up by the State of Florida in its new

16  constitutional amendment that created a

17  procedure for evaluating the state plans.

18  Q.    Unh-hunh (yes).

19  A.    So, they had -- the State Supreme Court,

20  essentially, had a pre-clearance process where

21  they did a preliminary evaluation of all plans

22  to see whether a trial should be held, or

23  whether the plans passed by the Florida State

24  Legislature were acceptable as is.

25       And the Florida State House plan was

1  acceptable in their judgement, and the State

2  Senate and congressional plans were deemed as

3  not passing a prima facia review or facia

4  review, and then it went on -- now, it's at

5  trial; and that's waiting.

6  Q.    Okay.

7  A.    And that's Romo v. Detzner.

8  Q.    Okay.  So, that's kind of related to the

9  other case?

10  A.    Yeah.

11  Q.    And are your clients in those cases

12  Democratic clients?

13  A.    It's my understanding that they're

14  Democratic clients.

15  Q.    Okay.  And then the last case that you

16  listed, League of United Latin American

17  Citizens v. Edwards Aquifer Authority, --

18  A.    Unh-hunh (yes).

19  Q.    -- could you tell me about that case?

20  A.    That's a one person one vote case.  It's

21  a water district that manages use of water in

22  the area to protect endangered species, prevent

23  pollution, prevent overuse of water; and I've

24  been retained or hired by the City of San

25  Antonio and the San Antonio water district.

1   Q.    Okay.  All right.  Now, in this case,

2   who has retained you?

3   A.    I am retained by the -- the -- I was

4   approached by the -- by John Devaney to see if

5   I was interested in working on this case.  So,

6   I'm retained by the -- I'm sorry -- an early

7   senior moment.

8              MR. SPEAS:  Harris Plaintiffs.

9   A.    Harris Plaintiffs.  Sorry.

10  Q.    (Mr. Farr)  Okay.  Are the Harris --

11  there's two Harris Plaintiffs in the case now

12  is my understanding.  Is that your

13  understanding?

14  A.    I didn't know that.

15  Q.    Oh, you didn't know how many there were?

16  A.    I didn't know how many Harris Plaintiffs

17  there were.

18  Q.    Okay.  All right.  And have you ever

19  talked to any of the Harris Plaintiffs?

20  A.    I've not.

21  Q.    Are they paying your fee, the Harris

22  Plaintiffs?

23  A.    That's my understanding, yes.

24  Q.    Okay.  Do you have a fee agreement with

25  the Harris Plaintiffs?

1   A.      I have a fee agreement through John

2   Devaney at Perkins Coie.

3   Q.      Have you submitted bills in this case?

4   A.      I have.

5   Q.      And who have you submitted the bills to?

6   The Harris Plaintiffs or to John?

7   A.      John Devaney in regard to the Harris --

8   Q.      Have you received checks form --

9   A.      I have.

10  Q.      And are the checks signed by the Harris

11  Plaintiffs or are they signed by someone else?

12  A.      I've not looked at who the -- the checks

13  come from -- directly from Perkins Coie, and I

14  have not looked at the signatories.

15  Q.      Have you worked with Perkins Coie in

16  other cases?

17  A.      Yes, I -- the Romo case in Florida is

18  Perkins, and the -- and Perkins is involved in

19  the Texas Section 2 and Section 5 redistricting

20  cases.   And Perkins was involved in the Guy v.

21  Miller case.

22          They approached me in July of 2011 about

23  working with them on the Texas redistricting

24  case, and they liked my work, so they hired me

25  again for other cases.

1   Q.   Okay.  All right.  In paragraph three,

2   you say you're an "author of numerous scholarly

3   works on voting behavior and elections, the

4   application of statistical methods in social

5   sciences, legislative politics and

6   representation and distributive politics."

7        Could you describe all those topics for

8   me, please?

9   A.   So, voting behavior and elections, I've

10  worked pretty extensively on questions such as

11  election forecasting, incumbency effects;

12  campaign finance.  I do a fair amount of work

13  on voting behavior at the individual level;

14  largely survey research in trying to understand

15  what factors predict why people choose to vote

16  for one candidate or another or one party or

17  another, and also why people choose to vote or

18  not vote but be registered to vote or not vote

19  and what the implications of those are -- those

20  factors are for understanding election outcomes

21  in the United States.

22       Application of statistical methods in the

23  social sciences, my research has -- one of the

24  things I focus on is aggregational issues,

25  like, how -- how do individual level data get

1    aggregated; some work on experimental methods.

2    That's older work.   That's from the '90s.

3         Legislative politics and --

4    Q.    Could you stop for a second?

5    A.    Okay.

6    Q.    I'm -- I know enough about this to be

7    dangerous, but I don't know as much as you do.

8    A.    Okay.

9    Q.    When you say aggregation of --

10   A.    So, if I have data that consists of a

11   lot of individuals and I want to understand the

12   relationship between two factors at the

13   individual level, but I have data at an

14   aggregate level, what assumptions do I need to

15   make in order to infer from the aggregate level

16   correlations between those two factors --

17   something about individual level behavior.

18   Q.    Can you give me an example?

19   A.    The classic example is by someone named

20   W.S.  Robinson where they were looking at the

21   correlation between literacy and income, and

22   found a weak correlation.   And then they --

23   Robinson discovered that there was an omitted

24   variable, which was foreign-born population.

25   As soon as you control for foreign born, that

1  relationship changes.

2  Q.    The connection between literacy and

3  income --

4  A.    Yes.

5  Q.    -- was that when you take the foreigners

6  out, is that right, or it the other --

7  A.    Yes.

8  Q.    -- way around?

9  A.    That would be correct.

10 Q.    Okay.

11 A.    And this was an important finding in the

12 1950s.

13 Q.    All right.  So, what about legislative

14 politics and representation?

15 A.    So, legislative politics and

16 representation, I work on coalitional politics

17 in Europe.  How do governments get formed,

18 coalition partners, how stable are they, what

19 -- what are the politics behind the formation

20 of coalitions.

21    In the United States, I work on

22 representation, especially, roll-call voting

23 behavior in Congress; and what explains why

24 members of Congress and state legislatures vote

25 certain ways on -- on legislation.

1        A very live question for political

2   scientists is whether or not members of

3   Congress are following what their districts

4   want, what their parties want or what they

5   personally would like to do or don't -- their

6   own personal ideologies in those cases.

7   Q.      Okay.  And I think the final subject is

8   distributive politics.  What does that mean?

9   A.      Distributive politics is how money is

10  distributed in a federalized system such as the

11  United States.  So, the state government has a

12  pool of money, and it gets distributed through

13  the counties; which counties are winning or

14  losing in the distribution of money or which --

15  what are the factors that predict where the

16  money is going in the political system.

17  Q.      Okay.  Now, Professor, I just wanted to

18  clarify one thing.  The cases that you've

19  testified in -- actually testified in, has

20  Perkins Coie been involved in all those cases?

21  A.      No.

22  Q.      Is there any one where they've not been

23  involved where you've testified?

24  A.      The Department of Justice, I -- they

25  might have been involved in some other -- for

1    some other party, but I was working for the

2    Department of Justice in the State of Texas v.

3    Holder.

4    Q.    Unh-hunh (yes).

5    A.    And the Edwards Aquifer Authority is the

6    San Antonio Water District, and I was retained

7    by an attorney for the State of Texas named

8    Renee Hicks.

9    Q.    Okay.  Now, have you any experience in

10   drawing redistricting plans?

11   A.    A little.  I've -- there's casual

12   experience teaching students how to draw plans,

13   and in my course on elections, we use map

14   making software such as Maptitude and other

15   free ware.

16        And then in the context of some of these

17   redistricting cases, people have asked me

18   about, like, how a plan ought to be shifted.

19   And so, I'll sort of mock out a plan; and if

20   you drew the boundary here, what would it mean

21   and so forth.  That's just a query that's made

22   of me.

23        I've never drawn an entire state

24   districting plan for a state legislature.

25   Q.    That was going to be my next question.

1  Have you been hired by a state legislature to

2  draw any sort of redistricting plan?

3  A.    No.

4  Q.    Have you ever been hired by a political

5  party to draw a proposed redistricting plan to

6  be presented during the legislative process?

7  A.    No.

8  Q.    Have you been hired by anybody to draw a

9  redistricting plan?

10  A.    No, except in the context of some of

11  these cases, I'm asked, "What if we drew the

12  district that way?"  And I will get on the

13  software and look at the district.  So, I'll do

14  it in that context, but it's always in the

15  context of a case rather than in the context of

16  passage of a plan.

17  Q.    So, you -- you would examine theories on

18  redistricting software after the case had been

19  filed?  Is that a fair way to say it?

20  A.    Yes, that's right.

21  Q.    And you say -- what sort of software --

22  redistricting software are you familiar with?

23  A.    I am familiar with Maptitude.  I'm

24  familiar with a free -- an interesting free

25  ware platform called Dave's Redistricting App

1  developed by someone named Dave Bradley.

2  Q.    We all know that one.

3  A.    Okay.  I love that one.  I actually had

4  Dave come to Harvard to give a big presentation

5  to the Institute for Quantitative Social

6  Sciences.  It was way interesting.

7        And then --

8  Q.    He was quite popular in North Carolina

9  around February of 2011.   (Laughter)

10  A.    And then the software developed by Mike

11  Altman for the -- I forget what the name of it

12  -- My District Building, I think is what it's

13  called.

14  Q.    Okay.  Tell me all the times you've used

15  Maptitude.

16  A.    I've used Maptitude through -- we had a

17  private license that I used Maptitude to just

18  draw various districts.  We did a redistricting

19  exercise to draw districts for the entire State

20  Legislature in Massachusetts.

21  Q.    Unh-hunh (yes).

22  A.    I trained to do Maptitude in the State

23  Legislature in Massachusetts because they had

24  stated -- sent out a request for proposals, and

25  my colleague Jim Griner and I put in a proposal

1  to help them with the State Legislative

2  districts, but they chose another group to do

3  that.

4         I used Maptitude in looking at Florida

5  districts in the Romo case, and then just

6  casually for other, like, educational purposes,

7  like, for teaching purposes in making maps.

8  That's not redistricting.

9  Q.    Have you had any training on Maptitude?

10  A.    Yes, at Maptitude headquarters in

11  Massachusetts which is the next town over from

12  me.

13  Q.    And how long was that training?

14  A.    That was -- it was a -- it was a three

15  or four-day training.  I also have training in

16  ArcGIS which is the platform on which Maptitude

17  is built.

18  Q.    Just for the court reporter, tell her

19  what GIS stands for?

20  A.    Geographic Information Systems.

21  Q.    And what is that?

22  A.    That is a -- a software architecture for

23  drawing maps.

24  Q.    Okay.  When you drew the Massachusetts

25  plan that you submitted for a proposal, who did

1  you submit the proposal to?

2  A.    We didn't actually submit the plan for the

3  proposal.  We just were training on it and --

4  and the proposal was for consulting services to

5  the Massachusetts State Legislature, and it was

6  directly to Representative Moran, M-o-r-a-n,

7  and Representative -- I think it's Rosenfield

8  or Rosen- --.

9  Q.    Do you remember what --

10  A.    Senator Rosenfield.  They had a joint

11  house/senate committee to draw districting.

12  Q.    We had the same thing.  What political

13  party were those two gentlemen from?

14  A.    They're both Democrats.

15  Q.    Do you remember anything about the draft

16  Massachusetts plan that you drew?

17  A.    Well, I drew many draft -- I drew many

18  different versions of it.

19  Q.    Okay.  Do you remember what criteria you

20  used?

21  A.    We were looking for various things, but

22  one of the things -- one of the criteria we

23  were using is could we make a map that was

24  unbiased for the parties; can we make a fair

25  map using standards of unbiasedness that

1  academics had developed -- statistical

2  standards.

3  Q.    Is that why you weren't hired?  Sorry.

4  I couldn't resist that.

5  A.    Actually, I think that -- my own

6  assessment of the Massachusetts plan, after the

7  fact developed by somebody completely

8  different, was that they actually drew a really

9  fair map; and they got rid of an old partisan

10  gerrymander that was discriminatory against the

11  Republicans in the state.

12  Q.    Okay.

13  A.    They really made things a lot better.

14  It was a good thing.

15  Q.    What kind of screens did you look at --

16  computer screens on Maptitude?  What sort of

17  information was on the screens?

18  A.    We loaded a lot of demographic data, the

19  census date, population count -- voting age

20  population count by racial groups.  We loaded

21  in different voting data that we -- we

22  provided.  One of the projects I ran at Harvard

23  is called the Harvard Election Data Archive.

24  Q.    Unh-hunh (yes).

25  A.    And the project there was to try to

1    collect as much precinct level election data as

2    possible and merge it in with census data.

3    This is one of the reasons I trained in ArcGIS,

4    to really get how to do those merges and

5    linkages.

6         So, beyond -- beyond drawing maps, it's

7    very useful for trying to deal with these

8    aggregation issues which are statistical

9    problems.  You know, precincts are different

10   from census areas.  So, how do you link these

11   two levels of reporting of data.

12        So, that -- and a lot of the motivation

13   for that development was just to -- we've got

14   this new technology for putting information out

15   there, and that would improve the study of

16   elections generally in the United States so

17   people could understand better the relationship

18   between the sociological structure of the

19   United States and the electoral structure of

20   the United States.

21   Q.    Okay.  With Maptitude could you pull up

22   on the screen the tabulation districts?

23   A.    Yeah.

24   Q.    Okay.  Could the person manipulating the

25   computer decide the type of information that he

1    wanted to look at in relationship to vote

2    tabulation districts?

3    A.    Yes.

4    Q.    Okay.  So, was it possible, for example,

5    to pull up the vote tabulation districts and

6    only look at election results?

7    A.    Yes, you can select what is pulled in the

8    -- there are different -- different versions of

9    Maptitude; and depending on which version is

10   used, different options and functionality are

11   available.

12         For example, one version of Maptitude

13   that they allowed us access to was the previous

14   version which allowed you to randomly simulate

15   districts, which I thought was kind of cool.

16   But apparently nobody wanted to buy it, so they

17   didn't distribute it in the new version of

18   Maptitude.

19         But there are different versions of

20   Maptitude that do different things.  It depends

21   a little bit on the version, but, yeah, you can

22   -- and we -- you could also pull in your own

23   data into Maptitude so you can bring your own;

24   not just what they provide.  You can bring your

25   own data and upload it which is what we were

1   doing in the Massachusetts project.

2   Q.     But would you agree that with the

3   Maptitude, you can pull up information on a VTD

4   level based upon election results?

5   A.     Yes.

6   Q.     And you can limit it to election

7   results, can you not?

8   A.     Yes.

9   Q.     And you can limit it to a particular

10  election result, can you not?

11  A.     Yes.

12  Q.     Okay.  All right.  Now, I want to move

13  to paragraph four.  And what did you do to get

14  ready for this deposition today, Professor?

15  A.     I read through all my reports, and

16  yesterday I met with Eddie Speas, and we

17  discussed my report.

18  Q.     Okay.  I'm not going to ask you anything

19  about that.

20  A.     Okay.

21  Q.     Now, you say here that you have been

22  asked to assess whether race is a predominant

23  factor in the configuration of Congressional

24  District 1 and 12.

25  A.     Unh-hunh (yes).

1    Q.    Okay.  What do you mean by "a

2  predominant factor"?

3    A.    Is it a factor that strongly predicts a

4  configuration of the district in a statistical

5  sense.  I'm looking at effects rather than, you

6  know, what individuals were doing when they

7  drew the maps.  So, I'm taking a look at which

8  demographic categories were put into which

9  groups, or which partisan categories were put

10  into which groups of districts -- groups of

11  VTDs that comprise districts.

12        And there might be multiple factors in

13  constructing a district, and the question was

14  how important?  Is it the most important

15  predictor?  Is it an important predictor of

16  race.

17    Q.    Okay.  Where did you get the term "a

18  predominant factor"?  Who gave you that term?

19    A.    I -- that was one of the questions that

20  was put to me, was is -- is it a predominant

21  factor in the configuration of these districts.

22    Q.    So, could there be more than one

23  predominant factor under your analysis?

24    A.    It's possible.  It's possible there are,

25  say, two equally important factors.  Those

1  would be two predominant factors, and

2  everything else is less important.  It's

3  possible if there's one fact that strongly

4  predicts --

5  Q.    All right.  And in your report -- I'm

6  sure we'll get a chance to go over this, but is

7  it your conclusion that race was a predominant

8  factor amongst other potential factors or was

9  it the predominant factor?

10  A.    It -- it -- my conclusion is the

11  predominant factor in the analysis of -- in

12  comparing party versus race.  When I looked

13  within party groups, I see a very strong racial

14  difference, but when I looked with racial

15  groups, I only see a small party difference.

16  And that's what I mean by holding race and

17  party constants.

18       The idea is to try to -- try to predict

19  which of these is a stronger factor.  It need

20  not have come out that way, but --

21  Q.    So, you were comparing race against

22  party.  And does that mean --

23  A.    Right.

24  Q.    -- how people are registered to vote?

25  A.    In this case, I was looking at how

1   people are registered to vote, and that's

2   because North Carolina is a state in which

3   party and race are on the voter files.  So,

4   it's uniquely good data.  It avoids the

5   aggregation issues that we discussed earlier

6   because it's individual level data.

7        If I didn't have that individual level

8   data on how individuals are registered as -- of

9   a certain racial group and of a certain party

10  group, I would have to make an imputation based

11  on aggregate level correlations.  So, this is

12  from a statistical perspective superior to the

13  aggregate analysis one might do.

14        Others have done aggregate analyses in

15  other contexts and --

16  Q.    Okay.  And I've read your report.  So,

17  you were looking at registration stats; not VTD?

18  A.    Yes.

19  Q.    Is that pretty much the heart of your

20  report?

21  A.    Yes.

22  Q.    Okay.  Did you ever look at actual

23  election results by VTD?

24  A.    Well, the actual election results do not

25  have race.  I don't know how the race of a

1    given voter -- nor do I know how all black

2    voters voted.  I'd have to make an imputation

3    or prediction based on some aggregate level

4    correlation.

5    Q.    So, if you looked at election results by

6    VTD, you're saying that from that data, you

7    couldn't determine the race of the voters?

8    A.    Correct, with certainty.  We do have to

9    make additional assumptions.  So, without

10   having to make those assumptions, you can state

11   with the registered voters, there are this many

12   black Democrats or this many black Republicans,

13   and this many black undeclared and so forth.

14   Q.    Okay.  Now, did you -- tell me what --

15   if you can remember, to the best of your

16   ability, what -- what did you review in

17   preparing this report?

18   A.    I reviewed the reports that are available

19   on the North Carolina Redistricting web page.

20   Q.    What reports?  There's a lot of reports.

21   A.    Yeah, yeah.  The reports -- there's a

22   page for the Rucho-Lewis 3 map, and there are

23   reports on demographics of the diff- -- VTDs in

24   the different districts.  So, I downloaded and

25   reviewed all of those spreadsheets and reports

1  that were there.

2       And I think that there were some -- I'm

3  trying to remember if I reviewed -- I think I

4  downloaded another report from the website on

5  just the redistricting process.

6  Q.    Okay.  Is it fair to say the only

7  redistricting plan you looked at was the

8  Rucho-Lewis 3 Congressional plan?

9  A.    Yes.  I didn't look at any of the prior

10 plans from throughout the process, and I also

11 looked at the existing -- the plan that applied

12 to the prior decades' districts.

13 Q.    Okay.  That was a bad question I asked

14 you, and I'm sorry.  I know you got a stats

15 report from the prior plan.

16 A.    Okay.

17 Q.    That's not what I'm really asking you.

18 Did you -- you did a VTD analysis of the

19 Rucho-Lewis 3 Congressional plan, right?

20 A.    Correct.

21 Q.    And did you do a VTD analysis of the

22 prior 2001 Congressional plan?

23 A.    Yes.

24 Q.    Okay.  And for the analysis for both of

25 those plans, you looked at registration

1    statistics for the VTDs?

2    A.    Correct.  And we also looked at census

3    demographic statistics.

4    Q.    Okay.  But, again, you didn't look at

5    the election results for those VTDs?

6    A.    I don't remember doing an election --

7    Q.    Okay.  Did you review any Supreme Court

8    decisions in preparing this report?

9    A.    Not this one specifically.  I had a few

10   cases going on at the same time, and so --

11   Q.    I understand.

12   A.    -- there were Supreme Court cases in

13   those others.

14   Q.    Right.  Are you familiar with a couple

15   of Supreme Court decisions, which I have

16   mispronounced for years almost as badly as I've

17   mispronounced your name; but which I've now

18   been corrected to refer to as Cromartie -- the

19   U.S. Supreme Court decisions in Cromartie, have

20   you ever looked at those cases?

21   A.    I've read those cases in other contexts,

22   yes.

23   Q.    Okay.  Did you refer to those cases in

24   preparing this report?

25   A.    No, I did not.

1   Q.    Do you recall anything about those cases?

2   A.    Not off -- not offhand, except that Dr.

3   Hofeller has noted that in Cromartie, the Court

4   said -- states reservations about using

5   registration as an indicator.

6   Q.    Okay.

7   A.    The question is an indicator of what, and

8   I think that's probably a question that will be

9   discussed in trial.

10  Q.    Okay.  Do you recall anything else about

11  those cases?

12  A.    Not -- not too many in particular, but

13  --.

14  Q.    Okay.  Did you read any Supreme Court

15  cases about what is meant by the term

16  predominant factor in preparing this report?

17  A.    Not in preparing this report, but I've

18  read the term many times.

19  Q.    Okay.  Did you look at any of the --

20  you're aware of the fact that there was a state

21  court redistricting case?

22  A.    Yes.

23  Q.    Okay.  And Mr. Speas represented a group

24  of the Plaintiffs in that case.  Are you aware

25  of that?

# EXHIBIT S – Part 2

Complete Deposition of Dr. Stephen Ansolabehere

1    A.    I didn't know that.

2    Q.    I think he would stipulate to that.  Do

3    you know that there was another group of

4    Plaintiffs where the lead Plaintiff was the

5    North Carolina NAACP?

6    A.    I don't know specifics on the case, no.

7    Q.    Okay.  Did you look at any of the

8    testimony from that case?

9    A.    No.

10   Q.    Let me get a little more specific.  Did

11   you look at any of the trial testimony from

12   that case?

13   A.    No.

14   Q.    Did you look at any of the deposition

15   testimony from that case?

16   A.    Did I look at any deposition testimony?

17   I don't recall.

18   Q.    Okay.  Do you know an expert witness and

19   professor named Ted Arrington?

20   A.    I know the name, but I've never met him.

21   Q.    Okay.  And do you know whether he gave a

22   deposition in the Dixon case or not?

23   A.    I don't know for sure.

24   Q.    Okay.  Do you know an expert witness

25   named David Peterson?

1    A.    I know the name because people have

2    mentioned him -- Mr. Speas has mentioned him in

3    relationship to this case, and I've seen his

4    name from prior cases in North Carolina.

5    Q.    Did you read any of the testimony that

6    he gave in the Dixon case?

7    A.    No.

8    Q.    All right.  Did you read any of the

9    testimony that was given by the legislative

10   leaders in the Dixon case?

11   A.    No.

12   Q.    Did you read any of the affidavit

13   testimony or deposition testimony given by any

14   of the legislative staff in the Dixon case?

15   A.    No.

16   Q.    Did you read the opinion -- there's been

17   an opinion by a three-judge state court in that

18   case.  Have you read that opinion?

19   A.    I believe I did read that.

20   Q.    Okay.

21   A.    This is one of these points where I

22   think, did I read that?  I taught four courses

23   this semester, so I'm little --

24   Q.    That's all right.  I forget who I had

25   lunch with last week, so you just do the best

1    you can.

2         Do you recall anything about that opinion?

3    A.    Not in particular.

4    Q.    Do you recall any findings or rulings by

5    the court in that case about whether race was

6    the predominant motive in the construction of

7    the 2011 Twelfth Congressional District?

8    A.    I think I was told by -- no, I don't

9    remember reading it.  I think I was told in a

10   conversation by my friend Nate Pursely who is

11   an election lawyer about that case, but I don't

12   remember reading it.

13   Q.    Did you know that was a decision by a

14   three-judge trial court?

15   A.    I didn't know the composition of the

16   court.

17   Q.    Unh-hunh (yes).  Did you know that they

18   made findings of fact after there was a trial

19   in the case?

20   A.    After -- as part of the decision?

21   Q.    Unh-hunh (yes).

22   A.    Just from what was mentioned to me, yeah.

23   Q.    Okay.  But you don't recall reviewing

24   that?

25   A.    I don't recall reviewing it.

1  Q.    Okay.  Did you look at -- you're aware,

2  I'm sure, Professor, that there's been a long

3  history of litigation associated with the First

4  and the Twelfth Congressional Districts in

5  North Carolina?

6  A.    I'm aware of that.

7  Q.    As a Professor of Government, you're, I'm

8  sure, aware of that?

9  A.    Yes.

10  Q.    Have you studied any -- for purposes of

11  this case, have you studied any of the prior

12  versions of the First or the Twelfth

13  Congressional Districts?

14  A.    Not -- not before the 2001 and 2011

15  districts.  I am familiar with cases such as

16  Shaw v. Reno and Thornburg versus Gingles.

17  Q.    I understand.

18  A.    Yeah, they are very important cases.

19  Q.    But for purposes of this case, did you

20  go back and look at any of the prior versions

21  of the First or the Twelfth District starting

22  in 1991 up to 2001?

23  A.    You know, I might have re-read Shaw v.

24  Reno.  I was teaching a course on election law

25  this semester, and we taught Shaw v. Reno and

1    Thornburg versus Gingles in the context of

2    that.  So, I've -- I've read them, but it was

3    not expressly for this purpose.

4    Q.    Okay.  Did you go back -- did you do a

5    VTD analysis on any of the prior plans?

6    A.    No.

7    Q.    Okay.  I should have asked that earlier.

8    I'm sorry.

9    A.    Okay.

10   Q.    All right.  Now, I want to go to page 4

11   of your report, and I want to get you to --

12   first of all, I think I want to talk with you

13   about compactness since that's the first thing

14   in your report.

15   A.    Unh-hunh (yes).

16   Q.    How do you define compactness?

17   A.    Compactness is a description of how

18   spread out a district is relative to an ideal

19   district.  And an ideal district is defined in

20   different ways, depending on geography, but the

21   most -- the way it's often defined is take the

22   most compact shape, which is a circle; and

23   consider the area or perimeter of this district

24   relative to area or perimeter of the most

25   compact shape.  That would be one way to think

1    about it.

2         The Reock score is take the area of the

3    -- the smallest circle in which the district is

4    inscribed and put the district in, and measure

5    the area of the district itself and the area of

6    that smallest circle.  So, that's one specific

7    definition of a measure of the compactness.

8    Q.    Was that -- so, did you just describe one

9    definition of compactness or two?

10   A.    One definition and one definition of a

11   measure.

12   Q.    Okay.

13   A.    I didn't know what you -- if you wanted

14   the concept or the measure.

15   Q.    The Reock test is based upon the concept

16   you described?

17   A.    Yes.

18   Q.    Okay.  Got that.  Is there any sort of

19   legal definition for compactness that's been

20   adopted by a court?

21   A.    The courts -- my understanding -- I'm

22   not a lawyer.  My understanding of what the

23   courts have used was a bit of we know it when

24   we see it as a standard, and there's not a --

25   there's not a specific bright-line threshold

1  like, you know, maybe with majority/minority

2  districting, 50 percent is the number.  I just

3  know specific bright-line for compactness.

4  Q.    Okay.  So, if I say to you there's no

5  judicially manageable standard for determining

6  when a district is legally compact, would you

7  agree with that?

8  A.    That's a legal opinion.

9  Q.    Okay.

10 A.    I don't know if -- I don't know if the

11 standards that have evolved in existing cases

12 are -- I mean, it's up to the judges to decide

13 if it's manageable.

14 Q.    Well, you've read the cases -- you're

15 read a lot of cases that --

16 A.    Yeah.  I mean, I think -- my reading of

17 Shaw, it was my understanding that they had a

18 sense that, you know, when it's -- you know,

19 that they would develop it or come up with it.

20        For me, compactness is not so much -- and

21 other geographic features of districts are not

22 so much a kind of bright-line test of this is

23 acceptable or this is not acceptable.  It's

24 more of a red flag, and just says, okay,

25 something is going on here.  This district is

1  really narrow, or this district swings around

2  back on top of itself.

3      And the compactness score gives you a

4  quantitative measure of how much this district

5  does it compared to other districts in, say, a

6  state or in the whole nation; how much it did

7  it compared to previous versions of the

8  district.  It's just more of a red flag; and,

9  you know, we need to look now more closely at

10  this.

11  Q.    Okay.  And, again, I'll -- I'll get off

12  of this after I ask this question.  Are you

13  aware of any legal standards that can define

14  when a district is legally compact versus not

15  legally compact?

16  A.    Not that I know of beyond the most

17  subjective assessment.

18  Q.    Okay.

19          MR. FARR:  Does anyone want to take

20  a break?  Let's take a short break.

21          (SHORT BREAK 1:40 - 1:50 P. M.)

22  Q.    (Mr. Farr)  Professor, I'm going to ask

23  you some questions about your compactness

24  conclusions and -- and -- and so, you might

25  want to get your finger on page 4 and wherever

1   Table 1 is.

2   A.      (Peruses document.)   Okay.

3   Q.      On page 4, you say that the Rucho-Lewis

4   reduced substantially the compactness of

5   Congressional Districts 1 and 12.

6         What I wanted to know is what -- how do

7   you define -- or what do you mean by "reduced

8   substantially"?

9   A.      So, there's a -- a numerical reduction

10  in the Reock measure and the area to perimeter

11  measure.   The area to perimeter measure is you

12  calculate the area of the -- of the district

13  and then calculate the perimeter of the total

14  miles around.

15        And then take the ratio of those two.

16  They're different scores.   They measure

17  slightly different aspects of compactness of

18  the districts.

19        And what I mean is that there was a

20  substantial, noticeable, meaningful reduction

21  in compactness according to either one of those

22  measures.

23  Q.      Okay.   So, I -- I want to try to put

24  that in context.   I'm looking at your Table 1.

25  A.      Unh-hunh (yes).

1  Q.    And you stated that the Reock score

2  under the 2001 plan for District 1 was .390?

3  A.    Correct.

4  Q.    And the Reock score under the 2011 plan

5  was .294?

6  A.    Correct.

7  Q.    So, if you subtract that, what's the

8  difference?

9  A.    Point one, roughly.  I mean, there's --

10  .096.

11  Q.    It would be -- right, 096.  And that's,

12  like -- what -- so, what would be an

13  insubstantial difference?

14  A.    So, one way to think about Reock is it's

15  a ratio -- the ratio of -- if you had a

16  perfectly compacted district, and it was a

17  circle, it would be one.

18  Q.    Unh-hunh (yes).

19  A.    And so, if you had a square -- because

20  you can't fit circles all over the State, but

21  you might be able to fit squares -- it would be

22  about .65, roughly.

23  Q.    Unh-hunh (yes).

24  A.    And so, that might be a good starting

25  point to take.  It's like, okay, that's, like

1    -- as compacted of districts as we see are

2    typically around .65 around maps in the United

3    States.

4         So, if you take .65 as the base line,

5    just sort of hypothetically, how much -- what

6    percentage reduction is that?  That's a pretty

7    substantial reduction.

8         It's about a 12 percent reduction from

9    that right at .096 over .65 -- somewhere around

10   12 percent.

11   Q.    Okay.  What -- like, it is was a -- if

12   it was a .01 reduction, would that be

13   substantial?

14   A.    Point 01?

15   Q.    Unh-hunh (yes), .01.

16   A.    I -- I don't -- I don't think so.  But

17   it depends on what the base line is.  As you

18   get down to the --

19   Q.    What do you mean by base line?

20   A.    What the -- when you get very -- when

21   you -- when you get down to highly non-compact

22   districts, beca- -- well, I should say the

23   limit.

24        As you -- as you get down to -- a

25   district that is a -- got a Reock score of .02,

1   a reduction to .01 would be a fif- -- 50

2   percent reduction in the compactness.

3       If you think about geometrically what must

4   happen to that district to go from .02, which

5   is already, like, extremely non-compact, to

6   .01, it's got to get stretched out a whole lot

7   more and bent around and contorted.

8       So, it depends a little bit on -- on the

9   ex- -- extreme values.  At the extreme values,

10   it becomes harder and harder to -- now, the re-

11   -- the reductions -- percentage reductions are

12   -- are, kind of, more substantial.

13   Q.    Like, what if you had a district that

14   had a .32 Reock score, and the new district was

15   .29.  That would give you a difference of .03.

16       Would that be substantial?

17   A.    Probably not.

18   Q.    Okay.  And then have you referred to any

19   scholarly literature on -- on compactness?  Or

20   articles?

21   A.    Not in this report, I didn't refer to

22   any of it.  But there is scholarly literature

23   on it.

24   Q.    Have you ever re- -- referred to scholarly

25   literature on compactness in your studies?

1  A.    Yes.

2  Q.    Do you remember any of the literature

3  that you referred to?

4  A.    I really like Micah Altman's Ph.D.

5  dissertation and the articles that came out of

6  that.

7  Q.    Are you familiar with an article by Niemi

8  and Plides?

9  A.    Niemi and Plides, I've -- Reock's

10 original article is a -- that -- that original

11 article is one of the standard articles on how

12 do you do compactness, and how he derived that

13 specific measure.

14        Gudgeon and Taylor's book on political

15 geography -- there's a big literature -- I've

16 read a lot of -- is there something in

17 particular you're thinking of?

18 Q.     No, I'm just trying to see which ones

19 you rely upon.

20 A.    Oh, okay.

21 Q.    And so, is Niemi and Plides -- is that

22 -- how would you rate that?  Is that

23 authoritative on compactness or --?

24 A.    It's -- it's quite good.  I -- you know,

25 Reock's article is taken as one of the

1  authoritative pieces on compactness.

2  Q.    Whose article?

3  A.    Reock, the person who generated this

4  report, yeah.

5  Q.    Okay.  Okay.  And -- but Niemi and

6  Plides, how would you rate that?

7  A.    I think it's a good, you know, further

8  application and -- and examination of the

9  concept and its application in this domain.

10  Q.    Okay.  Did you know Dr. Hofeller, who's

11  our expert, was one of the authors of that

12  report?

13  A.    I did know that.

14  Q.    Okay.  Okay.  Now, your second

15  compactness test, which is ratio, area to

16  perimeter of district?

17  A.    Unh-hunh (yes).

18  Q.    Is that a -- a test that's referred to

19  in the literature?  Or is that -- is that

20  something that you've come up with?

21  A.    This is actually standard.  It's in the

22  literature.  Maptitude produces it as part of

23  its other -- other -- ArcGIS produces this.

24  Q.    Okay.  Does it have a name?

25  A.    I'm not sure.  I've -- I've seen it in

1    different reports and different studies with

2    different names.  So, I don't know if there's a

3    standard name that's commonly used.  And also

4    different literatures -- and so, we're dealing

5    literature on geography, literature on

6    political science.

7         And they use different names for the

8    different scores.

9    Q.    Okay.  And so, turning -- looking at the

10   Table 2, based upon your calculations --

11   A.    Table -- Table 2?

12   Q.    Excuse me, Table 1, my apologies.  Is it

13   correct that the Rucho-Lewis 3 First District

14   has a more compact Reock score than the Twelfth

15   District under the 2001 Congressional Plan?

16   A.    The Rucho-Lewis -- which one?  The --

17   Rucho-Lewis --?

18   Q.    Rucho-Lewis 1 has a -- has a -- has a

19   more compact Reock score than the Twelfth

20   District under the 2001 plan?

21   A.    Correct.

22   Q.    And the Rucho-Lewis District 1 has a more

23   compact score than District 13 under the 2001

24   plan?

25   A.    Correct.

1    Q.    And -- and that's also true for

2    Rucho-Lewis District 3 as compared to the 2001

3    Twelfth and Thirteenth Districts under your --

4    A.    So --

5    Q.    -- ratio of area to perimeter of district

6    test, right?

7    A.    Oh, so, are we looking at ratio/perimeter

8    or Reock?

9    Q.    Yes.

10   A.    And it's 3 versus --?

11   Q.    I'm comparing -- I'm comparing

12   Congressional District 1 under Rucho-Lewis --

13   A.    Unh-hunh (yes).

14   Q.    -- under the ratio of area to perimeter.

15   I'm comparing it first to District 12.  And

16   would you -- District 12 under the 2001 plan.

17   Would you agree that the -- the 2011 version of

18   the First District is -- is more compact under

19   the ratio of area to perimeter test as compared

20   to the 2001 version of District 12?

21   A.    Correct.

22   Q.    And it's also more compact than the

23   District 13 under the 2001 Congressional Plan?

24   A.    Correct.

25   Q.    Okay.  Do -- do you know -- now on Table

1  1 -- we've talked about the fact that the First

2  District under the 2001 plan has got this Reock

3  score .390 versus .294 under the Rucho-Lewis 3

4  plan.

5       Do you -- can you explain why that

6  difference arose?

7  A.    The -- the district boundaries were

8  shifted; and shifted in such a way that the --

9  I think what happened -- if I'm recalling the

10  maps specifically, I think what happened is the

11  district extended westward.

12  Q.    Unh-hunh (yes).

13  A.    I -- I think that extension creates some

14  of the -- but I'd have to go back and look at

15  the exact map and overlay it with the circle to

16  see exactly where the inscribed circle is

17  pushed out.

18  Q.    Okay.  Are you aware of the fact that

19  the First District under the 2001 plan under

20  the 2010 census was underpopulated by 97,000

21  people?

22  A.    That's correct.

23  Q.    Okay.  Could that explain why the

24  boundaries needed to change?

25  A.    Yes, the boundaries would have to change

1   to capture another 97,000 people.

2   Q.    Okay.  Have you prepared a map showing

3   how they could have changed the boundaries for

4   the First District and achieved a Reock score

5   that was closer to the 2001 First District?

6   A.    No, I have not.

7   Q.    Have you prepared a map to show how the

8   First District -- the 2011 First District would

9   have been drawn to achieve a more compact Reock

10  score while also achieving the political goals

11  of the General Assembly when they enacted the

12  2011 Congressional Plan?

13  A.    No, I have not.

14  Q.    Okay.  And let's go to District 12 for a

15  second.  So, I -- I can see that the 2001 plan

16  has a Reock score that is higher on the

17  compactness scale than the 2011 version.

18        Do you know why that happened?

19  A.    Do you mean District 12?

20  Q.    Yes, sir.  Do you --

21  A.    Do you mean lower on --

22  Q.    Yes, sir, I meant lower.

23  A.    Okay.

24  Q.    The -- the new district is lower on the

25  Reock score.  Do you know why that happened?

1  A.     It looks like the district extended -- if

2  I recall the boundaries specifically, I think

3  the district extend--- extended northward

4  somewhat.

5         So, it's elong- -- elongating --

6  Q.     Right.

7  A.     -- further, so it's losing its -- it's

8  losing its area --

9  Q.     Unh-hunh (yes).

10  A.     -- as it stretches north.  So, it's

11  losing its area.  That's my recollection of the

12  geometry of the district.

13  Q.     Exactly right.  So, the longer the

14  district is, the lower the Reock score is going

15  to be?

16  A.     Unh-hunh (yes).

17  Q.     Is that -- you need to say yes or no.

18  A.     Yes, that's right.

19  Q.     Okay.  Did you look at any of the

20  legislative testimony or evidence presented at

21  trial regarding why District 12 was elongated?

22  A.     No, I did not.

23  Q.     Okay.  Have you prepared any maps

24  showing how the legislature could accomplish

25  its political goals for District 12 and the

1    2011 Congressional Plan by drawing a different

2    version of District 12 with a more -- with a

3    higher Reock score?

4    A.    No, I have not.

5    Q.    Okay.  And, you know, the answers you

6    just gave about the Reock score as far as, you

7    know, under the area to perimeter test, have

8    you prepared any maps showing how the 2011

9    First District could have scored better under

10   the area to perimeter test while also achieving

11   the political goals of the General Assembly?

12   A.    No, I have not.

13   Q.    And have you drawn any maps showing how

14   District 12 could have been drawn in 2011 with

15   a -- a better score under the area to perimeter

16   test while also achieving the legitimate

17   political goals of the General Assembly?

18   A.    No, I have not.

19   Q.    Okay.  Thanks.  I'm going to skip your

20   testimony about the split counties, since that

21   -- I think that speaks for itself.

22          So, I just want to ask you a few more

23   questions about compactness, I guess.  When you

24   say Congressional District 12 is highly

25   non-compact, what does that mean?

1  A.    I'm sorry, what -- which paragraph are

2  we on?

3  Q.    I'm sorry, yes, sir, I'm on paragraph 15.

4  A.    (Reads paragraph 15)  Which line -- so,

5  "CD 12 is highly non-compact"?

6  Q.    It says -- yes, I just want to know what

7  you meant by that.

8  A.    That -- that is based on my judgement

9  having looked at a lot of maps and looked at

10  various compactness scores across maps.

11        And also, there is a rule of thumb with

12  Reock scores that's emerged that Reock below .2

13  is viewed -- viewed as, sort of, having, kind

14  of, a fairly low compactness.

15  Q.    And a- -- and above .2 is not -- is not

16  viewed as having low compactness?

17  A.    Yes, not -- people don't, like, "Oh,

18  that's a really low -- that -- what's going on

19  there?"  They don't think above .2 is -- that's

20  just a rule of thumb.

21  Q.    Okay.

22  A.    There's no -- as far as I know, there's

23  no statistical property associated with Reock

24  scores, yet, though, I think, some geographers

25  are trying to work on that issue using

1    simulations.

2    Q.    Unh-hunh (yes).

3    A.    Because you don't know what the sam- --

4    what the sample of possible districts would be.

5    And I know that John Rhoden and Joey Chan at

6    Stanford and Michigan have been working on a

7    simulation based method of trying to understand

8    compactness, but --.

9    Q.    Okay.  All right.  Have you -- in your

10   studies and your work you've done, have you

11   seen any districts that have got lower, or

12   comparable Reock scores as the 2011 version of

13   the North Carolina Twelfth Congressional

14   District?

15   A.    I -- CD 5 in Florida had -- is about the

16   same.

17   Q.    Is that a majority black district that's

18   --

19   A.    That's one of the disputed questions,

20   whether it is majority black.

21   Q.    What's -- do you know what the racial

22   composition is of that district?

23   A.    It is not majority -- well, the prior --

24   the -- the version -- I think it was called --

25   numbered CD 3 was not majority black.

1        And they altered the district to make it

2   majority black VAP, but it's not majority black

3   citizen VAP.

4   Q.    Okay.  Good -- well, that's -- that's

5   okay.  Was that the district adopted by the

6   State of Florida for -- for Section 2 reasons

7   or Voting Rights Act reasons?  Do you know?

8   A.    That was -- I don't know what their

9   motivation was.  It was adopted under this new

10  constitutional provision where they'd have to

11  get pre-clearance from the State Supreme Court

12  and so forth.

13        So, I -- that -- my --.

14  Q.    Okay.  You just don't know what their

15  motivation was?

16  A.    To get it past the various screens that

17  they would have to pass at the state level and

18  possibly the federal level.

19  Q.    Okay.  All right.  Okay, but it -- it's

20  a --

21  A.    It's not a Section 5 covered county.  It

22  doesn't -- I don't -- yeah, I don't think it

23  intersected with any of the Section 5 covered

24  districts -- counties in the state.

25        So, it was not a Section 5 question.  It

1  was a -- it might have been a Section 2

2  question.

3  Q.    Okay.

4  A.    But then there's a Section 2 question,

5  which is whether or not -- if the district is

6  not majority black VAP, you have to create a

7  majority black VAP.

8       So, that's, I think, what the -- part of

9  the question is that they're grappling with

10  right now in the courts.

11  Q.    Okay.

12  A.    And the Florida Constitution has explicit

13  compactness criteria that they're trying to

14  figure out what the standard is, so --.

15  Q.    Do you know the -- do you know anything

16  about the history of that district in Florida?

17  A.    A little bit of it.

18  Q.    Has it -- has it -- has it, kind of, had

19  the same configuration for more than one cycle?

20  A.    It's -- it -- it moved.  I'm trying to

21  remember where it moved, what -- what --

22  exactly what decade it moved in.

23  Q.    And are you a witness in that case?

24  A.    I am.

25  Q.    Are you familiar with the parties in that

1  case?

2  A.    A bit.

3  Q.    Is the NAACP a party in that case?

4  A.    They are.  There's a set of Plaintiffs

5  called the Coalition Plaintiffs.  And I think

6  the NAACP is part of the Coalition Plaintiffs.

7  Q.    Do you know who their counsel are in

8  that case?

9  A.    I don't remember the names.  I think

10 they've been mentioned to me on the phone, but

11 I don't --.

12 Q.    Does the Southern Coalition for Social

13 Justice ring a bell?

14 A.    I've heard the name.  I don't know if

15 they're involved in that.

16 Q.    Okay.  Are those Plaintiffs defending that

17 district?

18 A.    I am not sure.  I'm just -- deal with my

19 counsel and the questions that they raise with

20 me.  I'm not --.

21 Q.    Okay.  You can't answer if you don't

22 know.

23 A.    Yes.

24 Q.    Okay.  Now, let's turn to the racial

25 compositions of districts, which starts on page

1  8, paragraph 18.  Okay.

2       When you say there were no majority black

3  districts under the 2001-2011 Map, you're

4  referring to what I call the 2001 Congressional

5  plan?  Is that the same thing?

6  A.    I believe that is.

7  Q.    Okay.  And what did you mean by no

8  majority black districts?

9  A.    No majority black VAP districts.  That

10  is, none of the districts had -- were districts

11  in which a majority of the voting age

12  population were black, according to census.

13  Q.    Okay.  But then you also say that the

14  First District was majority black as to

15  registered voters?

16  A.    Correct.

17  Q.    Okay.  And did you look to see if the --

18  if either the First or the Twelfth District

19  were majority non-hispanic white districts?

20  A.    Majority non-hispanic white districts?

21  I'm trying to remember if I did a -- I don't

22  remember looking at the -- but -- whether

23  either of them was a coalitional district.

24  Q.    Okay.  If they were -- if the -- if the

25  -- under the 2010 census, if the First -- if

1    the 2001 First and Twelfth Congressional

2    Districts were non-majority or non-hispanic

3    white minority districts --

4    A.     Unh-hunh (yes).

5    Q.     -- would that then potentially make them

6    into a coalition district similar to what you

7    talked about in Texas?

8    A.     Potentially.  There'd have to be a

9    separate analysis of the voting behavior of the

10   hispanics and the blacks in the area; whether

11   they vote together in the general elections

12   with sufficient cohesion, and the whites in

13   those areas vote together with sufficient

14   cohesion in opposition; and whether or not the

15   voting is -- behavior is sufficient that they

16   can elect their -- their candidates.

17   Q.     Okay.  Now, you then say there's two

18   majority black congressional districts in the

19   Rucho-Lewis 3 Congressional Map in paragraph 19.

20   A.     Unh-hunh (yes).

21   Q.     All right.  And let's look at your table

22   2.  Now, I want to -- when you say majority

23   black congressional districts, you're just

24   using that to describe the percentage of the

25   total black voting age population in the

1    district?

2    A.    Correct.

3    Q.    Okay.  All right.  Turning to your

4    section about race is a factor in the

5    composition of the districts, one of the tests

6    you -- you performed is -- is based upon what

7    you described as the envelope of the district?

8    A.    Envelope of counties, yes.

9    Q.    Okay.  The envelope of the counties that

10   have a part of the district in -- in them?

11   A.    Correct.

12   Q.    Okay.  Where did you get that concept?

13   A.    That concept I've encountered from map

14   drawing in other contexts.  The idea is -- and

15   -- and also through a traditional districting

16   principle of trying to respect county

17   boundaries.

18         So, if you imagine there being a set of

19   counties where there is a set of people with

20   particular characteristics, and you think that

21   that district ought to go in that county, then

22   the only question is, "Okay, how exactly

23   configured is the district within that envelope

24   defined by the county?"

25         So, if I'm not going to cross additional

1   county boundaries and so forth -- so the basic

2   principle of respect for county boundaries,

3   which is a fairly common redistricting

4   principle that goes back to the beginning of

5   districting in the United States, is one, sort

6   of, starting concept.

7           And one way of approaching a map is to

8   take all the counties and start to draw maps

9   with counties.  This county plus this county

10  plus this county; keeping them -- them whole to

11  the extent possible, and then starting to split

12  them if you're overpopulated or grabbing parts

13  of counties if they're underpopulated.

14          So, it's just a -- a -- an approach to

15  districting that's following a traditional

16  Democratic -- a districting principle.

17  Q.      But you've never actually drawn a

18  Congressional plan for a state government or a

19  party that submitted it to the legislature?

20  A.      No.

21  Q.      Okay.  And this -- this envelope theory

22  that you are using, has it been recognized by

23  any courts in a case similar to this one?

24  A.      Well, certainly, in respect for county

25  boundaries is -- is something that courts do

1  look at in thinking about districting;

2  certainly, your Florida example, it's a state

3  court but not federal court in that case.

4  Q.     Right.  I got that, but what -- what --

5  A.     Keeping counties whole, and then

6  imagining where the districts are situated

7  within that.  As soon as you think about

8  keeping counties whole, then you're talking

9  about the counties themselves being the

10 envelope and restrict- -- and restricting the

11 districting within that.

12       So, it is a principle that comes out of a

13 lineage.  In terms of the specific approach to

14 how you define the sub-population that you'd

15 study in terms of assessing a particular

16 district, there are some analyses that look at

17 specific subsets of states where the counties

18 in that subset of states -- or -- or some parts

19 of the states are what are -- are used, such as

20 -- all of the -- you know, Harris County is --

21 is used, and then how are the districts

22 configured within that, or the area -- the

23 metropolitan area and how the districts are

24 configured within that.

25       In terms of assessing the likelihood that

1   a black voter ends up in a district, or a

2   Democratic voter ends up in a district, or a

3   Republican voter ends up in a district, and

4   looking at the envelope as the baseline, I have

5   not encountered that particular analysis.

6   Q.    Okay.  That was my question.

7   A.    Okay.  I didn't know which part of it

8   you meant, like --

9   Q.    No, that was good.

10   A.    -- state as the envelope or the --

11   Q.    You're just -- you answered -- you

12   answered the question I wanted to ask.

13       So, using the envelope to predict or

14   assess the number of Republicans or blacks that

15   end up in or out of a district is not something

16   you encountered before this case?

17   A.    Not -- yeah, not explicitly that, yeah.

18   Q.    That's not something that a court has

19   recognized as a way to assess the evidence in a

20   racial gerrymandering case?

21   A.    Not that I know of.

22   Q.    All right.  Now, do you have a opinion

23   on actual voting behavior by blacks in North

24   Carolina versus whites in North Carolina?

25   A.    I have written on that question in a

1  pair of articles in the Harvard Law Review.

2  Q.    Oh, good.

3  A.    It's not specifically North Carolina, but

4  it is -- it's a -- every state in the United

5  States.  And there's an assessment of voting

6  patterns at a statewide level.

7        It doesn't break it out into specific

8  sub-regions within the states, and sometimes

9  there are variations of it in sub-regions.

10 Q.    Okay.

11 A.    But the articles -- if you look at my CV

12 -- if you -- if you don't have a copy of my

13 CV, please email me, and I will send it through

14 --

15 Q.    I'll ask Mr. Speas to send it to me.

16 That would be fine.

17 A.    But the articles are Voting Rights in

18 the Eye of the Beholder -- is that right -- no,

19 no, I have three articles in the Review.  So,

20 there's one that's an analysis of the 2008

21 election, and another is an analysis of 2012.

22 So, the 2012 analysis was in 2013.

23        So, if you get on the Harvard Law Review

24 website, you'll -- and I think it's April, 2013

25 -- you'll -- or May issue, it'll be an article

1    by me, me, Nate Pursely and Charles Stewart.

2         And then the other article is from 2010.

3    And I think it's the April issue.

4    Q.    Okay.  Well, here's what I was going to

5    ask you.  There's been some other expert --

6    there was some expert testimony in the -- in

7    the Dixon case that as much as 95 percent or

8    higher of -- of black voters who vote tend to

9    vote for the Democratic candidate?

10        Is -- would you agree with that or

11   disagree with that?

12   A.    I -- I'd have to go back and look at the

13   numbers, but that could be.

14   Q.    Did you study that in -- in terms of

15   whether that was true or not in North Carolina

16   when you prepared your report?

17   A.    Not in terms of preparing this report.

18   I didn't do a racial polarization or cohesion

19   analysis for this report.

20   Q.    Well, I -- I wasn't -- I'm not sure --

21   okay.  You didn't do a racial polarization

22   analysis.  I was asking more of a political

23   question.

24        Regardless of the race of the candidate,

25   there has been testimony that blacks, whether

1  they're Democrats, unaffiliated or Republicans,

2  are likely to vote for the Democratic candidate.

3       And the percentage is in excess of 90

4  percent.  Have you ever evaluated or studied

5  that?

6  A.    I have evaluated and studied it in an

7  academic context.  I haven't done it in the

8  context of this case.  So, I haven't focused on

9  it for that.

10       And the estimates that we derived are in

11 those articles for North Carolina.

12 Q.    Okay.

13 A.    For the elections we looked at, and they

14 were explicitly about the Obama elections.

15 Q.    Right.  Did you -- did you ever -- do

16 you have an opinion on whether there is a

17 strong correlation between race and the -- in

18 fact, the race of black people and how many

19 black people vote for Democratic candidates in

20 North Carolina?

21 A.    My expectation -- and you know, based

22 loosely on my memory of that article and on

23 North Carolina voting statistics from CBS,

24 which I've gotten North Carolina as a race to

25 call, is that it's fairly high.

1        I wouldn't be surprised if it was

2   somewhere 90 percent plus.  That tends to be

3   the average nationwide for blacks.

4        They tend to vote for Democratic

5   presidential and statewide candidates at very

6   high rates.

7   Q.    And that would include registered black

8   Democrats, registered black unaffiliated and

9   registered black Republicans, would it not?

10  A.    I don't know about the sub-groups of

11  registration.

12  Q.    Okay.

13  A.    We usually just look at blacks as a

14  category and the correlation of black VAP.

15  Q.    Okay.  And white voters are -- are much

16  more split in their political affiliations when

17  they vote as compared to black voters, is that

18  correct?

19  A.    That tends to be the case, though,

20  there's -- are you referring to North Carolina?

21  Q.    Yes.

22  A.    Yeah, my recollection is they tend to be

23  more split.

24  Q.    Okay.  Are -- and that would in- -- and

25  that would include white Democrats are more

1  likely to vote for a Republican candidate than

2  a black Democrat?  Would you agree with that?

3  A.     That, I don't know offhand.  So, you're

4  -- you're -- my guess is that would be likely

5  the case.  But it's -- like, I haven't focused

6  on that analysis.

7  Q.     You haven't worked with that?

8  A.     Right.  The ideal data to look at for

9  that would be to take, maybe, the National Exit

10  Poll for North Carolina, because they have a

11  pretty good sample of people as they're leaving

12  the exit polls.

13  Q.     Okay.  And would you agree the

14  unaffiliated white voters are far more likely

15  to vote for Republican candidates than

16  unaffiliated black voters in North Carolina?

17  A.     That would be my -- my guess.  But it's

18  not -- I don't -- I didn't study that

19  explicitly.  I don't have any estimates offhand

20  to draw on.

21  Q.     Okay.  So, given that testimony, I want

22  you to explain to me your last sentence in

23  paragraph 20, where you say "If the lines were

24  drawn without regard to race, one would expect

25  that the white and black registered voters

1  would have approximately the same likelihood of

2  inclusion in a given Congressional District."

3  A.    Unh-hunh (yes).

4  Q.    And explain that to me.  I don't

5  understand that at all.

6  A.    Oh, so, if you -- if you -- as a -- as an

7  expectation, if you drew the lines without

8  regard to race -- just arbitrarily, perhaps --

9  so, if you were doing this exercise that my

10  colleagues John Rhoden and Joey do, where they

11  randomly construct a district in some part of

12  the State, what would be the resulting

13  correlation between the probability that a

14  white ends up in a district and the probability

15  a white -- a black ends up in a district, you

16  know, it would probably be uncorrelated.

17          That's what the expectation is.

18  Q.    Okay.  What if the -- what if the

19  individuals drawing the district were trying to

20  draw District 12 as an extremely strong

21  Democratic district, and the adjoining

22  districts as strong Republican districts, would

23  you still say that one would expect that white

24  and black voters should be included in District

25  12 at the same percentages?

1   A.    So, if you gave me that as the

2   conjecture, then I would have to, sort of,

3   somehow condition on party.  Let's say, given

4   the party, what's the probability.

5         So, it's, like, a second analysis is

6   introduced into the report.

7   Q.    So, you --

8   A.    And that -- if it's race versus party --

9   Q.    Unh-hunh (yes).

10   A.    -- or if party is somehow a factor, then

11   you need to do an additional analysis.  That's

12   why I did the additional analysis.

13         But if it was just a question of race or

14   not race, without any -- without anything else

15   under consideration, then that's what that

16   sentence refers to.

17   Q.    All right.  But does party necessarily

18   indicate the percentage of white Democrats who

19   vote for a  Republican candidate?

20   A.    My experience looking at exit polls and

21   working for CBS is that white democrats tend to

22   vote about 80 percent with their party; maybe a

23   little higher -- 85 percent.

24   Q.    In what states?

25   A.    It's a general pattern around the United

1    States.

2    Q.    Have you studied that for North Carolina?

3    A.    Not explicitly.  But when -- I'm trying

4    to remember what -- I -- I had the North

5    Carolina -- I had the North Carolina Senate

6    race the last time around.

7         I'm trying to remember what the numbers

8    were.  They gave us a briefing book.  I don't

9    remember what the exact numbers, but you know,

10   the white Democrats will vote overwhelmingly

11   Democratic.

12   Q.    But they're -- they're voting at a

13   percentage that's lower than what the -- the

14   black Democrats are voting for the Democratic

15   candidate?

16   A.    Correct.  And white Republicans vote for

17   Republicans at a lower rate than black

18   Democrats vote for Democrats.

19        So, in terms of the swapping, it's -- my

20   -- my guess, based on this, is white

21   Republicans look like the opposite of white

22   Democrats in terms of their percentage, voting

23   for their -- for their party's preferred

24   candidates.

25   Q.    And are un- -- unaffiliated white voters

1   likely to vote for a Republican candidate at a

2   higher rate than registered black Democrats?

3   A.      Yeah, that -- that'd be my estimate, yeah.

4   Unaffiliated generally tend to split their

5   votes pretty evenly, so that -- that would be

6   -- that would necessarily follow.

7   Q.      Right.  Well, what about un- -- would

8   unaffiliated white voters tend to vote for

9   Republicans at a higher rate than unaffiliated

10  black voters?

11  A.      I don't know that one offhand, so --.

12  Q.      You haven't looked at that?

13  A.      I don't remember looking at that one in

14  particular, but --.

15  Q.      And you've not looked at that for North

16  Carolina?

17  A.      Right.  That's a -- that particular

18  group is sufficiently small.  It usually

19  doesn't show up in the exit polls.

20  Q.      Do you know what the percentage of

21  unaffiliated voters is in North Carolina?

22  A.      I don't remember offhand.

23  Q.      Do you know what percentage of registered

24  black voters are registered as Democrats?

25  A.      I recall it was very high, like, 85

1   percent of so.  I don't remember the exact

2   number, but I remember it being very high.

3   Q.    In North Carolina?

4   A.    In North Carolina.

5   Q.    Do you recall what -- what percentage

6   black voters make up of registered Democrats in

7   North Carolina?

8   A.    So, what percentage of all Democrats are

9   black voters?  I don't remember that number

10   offhand.

11   Q.    Okay.  Let me ask you, so, if -- if the

12   -- if the lines of the district were drawn to

13   try to increase Democratic performance in one

14   -- in District 12 --

15   A.    Unh-hunh (yes).

16   Q.    -- and increase Republican performance in

17   the adjoining districts, would you expect that

18   the percentage of whites and blacks moved in

19   and out of the Twelfth District would be the

20   same?

21        Or would -- would the percentage of

22   blacks moved in be higher?

23   A.    It depends on what the adjoining

24   populations are and what the populations in the

25   district are.  Because if you remove

1   population, you could affect it as well as

2   adding to it, so --

3   Q.    Well, let's --

4   A.    -- it just depends on what the

5   population is.

6   Q.    Let's talk about North Carolina, okay,

7   and District 12.

8   A.    Right.

9   Q.    You've got three major population centers

10   for District 12, right?

11   A.    Unh-hunh (yes).

12   Q.    And then you've got this connecting area?

13   A.    Correct.

14   Q.    Okay.   The -- the -- the -- in

15   Mecklenburg County and Guilford County and

16   Forsyth County, is it fair to say that a high

17   percentage of the registered Democrats in those

18   counties are African-American?

19   A.    That's -- that's fair to say.   I don't

20   know what percentage it is, but it's -- I

21   remember it being high.

22   Q.    Okay.   And if you were going to increase

23   the Democratic performance of that district in

24   those counties, would it be likely that you

25   would be adding African-American voters to

1  those districts if you were going to increase

2  the percen- -- or the performance of the

3  Democratic candidate in those districts?

4  A.    Well, that would be one strategy.  You

5  could add white Democrats, and it would

6  increase it, because white Democrats are voting

7  for Democrats at higher than 50 percent.  You

8  could --.

9  Q.    Yes, but they vote -- they vote for --

10 the white Democrats and -- and the unaffiliated

11 whites for the Democratic candidate at a lower

12 percentage than the black Democrats?

13 A.    That would be conjectured and then --

14 you know, my guess -- I don't know -- I don't

15 know if it's -- how much lower it is.

16       And if you're -- if you're taking, say,

17 white Republicans out of the district and

18 putting white Democrats in, that's a net swing,

19 say, of -- from 20 percent Democratic to 80

20 percent Democratic of those voters.

21       That's a pretty big net swing if you take

22 a white Republican out and put a white Democrat

23 in.  I guess, the marginal improvement would be

24 another -- under this hypothetical, another 15

25 points if you put a black Democrat in.

1  Q.     Okay.   What is the -- do you know what

2  the Supreme Court of The United States says

3  about whether election results or registration

4  statistics are a better predictor of actual

5  voting conduct?

6  A.     My recollection from -- this is what come

7  up in Cromartie --

8  Q.     Unh-hunh (yes).

9  A.     -- is that they said that election in

10  Briar's opinion -- is that right -- was a --

11  I'm trying to remember.   I'm not sure I've got

12  the right opinion in mind, but that election

13  results are better predictors or preferred

14  predictors.

15         My experience analyzing data is that the

16  two are highly correlated.

17  Q.     So, you disagree with the United States

18  Supreme Court?

19             MR. SPEAS:   Objection to form.

20  A.     I'm not disagreeing with them.   I'm not

21  disagreeing with them.   I'm just saying that

22  the two are highly correlated.   So, it could be

23  that -- my practical experience predicting

24  elections is that registration statistics are

25  very useful in predicting elections.

1        Party -- party registration is a very good

2   predictor of party vote.

3   Q.    (Mr. Farr)  But your experience in doing

4   that has been in working for CBS?

5   A.    And -- and also doing academic research.

6   Q.    Okay.  But you didn't -- you've never

7   been asked to -- to draw a redistricting map

8   for a jurisdiction, so that the party that

9   hired you would end up with a more favorable

10  redistricting plan than the one that was in

11  place in the previous decade?

12  A.    No.

13  Q.    Okay.  If the -- if the -- the drawers

14  of the -- of the First District or the Twelfth

15  District were focused on election results and

16  trying to draw a stronger Twelfth District,

17  with your knowledge of where the Twelfth

18  District is located, in your opinion, would

19  that result in the Twelfth District having a

20  higher black percentage in the 2011 than what

21  it had under the 2001 plan?

22  A.    It -- it might; it might not.  It

23  depends on how much population needed to be

24  shifted.  My recollection of the statistics was

25  that District 12 was overpopulated by 2400

1  people.

2       So, to make that a legal map, if you

3  started with that district as your first

4  district to draw, to make that legal -- if you

5  were doing the least thing possible, you'd

6  remove 2400 people.

7       And that would have been the extent of

8  the change.  So, they -- just conceptually,

9  just looking at the map, from what -- based on

10  what I -- I know, that's one thing I -- you

11  know, that could have been done.

12       However, the map drawer shifted in -- I

13  don't remember the exact numbers, but it was

14  somewhere around 75,000 people -- shifted out

15  another big chunk of people -- 70 -- 77,000.

16  So, there -- there were a lot of population

17  shifts that happened between the two.

18       If you started with, kind of, the

19  minimalist approach of just make this an equal

20  population district, and they could zero it out

21  to comply with Baker v. Kerr or with some later

22  cases, like, stop there, or at least that would

23  be my experience.

24  Q.    Okay.  Is the -- in your opinion, is the

25  2011 Twelfth District a stronger performing

1  Democratic district than the 2001 version?

2  A.    I think under either map, the Democrat is

3  almost surely going to win those districts.

4  Q.    Is it -- which one is he going to win by

5  a higher percentage?

6  A.    My guess is there's a small -- there

7  would be a percentage gain.  In terms of data

8  analysis at CBS, when we forecast the House,

9  we're not going to worry about either one of

10  those districts.

11       Those are safe, safe Democratic districts.

12  Q.    Right.  But -- but -- but is the -- is

13  the 2011 version of the Twelfth likely to get a

14  higher Democratic vote total for President and

15  Congress and other Democratic races than its

16  2001 district?

17  A.    It -- it's likely.

18  Q.    Okay.  What about the surrounding

19  districts?  Have you studied those to see if

20  those districts are better performing districts

21  for Republicans as a result of the way the --

22  the Twelfth District was constructed?

23  A.    I have not studied the party performance

24  of those districts.

25  Q.    Have you studied the party performance of

1   any of the other districts in the 2001

2   Congressional Plan other than the First and the

3   Twelfth?

4   A.      Just the First and the Twelfth.  I mean,

5   I have -- I have to start studying them for CBS

6   now.  So -- summer is upon me, and the election

7   is coming, so --.

8   Q.      Turn to paragraph 38 of your report.

9   And you say that "The VTDs moved into

10  Congressional District 12 are 44.0 percent

11  black registration."  I'm going to start over

12  again with 38.

13          I'll just read the whole paragraph.

14  A.      Okay.

15  Q.      "The VTDs kept in Congressional District

16  12 (the Core) --" and that raises an issue to

17  me, because I -- I want you to define to me

18  that that means, the Core.

19          "The VTDs kept in Congressional District

20  12 are 54.0 percent black registration and 31.9

21  percent white registration.  The VTDs moved out

22  of Congressional District 12 are 23.2 percent

23  black registration and 66.0 percent white

24  registration.

25          "The VTDs moved into Congressional

1  District 12 are 44.0 percent black registration

2  and 37.1 white registration."  Okay.  Are you

3  with me?

4  A.     Unh-hunh (yes).

5  Q.     Then you say -- what -- what conclusion

6  do you reach from that?  Is that -- what is

7  that -- what's the significance of that?

8  A.     So, the net effect is moving VTDs --

9  keeping a district -- keeping -- the part of

10  the district that was kept in the district

11  without being moved in or out, that -- that --

12  that's the Core -- is 54 percent black

13  registration.

14        So, it's majority black registration.

15  That's the part that was left.

16  Q.     Unh-hunh (yes).

17  A.     And then the net change was to move out

18  VTDs that were 64 percent white registration

19  and 23 percent black registration total; and

20  then to move in VTDs that are 44 percent black

21  registration and 37 percent white registration.

22        So, the net swing is to move -- you're

23  moving out VTDs that are disproportionately

24  white; you're moving in VTDs that are somewhat

25  more black.

1        So, the net swing in black registration is

2   23.2 versus 44.0.

3   Q.    Okay.  And I -- and I don't know if

4   you've got this in the back or not.  But do --

5   do you actually have totals of population that

6   was moved out and in in one of your tables?

7        Or did you just do percentages?

8   A.    That's a good question whether I put the

9   -- I did calculate that at one point.  And I

10  was trying to keep the -- I think (peruses

11  document).  I mean, I don't -- I don't see

12  population.

13  Q.    Okay.  Do -- do you know where the --

14  the -- the moved VTDs are located in the

15  district, the ones who were moved out and moved

16  in?

17       Did you make a study of that?

18  A.    I studied it in the map.  So, I -- I

19  looked at the boundaries of the map to see

20  which areas were being moved, which -- whether

21  there were any county splits that were

22  introduced, whether there were municipal splits

23  and things like that.

24  Q.    Okay.  And you're familiar with District

25  12.  And you've got these urban centers in

1   Mecklenburg and Guilford County, and then

2   you've got the corridors that connect them?

3   A.      Right.

4   Q.      Do you consider the part of the corridor

5   that was re- -- retained a part of the core of

6   the district?  Is that how you defined Core?

7   A.      Core is the part that's left in, kept in.

8   Q.      Okay.

9   A.      That's literally what the Core is.

10  Q.      Okay.

11  A.      It's not a -- it's not a, kind of,

12  judgmental term.

13  Q.      Okay.  Now, looking at paragraph 38,

14  "The VTDs that moved out were 23 percent black

15  registration and 64 percent white registration.

16          "The ones that were moved in were 44

17  percent black registration and 37.1 white

18  registration."  Did you do any political

19  analysis of the election results in the VTDs

20  that were moved out versus the ones that were

21  moved in?

22  A.      No, I didn't, just -- I -- I studied the

23  registration.  I think I looked at the -- we

24  had -- the report I had had election results,

25  but I didn't -- of the VTDs, but I didn't know,

1    like, which voters vote for -- I just knew vote

2    share for, say, Obama.

3         But I didn't know if it was the black

4    vote, the -- you know, what percentage of that

5    was the blacks voting which way, or the

6    Democrats.

7         So, I stuck with the individual level

8    analysis to avoid, kind of, the inferential

9    problem of predicting, you know, what

10   percentage of the vote for those was coming

11   from blacks and whites.

12   Q.    Okay.  So -- well, do you -- well, do

13   you have an opinion on -- if we just looked at

14   the VTDs that were moved out of Congressional

15   District 12 versus the ones that were moved in,

16   would you -- would you have an opinion on

17   whether the ones that mo- -- were moved out had

18   a higher percentage of vote for McCain than the

19   districts that were moved in to District 12?

20   A.    No, not -- not offhand, no.

21   Q.    You didn't look at that?

22   A.    I think I did look at it, but it's not

23   in the reports.

24   Q.    Okay.

25   A.    It's not something I would -- I would

1  testify on.

2  Q.    Well, looking at the -- at the

3  registration figures where the -- the districts

4  moved out were 23.2 percent black and 64.0

5  percent white, and then you compare that to the

6  44 percent black that were moved in and -- with

7  37.1 percent white, based upon your knowledge

8  of voting patterns by blacks versus whites,

9  wouldn't it be reasonable to assume that McCain

10 performed better in the districts that were

11 moved out than he did in the ones that were

12 moved in?

13 A.    That would be my prediction.

14 Q.    Okay.  And wouldn't it be reasonable to

15 assume that other Republican candidates

16 performed better in the districts that were

17 moved out than the ones that were moved in?

18 A.    That would be my prediction, too.

19 Q.    Okay.  And that same answer would apply

20 if we looked at this from a voting age

21 population perspective?

22 A.    Yes.  It gets a little complicated,

23 because one of the other groups is not

24 mentioned in here.  Hispanics, we don't know

25 what the registration rate of those is and so

1  forth, but --.

2  Q.    Okay.

3  A.    And again, you have to make some

4  projections.  And there are some classic

5  problems with making projections where in some

6  counties the whites who are closest to the

7  blacks are the -- you know, voting --

8  residentially are the ones who are voting the

9  most strongly opposite to the blacks.

10        But then the whites that are farther away

11  are not.  That's a classic article from Jerry

12  Wright in the 1970s.  So, it depends on -- I

13  guess it depends on which whites.

14  Q.    Okay.  Oh, I'll add something I forgot

15  to ask you.  Do you know what is meant by point

16  contiguity?

17  A.    Yes.

18  Q.    What does that mean?

19  A.    So, if you have a -- if you have a VTD

20  here and a VTD here, and they just touch at one

21  point, you've got point contiguity.

22  Q.    Okay.  Do you know what's meant by the

23  term -- it's been called various things down

24  here, but one of the terms it's been called is

25  double point contiguity.

1        Have you ever heard of that before?

2   A.    I haven't heard of double point

3   contiguity.

4   Q.    Okay.  Or criss-cross contiguity?  Have

5   you ever heard of that?

6   A.    I -- I've heard of criss-cross

7   contiguity, but -- like, I don't --

8   Q.    What -- what is that?

9   A.    -- fully -- I don't fully understand that.

10  Q.    What's criss-cross contiguity as far as

11  you know?

12  A.    So, I've -- the one reference I saw that

13  comes to mind was where you've got two -- two

14  -- two -- let me get an example.

15        So -- so, the point would be just like

16  any -- any -- any corner touching at least two

17  VTDs.  The criss-cross would be a -- my

18  understanding, it was a form of point

19  contiguity.

20        But it's, like -- it has to do with the

21  -- the shape of the boundary that's connecting.

22  Q.    If a -- if a jurisdiction used point

23  contiguity, could that affect the compactness

24  scores on a Reock test?

25  A.    It depends -- depends on the shape.  So,

1    if the district actually bent around -- back

2    around itself --

3    Q.    Unh-hunh (yes).

4    A.    -- then the inscribed circle -- the

5    inscribed circle wouldn't capture the bending

6    back.  So, that wouldn't necessarily affect it.

7        The area to perimeter ratio would reflect

8    that.

9    Q.    Okay.

10   A.    That's one -- one of the examples of why

11   you'd want to look at both as, kind of,

12   indicators of what's going on with the district

13   shapes.

14   Q.    Okay.  But it's pos- -- is it possible

15   that the use of point contiguity could have an

16   impact on a Reock test?

17   A.    It's possible if I took a district here,

18   and I stuck another district on top with just a

19   point connecting them, then by virtue of

20   elongating the district and reducing the total

21   area covered, that -- that would be an example

22   where it could, but --.

23   Q.    Okay.  All right.  I've skipped a

24   paragraph I want to ask you about, paragraph

25   29.  This -- this -- we're talking about the

1  same question I just asked you about

2  Congressional 12.

3          I want to ask you about Congressional

4  District 1.  You can see in your -- in

5  paragraph 29 you say that "The VTDS moved out

6  of Congressional District 1 are 27.4 percent

7  black registration and 66.7 percent white

8  registration."  Do you see that?

9  A.      Correct.

10  Q.      "The VTDs moved into Congressional

11  District 1 are 48.1 percent black registration

12  and 37.7 percent white registration"?

13  A.      Correct.

14  Q.      Okay.  Would it be fair to assume that

15  the VTDs moved out of Congressional District 1

16  when the 2011 version was created performed

17  better for McCain than the VTDs that were moved

18  into the district?

19  A.      That -- that would be my guess just

20  blindly on the basis of these statistics and

21  the correlation between race and -- and party.

22          But again, it depends on which whites, so

23  --.

24  Q.      Okay.  Would -- would -- would it be

25  fair to assume that other Republican candidates

1   performed better in the VTDs that were moved

2   out of Congressional District 1 as compared to

3   the VTDs that were moved into Congressional

4   District 1?

5   A.    That -- again, that would be my

6   prediction.  But again, it depends on which

7   whites and hispanics and other -- others.

8   Q.    Okay.  Would you be able to determine

9   that by looking at election results?

10  A.    Election results, registration -- those

11  are the data that would be helpful.

12  Q.    But you agree election results would be

13  helpful?

14  A.    Yes.

15          MR. FARR:  Can I take a short break?

16          (SHORT BREAK 2:50 - 2:59 P. M.)

17  Q.    (Mr. Farr)  Okay.  Professor, I wanted

18  to ask you about your second report.  And --

19  A.    Before I move on to my second report,

20  can I make one change in my --

21  Q.    Sure, you're always able to do that.

22  A.    So, Dr. Hofeller pointed out something to

23  correct -- there is an error I made in

24  tabulation on paragraph 18.  It should be 19

25  counties; not 18.

1        And it should be "splits nine of the ten

2   counties." I just miscounted.  I was counting

3   by hand from the Excel spreadsheet.  And I just

4   --.

5   Q.    We'll give you that one.

6   A.    Okay.

7   Q.    No problem.

8   A.    Time for new reading glasses, I guess.

9   Q.    I just want to ask you -- I hope I can

10  get -- I'm not going to go all through your

11  second report.  It's -- it speaks for itself.

12        But I -- you made some effort in this --

13  in the second report to try to --

14              MR. SPEAS:  This is Exhibit 10?

15              MR. FARR:  I'm sorry, yes, Eddie,

16  thank you, Exhibit 10.

17  Q.    (Mr. Farr)  Did -- you made an effort to

18  try to predict election results in your -- in

19  Exhibit 10, is that right?

20  A.    Well, there's a correlation between the

21  election data, the voting -- at the voting

22  tabulation district and the registration data.

23  Q.    Explain that to me.

24  A.    It's not an attempt to actually predict

25  the election results.  The question is whether

1  or not registration and -- and voting are

2  highly related to each other; and therefore,

3  whether registration is a good indicator of

4  likely performance of the -- of the district,

5  or whether or not -- you know, if you analyzed

6  registration, you'd get essentially the same

7  conclusions or close to the same conclusions as

8  analyzing elections.

9  Q.    Did that assessment that you did include

10  an assessment of accounting for unaffiliated

11  voters?

12  A.    Unaffiliated voters are included in that

13  measure of registration.

14  Q.    Okay.  Again, how did you predict how the

15  unaffiliated voters were going to vote?

16  A.    It's not a prediction about how the

17  unaffiliated voters are going to vote.  It's

18  just a correlation between the percent vote --

19  of the two-party vote and the correlation and

20  -- and the percent of the registration that's

21  Democrat or Republican or unaffiliated.

22      So, the higher the Democratic percent,

23  the -- in registration, the higher the

24  Democratic percent in vote.  And that degree of

25  correlation is quite high -- around .8 or

1  higher was my recollection of the numbers.

2  Q.    Could you point that part of your report

3  out to me?  Because this -- this is something

4  that I really didn't understand, which is why

5  I'm asking you questions about it.

6  A.    Okay.

7  Q.    Where is this in your report?

8  A.    Table -- page 5.

9  Q.    Okay.

10  A.    Paragraph 16, 17, 19.

11  Q.    Okay.  So, I'm looking at 17.  And you

12  said --

13  A.    I --

14  Q.    I'm sorry?

15  A.    Sorry, go ahead.

16  Q.    Anything else?

17  A.    No, no.

18  Q.    I didn't mean to interrupt you.  It's --

19  so, and you said Table 5?

20  A.    I didn't say a table, but yeah, I think

21  that's the right one -- Table 2?  No, Table 1.

22  Q.    Okay.  So, you -- you correlated

23  Democratic registration -- black Democratic

24  registration and VAP against the Obama vote?

25  Is that what you did?

1  A.    Right.  When I said .8, I was

2  remembering the black and white registration;

3  not the -- so, I correlated black registration

4  versus the Obama vote and white registration

5  other than party registration.

6      So, I just forgot which number I was

7  looking at.

8  Q.    Okay.  And then did you do the same

9  thing for black VAP and white VAP in the Obama

10  vote?

11  A.    Yes.

12  Q.    Okay.  Did you look at any other races

13  besides the Obama race?

14  A.    In this -- in this report, I only looked

15  at the Obama 2008 vote.

16  Q.    Okay.  Is there a correlation between

17  black registration and voting for Democratic

18  candidates, do you think?

19  A.    Yes.

20  Q.    Do you think it would be in the same

21  range as -- as the Obama correlation?

22  A.    Yes.

23  Q.    And what about -- is there a correlation

24  between black VAP and votes for other Democrats?

25  A.    Yes, my guess is it's quite high.

1   Q.    And would it be in the same -- close to

2   the same number as -- as for the Obama

3   correlation?

4   A.    Correct.

5   Q.    Okay.  So, your -- your study shows that

6   when you take all three of those things into

7   consideration, that blacks are very likely to

8   vote for the Democratic candidate?

9   A.    Correct, and -- and particularly for

10  Obama.  I was looking at the Obama '08 vote.

11  Q.    Right.  And that includes registered black

12  Democrats and unaffiliated blacks, right?

13  A.    Correct.

14  Q.    And with the VAP would also include some

15  degree -- to some degree, Republican blacks?

16  A.    Correct.

17  Q.    Okay.  And then I wanted to ask you,

18  have you -- I know you've looked at Dr.

19  Hofeller's report?

20  A.    Yes.

21  Q.    Is there anything that he added

22  incorrectly or any data that -- that he didn't

23  quote accurately?  I'm not asking you to agree

24  with his conclusions, but did you find any

25  errors?  Mathematical errors or things he

1  reported that were not correct?

2  A.    I found no mathematical errors or in- --

3  incorrect reports.

4  Q.    Okay.   Let me look real quickly here.

5         MR. FARR:   I think I'm done.   Thank

6  you, sir.

7  A.    Thank you.

8         MR. SPEAS:   Can we have just a

9  minute?

10        MR. FARR:   Sure.

11        (SHORT BREAK 2:50 - 3:01 P. M.)

12        MR. SPEAS:   We have no questions.

13        (WITNESS EXCUSED.)

14  (FURTHER DEPONENT SAITH NOT AT 3:01 P. M.)