

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al,

Plaintiffs,

v.

THE COMMONWEALTH OF
PENNSYLVANIA, et al.

Defendants.

No. 1:CV-01-2439
(Judge Rambo)

**MEMORANDUM OF LAW IN SUPPORT OF MOTION
TO EXCLUDE EXPERT TESTIMONY BY LARRY CEISLER**

This memorandum of law is filed in support of Presiding Officers' motion to exclude the testimony of Mr. Larry Ceisler, proffered by Plaintiffs as an expert in Pennsylvania politics and Congressional elections. This case challenges the constitutionality of Act 1 of 2002, establishing 19 congressional districts in the Commonwealth of Pennsylvania pursuant to the 2000 Census. Discovery has closed. A hearing is set for March 11-12, 2001.

QUESTIONS PRESENTED

Whether Mr. Ceisler should be precluded from testifying as an expert.

Suggested answer: YES.

ARGUMENT

I. BURDEN OF PROOF

A trial court must assess, under F.R.E. 104(a), whether a proffered expert will testify to knowledge that will assist the factfinder's understanding and

determination of the issues and whether the expert's reasoning or methodology is both scientifically valid and applicable to the issues.¹ *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 592-93 (1993). The proponent must establish admissibility by a preponderance of the evidence. *Id.* at 592 n.10. In *In re Paoli R.R. Yard PCB Litigation*, the Third Circuit explained the burden in a *Daubert* challenge: "This does not mean that plaintiffs have to prove their case twice—they do not have to demonstrate to the judge by a preponderance of the evidence that the assessments of their experts are correct, they only have to demonstrate by a preponderance of evidence that their opinions are reliable." 35 F.3d 717, 744 (3d Cir. 1994), *cert. denied sub nom. G.E. v. Ingram*, 513 U.S. 1190 (1995)). "[A]n expert opinion must be based on reliable methodology and must reliably flow from that methodology and the facts at issue—but it need not be so persuasive as to meet a party's burden of proof or even necessarily its burden of production." *Heller v. Shaw Industries, Inc.*, 167 F.3d 146, 152 (3d Cir. 1999).

II. QUALIFICATIONS UNDER F.R.E. 702 ARE NOT MET

A. Applicable Standard

F.R.E. 702 provides:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

¹ F.R.E. 104(a) provides:

Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b) [pertaining to conditional admissions]. In making its determination it is not bound by the rules of evidence except those with respect to privileges.

Before an expert witness may offer an opinion pursuant to F.R.E. 702, the witness must first be qualified by virtue of specialized knowledge or expertise regarding the area of testimony. The basis of this specialized knowledge can be practical experience as well as academic training and credentials, but at a minimum, a proffered witness must possess skill or knowledge greater than the average lay person. *Elcock v. Kmart Corp.*, 233 F.3d 734, 741 (3d Cir. 2000).

B. Application

Mr. Ceisler is a paid partisan consultant and political media pundit. NT 160, 187.² Mr. Ceisler was engaged to provide expert testimony concerning Act 1, i.e., its ramifications, its effects, and how the elections would come out in the 19 districts Act 1 put in place. DT 20-21.³ A witness may testify as an expert despite the lack of formal education, if through experience the witness has gained substantially more knowledge than the average person in a specialized area of expertise. *See Elcock*, 233 F.3d at 744. Mr. Ceisler, however, lacks expertise

² Reference is made to the notes of testimony ("NT") of Mr. Ceisler's testimony during the hearing held February 1, 2002 in the Commonwealth Court of Pennsylvania in *Erfer v. Commonwealth*, 14 M.M. 2002, and to the transcript of Mr. Ceisler's February 14, 2002 deposition ("DT"), appended at Tabs A & B.

³ While some federal courts have permitted political consultants to provide expert testimony, these courts apparently were not asked to and did not analyze the qualifications of a political consultant to testify as an expert under *Daubert*. For example, in *Perez v. Pasadena Indep. Sch. Dist.*, 958 F. Supp. 1196 (S.D. Tex. 1997), *aff'd*, 165 F.3d 368 (5th Cir. 1999), *cert. denied* 528 U.S. 1114 (2000), plaintiffs alleging vote dilution of Hispanics in a school district offered as an expert the testimony of a political consultant familiar with the district's demographics, who had worked on redistricting plans for municipal elections in the local area. He was accepted only as a fact witness regarding local elections. In *Vera v. Bush*, 933 F. Supp. 1341, 1350 n.13 (S.D. Tex. 1996), the court accepted an affidavit of a political consultant as expert testimony in a case of racial gerrymandering, but the reported case is devoid of any analysis concerning the standard used by the court to qualify the consultant as an expert.

beyond that of a lay person in any specialized field relevant to this case and cannot be qualified as an expert.⁴

Mr. Ceisler testified that he has been employed for the last eight to nine years performing public relations, grass roots lobbying, and marketing. DT 6-8. He testified that he worked on various campaigns, DT 8-12, but did not articulate how this experience led to the conclusions he has reached in this matter. Mr. Ceisler has worked as a political commentator for *Roll Call*⁵ and other national publications, is a paid political analyst for Fox Television in Philadelphia, NT 159, and has been a communications consultant to the House Democratic Caucus for the last four or five years. DT 14-15; NT 160. Mr. Ceisler, however, offered no testimony as what "specialized knowledge" he possesses that would be of assistance to the fact-finder in understanding the evidence or in determining a fact at issue in this matter. He failed to demonstrate how his exposure to politics helped him develop an analysis useful to redistricting or would provide a basis for his opinions regarding the outcomes of future elections. Although he is conversant in Pennsylvania politics, Mr. Ceisler's opinions are no more helpful to resolving the issues before the court than those of any other informed Pennsylvanian exposed to media coverage of Pennsylvania politics.⁶ Because Mr. Ceisler offers no "specialized knowledge" beyond that possessed by a layperson, he is not qualified to be an expert in this case and his testimony should be excluded.

⁴ Mr. Ceisler did not provide a curriculum vitae. He testified that he received a B.A. in political science and a J.D., DT 5, but provided no testimony showing that his education informed his conclusions.

⁵ *Roll Call* is a Washington D.C. publication commenting on national politics.

⁶ Commonwealth Court questioned the utility of Mr. Ceisler's testimony, noting that he would testify to the same conclusions as the statistical expert "but not based on statistical analysis." NT 161. The court, however, noting an absence of guiding Pennsylvania law, permitted the testimony. NT 162.

Moreover, there is no evidence to demonstrate that Mr. Ceisler's testimony is the product of reliable principles and methods or that he applied the principles and methods reliably to the facts of the case as required by F.R.E. 702. Petitioners sought to qualify Mr. Ceisler as an expert in Pennsylvania politics and Congressional elections in Commonwealth Court, NT 157-60, but presented no evidence that he had *any* methodology for assessing Pennsylvania politics and elections, let alone one deemed reliable under a *Daubert/Paoli* analysis.

Far from having a consistent analytical framework for his conclusions, Mr. Ceisler provided varying subjective anecdotal bases for his predictions of the 2002 election outcomes for the 19 congressional districts established by Act 1. Mr. Ceisler opined, for example, that Congressman Mascara was unlikely to win in the new 18th District, even with a majority Democrat voter registration, because:

Mascara's problem basically is, and that's, this is where I'm from, is that that district before and traditionally was a southwestern district, Washington, Green[e], Fayette County. It's taken in more of, it's taken in more of, Allegheny County, and the new district now has much more Allegheny County, Westmoreland County. But the parts of Washington County that it retains tend to have more in common with the parts of the Allegheny County district, which means it's suburban Pittsburgh, the same thing as Westmoreland. So Mascara, who is pro-life, conservative ethnic Democrat, is going to have a very difficult time appealing to voters for a district that is suburban Pittsburgh. ... Take it from me as a person who grew up in Washington County.

DT 52. When asked if a Democrat could win in 2002 in the 18th District (which has a majority Democrat registration), Mr. Ceisler responded:

No, because I think those are Democrats who are voting Republican. I think that's a Republican district. ... [That's based on] past voting history. You know, I can look at these numbers but it's not the only thing I would rely on. I mean, especially, this is the area I'm from, and the way that district is drawn, I just don't —any Democrat there is probably going to have to come out of Washington County, and a Washington County Democrat, you know, for the most part I just don't see having the resources or the issues or whatever to win in basically what's a suburban district.

DT 77-78. As to the new 17th District, Mr. Ceisler testified it would be difficult for Congressman Holden to win because:

Again, Republican registration, past performance of Democratic candidates there, the fact that Gekas is an incumbent that is better known in that district than Holden is, because Holden only represented a certain percentage of that district. The media market is Harrisburg for his district, so Gekas has been known here, whereas Holden probably has never been on Harrisburg television before.

DT 56. In the 13th District, Congressman Hoeffel, according to Mr. Ceisler, will lose the primary to Congressman Borski because:

[The district] is set up for a Democrat from northeast Philadelphia to win the primary, because the majority of the Democrats in the district are from Philadelphia. So I believe Borski or another Democrat from northeast Philadelphia will win the primary. And also probably be a pro-life Democrat. And what will happen in the fall is they will run against a Republican pro-choice candidate, and the district being majority Republican will then vote for the Republican pro-choice candidate.

DT 58. He further explained that "voters in Philadelphia, they will tend to be party voters and they'll also tend to be very parochial voters. So they will, they'll vote for Borski because they like him as an individual, he's been an excellent congressman, and they really won't give Hoeffel the time of day." DT at 59-60.

Finally, in assessing the 9th District, Mr. Ceisler opined, DT 79, that Congressman Shuster will retain his seat because:

[I]f you look at registration, you know, it's an overwhelmingly Republican district. But his father served as a congressman there for many years, a very powerful member. So as I said before, familiarity with names is very important in Pennsylvania. So the Shuster name is a good name there. And also, anybody that runs against him, you're going to have to buy television in Hagerstown, Harrisburg, Johnstown, Altoona, and Pittsburgh. I mean, it's just, it is an unbelievably high bar to come in and take that seat from Shuster.

While Mr. Ceisler's testimony suggests a general familiarity with Pennsylvania politics sufficient to enable him to address Congressional redistricting as a political commentator, his specific opinions are not reliably derived from underlying data or grounded in a disciplined, consistent

methodology. His arbitrary selection of "factors" and subjective, quasi-personal commentary belie any notion that he has a methodology that produces reliable evidence, e.g., his opinion that Congressman Hoeffel would likely be defeated by a Philadelphia candidate in the primary because the most registered Democrat voters are in the city of Philadelphia and they "will vote, take it from me, being a Philadelphian" for a Philadelphian. NT 166-67. Mr. Ceisler's opinions are not based on a disciplined, consistent analysis of the underlying facts or data, but rather an amalgam of hearsay, second-hand information, subjective belief, and speculation. His testimony does not meet the requirement of F.R.E. 702 for reliable evidence and should be excluded. *See Paoli*, 35 F.3d at 744 (quoting *DeLuca v. Merrell Dow Pharmaceuticals, Inc.*, 911 F.2d 941, 956 (3d Cir. 1990) ("The ultimate touchstone is helpfulness to the trier of fact, and with regard to reliability, helpfulness turns on whether the expert's technique or principle [is] sufficiently reliable so that it will aid the jury in reaching accurate results."))

III. DAUBERT REQUIREMENTS ARE NOT MET

A. Applicable Standard

In *Daubert*, the Supreme Court outlined certain specific factors by which districts courts may determine the admissibility of expert testimony. The Third Circuit, in *Paoli*, summarized the *Daubert* factors and set forth four additional factors: (1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put. 35 F.3d at 742 n.8. A final factor required by *Daubert* is the "fit" between the methodology and the

particular issues in the case. *Paoli*, 35 F.3d at 754. The district courts may examine other factors as necessary to accurately evaluate the proffered expert testimony in light of the facts and circumstances of the particular case. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 150 (1999) (noting that the *Daubert* inquiry applies to all expert testimony). Because Mr. Ceisler failed to describe any methodology or disciplined analysis underpinning his conclusions, this brief can address only a few of the *Daubert/Paoli* factors.

B. Reliability Of Foundation/Underlying Data

Mr. Ceisler testified in Commonwealth Court that he reviewed data on how statewide candidates performed in various districts and looked at voter registration data for the new districts in reaching his opinions about who would win in districts currently held by Democrats. NT 169. During deposition, he stated that he had received data, statistics, and maps from Plaintiffs' counsel, DT 21, and "was able to ... look at the new districts and look at the registration, look at performance, but then compare it to what was actually happening between Democratic and Republican candidates in particular races. And then also compare it to what my working knowledge of, was and is, of these areas." DT 33. Notably, some of the documents reviewed by Mr. Ceisler already contained conclusions regarding the number of municipalities split under Act 1 and the various alternative maps. *See* DT 32-33. Mr. Ceisler summarized the basis of his knowledge and conclusions:

[B]asically I prepared for [the Commonwealth Court hearing] —it was based on what I know, because this is what I do, and my experience, a lot of conversations with a lot of people, Republicans and Democrats, articles that I had read in the paper, the papers all over the state. ... Plus, I guess the clip files from the House Democrats. So I reviewed those articles ... articles and [R]oll [C]all ... just to bring myself up to speed on everything.

DT 21. Because the data supporting Mr. Ceisler's opinions are insufficient and unreliable, his testimony should be excluded.

C. Testing The Methodology

An expert's opinion is reliable only if based on the methods and procedures of science rather than subjective belief or unsupported speculation. *Daubert*, 509 U.S. at 589; *Paoli*, 35 F.3d at 742. An idiosyncratic or subjective judgment in which the result cannot be duplicated or tested for validity generally implicates this *Daubert* factor. See *Elcock*, 233 F.3d at 746. Mr. Ceisler, at both the hearing and the deposition, failed to articulate any methodology or consistently applied analysis. In fact, Mr. Ceisler has no methodology. He does not even have a defined set of criteria by which he has or can gauge the likely outcomes of various elections, past or future.

Mr. Ceisler reviewed the results of averaged statewide elections and when asked the significance, responded:

Well, the significance is basically how if you break up the new congressional districts, even though it breaks up somewhat 50/50, the Republican candidates seem to run very well in areas with Democratic, significant Democratic registration. ... [Y]ou can look at this and say boy, you know, this is very equitable because, you know, half the districts have Republican registration advantages, half have a Democratic registration advantage. But then when you start to look at the races you'll see that registration really doesn't have much significance. So what's significant about this is looking at [] the newly drawn congressional lines, and how these different races would have played out in those lines.

DT 37-39. Responding to a question regarding election results that were not factored into the reagggregated statewide election results, Mr. Ceisler stated:

I don't put any significance in court races. ... [C]ourt races are just determined basically on what year they're conducted in. Like, if it's an off year, for instance, Democrats won't do as well because the City of Philadelphia won't have as high of a turnout. Or, there can be a significant local race that can draw a higher turnout in an area, which could skew it for a candidate. Plus, in court races ... candidates are so handicapped by what they can talk about and what they do, if you're able to raise a significant amount of money and have a coordinated effort, you can do better. Which the Republicans have been able to do. So I just, I guess that's why I'm for merit selection, because I don't think they have any basis in anything.

DT 39-40. Asked if that was his personal opinion, he responded: "Yes. I think it's probably an opinion shared by a lot of people." DT 40.

Mr. Ceisler also opined that "Philadelphia is a heavily Democratic area, it tends to vote straight Democrat, and it's also an area that has a very strong party organization that can effect a straight party vote," DT 41, and that "western Pennsylvanians tend to vote at a higher percentage than people in Philadelphia, for instance. I mean, this year when the Republicans won all the judicial elections, I mean, turnout in Philadelphia was just abysmal because there was nothing, there was really nothing going on. So there was no reason, people didn't have any reason to go out and vote. They really didn't care about Superior Court." DT 42. Asked if he considered congressional races in preparing for his testimony, he responded that:

I thought about them because I know how Congressional races are run and what their elements are and what goes into them, yes. ... [I]n coming to my conclusions I have to project how candidates would do in areas that they may not be representing now. ... I have a general knowledge. See, I can't specifically tell you what, you know, what I would draw back on, but, you know, when you ask me about Hoeffel, Borski or any of these races, I mean, I know what happened there, or what would happen there.

DT 43. Mr. Ceisler testified inconsistently that some candidates would win elections because they will run in districts having a majority of registered voters of the candidate's party, DT 47-49, while others will lose despite having a majority of registered voters of that candidate's party in the district. DT 52, 62.

As the Third Circuit recently explained: "Although *Daubert* does not require a paradigm of scientific inquiry as a condition precedent to admitting expert testimony, it does require more than [] haphazard, intuitive inquiry." *Oddi v. Ford Motor Co.*, 234 F.3d 136, 156 (3d Cir. 2000), *cert. denied* 532 U.S. 921 (2001). In *Oddi*, the Third Circuit concluded that the plaintiff "could not establish the existence of [the expert's] methodology and research let alone the adequacy of

it." *Id.* The situation here is identical –Plaintiffs cannot establish the existence of Mr. Ceisler's methodology and research, let alone the adequacy of it.

D. Other Factors

Mr. Ceisler's opinions and underlying analyses are not of the type subjected to rigorous analysis, as they are designed for the popular media and for providing public relations advice to politicians. Absent any articulation of a nexus to the underlying facts or application of some methodology beyond his own intuition, there is nothing to subject to peer review and it is impossible to ascertain any rate of error for Mr. Ceisler's assumptions regarding the outcomes of future congressional elections. Similarly, no standard methods control his analysis and no "gatekeeper" can assess the relationship of Mr. Ceisler's method to other methods known to be reliable and the non-judicial uses to which it has been put. *See Oddi*, 234 F.3d at 158. Thus, the *Daubert* inquiry into these factors weighs heavily in support of exclusion.

E. Qualifications

An expert's level of expertise may affect the reliability of his opinion. *See Elcock*, 233 F.3d at 734, 749. In *Elcock*, the district court admitted a vocational rehabilitation expert's testimony regarding the plaintiff's vocational disability, although finding it a "close call." 233 F.3d at 740. The Third Circuit, despite misgivings, concluded the district court did not abuse its discretion in admitting the testimony but stressed that the "marginal nature" of the expert's qualifications would also be considered in the *Daubert* calculus. *Id.* at 744. As discussed above in Section II, Mr. Ceisler's qualifications are insufficient and undermine the reliability of his testimony. This factor militates in favor of exclusion.

F. Fit

"Fit" refers to whether the expert testimony is relevant to the facts of the specific case so that the testimony would be helpful to the trier of fact. *Daubert*, 509 U.S. at 591.⁷ Put another way, while the scientific methodology might be valid viewed in a vacuum, it may nonetheless not be valid to prove the particular point at issue in the case. *Paoli*, 35 F.3d at 743 (citing *Downing*, 753 F.2d at 1237) (fit depends on "the proffered connection between the scientific research or test result to be presented and particular disputed factual issues in the case").

Mr. Ceisler's testimony, even if it were reliable, is not sufficiently relevant to assist the court in determining the material facts in this case. Plaintiffs seek to use Mr. Ceisler's testimony, in large part, in establishing their partisan gerrymandering claim. Under the *prima facie* standard set by the plurality in *Davis v. Bandemer*, 478 U.S. 109 (1986), Plaintiffs must establish (1) an identifiable political group,⁸ (2) that the group was intentionally discriminated against by the General Assembly, (3) that the group will suffer actual discriminatory effects as a result of Act 1 (i.e., an actual or projected history of disproportionate results and arrangement of the electoral system in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole, *Terrazas v. Slagle*, 821 F. Supp. 1162, 1172 (quoting *Bandemer*, 478 U.S. at 132)).

⁷ While most of the *Daubert* factors consider the reliability of the evidence, fit focuses on the relevance of the evidence to the case before the court. See *United States v. Downing*, 753 F.2d 1224, 1242 (3d Cir. 1985). The *Daubert* Court relied on *Downing* in discussing fit. See 509 U.S. at 591.

⁸ This is perhaps the thorniest issue in this case and one rarely addressed by the courts. Plaintiffs' experts provide nothing in the way of proof of an identifiable political group. Plaintiffs are registered Democrats who live in new Districts 16 and 13, who generally (but not always) vote Democrat, and who are not paying for this litigation. See February 13, 2002 deposition testimony of Plaintiffs (appended at Tab C). Mr. Ceisler thinks Democrat congressmen are paying for the litigation. DT 83-84. Dr. Lichtman thinks "Democratic interests in the state of Pennsylvania" are Plaintiffs' counsel's clients. Lichtman DT 17. (Tab A to Memorandum in Support of Motion to Preclude Expert Testimony by Dr. Allan Lichtman).

The salient points of Mr. Ceisler's testimony are that (1) although Democrat and Republican voter registration breaks out evenly among the new districts, voter registration is not significant because Republican candidates do very well in areas with significant Democrat registration, DT 38; (2) only five Democrat candidates would win in the 19 newly-created congressional districts in 2002, DT 47; (3) Congressmen Brady, Chaka Fattah, Kanjorski, Murtha (or Mascara) and Doyle will win their districts because of the majority Democrat voter registration in those districts, DT 47-49; (4) Democrat-incumbent Congressmen Borski, Hoeffel, Holden, Mascara (or Murtha) are not "safe" under Act 1, DT 50; (5) Republican-incumbent Congressmen Gekas, English, Hart, Peterson, Weldon, Greenwood, Sherwood, Toomey, Pitts, Platts, and Shuster will win re-election in their new districts, DT 56-73, 79; (6) a "pro-choice" Republican female candidate will win the 13th District against a "pro-life" Democratic incumbent, DT 58; (7) a Republican candidate will win the newly created 6th District, DT 62-63; (8) a Republican candidate will win in the 18th District, DT 52-53; (9) the 2002 election results will continue through the decade because of incumbency and cost of campaigning across media markets, DT 74; and (10) Republican members of Congress will support local Republicans for local elections, making it difficult for the Democrat Party to build infrastructure to create viable candidacies. DT 75.

While Mr. Ceisler insinuates throughout his testimony that Act 1 was passed to benefit Republicans and disadvantage Democrats, the goal for his testimony is to demonstrate the discriminatory effect of Act 1 on Democrats. The inference to be drawn from his testimony - that with almost equal Democrat and Republican voter registration among the new districts, it is unfair that Republicans will win 14 of 19 seats - has no relevance to determining whether Act 1 constitutes an unconstitutional partisan gerrymander. The Supreme Court made crystal clear in

Bandemer that redistricting, when performed by a state legislature, is not required to treat the two major parties proportionately. *See Bandemer*, 478 U.S. at 132.

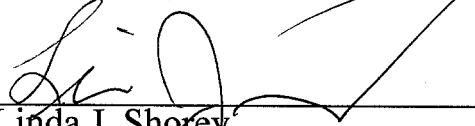
Even assuming Mr. Ceisler has correctly predicted the outcomes in all 19 districts for the upcoming congressional races, his predictions do not demonstrate that the outcomes result from the lines drawn under Act 1 as opposed to a multitude of other factors at play in any election, e.g., the quality and attractiveness of the candidate, issues of local importance, money, effectiveness of the campaign staff and the campaign plan, the candidate's willingness to campaign, the weakness of the opposing candidate, and voter turnout. Even if it might be inferred from Mr. Ceisler's testimony that Republican victories in 14 of 19 races is caused exclusively by redistricting under Act 1, his testimony is insufficient to establish an actual or projected history of disproportionate results and consistent degradation of Democrat voters' influence on the political process as a whole.

Mr. Ceisler's testimony that the effect of Republican victories in 2002 will endure throughout the upcoming decade is not only unsupported speculation but also insufficient to demonstrate that Act 1 prevents or substantially interferes with the ability of Democrats to raise money or recruit candidates, *see RPNC v. Martin*, 980 F.2d 943, 957 (4th Cir. 1993), *cert. denied sub nom. Hunt v. Republican Party*, 510 U.S. 828 (1993), or that it effectively shuts Democrats out of the political process as a whole. *See Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022, 1041 (D. Md. 1994). Unreliability aside, Mr. Ceisler's testimony is not relevant to, and does not represent a good "fit" with, the issues on which Plaintiffs bear the burden of proof.

CONCLUSION

Based on the foregoing, Plaintiffs' proposed expert witness, Larry Ceisler, should be precluded from testifying at the March 11-12, 2002 evidentiary hearing.

Respectfully submitted,



February 22, 2002

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IN THE COMMONWEALTH COURT OF PENNSYLVANIA

JOANN ERFER AND JEFFREY B. ALBERT, : NO. 10 M.D. 2002
VS. :
THE COMMONWEALTH OF PENNSYLVANIA, :
ET AL., :

TRANSCRIPT OF PROCEEDINGS
AFTERNOON SESSION

BEFORE: The Honorable Dan Pellegrini, Judge

DATE: February 1, 2002, 2:00 P.M.

PLACE: Courtroom No. 1
South Office Building
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Harrisburg, Pennsylvania

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20
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22
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25

SHERRY BRYANT, RMR, CRR
NOTARY PUBLIC

1 Ceisler.

2

3

4

LARRY CEISLER, called as a witness, being
sworn, testified as follows:

5

6

DIRECT EXAMINATION

7

8

BY MR. SMITH:

9

Q Can you state your name for the record.

10

A Larry Ceisler.

11

Q And how is that spelled?

12

A C-e-i-s-l-e-r.

13

Q Where do you reside, Mr. Ceisler?

14

A Philadelphia, Pennsylvania.

15

Q And what's your educational background?

16

A A BA in political science from American

17

University in Washington, D.C., and a law degree from

18

Duquesne University in Pittsburgh.

19

Q Can you describe your background, with

20

particular emphasis on your involvement in political

21

activities in the state of Pennsylvania?

22

A Yes. I was born and raised in Washington

23

County, and I was involved in politics there. I moved to

24

Washington, D.C. for college and I was involved in politics

25

there. In fact, when I was 18 years old, I was elected to a

1 Democratic midterm convention. I was the youngest delegate
2 in the country.

3 I worked on presidential campaigns in 1976 and
4 1980. I then became a television producer in Pittsburgh at
5 KTK TV, where I worked on political stories. And then I
6 moved to Philadelphia and worked as a television producer at
7 KYW Television.

8 I was then recruited to be the deputy campaign
9 manager for, political director for W. Wilson Good's
10 reelection campaign in 1987. After that successful campaign,
11 I went into the Good administration, where I was a special
12 assistant to the mayor, where I actually oversaw governmental
13 relations with an emphasis on federal relations.

14 After that, I opened a political public
15 relations consulting firm, where we worked on elections on
16 every level, federal, state and local. I've worked on --

17 Q Let me interrupt you just for a moment. Were
18 those all in Pennsylvania?

19 A Yes.

20 Q And this was a consulting firm where you were
21 hired to work for the campaigns?

22 A Right. And we were -- one of the reasons we
23 were hired for Pennsylvania is because of my perspective on
24 Pennsylvania, having grown up in western Pennsylvania and
25 living in Philadelphia.

1 Q Now, can you tell us a breakdown of candidates
2 that you've worked for, campaigns you've worked for, in terms
3 of Democrat versus Republican?

4 A I've worked for all Democrats, but I have
5 worked for Republican candidates. I've worked for -- I
6 worked in Senator Specter's reelection campaign in 1992
7 against Lynn Yeakel. And in 1995 and 1999, I worked for
8 Councilman Frank Rizzo, who's also a Republican.

9 Q Can you give us a rough idea of how many
10 different political campaigns you've worked on in the state
11 of Pennsylvania?

12 A I've probably worked -- I've probably worked
13 in over 50, over 50 campaigns.

14 Q Now, do you also have a role as a political
15 commentator in your more mature years?

16 A Yes. I have morphed into a learned person.
17 And what I've done is I do less of the campaign work and I do
18 more public relations. So now that I can be more objective,
19 I get called on by newspapers all over the Commonwealth. I
20 get called by Roll Call out of Washington, D.C., a lot of
21 national publications.

22 I'm also a paid political analyst for Fox
23 Television in Philadelphia, and that started in 1999 in the
24 mayor's race, and that has continued.

25 Q Can you give us some sense of the frequency

1 that you appear on television for Fox?

2 A Well, whenever there's an election, I'll
3 appear. I'll appear every day, you know, within a couple
4 months of an election. When there's not an election,
5 whenever there's an issue that even touches on politics, for
6 instance, I was on the other night, because the mayor and
7 city council in Philadelphia don't get along too well, so
8 they had me explain why that's the case.

9 Q Do you have some affiliation with the House
10 Democratic Caucus here in Harrisburg?

11 A Yes. I have been a communications consultant
12 to the House Democratic Caucus for approximately the last
13 four or five years.

14 Q And you may have mentioned this, but did you
15 work on Congressional campaigns in the state of Pennsylvania?

16 A Yes. I've worked on several Congressional
17 campaigns. Probably the highlights were the Marjorie
18 Margolis-Mezvinsky election, successful election, and then
19 the reelection that she lost right after that, which is the
20 district that Congressman Hoeffel holds. I also worked for
21 Congressman Holden in two of his campaigns, and I worked,
22 I've worked in others in the city of Philadelphia.

23 MR. SMITH: Your Honor, I would offer
24 Mr. Ceisler as an expert in Pennsylvania politics, including
25 Congressional elections.

1 THE COURT: May I ask why?

2 MR. SMITH: Your Honor?

3 THE COURT: What's he going to testify to?

4 MR. SMITH: He's going to testify to his
5 assessment as an observer, the kind of analysis that he does
6 in his profession, of how these districts will function, how
7 many Democrats and Republicans will win, that sort of thing.

8 THE COURT: Essentially, what Mr. Lublin
9 testified to, but not based on a statistical analysis.

10 MR. SMITH: Mr. Lublin said, of course, about
11 seven times he's not an expert on Pennsylvania politics, so
12 it seemed like it was a good combination, Your Honor.

13 THE COURT: Mr. Krill?

14 MR. KRILL: Yes. I object to the witness'
15 testimony as proffered by counsel, Your Honor. I object,
16 number one, on the grounds of methodology.

17 THE COURT: We don't know the methodology yet.

18 MR. KRILL: Well, yes, and the methodology is
19 not accepted in any expert community here, nor would the
20 conclusions be. This just doesn't meet the Frye test in
21 Pennsylvania.

22 Now, furthermore, I object on relevance.
23 We're talking here about an effort to overturn a duly enacted
24 statute that's entitled to a presumption of
25 constitutionality. It would be unprecedented for this

1 evidence to have probative value. I'm sorry, Your Honor,
2 forgive me --

3 THE COURT: I mean it's the same as the --

4 MR. KRILL: -- a talking head to overturn the
5 statute.

6 THE COURT: -- case and they're talking about
7 the districts that the United States Supreme Court struck
8 down because of racial gerrymandering, and they offered him
9 in this case to show the impact of what the vote would be in
10 that case. I think he can testify and I think that kind of
11 testimony.

12 Now, that begs the question, because I'm only
13 here under Pennsylvania law, but at a later date we're going
14 to determine -- see, if everybody would have waited for the
15 Federal Court, they should have after Federal -- February
16 11th is --

17 MR. KRILL: Postponed, Your Honor.

18 THE COURT: Oh, till this?

19 MR. KRILL: March 11th now in Federal Court.

20 THE COURT: Well, that's kind of the schedule
21 I was on, too. But I don't know. We have to decide what
22 Pennsylvania law is and, quite frankly, I don't know what
23 Pennsylvania law is at this moment because most of these
24 cases have always been decided on federal law, not state law.
25 So I guess the long answer to your short objection is that

1 I'm going to allow the testimony and it will be relevant when
2 we find out what the law is here.

3 MR. SMITH: Thank you, Your Honor.

4 BY MR. SMITH:

5 Q Mr. Ceisler, are you familiar with the
6 Congressional redistricting plan that was passed by the
7 General Assembly in January of this year?

8 A Yes, I am.

9 Q And that's up on the board as Exhibit 6; is
10 that right?

11 A Yes.

12 Q When did you first see that map?

13 A I saw it the day it was presented to the House
14 Democratic Caucus, because I happened to be in Harrisburg
15 that day.

16 Q And do you know roughly when that was?

17 A No.

18 Q And do you have an opinion about the likely
19 impact of this map if it's allowed to be used in the upcoming
20 election?

21 A It's just an egregious drawing of district. I
22 think it's going to impact not only the citizens of
23 Pennsylvania, but the Democratic party. Just because of the
24 way it's split up, I don't think you're going to be able to
25 have effective representation. And also we're going to lose

1 many Democrats and we're going to lose a lot of seniority.

2 Q Let's pull those pieces apart. What do you
3 mean by effective representation?

4 A Well, I worked, I worked in a Congressional
5 office in Washington, D.C. I worked for Dr. Thomas Morgan,
6 and I also, you know, oversaw federal relations for the city
7 of Philadelphia. So I understand how a Congressman's office
8 works.

9 I do not think, the way some of these
10 districts are drawn, that many communities are going to get
11 effective representation, because what's going to happen is
12 Congressmen are going to be forced to choose between
13 competing interests of their district, of different
14 communities, and they're going to go to their base.

15 So if Frank Mascara, for instance, you know,
16 has two -- two communities are looking for, you know, for
17 water projects or whatever from the federal government and
18 one's in his base and one's not, it's going to be an easy
19 answer for him.

20 Now, these Congressmen, they're asked a
21 question are you going to effectively represent these people.
22 Well, of course, they're going to say yes, because if they
23 say no it's going to get used in a political ad against them.
24 But there is no way that they can represent these people
25 effectively.

1 Q Now, when you said it's bad for the Democratic
2 party, can you tell us what you mean by that?

3 A Well, as I see it, only five Democrats are
4 going to survive under this map.

5 Q Let's, if you could, ask you to identify those
6 five people that you think in this map would be able to
7 succeed in being reelected.

8 A Well, I believe Congressman Brady and
9 Congressman Fattah in Philadelphia.

10 Q Those are the two districts in the city of
11 Philadelphia?

12 A Yes, yes. Congressman Kanjorski.

13 Q And he's up in Wilkes-Barre-Scranton area,
14 generally?

15 A Yes, yes. Congressman Doyle in Pittsburgh and
16 then whoever represents the Murtha district.

17 Q And can you explain to me what you mean by
18 saying whoever represents the Murtha district?

19 A Well, if I was advising Congressman Mascara, I
20 would tell him, I would advise him to run against Congressman
21 Murtha, because I think that's his best and only shot to stay
22 in Congress.

23 Q Can you tell us why you don't think it would
24 make sense for him to run in District 18?

25 A If you look at the numbers, and Congressman

1 Mascara testified to that, he cannot win in the 18th
2 district. That district is -- just skews Republican, and
3 somebody from Charleroi is not going to win that.

4 Q Is there an individual who's the likely
5 nominee of the Republican party in that district?

6 A Yes. That's Senator Murphy.

7 Q Now, let's look at the other Democrats that,
8 in your view, would not succeed in winning reelection in
9 addition to either Mr. Murtha or Mr. Mascara in this matter.
10 Can you tell us who they are?

11 A We can start with Congressman Borski and
12 Congressman Hoeffel. They've been paired together.

13 Q And how do you see the politics of that
14 district playing out in the coming year if it's left in this
15 configuration?

16 A Well, as it's designed, it is designed for a
17 Democrat from northeast Philadelphia to win a primary against
18 Congressman Hoeffel. That -- if it's not Congressman Borski,
19 if Congressman Borski does not run, some other Democrat from
20 northeast Philadelphia will run. They will defeat
21 Congressman Hoeffel in the primary.

22 Q Let me interrupt you there. Why do you think
23 that Congressman Hoeffel would be defeated by a Philadelphia
24 candidate in the primary?

25 A Because the vast majority of registered

1 Democratic voters are in the city of Philadelphia, and they
2 will vote, take it from me, being a Philadelphian, they will
3 vote for a Philadelphian.

4 Q Okay.

5 A And then when Congressman Borski has to run in
6 the general election, now the district is majority
7 Republican. And these are moderate, these are moderate
8 Republicans and the abortion issue is a -- and I've worked in
9 this district -- is a very important issue in this district,
10 and they will vote for the pro choice Republican candidate.

11 Q Is there an individual who's been slated by
12 the Republicans to be that pro choice candidate?

13 A Yes. Senator Santorum has picked Dr. Melissa
14 Brown.

15 MR. KRILL: Objection, Your Honor. I think
16 we're hearing hearsay at this point.

17 THE COURT: Well, has anybody announced for
18 the seat?

19 A Well, I know that there is a -- there's a
20 letter from all the Congressmen in that area endorsing
21 Melissa Brown. She has announced her intentions to run and
22 she's using Senator Santorum's media consultant.

23 THE COURT: Well, that's -- I mean Republicans
24 you said use you. So what does that mean?

25 A They're smart.

1 THE COURT: So I mean that's all you can
2 testify to.

3 A Okay.

4 THE COURT: You can't say that Santorum slated
5 her.

6 MR. SMITH: Fair enough, Your Honor.

7 BY MR. SMITH:

8 Q While we're on the subject of District 13, we
9 had some discussion this morning about the portions of
10 District 8, the Bucks County district, that come down into
11 District 13, and I wonder if you could give us your analysis
12 of the politics of those two incursions?

13 A Right. That's going to -- that's going to
14 cripple the reelection, the election of any Democrat, because
15 what's happened is you have Congressman Greenwood's 8th
16 district in Bucks County coming down to take part of
17 Philadelphia. I believe it's the 58th ward. And then also,
18 as Congressman Hoeffel said, the Greenwood gash in that area
19 is a Democratic area. So those are Democratic votes that
20 would go to a Democrat in a general election.

21 Q I'm putting up in front of you Petitioner's
22 Exhibit 11. This is the close-up of the Philadelphia area in
23 the newly enacted map. Can you just show us the areas in
24 which District 8 comes down and picks out Democrats and pulls
25 them back up into District 8?

1 A Sure. Let's see. It's down in here, this is
2 the 58th ward. And let's see, it picks up Washington
3 Township. I can't read this.

4 Q It's too close a close-up, perhaps.

5 A This is Greenwood. I know it's the 58th ward
6 in Philadelphia. Did they change the -- I'll tell you this
7 redistricting has been a boon for color maps.

8 MR. SPIVA: We may have a better map,
9 actually.

10 MR. SMITH: I'll withdraw the question, Your
11 Honor.

12 BY MR. SMITH:

13 Q Now, in coming to your opinions about who's
14 going to win in these various districts currently held by
15 Democrats, Mr. Ceisler, have you reviewed data on how
16 statewide candidates have performed in those districts?

17 A Yes, I have.

18 Q And are those data consistent with the
19 conclusions that you've stated today?

20 A Yes.

21 Q Have you also looked at voter registration
22 data for the new districts that were created last month?

23 A Yes, I have.

24 Q And do those data match up with the
25 conclusions that you've stated today?

1 A No.

2 Q And can you tell us, in your opinion, why they
3 don't?

4 A Well, because it basically shows that a lot --
5 I think over half the districts have Democratic registration,
6 but those districts don't perform for Democrats as per the
7 registration.

8 Q And do you have some opinions about why that's
9 true?

10 A Yes.

11 Q Can you tell us what those are?

12 A Well, number one, registration figures
13 themselves I'm always skeptical of. Doing political
14 consulting, I send out a lot of mail and whatever and you
15 always see a lot come back. We have a problem in this state
16 with that. You have Motor Voter. You have not a good
17 purging system, and then so that makes them inaccurate.

18 You have a lot of -- you have independent
19 voters, of course. And then you have Democrats who vote
20 Republican who just haven't bothered to change their
21 registration. I mean we have -- as has been testified, we
22 have a very old state here and we have a lot of Reagan
23 Democrats.

24 Q Now, do you have an opinion about the effects
25 of this new map, that this new map would have on the clout of

1 the state of Pennsylvania in Washington?

2 A Yes. I think it's going to diminish it
3 significantly. We're going to lose Congressman Borski, and
4 Congressman Borski, because of his position, it used to be
5 called Surface Transportation Committee, but we're going to
6 lose billions of dollars in road money, airport money. I
7 mean I know in Philadelphia he's been getting a lot of money
8 for SEPTA. But, again, they work for the whole state. And
9 then if Congressman Murtha loses, we will lose his clout on
10 the Appropriations Committee.

11 Q Now, let me pause for a moment and ask you a
12 little bit about a couple of statewide races and how they
13 relate to the new Congressional districts. Are you familiar
14 with the 1996 Attorney General's race between Fisher and
15 Kohn?

16 A Yes. I worked for Joe Kohn in that race.

17 Q And was that the closest race in the last
18 decade in a statewide election?

19 A Yes, I believe it was.

20 Q And can you tell us what the percentages were
21 of the major party vote that each candidate received in that
22 election?

23 MR. KRILL: Excuse me, Your Honor. I'll
24 object to the witness consulting documentation that is on his
25 lap. If he's being asked a question, he should be able to

1 answer it. If he doesn't know the answer, he should say so.

2 THE COURT: Do you want him to say 22,100
3 votes or do you want him to say he got a little bit more? If
4 you want to examine the list, you can examine the list,
5 but --

6 MR. KRILL: I'm objecting to a witness being
7 asked questions and testifying as though of his own
8 knowledge.

9 THE COURT: Lay a foundation as to what list
10 he's looking at, because it looks like it's some computer
11 printout.

12 BY MR. SMITH:

13 Q Mr. Ceisler, what is this document?

14 A This is election results.

15 Q Of the districts, district by district from
16 the conference plan?

17 A Yes.

18 MR. SMITH: It's actually a portion of what's
19 in Exhibit 56, which was the backup given to Dr. Lublin. He
20 has a couple of additional figures written down there in case
21 he didn't remember them in his head, Your Honor.

22 THE COURT: I think the question was what was
23 the difference in the race between Kohn and Fisher, which to
24 me should not be a controversial issue, because the number is
25 what the number is.

1 MR. KRILL: I agree, Your Honor, but to me
2 what is controversial is a witness on a written transcript
3 appearing to be testifying off the top of his head when, in
4 fact, he's consulting an exhibit.

5 THE COURT: Yes, but I'm here, although the
6 Supreme Court is not here.

7 MR. KRILL: Exactly.

8 THE COURT: But I think they know now.

9 MR. KRILL: My purpose, Your Honor.

10 BY MR. SMITH:

11 Q Can you tell us what percentage of the major
12 party vote Fisher and Kohn got in the 1996 Attorney General's
13 race?

14 A Yes. Fisher got 50.8 percent, Kohn got 49.2
15 percent.

16 Q And referring to the breakdown district by
17 district there, can you tell us with 50.8 percent of the vote
18 how many Congressional districts in the 2001 conference plan
19 Fisher carried?

20 A Thirteen.

21 Q And how many Congressional districts with 49.2
22 percent of the vote did the Democrat, Kohn, carry?

23 A Six.

24 Q Are you also familiar with the 2000 treasurer
25 race between Hafer and Knoll?

1 A Between Mina Knoll, right. We have a lot of
2 Knolls in this state.

3 Q Was that also a very close race?

4 A Yes, it was.

5 Q What are the percentages of the major party
6 vote that each of those candidates received in the year 2000?

7 A Hafer got 51.1 percent, Mina Knoll 48.9
8 percent.

9 Q Referring to the districts that have been now
10 drawn by the legislature, with 51.1 percent of the vote, how
11 many Congressional districts did Hafer carry?

12 A Fourteen.

13 Q And how many Congressional districts did
14 Knoll, with 48.9 percent of the vote, carry?

15 A Five.

16 Q Now, turning to the effects of the map that
17 was enacted, do you have an opinion about how it will affect
18 campaigns for Congress in the coming decade if it's left in
19 place?

20 A Yes. There's only two groups of people are
21 going to be satisfied with this, and that's going to be
22 incumbent Congressmen --

23 MR. KRILL: Excuse me. Your Honor --

24 Mr. Ceisler, excuse me. Your Honor, I think the question was
25 in coming decades. Now, let me renew my objections to the

1 methodology, expertise --

2 THE COURT: How about in the coming decade?

3 MR. SMITH: That is certainly what I intended
4 to say, Your Honor. If that's not what I said, I withdraw
5 the question.

6 MR. KRILL: It was a plural decades and, Your
7 Honor, frankly, I don't believe the methodology has been
8 established to prognosticate for this year, much less for the
9 decade.

10 THE COURT: I think you hope that you've
11 prognosticated it for at least this year.

12 MR. KRILL: I'm talking about this witness.

13 THE COURT: You can answer the question.

14 BY MR. SMITH:

15 Q I intended, Mr. Ceisler, to ask you about the
16 effect it will have on campaigning for the next ten years.

17 A Campaigns are going to become very expensive
18 in Pennsylvania.

19 Q Can you tell us why?

20 A Well, if we can look -- I mean campaigns now
21 are media driven, and ideally what you want to do is you want
22 to run a campaign in one television market, one radio market.
23 But what we have here, we have districts running across
24 several markets, which is going to not only multiply the
25 amount of money that's going to be spent in a campaign, but

1 also make it less efficient.

2 So, for instance, if you look at the -- if you
3 look at the Mascara-Murtha seat, they're going to have to buy
4 television and radio in Pittsburgh, Johnstown, Altoona. If
5 you look at the Shuster, the Shuster seat is unbelievable.
6 They're going to have to buy in Pittsburgh, because they're
7 in Fayette County. They're going to have to buy in
8 Johnstown, Hagerstown, Maryland, and Harrisburg. And so when
9 they buy in Harrisburg, it's just not going to be very
10 efficient, and that goes throughout the whole map.

11 MR. KRILL: Your Honor, I move to strike the
12 witness' testimony, because it's clear that that has nothing
13 to do with any conceivable state constitutional issue.

14 THE COURT: I think I have to agree with you.
15 Although it makes eminent sense to probably cluster the 19
16 Congressmen around media markets, but it's nowhere in the
17 State Constitution. It makes eminent sense, but I have to
18 strike the testimony.

19 BY MR. SMITH:

20 Q Do you have an opinion about the likelihood
21 that the 14-to-5 breakdown that you've described will persist
22 through the coming ten years?

23 A Yes. Incumbents, incumbents win in
24 Pennsylvania. And because the cost of election is going to
25 be so high, it's going to be a bar to people running against

1 incumbents effectively. So I think this plan is an incumbent
2 protection plan for those 14 Republicans and the five
3 Democrats.

4 Q Now, can you tell us roughly how many
5 municipalities in the state of Pennsylvania are divided by
6 the district lines in Exhibit 6, the 2001 plan?

7 A I believe there are approximately 65
8 municipalities. I don't know how many school districts, but
9 65 municipalities.

10 Q How does that compare with the prior map?

11 A I believe that the prior map was 13. So it's
12 a fivefold increase.

13 Q And have you reviewed the first and second
14 alternative plans that we've presented this morning?

15 A Yes, I have.

16 Q And how do they compare with the conference
17 plan in that regard?

18 A I believe there are approximately 18, 18 split
19 municipalities.

20 Q Do you have an opinion about the political
21 impact of those plans in terms of how many Democrats and
22 Republicans would be elected under the first or second
23 alternative plan?

24 A Yes. I believe it's going to be ten to nine
25 Republican.

1 Q And what pairings, what kinds of pairings
2 appear in those plans?

3 A Do you want to put those up or --

4 Q Just as an example, I don't think we need to
5 go through it in detail, but just generally what kind of
6 pairing strategy was followed in these plans?

7 A Well, I know they put --

8 MR. KRILL: Excuse me, I'm going to object to
9 the question. What kind of pairing strategy was followed in
10 these plans? That goes to the intent of the General
11 Assembly. What effect is a question that hasn't been asked.

12 THE COURT: I think the speech and debate
13 clause only applies to members of the General Assembly, not
14 to anybody else. And the other part of it is it's almost
15 repetitive, because Dr. Lublin testified to the same thing.
16 And essentially what they did he testified to is they paired
17 up the Democrats to eliminate the Democrats. Is that what
18 you want to get out of this testimony?

19 MR. SMITH: Your Honor, I was talking about
20 the alternate plan. The testimony is going to be that
21 there's one pairing of Republicans and one pairing of
22 Democrats to maintain parity.

23 THE COURT: So it's not the old plan?

24 MR. KRILL: I thought that I heard your
25 question framed in such a way that it was referring to what

1 some they did or intended to do under the old plan. If not,
2 if you're referring --

3 THE COURT: When I hear they, I always in this
4 particular, I hear the net effect.

5 MR. KRILL: Okay.

6 THE COURT: I mean it's this they that's out
7 there.

8 A Can I answer, Your Honor?

9 THE COURT: Yes.

10 A In the two alternate plans, they have
11 Greenwood and Toomey together in one plan and in the other
12 plan they have Shuster and Platts.

13 BY MR. SMITH:

14 Q And is there a pairing of Democrats?

15 A The Democratic pairing would be Coyne, the
16 Coyne and Doyle seats.

17 Q Let me show you what we've marked as Exhibit
18 36, Mr. Ceisler. Are you familiar with this document?

19 A Yes.

20 Q And is this a page from a website operated by
21 the Pennsylvania Republican party?

22 A It is.

23 MR. SMITH: Your Honor, I would move the
24 admission of this. I thought I should make a motion here,
25 because obviously it is hearsay unless it's an admission, and

1 the question is really would you treat a statement by the
2 Republican party of Pennsylvania as an admission.

3 THE COURT: They're not a party.

4 MR. SMITH: But they're certainly in privity
5 with the parties here and it's a partisan gerrymandering
6 case.

7 MR. KRILL: They're not a party, Your Honor.

8 THE COURT: I don't think you can get it in
9 under that hearsay exception. They're not a party.

10 MR. SMITH: Okay, Your Honor.

11 BY MR. SMITH:

12 Q Mr. Ceisler, did you have occasion to become
13 familiar with the process that led to the enactment of the
14 2001 plan?

15 A Yes, I did.

16 Q And can you describe that process?

17 A We started work on it. Because I work for the
18 House Democrats, we knew --

19 MR. KRILL: Objection, Your Honor. Now we are
20 into speech and debate immunity and, again, we have the
21 phenomenon of someone who is staff working for members in one
22 of the bodies in the General Assembly appearing to waive his
23 speech or debate immunity, he said he worked for them, and,
24 therefore, putting others, the people on the other side in
25 the awkward position of having to say, well, if we want to

1 rebut we've got to waive ours.

2 And that's why speech or debate immunity isn't
3 waivable in this context. It's quite different than if, say,
4 it was a tort suit against a member who could waive it with
5 no other political implications. It's not waivable in this
6 context.

7 THE COURT: See, here's the problem that I
8 mean we had from the date of the first conference when I was
9 also surprised by my ignorance that intent made a difference
10 and I always thought the net effect was what made the
11 difference. The intent, you could have an intent to get 19,
12 all of 19 Republican seats, but the net effect would be the
13 Democrats got 19 seats.

14 So I'm still trying to figure out what intent
15 has to do with it. It's only the outcome that matters. But
16 everybody tells me that intent is an issue in these cases.
17 So how do you -- I'm asking you this, how do you prove intent
18 other than saying what the intent was? I mean I never
19 thought intent was an issue in these cases, but everybody
20 tells me it is, so how do you prove it? You can help him
21 out.

22 MR. KRILL: Yes. Maybe I can help him out.
23 The answer is that sometimes you can't prove it. Sometimes
24 it is simply unprovable, either as a matter of fact or as a
25 matter of law. And if that's the case, tough luck for the

1 plaintiffs.

2 Now, there are situations where speech or
3 debate immunity would not apply. You know, there are school
4 districts that elect regionally rather than at large. There
5 are lots of bodies to which speech or debate immunity does
6 not apply. However, it applies to the General Assembly of
7 the Commonwealth.

8 THE COURT: So, in effect, what you're saying
9 is that if you have to prove intent by the members, you can't
10 prove intent by the members, even though the United States
11 Supreme Court says intent is an element in Congressional
12 districting.

13 MR. KRILL: The United States Supreme Court,
14 however, has not said that speech or debate immunity doesn't
15 apply, but what this Court has said, and I'm not sure it said
16 it in Davis v Bandemer, it may have said it in a subsequent
17 case, but I think it's Davis, that perhaps you can prove
18 intent through objective indicia that are inferable from the
19 bill or the statute. If that can be done, then it can be
20 done. If it can't be done, you can't pry into the workings
21 of the body.

22 THE COURT: So we're back to the outcome
23 proves the intent.

24 MR. SMITH: Your Honor, if I might --

25 THE COURT: Is that about it? I mean that's

1 what --

2 MR. KRILL: Certain outcomes, yes.

3 THE COURT: Okay.

4 MR. SMITH: Your Honor, there is, in fact,
5 language in the Davis case which says that that's often the
6 best proof of intent, but those cases also routinely look and
7 see whether there was opportunity for input from the other
8 party, whether there was some fair consideration in the
9 process. And so it's not --

10 THE COURT: Go ahead.

11 MR. KRILL: You know, I've read those cases,
12 too, Your Honor, and the one thing that stands out to me is
13 that in those cases where there has been actual testimony
14 from legislators about what went on within their state
15 legislatures, nobody raised the issue and, therefore, it was
16 not litigated.

17 There is no holding, I assure you, from the
18 U.S. Supreme Court that says that speech or debate immunity
19 does not apply in that context. Sometimes these things get
20 litigated because people don't raise it. They don't have to
21 raise it if they don't want to. We are raising it here.

22 THE COURT: I understand that. What was your
23 question, again?

24 MR. KRILL: It was a fairly general question
25 about describe the process that led up to the enactment.

1 THE COURT: He can describe the process. He
2 can't describe anything that would come as -- he wasn't a
3 staffer, he was a consultant.

4 MR. KRILL: It's the same thing under the law,
5 Your Honor.

6 THE COURT: As what the intent of any member
7 of the General -- but you can describe the process, because
8 the process is transparent. It should be transparent.

9 BY MR. SMITH:

10 Q Mr. Ceisler, if you can describe the process
11 without specifically characterizing anybody's intent or any
12 particular hearsay statement, just generally how did the
13 process go, what kind of input did the Democrats have in the
14 process?

15 A None.

16 Q When did they first have --

17 MR. KRILL: Objection, move to strike, Your
18 Honor. I mean I think that violates speech or debate.

19 THE COURT: Why does that violate speech or
20 debate?

21 MR. KRILL: Well, because --

22 THE COURT: He's saying there was no speech or
23 debate.

24 MR. KRILL: No. He's contending that within
25 the body there was no input on one side. Now, I would say

1 that's contradicted in the record to some extent by the
2 Congressman's testimony, but nevertheless, to say that there
3 was none is a conclusion about what happened or didn't happen
4 within the body. That's speech or debate immunity.

5 The process is a matter of public record and
6 Your Honor knows that it's a matter of bill printer numbers
7 and the legislative journals. That's it.

8 THE COURT: Do I take judicial notice that it
9 was introduced and passed within X many hours and that you
10 can infer intent from that? I mean I'm having a great deal
11 of difficulty. Essentially, everybody's telling me that
12 intent is an element with the idea that you can't prove
13 intent. I mean that just doesn't seem to make any sense
14 whatsoever.

15 MR. KRILL: Your Honor, and you know what,
16 there are lots of cases where intent is an element and it's
17 provable because there's no privilege. However, just because
18 intent may be an element doesn't mean --

19 THE COURT: I know, I know, I know. So, in
20 other words, the Supreme Court set up a standard that was a
21 fake standard. Any time somebody raises the speech and
22 debate clause, then the other side wins. I mean I just --

23 MR. KRILL: No, I didn't say that, Your Honor.
24 I didn't say that. I said if it can be inferred from
25 objective indicia, from looking at the enrolled bill or

1 matters of public record, that's different. That's
2 different. That's not what we have here.

3 THE COURT: I'm going to let him answer the
4 question. Number one, I don't think the input is covered by
5 speech and debate. I think the speech and debate goes to
6 what the intent was in a vote, not into the process. Answer
7 the question.

8 A And we were -- the other thing is all the
9 money that was being raised for the State House elections
10 prior, not all the money, but the money that was being raised
11 for the State House elections prior to the 2000 elections,
12 the redistricting was a big part of that. That was a big
13 part of the argument. Republicans, Republicans were saying
14 that we can --

15 MR. KRILL: Objection.

16 A John Perzel told me.

17 THE COURT: Wait a second. What we're here to
18 do is to find out what the impact of this plan is. What
19 you're in effect saying is the Democrats had no input into
20 the plan. What you've said is that the Democrats are
21 going -- it's going to be 14-5, 13-6; right?

22 A Yes.

23 THE COURT: Okay. Anything more?

24 MR. SMITH: I'm done with this witness, Your
25 Honor. Thank you.

1 MR. KRILL: I'm not done with this witness,
2 Your Honor.

3
4 CROSS-EXAMINATION

5
6 BY MR. KRILL:

7 Q Mr. Ceisler, you're quoted a lot in the
8 newspapers, aren't you?

9 A Yes, sir.

10 Q You're kind of a pundit in the papers; right?

11 A If that's the word you want to use.

12 Q Do you recall being quoted -- well, let me ask
13 this: Are you familiar with a publication called Roll Call?

14 A Yes.

15 Q What is it?

16 A It's a Congressional -- it's a publication in
17 Washington, D.C.

18 Q It covers politics in the capital; right?

19 A Yes, sir.

20 Q And do you recall being quoted regarding the
21 Santorum-Klink senatorial race in Roll Call?

22 A Probably was.

23 Q Does this sound familiar to you: "Abortion
24 and guns come off the table now in the Pennsylvania Senate
25 race," commented Pennsylvania Democratic Political Consultant

1 Larry Ceisler. "Basically, it's going to be Democrat versus
2 Republican." "One of the weaknesses of statewide Democratic
3 candidates in the last several years is that Democrats in
4 western Pennsylvania have been voting Republican. Ron
5 Klink's candidacy is designed to bring those western
6 Pennsylvania Democrats back into the fold," he explained.

7 Do you recall that statement?

8 A That's probably something I would have said,
9 yes.

10 Q And you recall making that statement?

11 A I can't specifically recall, because I talk to
12 these people a lot, but that's something I would have said.

13 Q And at that time, did you believe that Ron
14 Klink's candidacy would bring western Pennsylvania Democrats
15 back into the fold?

16 A No.

17 Q You didn't say so, though, did you?

18 A I said that was the intent of the Klink
19 candidacy.

20 Q It didn't work, did it?

21 A No, sir.

22 Q You didn't make a public prediction about the
23 outcome of that election, did you?

24 A I probably wasn't asked.

25 Q Now, you said that Act 1 of 2002 was an

1 incumbent protection plan; is that right?

2 A Yes, that's a way to -- yes, I did say that.

3 Q And then you said it was designed to protect
4 14 Republicans?

5 A And five Democrats.

6 Q Well, you recognize, don't you, that there are
7 not 14 incumbent Republicans in Congress right now?

8 A Right, that is correct. Fourteen Republican
9 districts. You're absolutely right. I stand corrected.

10 Q And you do agree, of course, don't you, that
11 there are five Democrats who are incumbents being protected
12 under Act 1, the effect of Act 1 would be to protect them?

13 A Yes. By the way, I think two of those have to
14 be protected under the law, because they're minority
15 districts.

16 Q Which two are those?

17 A That would be the Fattah and the Brady
18 districts.

19 Q Are those districts --

20 A I think it's 1 and 2.

21 Q Or 2 and 1 respectively?

22 A Yes. No, I'm sorry, I think Fattah might
23 be -- that's right, 1 and 2.

24 Q And could you explain your opinion on that for
25 the Court, please, the protection of majority districts.

1 THE COURT: I don't think we're under a voting
2 rights act here in Pennsylvania.

3 MR. KRILL: No, we're not, Your Honor.

4 BY MR. KRILL:

5 Q But there are always voting rights act issues;
6 isn't that correct, Mr. Ceisler?

7 A I don't know. I can't speak to that.

8 Q Are you saying you don't know, you haven't
9 examined Act 1 to look at its voting rights impact?

10 A No.

11 Q Have you looked at the first alternative plan
12 or any alternative plan for voting rights impact?

13 A No, I have not.

14 Q So you don't know whether any of these plans
15 would dilute minority representation in districts 1 or 2, do
16 you?

17 A I don't think they would.

18 Q But you don't really know?

19 A As I stand here -- as I sit here right now,
20 that is correct.

21 Q Now, you heard Congressman Mascara testify,
22 didn't you?

23 A Yes, I did.

24 Q And you also heard Congressman Hoeffel
25 testify?

1 A Yes, I did.

2 Q And you heard them testify that they would
3 both zealously represent their constituents in their new
4 districts, didn't you?

5 A Yes, I did.

6 Q In your earlier testimony, were you accusing
7 them of perjury?

8 A I think they would like to think they could
9 represent -- I think zealous and effective are two different
10 words. I think they can zealously represent as much as
11 possible, but do I think in reality they're going to be able
12 to do it? No.

13 Q You've never run for elective office yourself,
14 have you?

15 A Actually, I did.

16 Q Did you?

17 A Yes.

18 Q And what was that?

19 A I ran for the State House of Representatives.

20 Q How did you do?

21 A Luckily, I lost.

22 Q And what was your prediction on that election?

23 A Actually, I knew I was going to lose.

24 THE COURT: Did you say that to the public
25 when you were running?

1 A No. No, but I told my wife and she said thank
2 God.

3 BY MR. KRILL:

4 Q Now, you referred to Mina Knoll as a candidate
5 for treasurer; right?

6 A Yes.

7 Q Isn't it true that in 2000 Catherine Baker
8 Knoll was the candidate, the Democrat candidate for state
9 treasurer?

10 A No, Mina -- oh, that's right, Catherine. I'm
11 sorry, yes, Catherine. That's right, Mina ran in 1996.

12 Q So you want to correct your earlier testimony?

13 A Yes. I'm sorry. We all get those Knolls
14 confused.

15 THE COURT: She'll be in the next census case,
16 because she's running this year.

17 A I'm not going to make any prediction on that.

18 BY MR. KRILL:

19 Q Now, you said you were familiar with voter
20 registration in the new districts under Act 1?

21 A Yes.

22 Q Is that correct?

23 A Yes.

24 Q Can you give me percentages, district by
25 district?

1 A I have to look. I have to look at something
2 to do that.

3 Q So you don't have those in your head; right?

4 A No, sir.

5 Q Let me just take a look here. Let's look at
6 the map for this. Exhibit 6 has been characterized as the
7 conference committee plan. Is that what you believe to be
8 the map as it would be under Act 1?

9 A Yes, sir.

10 Q Congressman Mascara testified about his
11 residence in Charleroi. Do you know where that is?

12 A Charleroi is on the -- I mean I'm from
13 Washing -- I'm from South Strabane, actually, so I guess
14 Charleroi would be up there. I'm not sure, to tell you the
15 truth.

16 Q You're from South Strabane?

17 A Yes. One of the split municipalities.

18 Q Do you know where Congressman Murtha lives?

19 A I believe he lives in Johnstown. He lives in
20 Cambria County.

21 Q Where would that be on Exhibit 6?

22 A Well, Cambria County, I guess Johnstown is
23 like right around in here (indicating).

24 Q Do you know precisely which political
25 subdivision it is on this map?

1 A No, I don't.

2 Q Well, let's start at the north end of District
3 12. Can you identify the political subdivisions at the north
4 end of District 12?

5 A No, I can't.

6 Q Can you identify the political subdivisions at
7 the north end of District 4?

8 A No, I can't.

9 Q Can you identify the political subdivisions at
10 the western end of District 9?

11 A No, I can't.

12 Q In fact, do you know how many political
13 subdivisions there are in Pennsylvania?

14 A An exact number, no, I don't.

15 Q You said you didn't know how many school
16 districts there are in Pennsylvania.

17 A Well, there's like -- no, I think there's like
18 538 school districts, something like that.

19 THE COURT: I know that one, unfortunately.

20 MR. KRILL: I think the Court can take notice
21 the correct answer is 501.

22 THE COURT: And how many operate?

23 MR. KRILL: Under which law, Your Honor?

24 THE COURT: How many just farm them out?

25 Mr. Knorr knows the answer to that.

1 MR. KNORR: Yes, Your Honor, I do.

2 BY MR. KRILL:

3 Q All right. So we could continue on district
4 by district, Mr. Ceisler. Isn't it fair to say that there
5 are an awful lot of communities in Pennsylvania that you
6 can't identify on this map?

7 A I know an awful lot of communities, but if you
8 said find them on the map, I probably could not, that is
9 correct.

10 Q Now, you've talked about the Democratic party
11 and impact on the Democratic party. What do you mean by
12 Democratic party?

13 A The Democratic party would be people who hold
14 office in the Democratic party, people who aspire to hold
15 office in the Democratic party, Democrats who have Democratic
16 party ideals and vote Democratic.

17 Q All right. Now, under that definition, that
18 would also include some Republican voters, wouldn't it?

19 A Probably a couple.

20 Q And under that definition, there are a lot of
21 people who are registered as Democratic voters who would not
22 be within your notion of the Democratic party; correct?

23 A Correct. Except what a lot of these people do
24 is on local elections, you know, sometimes school board
25 supervisors, they will still vote with the Democratic party,

1 but then when they get to the bigger races they'll vote
2 Republican.

3 Q You agree, don't you, that Pennsylvania is a
4 state where there's a lot of ticket splitting?

5 A Yes. I don't think any different than any
6 other state.

7 Q And you'd agree that there's ticket splitting
8 among registered voters of both parties?

9 A Yes.

10 MR. KRILL: I have no further questions.
11 Thanks, Your Honor.

12 THE COURT: Do you have any redirect?

13 MR. SMITH: No, Your Honor.

14 THE COURT: You may step down. Thank you.

15 MR. SMITH: We have no more witnesses, Your
16 Honor. I would I guess like to move in the exhibits or
17 should we handle that in some other way?

18 THE COURT: My recollection is that you didn't
19 use every one of these, right?

20 MR. SMITH: No, I could read the numbers, if
21 you'd like, into the record.

22 THE COURT: Okay.

23 MR. SMITH: I have used and would offer
24 Exhibits 1, 2, 6, 7, 9, 11, 13.

25 MR. KRILL: Are these the maps? Can we stop?

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

.....
RICHARD VIETH, NORMA JEAN VIETH, . NO. 1:CV-01-2439
and SUSAN FUREY, .
Plaintiffs, . Judge Sylvia H. Rambo
vs. .
COMMONWEALTH OF PENNSYLVANIA, .
et al., .
Defendants. .
.....

Deposition of: LARRY CEISLER
Taken by: Defendants
Date: February 14, 2002, 10:35 a.m.
Before: Emily Clark, RMR, Reporter-Notary
Place: Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, Pennsylvania

APPEARANCES:

JENNER & BLOCK
BY: DANIEL MACH, ESQUIRE
BRUCE V. SPIVA, ESQUIRE

For - Plaintiffs

KIRKPATRICK & LOCKHART
BY: LINDA J. SHOREY, ESQUIRE
JULIA GLENCER, ESQUIRE
AND
OFFICE OF ATTORNEY GENERAL
BY: J. BART DELONE, DEPUTY ATTORNEY GENERAL

For - Defendants

EX-2

ORIGINAL

I N D E X

WITNESS

Larry CeislerExamination

By Ms. Shorey

3

EXHIBITS

Ceisler Exhibit No.Page

1 2-page Notice of Deposition

3

* * * * *

(Ceisler Deposition Exhibit No. 1 was marked.)

LARRY CEISLER, called as a witness, being duly sworn, was examined and testified, as follows:

BY MS. SHOREY:

Q Mr. Ceisler, I'm Linda Shorey, and I represent Lieutenant Governor Jubelirer and Speaker Ryan, who are the defendants in this matter, which for the record is Vieth verse the Commonwealth, Pennsylvania Middle District No. 1:CV-01-2439.

A. Linda, it's Ceisler.

Q Ceisler?

A. Yeah, rhymes with Chrysler.

Q Okay. This deposition is being conducted pursuant to a Notice of Deposition dated February 11th, 2002, and will be taken pursuant to the Federal Rules of Civil Procedure.

Mr. Ceisler, would you state your name and address for the record?

A. It's Larry Ceisler, 8112 St. Martins Lane, Philadelphia, Pennsylvania, 19118.

Q Thank you. Are you represented by counsel?

A. I guess, yes.

Q Are they here?

A. Yes.

1 Q Would that be Mr. Spiva and Mr. Mach?

2 A. Yes.

3 MS. SHOREY: Also present today are Bart DeLone,
4 who represents the defendant Commonwealth and other
5 executive officers --

6 MR. MACH: Executive officers.

7 MS. SHOREY: And Julia Glencer, who is co-counsel
8 with me for Defendants Jubelirer and Ryan.

9 BY MS. SHOREY:

10 Q Mr. Ceisler, have you been deposed before?

11 A. Yes, I have.

12 Q How many times?

13 A. Approximately I think maybe twice. Once for sure.

14 Q What sort of actions were those in?

15 A. It was a civil action. Actually, I'm sorry, I've been
16 definitely deposed twice, civil actions.

17 Q And did those actions involve congressional
18 redistricting?

19 A. No.

20 Q Did they involve you testifying as an expert?

21 A. No.

22 Q Now, you understand you are under oath today?

23 A. Yes, ma'am.

24 Q Now, I'm going to ask you a series of questions, and if
25 you do not understand, will you tell me?

1 A. Yes, I will.

2 Q And if you need to take a break for any reason, will you
3 tell me?

4 A. Yes, I will.

5 Q Now, you brought some documents with you today, did you
6 not?

7 A. Yes.

8 Q And we'll identify those for the record when they return
9 from being copied.

10 Mr. Ceisler, how old are you?

11 A. 45.

12 Q When did you graduate from high school?

13 A. 1974.

14 Q What is your educational experience?

15 A. I have a bachelor of arts in political science from
16 American University in Washington. I attended the
17 University of Pennsylvania School of Law and graduated
18 from Duquesne University School of Law.

19 Q What year did you graduate from American University?

20 A. 1979, I believe.

21 Q And from Duquesne?

22 A. 1983.

23 Q How long were you at Penn?

24 A. I was at Penn for a year.

25 Q And then you transferred, did your final two years --

1 A. No. I transferred from Duquesne to Penn, and I had my
2 last year at Penn.

3 Q But you graduated from Duquesne?

4 A. Yes.

5 Q So your credits transferred?

6 A. My credits transferred from Penn to Duquesne, correct.

7 Q Okay. Are you currently employed?

8 A. Yes, I am.

9 Q And what is that employment?

10 A. I'm self-employed. My company is called Snowline
11 Communications.

12 Q And what does Snowline Communications, what kind of
13 business do you engage in?

14 A. We do public relations, grass roots lobbying, and
15 marketing.

16 Q Could you just explain what type of public relations?

17 A. I represent, you know, organizations who want to get
18 their name out or want to get their story out. For
19 instance, I work for labor unions, I work for a show
20 downtown called Lights of Liberty. It's basically
21 dealing with the press. That's what public relations
22 is.

23 Q And you said marketing?

24 A. Marketing, correct.

25 Q How does that differ from the PR?

1 A. I have marketing clients. Philadelphia Magazine is a
2 client of mine. There's a radio station group that owns
3 four radio stations in Philadelphia, and I work with
4 them on their marketing initiatives, trying to find
5 non-traditional forms of revenue, like event
6 sponsorships, things like that.

7 Q And grass roots?

8 A. Grass roots is -- I'm not a lobbyist, I don't do
9 lobbying, but what happens is there are initiatives,
10 either state or federal, where you're trying to raise
11 public awareness of the issue, trying to raise press
12 attention of the issue, trying to get membership to be
13 more involved. So for instance, I work for National
14 Audobon Society and they're interested in environmental
15 issues and they're interested in, oddly enough, family
16 planning, international family planning issues. I work
17 for AARP, and their issues that are of interest to
18 senior citizens.

19 And I have a lot of clients come and go in that I'm
20 working on one dealing with overuse of antibiotics right
21 now, where I work for different medical organizations.

22 Q So these would be private nonprofit or for-profit
23 entities?

24 A. They're both. They're both.

25 Q Any governmental entities that ask you to do that sort

1 of work?

2 A. Governmental entities aren't allowed to do that type of
3 work.

4 Q Well, let's say a public entity of any sort.

5 A. Well, I do, for instance, I do work, I have a contract
6 with the Philadelphia Housing Authority, but that's
7 public relations and communications.

8 Q Now, how long did you say Snow --

9 A. Snowline.

10 Q Snowline?

11 A. Snowline.

12 Q How long have you owned Snowline?

13 A. Approximately six years. Five, six years.

14 Q Before that, how were you employed?

15 A. I was a partner in a company called Keystone Strategies.

16 Q What did Keystone Strategies do?

17 A. That was political consulting. That was running
18 campaigns.

19 Q How long did you do that?

20 A. We had that partnership two or three years.

21 Q Who did you work with?

22 A. I had two partners. One man's name was Ken Smuckler,
23 and the other name was Linda August.

24 Q And so I understand that was, you actually helped
25 candidates run their campaigns?

1 A. Correct.

2 Q Was that in Pennsylvania?

3 A. For the most part, yes.

4 Q And you did this for a couple of years?

5 A. Yeah. Two, three years.

6 Q What sort of campaigns did you do?

7 A. Everything. Everything from, we worked on council
8 elections, worked on congressional elections, worked on
9 some statewide elections. Yes. We worked on every
10 level throughout the state.

11 Q Who were the congressional races?

12 A. We did work for Joe Hoeffel. We did work for Marjorie
13 Margolis-Mezvinsky. Did work for John Braxton, who was
14 a challenger to Congressman Foglietta.

15 I've also done work, I worked on two of Congressman
16 Holden's campaigns. Let's see. Who else
17 congressionally can I think of. Did some work with a
18 gentleman by the name of Jamie Blain who ran, he ran out
19 in -- I don't know if he ran against Joe Pitts or -- I
20 forget who he ran against. But there were several
21 congressionals.

22 Q Were these in the general election or primaries?

23 A. They were both.

24 Q Jamie Blain?

25 A. That would have been a general.

1 Q So he would have been the Democrat candidate?

2 A. Right.

3 Q And Braxton, was that in --

4 A. That was a Democratic primary.

5 Q And those were the ones you did as through Keystone
6 Enterprises?

7 A. Keystone Strategies, yes.

8 Q Keystone Strategies, I got the first word. Okay.

9 What statewide campaigns were you involved with?

10 A. We worked for Joe Kohn when he ran for Attorney General
11 against Mike Fisher. We worked, let's see, we worked on
12 some judicial elections. Let's see. We did some work
13 in the state treasurer's race. That would have been,
14 that probably would have been for Mina, probably for
15 Mina Knoll.

16 We let's see. There was when Amy Putnam ran for
17 Commonwealth Court.

18 Q That would have been a primary, right?

19 A. I think Amy, did Amy -- on yeah, Amy lost -- did Amy
20 lose to Mystik? Yeah. That was when Sandy, that's when
21 Mrs. Neuman probably was elected, yeah. Yeah. Did Amy
22 lose to Joe? I forget. I forget.

23 I'm trying to think who else statewide. That's
24 probably -- that's what I can remember right now.

25 Q And those are state statewide elections?

1 A. Yes, ma'am.

2 Q How about national elections, federal elections?

3 A. Federal elections? You mean like President of the
4 United States?

5 Q Or U.S. Senator.

6 A. I worked for Arlen Specter against Lynn Yeakel. I think
7 that's about it in terms of Senate, a Senate election.
8 That's it in terms of Senate, just Arlen.

9 Q Now, did you work on any campaigns prior to Keystone
10 Strategies?

11 A. Yeah. Yeah, I worked on several.

12 Q Were those as a hired consultant or were you a
13 volunteer?

14 A. Mostly hired. Mostly hired. I've been, you know, paid
15 or whatever.

16 Q Now, you alluded to, well, you didn't allude to but when
17 I said federal you asked presidential. Did you ever
18 work on a presidential election?

19 A. Yes.

20 Q Could you describe those?

21 A. I've worked for in, 1976 I worked for Birch Bayh, and
22 Morris Udall. In 1980 I did some work for John
23 Anderson. I think '80 was Anderson. You know, I'm not
24 sure what, you know, what the year was.

25 And there was any other presidential work, we would

1 do, we would get work from the national, like the
2 national committees, but not, I never directly, I don't
3 think I worked directly in any other presidential
4 campaigns where I was paid.

5 Q Now, you were relatively young, or younger than today
6 back then than --

7 A. Yes, I was. I was.

8 Q Those I take it from the names were more on the primary
9 campaign level as opposed to --

10 A. There's no -- President Bayh is going to be his son, not
11 the dad.

12 Q That's right. Anderson was a third-party candidate, was
13 he not?

14 MR. SPIVA: Yeah.

15 (Discussion held off the record.)

16 BY MS. SHOREY:

17 Q Now, before Keystone Strategies, which would put us
18 back now to the early '90s?

19 A. Right.

20 Q What did you do?

21 A. I was an attorney, actually.

22 Q You actually practiced law?

23 A. I did what you're doing.

24 Q Did you work for a firm or were you a self-employed
25 attorney?

1 A. No, I worked for a firm. You want the name of the firm?

2 Q Yes, please.

3 A. It was called Wilbraham and Lawler.

4 Q And where were they located?

5 A. Philadelphia.

6 Q Is that what you did when you got out of law school?

7 A. No.

8 Q So we're back now to about 1990.

9 A. Right.

10 Q What were you doing before you became associated with
11 the lawfirm?

12 A. I worked -- I was a special assistant to the Mayor of
13 Philadelphia, and also I was an assistant or deputy, I
14 don't know what they called them, city solicitor with
15 the city, with the commerce department of the City of
16 Philadelphia.

17 Q Which mayor was that?

18 A. Wilson Good.

19 Q And prior to working for Mayor Good?

20 A. Prior to working for Mayor Good, that's when I would
21 have worked in -- I was a television producer.

22 Q And was that after law school?

23 A. That was before, during and after.

24 Q Okay. Where was that employment?

25 A. It was in Pittsburgh and in Philadelphia.

1 Q What stations?

2 A. KTK TV in Pittsburgh and KYW TV in Philadelphia.

3 Q Were you associated with a particular show or were you
4 just a free-lance?

5 A. No, I wasn't free-lance. I mean, I was paid.

6 Q Free-lance show-wise.

7 A. No, I did different things different parts of the year.
8 I would do a lot of news and public affairs and things
9 like that, and did a lot of political work when there
10 were elections. But then I did a lot of sports. I
11 produced a show for the Pittsburgh Steelers, and I was
12 the assistant, I was the deputy producer for the
13 Pittsburgh Pirates baseball games. That was a lot more
14 fun.

15 Q Well, it certainly was in '79.

16 A. Yeah. You know, it's funny, Dennis Miller was my
17 assistant. Dennis was my assistant, which is pretty
18 funny.

19 Q Now, currently, in addition to the work you do through
20 Snowline do you have other paid employment or contracts
21 that you do?

22 A. No. It all goes through --

23 Q Goes through Snowline?

24 A. Yes, it does.

25 Q Do you have a contract with the House Democratic Caucus?

1 A. Yes, I do.

2 Q What do you do for them?

3 A. Communications work.

4 Q And what does that mean?

5 A. I help members with communications situations, with
6 writing, with how they present themselves to the media.
7 I do, I help them with public service announcements. I
8 work with them on trying to develop their web sites. We
9 try to do, like, when legislation comes up, you know,
10 try to position the caucus and the leadership, you know,
11 on legislation, on issues and whatever.

12 Q So you help them get the message out to the
13 constituents?

14 A. To the constituents and also to their own members.

15 Q So you might be on one particular day asked to help a
16 member, an individual member, on how to communicate
17 better?

18 A. That's correct. It could be anybody from any part of
19 the state. I work with them, I work with members from
20 all over the state.

21 Q Now, do you have any other sort of contracts that don't
22 fall under the main things that you were -- at least I
23 didn't consider the political as falling under your PR,
24 grass roots and marketing?

25 A. Well, I have other contracts, but I mean, that's --

1 everything sort of falls in those areas.

2 Q Okay. I think, do you have a contract with Fox TV?

3 A. Yes, I do. I do political analysis for them on their
4 news.

5 Q Does anyone else pay you to do political analysis for
6 them?

7 A. No. I guess this is political analysis.

8 Q Well, we'll get to that.

9 Mr. Ceisler, did you ever work for Congressman
10 Morgan?

11 A. Yes, I did.

12 Q When was that?

13 A. That would have been when I was in college at American
14 University. So I worked for him, that would have been
15 sometime in the years between 1974 and 1979.

16 Q Was that a staff position?

17 A. Yeah, I guess you would call it a staff position. I was
18 actually assigned -- they paid me out of the committee.
19 The committee, it was called the International Relations
20 Committee back then because he was the chairman, but I
21 worked, I did work for the committee but I worked for
22 him.

23 Q Okay. So that was the House Congress -- you were
24 employed by the committee who then assigned you to
25 Congressman Morgan?

1 A. No. They didn't assign. That's not the way it would
2 work. Basically, I was under his patronage, so he put
3 me on the committee's payroll, but I worked for him.

4 Q What did you do for Congressman Morgan?

5 A. Oh, on the committee, you know, I did all kinds of
6 research and whatever. And for him, you know, it could
7 be anything. It could be research, dealing with
8 constituent requests, running errands, dealing with --
9 he was a nice man, we got along pretty well and he would
10 just -- he would just like to talk sometimes, talk about
11 politics and whatever.

12 Q And how long did you do that?

13 A. That was -- I would do that off and on while I was in
14 college. I could come in and come on and come off his
15 payroll.

16 Q And so that was during the period of time you were at
17 American University?

18 A. Yes, it was.

19 Q Did you ever work for any other congressmen?

20 A. I may have worked, I may have been on Senator Bayh's
21 payroll for a short period of time. I don't exactly
22 remember. I think that was it.

23 Q And that was during the same time while you were at
24 American University?

25 A. That would have been around -- that would have been

1 right after -- that would have been during the election
2 when he ran for president in '76.

3 Q And what did you do for Congressman Bayh?

4 A. Senator Bayh?

5 Q Senator Bayh, excuse me.

6 A. I really don't remember.

7 Q Okay. Is there any other involvement that you
8 personally have had in politics?

9 A. Oh, yeah. I mean, starting when I was a little kid, I
10 mean, you know, I worked in, you know, my dad was active
11 politically in Washington County so I was always working
12 on campaigns back then.

13 We talked about working on the presidential
14 campaigns. I've been elected a delegate to several
15 national Democratic conventions. I was always, I've
16 always been involved. I've always been involved, I
17 mean, you know, probably worked, you know, I've probably
18 been involved and worked 50, 60, you know, 60 campaigns,
19 something like that. Even when, you know, when I lived
20 in Pittsburgh, you know, I helped people in council
21 campaigns, commissioners' races, you know, whatever.

22 Q Now, was that volunteer work?

23 A. Yeah. That would have been volunteer, yeah.

24 Q Now, how long did you live in western Pennsylvania?

25 A. Well, I was born there and I left when I was 18, I went

1 to college. And I came, I think I came home the first
2 summer. And then I moved back for law school, and to
3 work, so I was back. So then I lived in Pittsburgh for
4 another, you know, for another few years. Then I moved
5 to Philadelphia. But my family is still there. I go
6 back, I go back there all the time. I mean, I still
7 consider myself a western Pennsylvanian, I'm not a
8 Philadelphian.

9 Q The Alleghenies do have that effect. So is it true,
10 then, that you've lived in the western and the eastern
11 parts of Pennsylvania?

12 A. That's right. I've lived in Allegheny, Washington
13 County, and Philadelphia.

14 Q Okay.

15 A. And I've worked in both places. I've gone to school in
16 both places.

17 Q So you have a familiarity with those two regions?

18 A. Yeah. And I've been coming to Harrisburg one day a
19 week, you know, for the last several years, since I've
20 had my contract with the House Democrats. So I'm here
21 every week.

22 Q Now, Mr. Ceisler, how did you become involved in the
23 litigation that's challenging the congressional
24 redistricting plan enacted by the General Assembly?

25 A. I was having a peaceful afternoon and Dan called me. I

1 don't know. I guess they got my name from somebody.

2 Q So you received a call from Mr. Mach?

3 A. Yes.

4 Q And when was that?

5 A. Geez. Maybe five weeks ago. I'm really, you know, I
6 really don't remember.

7 Q After the plan was enacted?

8 A. Yes.

9 Q What were you asked to do?

10 A. At that point I wasn't asked to do anything. Dan just
11 told me that he had gotten my name as a person that
12 potentially might be able to be an expert on this, and
13 would I be interested, and I said maybe. And that was
14 it. That was basically the extent of that conversation.

15 Q So when did you actually start to work?

16 A. I think he called me a couple weeks later and said
17 you're the guy, and that's what happened. And within a
18 few days then that's when we did the -- I think that was
19 only a few days before Commonwealth Court had their
20 hearing.

21 Q And so what did you -- were you asked to prepare for
22 Commonwealth Court?

23 A. What was I asked to prepare?

24 Q What were you told you were going to be testifying on?

25 A. The plan and its ramifications and its effects and the

1 different districts, you know, how I thought that they
2 were going to come out when there were elections.

3 Q Now, when they asked you if you would do that, how did
4 you proceed to prepare?

5 A. Dan sent me a packet of just data, statistics, and sent
6 me some maps. And then basically I prepared for it --
7 it was based on what I know, because this is what I do,
8 and my experience, a lot of conversations with a lot of
9 people, Republicans and Democrats, articles that I had
10 read in the paper, the papers all over the state.
11 Because one of the things that I do, I have to track, I
12 have to track media reports. So you know, I've been
13 reading about redistricting, you know, everything from
14 the Philadelphia Inquirer to the Washington Observer
15 Reporter, you know, to the Times Leader, to the Patriot.
16 I mean, I read them from all over the state. Plus, I
17 guess the clip files from the House Democrats. So I
18 reviewed those articles, you know, articles and roll
19 call, you know, just to bring myself up to speed on
20 everything.

21 Q You said you spoke to Democrats and Republicans both.
22 Did you talk to them about the plan?

23 A. I mean, listen, we've been talking, people have been
24 talking about this plan since the election. I mean, you
25 know, one of the -- because I work for House Democrats,

1 I mean, the redistricting was really was more than any
2 issue what was driving those House elections on both
3 sides.

4 Q Which House elections?

5 A. State House.

6 Q Okay.

7 A. State House. Because that's what both sides were
8 relying on heavily to raise their money. I mean, that's
9 what the stakes were.

10 See, Pennsylvania became a very important national
11 focus because the balance of power in the state House,
12 you know, it was only a couple of votes. So I mean,
13 I've been talking to people about, you know,
14 redistricting, you know, probably since 1999.

15 Q Now, was that both legislative and congressional
16 redistricting, or just congressional?

17 A. Both. Both. Both. I mean, legislative, of course, is
18 different because that's a commission and that tends to
19 be more equitable than the congressional legislation,
20 which ends up coming out in a bill. So if you don't
21 have a seat at the table, and each caucus has a seat, if
22 you don't have a seat at the table, then you're shut
23 out.

24 Q Now, when you said you spoke to D's and R's, were there
25 specific people you spoke to after you agreed to act as

1 an expert for Mr. Mach?

2 A. No.

3 Q So you didn't speak to anybody in particular at that
4 point?

5 A. No. No, because my knowledge of this process was gained
6 prior to this.

7 Q Did you talk to anyone else who was engaged as an expert
8 for that trial?

9 A. No. I mean, I met Dr. Lublin that morning and we
10 basically talked about the bizarre cereal he was
11 carrying around with him, and the fact that he taught at
12 American. We didn't talk about the -- it was like, I
13 forget what that was he had. Remember that stuff? So,
14 no, I didn't talk to anybody else about it.

15 Q Have you ever spoken with Dr. Lichtman?

16 A. Actually, I had him in school. But no, I have not
17 spoken to him since I probably answered a question
18 incorrectly many years ago. No, I have not spoken to
19 him.

20 MR. SPIVA: Incidentally, Lublin is L-U-B-L-I-N.

21 BY MS. SHOREY:

22 Q You said Mr. Mach provided you with data, and was that
23 part of the packet you brought this morning?

24 A. Yes.

25 Q This is a good time I think, then, to go through and

1 identify what you brought so that we have that on the
2 record. This is your set.

3 A. Thanks.

4 Q Mr. Ceisler, what is the first document that you brought
5 with you today?

6 A. This is a roll call for the conference report in the
7 House of Representatives.

8 Q Okay. Is it correct to describe this as the final vote
9 on Senate Bill 1200 conference report?

10 A. I think that would be correct.

11 Q The second document, what I have is labeled Exhibit 48?

12 A. Right.

13 Q Could you describe this?

14 A. I haven't looked at this one. I really haven't spent
15 much time with this one. I looked at it, but.

16 Q Did you rely on this at all with respect to your
17 testimony?

18 A. No. No.

19 Q Now, it also has attached to it Exhibits 47 and 49. Did
20 you look at -- were any of these used by you?

21 A. Not really.

22 Q Now, the third packet that I have is entitled Act 1 2002
23 Splits.

24 A. Right.

25 Q Did you look at this?

1 A. Yes, I did.

2 Q The next is entitled 1992 Plan Splits. Did you look at
3 this?

4 A. Yes, I did.

5 Q Next, Alternative Plan #1 Splits.

6 A. Yes.

7 Q Did you look at this?

8 A. Yes, ma'am.

9 Q Alternative #2 Splits?

10 A. Yes.

11 Q And you looked at this one?

12 A. Yes.

13 Q Okay. Next, Alternative #3 splits, did you look at
14 those?

15 A. Yes.

16 MR. SPIVA: Are you planning to mark these as
17 exhibits or --

18 MS. SHOREY: Not all of them. This way we'll just
19 identify them.

20 MR. SPIVA: Sure.

21 BY MS. SHOREY:

22 Q The next document is entitled Alternative Plan #4
23 Splits?

24 A. Yes.

25 Q And the next document that I have is a relatively fat

1 document. It has a title on the front of Pennsylvania,
2 and appears to have descriptions of the various congress
3 people and senators as well as the governor from
4 Pennsylvania. Is that correct?

5 A. Yes, and I read this.

6 Q And I think the last thing is the transcript of
7 proceedings, afternoon session, in Commonwealth Court of
8 Pennsylvania, Erfer v. Commonwealth, No. 10 MV 2002.

9 A. Yes. This was my testimony in Commonwealth Court.

10 Q Now, you obviously didn't review this prior to your
11 testimony, did you?

12 A. No.

13 MR. SPIVA: He's clairvoyant.

14 THE WITNESS: That's why you have me, right?

15 BY MS. SHOREY:

16 Q But you did review there before you came today?

17 A. Yes. Yes, I read it last night.

18 Q So the ones you identified you looked at were the ones,
19 other than the transcript, were the ones that you had
20 looked through that you had received from Mr. Mach and
21 had looked through in preparing your testimony?

22 A. Right. And the maps.

23 Q And the maps, okay. And those maps were --

24 MR. SPIVA: Do you want those?

25 MS. SHOREY: Let's just have the -- let's reference

1 those by exhibit number to the Erfer case.

2 (Discussion held off the record.)

3 BY MS. SHOREY:

4 Q Mr. Ceisler, we need to clarify I believe a couple of
5 these packets as to what they actually include. The
6 first one is the Act 1 2002 splits?

7 A. Right.

8 Q That is the first page of that packet, first two pages,
9 correct? Three pages, first three pages.

10 Now, the fourth page is entitled Act 2002
11 Population, correct?

12 A. Yes.

13 Q And that you reviewed?

14 A. Yes.

15 Q I think the next page is a --

16 A. Continuation.

17 Q -- continuation of that same data.

18 A. Um-hum.

19 Q Okay. Making the sixth page entitled U.S. Congressional
20 Districts 2002 Act 1 Election Results; is that correct?

21 A. Correct.

22 Q And there are in that four pages of those election
23 results, correct?

24 A. Right.

25 Q And you reviewed those election results?

1 A. Yes.

2 Q And then there are packs that are entitled Alternative
3 1, 2 and 3 Splits. Do they have similar information?

4 A. Yes.

5 Q And you looked at those as well?

6 A. Yes.

7 Q And then the Alternative Plan #4 has the same
8 information, I believe?

9 A. Yes.

10 Q But as I understand, you did not receive that until
11 after the hearing?

12 A. Right.

13 Q I think that clears up those exhibits.

14 Now, if you could identify for the record by
15 exhibit number the maps? And these are the exhibit
16 numbers from the Erfer hearing.

17 A. Exhibit 1 is the U.S. Congressional Districts for
18 Pennsylvania 1992 through 2001.

19 Q Mr. Ceisler, did you rely on that one when you were
20 doing --

21 A. Yes.

22 No. 2 is, it's the southeast, it's the southeast
23 cut-out of the congressional districts '92 to 2001.

24 Q Let's refer to that for ease to say the 1992 plan.

25 A. Okay. Great.

1 MR. SPIVA: It's Plaintiffs' Exhibit 2 from Erfer.

2 THE WITNESS: No. 3 is the 1992 plan southwest.

3 No. 4 is the 1992 plan Philadelphia. No. 5 is the 1992

4 plan Allegheny. No. 6 is the 2001 Congressional

5 Reapportionment Conference Committee plan.

6 BY MS. SHOREY:

7 Q Now, that is what we've also referred to as the Act 1
8 plan? The Act 1 was the Congressional redistricting
9 plan.

10 A. Yes, the bill. Right, correct.

11 Exhibit No. 7 would be the Act 1 plan for the
12 southeast. Exhibit No. 8 would be the Act 1 plan by
13 voting strength for Districts 8 and 13.

14 Q And that is Exhibit No. --

15 A. 8.

16 Q -- 8, okay.

17 A. Exhibit No. 9 is the Act 1 plan for the 12th and 18th
18 congressional districts.

19 MR. SPIVA: Let me just clarify one thing because I
20 don't want the record to -- a lot of these were
21 premarked but weren't actually entered as exhibits in
22 the Commonwealth trial. He can testify about that he
23 saw them and relied upon them, but I just want to
24 clarify that not every one of these exhibit numbers were
25 actually entered in Commonwealth Court. But it still

probably makes sense to refer to them by the numbers, in case you want to go back later, you know, the number will be on there. So it's probably for clarification purposes --

MS. SHOREY: Right. And what we can do before we end today is just clarify which ones were not admitted for the record so we'll have that.

MR. MACH: I think you probably have that right there.

MR. DELONE: I do, thanks. I've been noticing that some are in and some are out.

MS. SHOREY: At the end we'll clarify that.

MR. MACH: Sure.

THE WITNESS: No. 10 would be the Act 1 plan voting strength Districts 12 and 18. No. 11 is the Act 1 plan for Philadelphia. I'm sorry, that was No. 11. No. 12 is the Act 1 plan for Allegheny County.

No. 13 is the first alternative plan for reapportionment as I guess is the proposed by plaintiffs. No. 14 is the first alternative plan for southeastern Pennsylvania. No. 15 is the first alternative plan for Allegheny County. No. 16 is the first alternative plan for Philadelphia.

No. 17 is the second alternative plan for the state. No. 18 is the second alternative plan for the

1 southeast. No. 19 is the second alternative plan for
2 Philadelphia. No. 20 is the second alternative plan for
3 Allegheny County.

4 No. 21 is the U.S. Congressional Districts
5 Southeast conference committee.

6 No. 22 is the 1992 plan for the southeast. No. 23
7 is the Act 1 plan for Philadelphia. No. 24 is the Act 1
8 plan for the southwest. No. 25 is the Act 1 plan for
9 Allegheny.

10 And then this says Exhibit 55 is Alternative #3 for
11 the state.

12 And then these are three new ones: U.S.
13 Congressional district zero deviation for the southeast;
14 U.S. Congressional district zero deviation for the
15 southwest, and U.S. Congressional district zero
16 deviation statewide.

17 BY MS. SHOREY:

18 Q And those ones that did not have numbers, you did not
19 have those in advance of the Erfer hearing, did you?

20 A. Correct. I just received those yesterday.

21 MR. MACH: I can read into the record now what I
22 have as the exhibits that were used in the proceeding in
23 Commonwealth Court, if you want to just check against
24 what I have. Numbers --

25 MR. SPIVA: By the way, we can do this in some way

1 that's -- it's not really relevant. If you're just
2 going to ask him if he saw these and relied upon them,
3 it doesn't matter whether or not they were --

4 MS. SHOREY: It doesn't, but it will just make the
5 report clean.

6 MR. MACH: So I have No. 1, 2, 6, 7, 9, 11, 13, 17,
7 and 55.

8 MR. DELONE: That's right.

9 MR. MACH: That's right?

10 MR. DELONE: Yes.

11 MS. SHOREY: So the others were exhibits that were
12 not admitted.

13 MR. SPIVA: I want to be clear. Some of them were
14 not offered. So not that they were offered and
15 excluded, but many, if not all of them, were simply not
16 offered.

17 MS. SHOREY: They were not used during that
18 hearing.

19 MR. SPIVA: Yes, that's right.

20 BY MS. SHOREY:

21 Q Let's take a look at the data that you actually did
22 review on the Act 1, the packet that starts with Act 1
23 2002 Splits.

24 A. Right.

25 Q Mr. Ceisler, you indicated you received this data from

1 counsel, correct?

2 A. Correct.

3 Q Do you know where counsel obtained this data?

4 A. I believe they received it from the House demographic
5 office, but their sources were, I believe was the
6 General Assembly.

7 Q Is that what you were told?

8 A. Yes.

9 Q Do you know who prepared this data?

10 A. Who actually prepared it?

11 Q Yes. Do you personally know?

12 A. No, I don't. But -- well, I can't guess. I would guess
13 who it is, but.

14 Q How did you use this data in forming your -- in doing
15 your analysis?

16 A. Well, what I was able to do was look at the new
17 districts and look at registration, look at performance,
18 but then compare it to what was actually happening
19 between Democratic and Republican candidates in
20 particular races. And then also compare it to what my
21 working knowledge of, was and is, of these areas.

22 Q Now, when you talk about registration, where does that
23 appear?

24 A. Well, registration is, that's in the first column, the
25 first three columns.

1 Q Which page are you on?

2 A. Well, if we're in the first packet, that would be page,
3 you get past the splits, and we have this table here
4 and -- whoops, I'm sorry. That would be the second page
5 of these tables.

6 Q What's the title on the top?

7 A. It says U.S. Congressional Districts 2002 Act 1 Election
8 Results.

9 Q Okay. And you're saying the second page has the
10 registration numbers --

11 A. Yes.

12 Q -- that you looked at?

13 A. Yes.

14 Q And that's where it says voter registration 2000?

15 A. Yes.

16 Q Do you know if those were spring or fall 2000 data?

17 A. Oh, I don't know that, but there couldn't be much
18 differentiation between the two.

19 Q You said you looked at the registration data?

20 A. I did.

21 Q And you said you looked at the election results?

22 A. Yes.

23 Q How did you look at them? What did you look for?

24 A. How many votes --

25 MR. SPIVA: Objection, vague and ambiguous, but you

1 can answer.

2 THE WITNESS: Yeah. I mean, how many votes people
3 got, who won, who lost. That's what election results
4 are.

5 BY MS. SHOREY:

6 Q Which elections are portrayed here on these four
7 pages?

8 A. Well, we have the Senate 2000 race between Santorum and
9 Klink; Attorney General 2000 between Fisher and
10 Eisenhower; Auditor General 2000, True and Casey;
11 Treasurer 2000, Hafer and Catherine Baker-Knoll;
12 Governor 1998, Ridge and Itkin; U.S. Senate '98, Specter
13 and Lloyd; Attorney General '96, Fisher-Kohn; Auditor
14 General '96, Nyce-Casey; Treasurer '96, Hafer-Mina Baker
15 Knoll; U.S. Senate '94, Santorum-Wofford; U.S. Senate
16 '92, Specter-Yeakel; Attorney General '92, Preate-Kohn;
17 Auditor General '92, Hafer-Lewis; Treasurer '92
18 Henry-Catherine Baker-Knoll; Senate '91, Thornburgh-
19 Wofford.

20 Q And I think the first page, did you also look at those
21 races?

22 A. Yes. The first page is president 2000, Bush-Gore;
23 President '96, Dole-Clinton; Governor '94, Ridge-Singel;
24 President '92, Bush-Clinton. And also that page also
25 has percentages.

1 Q Yeah, they all have percentages.

2 A. Right.

3 Q And what are those, those percentages on the second half
4 of the page? Those are the percentages of the number of
5 votes received up above?

6 A. Yes.

7 Q Okay. Now, on the page that has the president race for
8 2000, 1996, 1992 and the governor race for 1994 also
9 indicates other.

10 A. Right.

11 Q That does not appear on the other pages, does it?

12 A. It does not.

13 Q Do you know if the percentages -- were there other
14 candidates in some of those races?

15 A. Sure. I mean, I know Ralph Nader against Bush and Gore.
16 Yeah, there's always third-party candidates and
17 whatever.

18 Q Is there a reason why the other candidate percentages
19 are not included in the races other than the four that I
20 mentioned?

21 A. I don't know. I mean, what you have -- well, no.
22 Strike that.

23 No, I don't know. I mean, there might -- in some
24 of these races I know there weren't third-party
25 candidates, but I'm sure in others there were. But

1 there was never -- there wasn't a significant -- there
2 wasn't a significant one. I mean, like for instance
3 governor '94, the other would probably be Peg Luksik.
4 But besides Luksik there hasn't been a significant
5 third-party candidate.

6 Q Now, there's also some statistics on the page that has
7 the president 2000 race.

8 A. Right.

9 Q That says: D E M, underlined S T R. Do you know what
10 that means? Does that mean something to you?

11 A. Well, I think that stands for Democratic strength or
12 Democratic performance.

13 Q And do you know how that percentage was obtained?

14 A. Yeah. That's an average of statewide races over a
15 number of years.

16 Q So that would be the statewide races in this packet?

17 A. Probably, yes.

18 Q But you don't know for sure?

19 A. Not for sure, no.

20 Q Do you know who prepared that Democrat strength piece?

21 A. No.

22 Q Now, and you said you used this information in preparing
23 for your testimony.

24 A. Yes.

25 Q What was the significance?

1 A. Excuse me?

2 Q What did you find significant with respect to this data?

3 MR. SPIVA: I'm sorry, which data?

4 MS. SHOREY: The data that's on these four pages,
5 the statewide elections.

6 THE WITNESS: On these four pages?

7 BY MS. SHOREY:

8 Q Yes.

9 A. Well, the significance is basically how if you break up
10 the new congressional districts, even though it breaks
11 up somewhat 50/50, the Republican candidates seem to run
12 very well in areas with Democratic, significant
13 Democratic registration.

14 Q I just need you to break that down into components. The
15 first thing you said, they break up fairly evenly, is
16 that what I heard?

17 A. Yeah. Yeah, registration. Registration breaks out
18 evenly. I mean, for instance, you can look at this and
19 say, boy, you know, this is very equitable because, you
20 know, half the districts have Republican registration
21 advantages, half have a Democratic registration
22 advantage. But then when you start to look at the races
23 you'll see that registration really doesn't have much
24 significance. So what's significant about this is
25 looking at these, the newly drawn congressional lines,

1 and how these different races would have played out in
2 those lines.

3 Q And by that you mean which candidate would have won --

4 A. Right.

5 Q -- if they had run within those 19 districts?

6 A. Right.

7 Q Now, are there other statewide races that are not
8 included in here?

9 A. Are there statewide races that are not included in here?
10 Well, there are no court races, for instance. There are
11 no court races included in here. And we've had, you
12 know, countless number of appellate court races.

13 Q Did you look at any data on court races?

14 A. I don't put any significance in court races.

15 Q Why?

16 A. Because court races are just determined basically on
17 what year they're conducted in. Like, if it's an off
18 year, for instance, Democrats won't do as well because
19 the City of Philadelphia won't have as high of a
20 turnout. Or, there can be a significant local race that
21 can draw higher turnout in an area, which could skew it
22 for a candidate.

23 Plus, in court races because you, you know,
24 candidates are so handicapped by what they can talk
25 about and what they do, if you're able to raise a

1 significant amount of money and have a coordinated
2 effort, you can do better. Which the Republicans have
3 been able to do.

4 So I just, I guess that's why I'm for merit
5 selection, because I don't think they have any basis in
6 anything.

7 Q Now, is that your personal opinion?

8 A. I think it's -- is it my personal opinion? Yes. I
9 think it's probably an opinion shared by a lot of
10 people.

11 Q Are there any other folks that you -- could I go and
12 find an article where someone has said "statewide
13 judicial elections are of no value" when I'm trying to
14 figure out how people are going to vote?

15 A. Actually, I think that Dr. Lublin said that in his
16 testimony, if I'm not mistaken. But I think, I don't
17 know if there are any articles, but just working in
18 statewide judicial elections and being cognizant of how
19 they work, I mean, it's a pretty -- I mean, it's a
20 pretty accepted, it's accepted. I mean, I know people
21 who will, you know, want to run for statewide office for
22 an appellate judgeship and they'll skip it because they
23 know it's a bad, they'll know it's a bad year.

24 Q What do you mean by a bad year?

25 A. Well, if you're a Democrat, for instance, and you want

1 to run in a year when you think the turnout is going to
2 be higher in the City of Philadelphia or the City of
3 Pittsburgh. If you're a Republican, you want to run in
4 those years when you're not going to have that type of
5 turnout. And that, for instance, that year was this
6 past year.

7 Q Okay. And why does a significant race in Philadelphia
8 make a difference to a Democrat candidate for a judicial
9 office?

10 A. Well, because Philadelphia is a heavily Democratic area,
11 it tends to vote straight Democrat, and it's also an
12 area that has a very strong party organization that can
13 effect a straight party vote.

14 Q Now, when you mentioned off years, what did you mean by
15 an off year?

16 A. Well, a presidential election is an off year,
17 Congressional election is an off year. And off year it
18 tends to be, you know, less municipal. You know,
19 anymore there's -- we have so many elections it's really
20 hard to make, to distinguish it. But you know, to me,
21 an off year is just a year where there's not that much
22 political activity.

23 Q And when you say an off year, correct me if I
24 misunderstood you, that Republican voters will turn out
25 better than --

1 A. Yeah, Republicans tend to vote at a higher percentage.

2 Q Now, when you say Republicans, do you mean registered
3 Republicans?

4 A. Those are the only people that can vote. You can't vote
5 if you're not registered.

6 Q Correct. But you would --

7 A. Yeah. But you know, and also, western Pennsylvanians
8 tend to vote at a higher percentage than people in
9 Philadelphia, for instance. I mean, this year when the
10 Republicans won all the judicial elections, I mean,
11 turnout in Philadelphia was just abysmal because there
12 was nothing, there was really nothing going on. So
13 there was no reason, people didn't have any reason to go
14 out and vote. They really didn't care about Superior
15 Court. How do you feel about Superior Court?

16 MS. SHOREY: Off the record.

17 (Discussion held off the record.)

18 BY MS. SHOREY:

19 Q What about congressional races? I noticed that there
20 are none of those included here.

21 A. That's correct.

22 Q Did you consider how congressional races, the results of
23 congressional races?

24 MR. SPIVA: I'm sorry, I didn't know if there was a
25 complete question there? You said how the results of

1 congressional races?

2 MS. SHOREY: I asked did he consider Congressional
3 races in preparing for his testimony.

4 THE WITNESS: Well, I thought about them because I
5 know how Congressional races are run and what their
6 elements are and what goes into them, yes.

7 BY MS. SHOREY:

8 Q Did you look at any specific congressional race
9 results, though?

10 A. Past results? No. Well, no, that's not fair, because I
11 took into consideration, for instance, how Congressman
12 Borski -- well, see, no, that's -- I'm trying to think
13 how I can phrase. See, because in coming to my
14 conclusions I have to project how candidates would do in
15 areas that they may not be representing now, so.

16 But actual results, probably just how Congressman
17 Mascara does in the South Hills of Pittsburgh, the parts
18 of South Hills that he represents. Let's see, is there
19 anybody else. That's really about it.

20 But I have, you, know but I have a general
21 knowledge. See, I can't specifically tell you what, you
22 know, what I would draw back on, but, you know, when you
23 ask me about Hoeffel, Borski or any of these races, I
24 mean, I know what happened there, or what would happen
25 there.

1 Q I was going to say, it didn't happen yet, did it?

2 A. It didn't happen yet.

3 Q So you did not see, analyze any data with respect to the
4 congressional races?

5 A. No. The only congressional numbers I looked at is if
6 you look at the packet that has Pennsylvania, there are
7 some past election results in that, and I did look at
8 some of those.

9 Q Okay. You didn't, I mean, this data as I understand it
10 has, what it did was take the, divide up the, look at
11 the election results by a process of reaggregating them
12 into the new, the 19 new districts, correct?

13 A. Yeah, that's right.

14 MR. SPIVA: I don't want to object, but you both
15 are looking at statistics about I believe -- I'm sorry,
16 I withdraw that. My confusion. I thought that was the
17 alternate one.

18 MS. SHOREY: No, we're looking at the packet for
19 2002.

20 MR. SPIVA: My mistake.

21 BY MS. SHOREY:

22 Q So you didn't look at any statistics to see how the
23 congressional races would have turned out if they had
24 been reallocated among the 19 districts?

25 A. That would be impossible. You can't do that because

1 they didn't run in parts of those -- you're changing --

2 Q I mean by individuals.

3 A. You mean Democrats --

4 Q Yeah. This here, the percentages, if I understand
5 correctly these are just, these are, you know, the
6 Democrat and Republican candidate in the general
7 election.

8 A. Right.

9 Q And then that's how these were, these are the
10 percentages.

11 A. Right.

12 Q So if you were to do the same thing and allocate all the
13 people who voted in those 21 districts back among the 19
14 districts and look at them, you could then see how they
15 would have, if you looked at it for D and R?

16 A. Well, you could, but I mean, I don't think that that
17 would be reliable, because if you didn't have a
18 competitive race, it would skew the results. But the
19 answer to your question would be no.

20 Q So just to follow up, is there something -- there's an
21 inherent difference, then, between the congressional
22 race than the other statewide races?

23 A. Well, sure. Congressional --

24 MR. SPIVA: I just want to object. I think the
25 question is unclear. I don't understand it.

1 BY MS. SHOREY:

2 Q If you can, answer it.

3 A. A congressional district is -- a congressional race is
4 much more local.

5 Q What do you mean by local?

6 A. Well, people local, it's more local. I mean, when you
7 run statewide you have to campaign throughout the state,
8 advertise throughout the state, talk about statewide
9 issues more. When you run for Congress, you're only --
10 before this plan you were in a more compact area,
11 dealing with issues that are more consistent, you know,
12 with your district. It's just a different type of race.

13 MR. SPIVA: Linda, when you get to a convenient
14 stopping point could we take about a five-minute break?
15 We've been going about an hour and a half.

16 MS. SHOREY: That's fine. We might as well just do
17 that right now.

18 (Recess taken from 11:45 until 11:57 a.m.)

19 BY MS. SHOREY:

20 Q I'd like to focus at this point on your conclusions.
21 That's basically what you're here for as the expert, is
22 to reach a conclusion.

23 Now, you concluded, at least as your testimony in
24 the Erfer trial, that the Act 1 was a plan that was bad
25 for the Democratic party, and if I remember correctly

1 you started by saying that there were only five, you
2 could only see that five Democrats were going to win
3 under this plan?

4 A. Right. New districts, correct.

5 Q Now, can you tell me how you determined that those five
6 districts were safe?

7 A. Well, you can go through them. If it's okay if I --

8 Q Yeah, that's fine. Just say which map you're looking
9 at. I think 6 is the Act 1.

10 A. Well, Congressmen Brady and Chaka Fattah in
11 Philadelphia, because those were huge Democratic
12 majority, you know, majority areas, so they're safe,
13 nothing's going to happen there. And then --

14 Q Excuse me one second. You said huge Democrat
15 majorities. Now, what do you mean by a huge Democrat
16 majority?

17 A. I mean over -- it's overwhelmingly Democratic, and
18 there's no Republican infrastructure in Philadelphia.

19 Q So you're saying the Democrat party, meaning the
20 registered voters?

21 A. Yeah. Yeah, I mean, this bottle cap could be elected to
22 those areas if it was a Democrat.

23 MR. SPIVA: I'm going to object to the question
24 after the fact. Was there a complete question there?
25 You said you mean the Democratic party meaning, and then

1 I don't know if you completed your question.

2 MS. SHOREY: What I was meaning is the Democrats,
3 registered Democrats.

4 MR. SPIVA: I'm sorry. Are you asking him if he
5 means registered Democrats when he refers to it being an
6 overwhelmingly Democratic --

7 MS. SHOREY: Yes.

8 THE WITNESS: Yes, yes. Kanjorski, the Kanjorski
9 district. That should stay. That should stay
10 Democratic and Kanjorski should win.

11 BY MS. SHOREY:

12 Q And why?

13 A. The same reason, Democratic registration. But that's an
14 area, for instance, Congressman Kanjorski has had a
15 series of very bad articles come out against him. You
16 know, potentially something could go wrong there for
17 him. So that's three.

18 The Murtha, we'll call it the Murtha district.

19 Q And what number is that?

20 A. That would be 12.

21 Q Under the Act 1?

22 A. Yes. Again, Democratic, Democratic registration.

23 And then the Doyle district, which I believe is 14.

24 Q So what was the key factor in each of these?

25 A. The key factor is the people who drew these lines packed

1 a lot of Democrats into these five districts. That
2 would make it very, very difficult for a Republican to
3 win there, I believe.

4 Q So you think the high number of registered Democrats in
5 those districts is the key factor in those five
6 districts?

7 A. I think that's definitely one of the factors, sure.

8 Q What would be the others?

9 A. Well, it's just how, you know, people, you know, people
10 tend to think, you know, the issues they care about,
11 they probably more identify with the Democratic party as
12 it's constituted.

13 Q What would be those issues?

14 A. Issues that affect working-class families, working
15 families.

16 Q And that's the same in each of those five districts?

17 A. Well, no. The Fattah district, actually, both
18 Philadelphia districts, I believe both are minority
19 districts. The Fattah district is definitely a minority
20 district. And the Brady district I believe still is a
21 minority district, and I believe Congressman Brady is
22 the only non-minority representing a minority district
23 in the country. And African-American voters tend to
24 vote Democratic.

25 Q Okay. And that's in the first and second districts?

1 A. That's in the first and second. And the other districts
2 it's, you know, it's registration and ideology to a
3 large degree. I think it would be very -- it's just
4 because of the way they're packed in, I think it would
5 be very hard for Republicans to win there.

6 Q Okay. Now, which of the Democrat incumbents did you
7 determine would not be safe under Act 1?

8 A. Borski, Hoeffel, Holden, Mascara, and/or Murtha.
9 Hoeffel, Borski, Holden, Murtha and/or Mascara. And
10 then, of course, the Coyne seat, they're getting rid of
11 the -- eliminating the Coyne seat.

12 Q And that's because Congressman Coyne is retiring?

13 A. No. I think that's because Pennsylvania had to lose two
14 seats.

15 Q Right.

16 A. And that was one of the ones they picked.

17 Q And he is retiring, though, correct?

18 A. He is retiring.

19 Q And he announced that retirement before this plan was
20 drawn?

21 A. I believe he did, probably thinking that they would
22 take -- as has always been done in the past, that there
23 would be equitable, there would be an equitable
24 diminishing of seats. And he probably said, okay, I'll
25 take out my seat and then there will be a Republican

1 seat. That was probably, I think that was his thinking,
2 actually.

3 Q Now, one Democrat incumbent you did not mention was
4 Sherwood.

5 A. That's because he's not a Democrat.

6 Q He's not? Okay. He is a Republican?

7 A. The last time I looked.

8 Q Okay.

9 A. You want to take that off?

10 Q Hey, you know. You're the expert. I am only --

11 A. That wasn't a trick question, was it?

12 Q No, it wasn't. It was one that I actually have in here
13 in my list.

14 A. That seems like a Krill question.

15 Q Let's talk, then, about those incumbent Democrats that
16 you've identified and why you think they don't have a
17 chance to remain.

18 A. Sure.

19 Q Let's start with Mascara, Congressman Mascara.

20 A. Okay.

21 Q He's now resides I believe in the 18th, correct, what's
22 labeled the 18th?

23 A. Yeah. They split up his precinct, I believe, because
24 across -- as he likes to say, I wake up in one district
25 and I go to my car in another district, so. He lives in

1 Charleroi.

2 Mascara's problem basically is, and that's, this is
3 where I'm from, is that that district before and
4 traditionally was a southwestern district, Washington,
5 Green, Fayette County. It's taken in more of, it's
6 taken in more of Allegheny County, and the new district
7 now has much more Allegheny County, Westmoreland County.
8 But the parts of Washington County that it retains tend
9 to have more in common with the parts of the Allegheny
10 County district, which means it's suburban Pittsburgh,
11 the same thing as Westmoreland. So Mascara, who is a
12 pro-life, conservative ethnic Democrat, is going to have
13 a very difficult time appealing to voters for a district
14 that is suburban Pittsburgh.

15 Q Okay.

16 A. Take it from me as a person who grew up in Washington
17 County.

18 Q So even though there is a majority of registered
19 Democrats in this district, that's not the key factor
20 here?

21 A. That's correct.

22 Q So is it fair to say that the key factors are going to
23 be the issues and the --

24 A. Key factors are going to be issues and geography.

25 Q Okay. And is there anything -- how about candidate?

1 A. Candidate? I think it's going to be very difficult for
2 a candidate from Washington County to win that seat.

3 Q Would it be impossible for a Democrat to win that seat?

4 A. I would say based on past voting, it would be. And
5 especially if Senator Murphy is successful in this
6 election, which he will be, he would be very difficult
7 to dislodge as an incumbent.

8 Q What if Senator Murphy is not the Republican candidate?

9 A. Who would be? If it wasn't Senator Murphy, I mean, the
10 only other name I've heard is Barbara Hafer for that
11 seat, and she would be even tougher than he would be.

12 Q So what you think is important here is the candidate
13 that the Republicans pick for them to win that district?

14 A. I think it's a combination of elements. I mean, you
15 have a district that's basically been drawn for an
16 individual, and I don't think that's been disputed by
17 anybody. So you take the candidate and you put him
18 together with the district and I think it would be very,
19 very difficult for a Democrat to win that district in
20 the foreseeable future.

21 Q How does a candidate, how does an individual get to be a
22 candidate in a district?

23 A. Well --

24 MR. SPIVA: Object as vague, but you can answer.

25 BY MS. SHOREY:

1 Q Under the Pennsylvania Election Code, how does one, an
2 individual, if I wanted to be a candidate for Congress
3 in the 18th district, what would I have to do to appear
4 on the general election ballot in November?

5 A. You'd have to win the primary.

6 Q And what would I have to do to be on the ballot in the
7 primary?

8 A. You would have to take out petitions and have the
9 requisite number of signatures from the district, and to
10 get on the ballot.

11 Q And so we don't know yet who's going to be the candidate
12 in that election?

13 A. Which candidate? The Republican?

14 Q Either candidate, for that matter.

15 A. It's going to be Senator Murphy.

16 Q He hasn't yet won the primary, though.

17 A. I think he will. That is, if Barbara Hafer decides not
18 to -- I mean, if Barbara Hafer runs, then that could
19 throw a monkey into that, throw a wrench into that. But
20 Murphy has already announced he's going to run, and I
21 haven't heard anybody else announcing they're going to
22 run against him.

23 Q Now, have we heard anything with respect to Democrat
24 candidates for that district?

25 A. No, because I think what's happening there is they're

1 waiting to see what Mascara does. But even, but if
2 Mascara runs against Murtha, I don't think you're going
3 to be finding Democrats lining up, at least legitimate
4 Democrats lining up to run in that district who are
5 going to have the backing and finances to make a
6 credible campaign.

7 Q And what do you base that belief on?

8 A. Knowing what the district looks like, knowing the
9 resources that are out there, knowing that the types of
10 people who would be considered serious candidates for a
11 congressional seat out there, I don't see, you know,
12 anybody of significance stepping forward. Knowing that
13 the Democratic party has limited resources and where
14 they're probably going to put them.

15 Q Let's move to the Holden district, not his district, I
16 guess his district, he's now in the 17th, correct?

17 A. He's going to -- he's in the Gekas district, correct.
18 Again, it's a --

19 MR. SPIVA: I don't know if there was a question
20 on the table, actually. Why don't you wait until we
21 have a question you can answer. You just said you were
22 moving there, but I don't know if you actually asked a
23 question about it yet.

24 MS. SHOREY: Mr. Ceisler is doing a great job.

25 BY MS. SHOREY:

1 Q Representative Holden, you indicated you do not
2 believe that he will be able to win in the 17th.

3 A. Very difficult.

4 Q Could you tell me why?

5 A. Again, Republican registration, past performance of
6 Democratic candidates there, the fact that Gekas is an
7 incumbent that is better known in that district than
8 Holden is, because Holden only represented a certain
9 percentage of that district. The media market is
10 Harrisburg for his district, so Gekas has been known
11 here, whereas Holden probably has never been on
12 Harrisburg television before.

13 Q Do you know how much of the district each of the prior
14 incumbents is encompassed within the 17th?

15 A. I know that Holden's from Schuylkill County. I don't
16 have -- I don't know the exact -- I don't know the exact
17 percentage but I do know before he was put into the
18 Kanjorski, he was put into the Kanjorski district, and
19 then in the new plan they moved him over to Gekas, and
20 it was a small percentage, but I can't give you an exact
21 number.

22 Q Okay. Do you think it would make any difference if
23 local leaders were to support Representative Holden,
24 give him their endorsement?

25 A. What local leaders?

1 Q Mayor Reed.

2 A. I think -- has he already endorsed him? I don't even
3 know. Does something like that help? Sure, sure. That
4 would help, but in the end, endorsements are not what
5 wins elections. I mean, the thing is, I believe that
6 Gekas is the, is either -- might be the most senior
7 Republican member of the House in Pennsylvania, so he's
8 known in this district. And if Mayor Reed endorses
9 Holden, I think people would say, okay, well, that's
10 nice, but we know Gekas ourselves and we either like him
11 or we don't like him. And that's the benefits of
12 incumbency.

13 And also, people would think that Mayor Reed, being
14 a Democrat, it would be consistent with him to endorse a
15 Democratic, even though in the past Mayor Reed has
16 endorsed Republicans. I believe he endorsed Governor
17 Ridge.

18 Q Yes, he did. Are you aware that Mayor Reed received the
19 Republican nomination for mayor this past --

20 A. I wouldn't be surprised. Isn't he mayor for life?
21 Isn't that what they called him?

22 MR. SPIVA: That was Mayor Berry in D.C., actually.
23 But his term got cut short.

24 (Discussion held off the record.)

25 BY MS. SHOREY:

1 Q That will bring us to the 13th district, I believe,
2 where we have Congressman Borski and Congressman
3 Hoeffel.

4 A. Correct.

5 Q Now, why do you think that one of them, since both are
6 incumbents, that one of them will not, whichever one
7 wins the primary, will not ultimately be the winner?

8 A. Republicans did a masterful job of setting this district
9 up, because the way it is set up, it is set up for a
10 Democrat from northeast Philadelphia to win the primary,
11 because the majority of the Democrats in the district
12 are from Philadelphia. So I believe Borski or another
13 Democrat from northeast Philadelphia will win the
14 primary. And also probably be a pro-life Democrat. And
15 what will happen in the fall is they will run against a
16 Republican pro-choice candidate, and the district being
17 majority Republican will then vote for the Republican
18 pro-choice candidate.

19 Q Did I just hear you infer that Congressman Hoeffel is
20 anti-life?

21 A. No. I said Borski is pro-life, Hoeffel is pro-choice.

22 Q So we could refer to Congressman Borski as anti-choice
23 and --

24 A. I guess you could.

25 Q So you think that's the major issue that's going to

1 drive it as opposed to registration?

2 A. Yeah, I think that's a big -- I mean, I've worked that
3 district. I think that that's -- abortion is a very big
4 issue there. Abortion and guns, those are big issues.

5 Q In what respect -- explain that to me, why guns and
6 abortion are big issues.

7 A. Because these are very -- these are moderate suburban
8 voters, and women are very important voters in this
9 district, and there are a number of women who are
10 elected officials in this district, and the vast
11 majority of them are pro-choice. And it's also a
12 district that cares about gun violence because they read
13 and hear about it every day in the City of Philadelphia
14 and they don't want it visiting them.

15 Q So the key factor in this district then is issue?

16 A. I think issue, I think issue is very important.

17 Q More so than registration?

18 A. Yeah. These are independent voters. But you see, what
19 happens is in that primary, in that primary -- let me
20 back up a second.

21 I want to differentiate between voters in the City
22 of Philadelphia and voters in suburban Montgomery
23 County. And the voters in Philadelphia, they will tend
24 to be party voters and they'll also tend to be very
25 parochial voters. So they will, they'll vote for Borski

1 because they like him as an individual, he's been an
2 excellent congressman, and they really won't give
3 Hoeffel the time of day.

4 Q Okay. Now, you had indicated to me before that having
5 an important local race is important in Philadelphia for
6 voters to turn out. Is that correct?

7 A. That's correct.

8 Q Okay. Will there be an important local race in Philly
9 that will get them to turn out in that primary?

10 A. Potentially. But it wouldn't be a local race, it would
11 be a gubernatorial, it would be the gubernatorial race
12 because Ed Rendell, the former mayor, will be running.

13 You know, the other thing that's going to make it
14 very difficult for a Democrat to win that district in a
15 general election is you take an area like Lower Marion,
16 which has been taken out of that district and it's been
17 put I believe in the 6th district, now, that was a
18 district that Hoeffel and Democrats have always done
19 very well in, and the Republicans wanted to get rid of
20 Lower Marion. In fact, they call it the People's
21 Republic of Lower Marion. But they wanted to get rid of
22 that. And then that area that Greenwood came down and
23 took, which they call the Greenwood gash, they took that
24 out. They took out part of Hoeffel's home area of
25 Abington. So you take those areas out that will vote

1 for Democrats and that makes it a lot tougher, also.

2 Q But just to back up, though, the primary piece, though,
3 you think that's going to decide that is the issue in
4 the 13th?

5 A. No, the primary -- are you saying primary as in primary
6 election, or primary as in --

7 Q The primary issue in that district.

8 A. Yeah, I think if -- I think Republicans running a
9 moderate pro-choice woman I think are going to be very
10 difficult -- against a pro-life Democrat from the City
11 of Philadelphia, I just don't see how a Democrat can win
12 that.

13 Q If, however, there was a, to use your words, pro-life
14 Republican candidate who, male, that ran in that
15 district in the general election, would your analysis be
16 the same?

17 MR. SPIVA: Objection, incomplete hypothetical, but
18 you can answer it. I don't know if you gave the
19 candidate of the other party or issue leaning.

20 BY MS. SHOREY:

21 Q Either Hoeffel or Borski.

22 A. Well, it would -- I think a pro-life male Republican
23 would still defeat Borski, because then I think people
24 are just going to vote straight party lines. They're
25 going to say what's the difference. They're going to

1 say, it's like that area with Klink and Santorum, for
2 instance, they said, you know, pro-life pro-gun
3 Democrat, pro-life pro-gun Republican, we'll just vote
4 party line, we'll vote for the Republican.

5 Q You're saying that district as a whole even though the
6 registration -- just wait one second. I gotcha. There
7 are those other pretty large percentage of other
8 registered voters in that district?

9 A. Yeah. Yeah. But registration just to me just doesn't
10 have -- I don't trust registration numbers, either.

11 Q So in that district the registration numbers are not the
12 factor?

13 A. No, I don't think so.

14 Q Okay. I think that's all of our Democrat incumbents.

15 What did you determine about the 6th district,
16 which currently is empty?

17 A. It's the screwiest district. That's one of the screwy
18 districts. I just find that district amazing. To go
19 from the City of Reading through Chester County all the
20 way to Lower Marion is just incredible. That district
21 was drawn for Senator Gerlach.

22 And look, I have a friend who wants to run in that
23 district, and he called me, and he has a great name and
24 he could raise money, and he still may run, but I told
25 him I think it's a waste of time. I think that's -- I

1 think I don't think you're going to be able to beat
2 Gerlach in that district.

3 Q What's the key factor in that district?

4 A. Past performance and, you know, registration to a
5 certain degree. But again, you know, here's a district
6 where what they've done is they carved out that Lower
7 Marion part out of the Hoeffel piece and they put it in
8 with Gerlach, and Chester County is basically the center
9 of that district and the base of that district.

10 Q And why is that important?

11 A. Because that's his base.

12 Q And you mean he?

13 A. Senator Gerlach.

14 Q And this, of course, assumes Senator Gerlach gets the
15 nomination.

16 A. But I believe he will.

17 Q Now, what did you determine about the Republican
18 incumbent?

19 A. The Republican incumbents, they're doing very well.

20 Q Let's start with Congressman English, whom I believe is
21 in the new, the third district under Act 2001.

22 A. Correct. Congressman English can stay a congressman as
23 long as he wants.

24 Q What's the key factor there?

25 A. The key factor is Republicans do very well in that

1 district. And he's an incumbent, and I don't see
2 Democrats being able to mount a significant challenge to
3 defeat him.

4 It's a district now that you're in two media
5 markets. You have to buy -- not only do you have to buy
6 Erie television, but you have to buy Pittsburgh
7 television. So it makes it much more difficult.

8 Q Now, that district, of course, like all the districts,
9 had to grow, correct, in order to -- because they had to
10 add more people, right?

11 A. It had to add more area.

12 Q Well, true. More area to get more people.

13 A. Right, because we have less people.

14 Q But there did have to be more area added to that
15 district?

16 A. Yeah, yeah. You know what, I guess, sure. I'd have to
17 look at the old map. Actually, when you look at
18 English, he had Erie, Crawford, Mercer, his district
19 basically stayed the same. It picked up a little into
20 Armstrong, but his district basically stayed the same.

21 Q Now, English is, of course, in a district that has, it's
22 a plurality Democrat registration district?

23 A. Correct.

24 Q So registration in that district is not a key?

25 A. No, not at all.

1 Q Are issues a key there?

2 A. These voters tend to be Reagan Democrats. But I mean,
3 you look, Governor Ridge, you know, Governor Ridge held
4 that seat before English. Another Republican by the
5 name of Mark Marks held it, you know, held it before
6 that. These are, you know, these are conservative
7 Democrats who when they vote, they'll vote Republican,
8 they just haven't changed their registration.

9 Q Do they vote Republican statewide?

10 A. Well, they voted for Santorum, they voted for Fisher,
11 they voted for Hafer. They voted for Ridge, of course.
12 They vote for Specter. They voted for Fisher against
13 Kohn. The only Democrat they voted for is Casey.

14 And Casey, you know, the thing is that even looking
15 at Casey, because neither of his opponents were able to
16 mount, you know, mount viable campaigns. They just
17 couldn't, you know, they can't raise the money to run
18 against that.

19 Q How about the 4th district? I believe Melissa Hart is
20 the incumbent there?

21 A. Right.

22 Q Now, the 4th district is fairly heavily, well, certainly
23 has a majority Democrat registration.

24 A. But again, she's the incumbent, and she would be really
25 hard to beat. I mean, that district, when they voted,

1 they voted for Dole against Clinton, they voted for
2 Ridge, they voted for Santorum. They voted for Fisher,
3 they voted for Hafer. Voted for Ridge, voted for
4 Specter. Voted for Fisher against Cohen. They voted
5 for Santorum against Wofford. Again, Casey is the only
6 one who has been able to win there.

7 Q How long has Melissa Hart been in office?

8 A. I think she's going into her third term. I'd have to
9 check. She was a state senator.

10 Q Yeah, but how long has she been a congressman?

11 A. I think she's going into her third term. I'd have to
12 look that up.

13 Q Who was the congressman before her?

14 A. Klink.

15 Q And how long was he there?

16 A. Ron was there, let's see, Ron -- actually, when I was at
17 KTK Ron was my weather man.

18 MR. SPIVA: Long route to Congress.

19 THE WITNESS: Ron was there possibly around eight
20 years, something like that.

21 BY MS. SHOREY:

22 Q And what party was Ron Klink?

23 A. Democrat.

24 Q I believe he was elected to four terms. Is Melissa in
25 her first term? She was elected in 2000.

1 A. Like I said, eight years -- okay. That's right. That's
2 right. I'm sorry, that's right. She was just elected.
3 You know, because I keep thinking of her as a state
4 senator.

5 Q What's the key factor in the 4th district?

6 A. I think issues are important there. But again, you have
7 a lot of Reagan Democrats. See, Klink, Klink was an
8 anomaly because Klink was a weather man at the most
9 popular station in Pittsburgh, so people knew who he
10 was. People always say -- it was funny, people would
11 say, who would vote for a weather man? And I'd say,
12 think about it, who is the most trusted person on that
13 anchor team, it's the weather man. You know, the
14 weather man ain't going to lie to you.

15 Q Well --

16 MR. SPIVA: He may be wrong but he won't lie.

17 MS. SHOREY: He doesn't lie, right.

18 THE WITNESS: He's not going to lie to you. So
19 Klink, that district would have gone Republican, anyway,
20 because what happened is there was a Congressman
21 Atkinson flipped from Democrat to Republican, who had
22 that district. And then a Democrat did win that
23 district, I forget his name. But he got caught up in
24 some scandal so he had to leave. And I think a
25 Republican would have kept that district, but because

1 Klink was so well known from being on TV, that he was
2 able to win.

3 BY MS. SHOREY:

4 Q So let's go to the 5th district, Peterson?

5 A. Right.

6 Q What do you think is the key factor that made you
7 believe Peterson is not susceptible to defeat?

8 A. That district is so huge that incumbency there is just
9 so important, because, you know, the use of your
10 franking privileges and all the things you get with
11 incumbency just makes it much easier to cover that
12 district.

13 For a Democrat -- there is no base in that district
14 for a Democrat to emerge from. So that's just a very,
15 very safe district.

16 Q And when you say base, what do you mean by that?

17 A. Well, there's no mass of Democratic voters. You know,
18 maybe there's a few thousand in State College or
19 something like that, but there's just no base. And to
20 get known in a district like that in a real short period
21 of time would be very difficult. I mean, you know, you
22 would have to have an airplane or a helicopter to deal
23 with that district.

24 Q So the key factor there is size?

25 A. I think size, I think geography, lack of base. And also

1 it's a conservative. You know, that's the real rural,
2 you know, Pennsylvania, except for State College.

3 Q The 7th district?

4 A. Okay.

5 Q That's Congressman Weldon, I believe?

6 A. Right. Delaware County, correct.

7 Q Yeah.

8 A. Right.

9 Q That's where the 7th is?

10 A. Yeah.

11 Q What's the key factor there?

12 A. Again, he's a -- actually, Delaware County I believe
13 lost population, if I'm not mistaken. But the key
14 factor there is you have an extremely powerful
15 Republican machine there, and believe me, I know,
16 because I have worked in races in Delaware County. So
17 you have a powerful Republican machine and you have
18 incumbency and there's no Democratic infrastructure.
19 Nobody is going to invest in a race against Congressman
20 Weldon, or a credible Republican candidate there.

21 I mean, there was a state senate election when
22 Senator Loeper had to leave, there was a special
23 election, and Democrats in Delaware County thought that,
24 you know, we'll put up the right candidate, we'll put up
25 a moderate pro-choice, you know, woman, or whatever,

1 well financed. They put a ton of money into her and
2 they worked that really hard, and it just didn't make
3 any difference. You just can't beat that Republican
4 machine there.

5 And also, you know, because of the way government
6 is set up in Delaware County, you know, unlike other
7 counties where you have, you know, accept for Allegheny
8 and, you know, where you have a Board of Commissioners
9 where you have some minority representation, Democratic
10 representation or whatever, the way the Delaware County
11 government is set up, you have a Board of Commissioners
12 that's all Republican. There's no minority
13 representation there whatsoever. So there's no base to
14 run from.

15 Q The 8th, Greenwood, that's a plurality Republican
16 district.

17 A. Yeah. That's Bucks County. You know, again, Greenwood
18 being an incumbent, being a moderate, you know, being a
19 moderate Republican in a district where if you want to
20 run against the incumbent, just like Weldon, you would
21 have to buy Philadelphia television, which is, you know,
22 very expensive because it's, you know, the fourth
23 largest market, you know, fourth largest TV market in
24 the United States. And now Greenwood is becoming even
25 more well known because he's one of the key, you know,

1 the key congressman in the Enron investigation, so he's
2 on television every night.

3 Now, there was a Democratic congressman in that
4 district, you know, he defeated Peter Kostmeyer. But
5 that's because Republicans kept running the wrong type
6 of candidates there. So Greenwood and somebody like
7 Greenwood will be in that district forever.

8 Q So the key there is issues again? Is that the --

9 A. I think -- you can't have -- you can't put a right wing,
10 you can't put an extreme right wing Republican in that
11 district. I mean, these are moderate suburban voters.

12 Q So the right Democrat could win that district?

13 A. Only if he ran against the wrong Republican.

14 Q And Mr. Sherwood in the 10th who I inappropriately
15 listed on my list as a Democrat.

16 A. Right. Again, that's a district that has Republican
17 representation for years. There was Congressman McDade
18 was before him, and I believe Governor Scranton was
19 before McDade, if I'm not mistaken. So they've always
20 had Republican representation there.

21 And look, I'll tell you how hard it is to beat a
22 Republican there, is when McDade left and that was an
23 open seat, the Democrats ran a Casey up there, they ran
24 Governor Casey's son, and that was a target race for
25 national Democrats. They put tons and tons and tons of

1 money there, and the young Casey was a good candidate,
2 and they still couldn't win that seat when it was an
3 open seat.

4 Q So the key factor there is registration?

5 A. I think party affiliation is very important there.

6 Q Now, Mr. Toomey's district, the 15th?

7 A. Right.

8 Q Mr. Toomey is a plurality Democrat district in
9 registration.

10 A. Yeah. And they did have before Toomey was Congressman
11 McHale, who was a Democrat. But again, you have a lot
12 of older Democrats in this area who tend to vote
13 Republican, are a little more conservative.

14 I think incumbency is very important here. They
15 have run -- Democrats have put money and good candidates
16 in against Toomey. They ran a guy by the name of
17 O'Brien before, and they couldn't beat him. And I don't
18 see them -- I don't see Democrats beating him.

19 Q What do you consider the key factor in that district?

20 A. Lehigh Valley is an interesting, it's an interesting
21 place. The Lehigh Valley is a very expensive place to
22 run campaigns. Money is very important there because
23 you need to run Philadelphia television.

24 And the other thing that makes it very expensive is
25 you have -- it's one of the few places where you have

1 two competing cable television systems, you don't have a
2 monopoly. So what happens is when you want to buy cable
3 television advertising in the Lehigh Valley, you have to
4 buy both systems, and it becomes very, very expensive.
5 So I think financing of campaigns is very important
6 there.

7 Q That would be the key factor in that district?

8 A. I think that is a very key, I think that's a very key
9 factor.

10 Q Congressman Pitts in the 16th.

11 A. That's just a very conservative area. I don't even know
12 if a Democrat lives there.

13 MR. SPIVA: Actually, we had a couple in yesterday.

14 THE WITNESS: Yeah, it's very conservative. So I
15 think registration is important there. And I think
16 issues are important there.

17 BY MS. SHOREY:

18 Q And we did the 17th when we talked about Congressman
19 Holden.

20 A. And Gekas, right.

21 Q And Congressman Gekas being the Republican.

22 A. Right.

23 Q That leaves us with Congressman Platts in the 19th.

24 A. That's a secure Republican seat, also. That would be
25 registration.

1 Q Now, what we've talked about basically are what will
2 happen in the 2002 elections.

3 A. Right.

4 Q You had I believe testified in Erfer that you felt that
5 the results that you believed would occur in 2002 would
6 continue through the decade.

7 A. Yes.

8 Q Could you explain how you reached that conclusion?

9 A. Well, Pennsylvania, like other states, incumbents get
10 reelected. And Pennsylvania likes familiarity. We're a
11 state where people are older, so they're more
12 comfortable with the names they know, you know, names
13 they recognize, the people they know.

14 And because of the way this map is drawn, elections
15 are going to become more costly to run. So what's going
16 to happen, instead of having to do television
17 advertising in one media market, many of these seats run
18 across several media markets. So there's basically
19 going to be a higher bar to entry if you want to run,
20 because you're going to have to raise a lot of money.

21 Also, just to get known, I mean, if you are a, you
22 know, let's say for instance you're in the Shuster seat
23 and you're a Democrat who wants to run in the Shuster
24 seat and you're from Shippensburg, okay? If you're well
25 known, you're going to be on TV in Hagerstown,

1 basically, because that's the television station that
2 gets covered down there. But the district runs all the
3 way to Fayette County and Somerset County, which are in
4 the Pittsburgh media market. And there's another part
5 of the district which is in the Harrisburg media market.
6 So you know, therefore, you know, you just have -- a
7 candidate's going to have a lot of work to do.

8 And then also because, I think because these
9 congressman are Republican, they're going to tend to
10 support their local parties and whatever. And the
11 Democratic infrastructure is going to be such it's going
12 to be hard to build parties because, you know, they're
13 going to be making sure that Republicans win for school
14 board and township supervisor and state House and
15 whatever, which would be the traditional feeding ground
16 for people who would want to run for Congress. So I
17 think it's going to be very, very difficult to defeat
18 any of these incumbents with the map drawn as it is.

19 Q So your opinion is based upon the incumbents staying in
20 place, those people who get elected in 2002?

21 A. Not necessarily. I think also it's just because these
22 seats are drawn for Republicans. It helps to develop,
23 it helps to make a Republican infrastructure stronger,
24 and it makes it difficult for the Democrats to develop
25 an infrastructure that would create viable candidacies.

1 Q Let's take the 4th for an example, because the 4th has a
2 heavy Democrat registration, majority Democrat
3 registration. And let's say Melissa Hart decides she's
4 going to run for senator against -- Arlen Specter
5 retires, she runs for senator.

6 A. In her dreams, but anyway, go ahead.

7 Q Well, he's no young chicken.

8 A. I'm going to a fund-raiser for him in a couple weeks.
9 He better be --

10 Q And that district becomes open.

11 A. Yes.

12 Q You know, does that not become a district where
13 Democrats would have a shot at winning?

14 A. Yes. That's probably the one. That's probably the one.
15 That's a seat that apparently what happened there was
16 they took the chance, they took the chance there to --
17 the way they had it drawn, they had to cut it a little
18 closer in one of the seats, and that's the one. Yeah, a
19 well-financed, well-known Democrat in an open seat,
20 having everything going for them, in a good year, might
21 have, like, a 50/50 chance of winning that district.

22 Q How about in the 18th? Let's assume that Mr. Murphy,
23 Senator Murphy, whom you believe will be elected in the
24 18th, decides that he wants to go back to being a
25 psychologist, he's tired of politics, and that seat

1 becomes open. Isn't that a possibility that in that
2 seat that a Democrat could win?

3 A. I think that's a harder one compared to the, you know,
4 compared to the Hart seat. I think that's one that
5 would probably stay Republican.

6 Q It currently isn't.

7 MR. SPIVA: Objection.

8 THE WITNESS: Well, it's currently nothing. It
9 would stay Republican if Murphy ran and then decided not
10 to run.

11 BY MS. SHOREY:

12 Q And why would that be?

13 A. It's just what I said. I just answered that.

14 Q You said if Murphy ran and then didn't run again, it
15 would stay Republican?

16 A. Well, no. I was answering your question. I thought you
17 were making a joke. You said because I said it's really
18 not a seat now, there's nobody there, it was created for
19 him.

20 Q I'm just looking at a hypothetical situation. If in
21 2002 Murphy did not run, then wouldn't a Democrat with a
22 majority Democrat registration who chose the right
23 issues, have an opportunity to win in that district?

24 A. No, because I think those are Democrats who are voting
25 Republican. I think that's a Republican district.

1 Q And that's based on past voting history?

2 A. Past voting history. You know, I can look at these
3 numbers but it's not the only thing I would rely on. I
4 mean, especially, this is the area I'm from, and the way
5 that district is drawn, I just don't -- any Democrat
6 there is probably going to have to come out of
7 Washington County, and a Washington County Democrat, you
8 know, for the most part I just don't see having the
9 resources or the issues or whatever to win in basically
10 what's a suburban district.

11 Q How about our fellow Duquesne alumni from Green County,
12 Farley Toothman?

13 A. Nobody from Green County is -- well, first of all, Green
14 County is in the Murtha district.

15 Q I guess that won't work then, will it?

16 A. That won't work, right. And nobody from Green County is
17 going to win anything.

18 MS. SHOREY: Could we just take a few short minutes
19 so I can see what else I need to cover?

20 (Recess taken from 12:53 until 1:03 p.m.)

21 BY MS. SHOREY:

22 Q I think we can finish up relatively quickly here.

23 A. Great.

24 Q What I did realize is that I neglected to ask you about
25 Congressman Shuster in the 9th.

1 A. Okay.

2 Q With respect to his chances of retaining that district
3 or as an incumbent.

4 A. Well, he'll retain it, and it could be based on a number
5 of things. I mean, if you look at registration, you
6 know, it's an overwhelmingly Republican district. But
7 his father served as a congressman there for many years,
8 a very powerful member. So as I said before,
9 familiarity with names is very important in
10 Pennsylvania. So the Shuster name is a good name there.

11 And also, anybody that runs against him, you're going
12 to have to buy television in Hagerstown, Harrisburg,
13 Johnstown, Altoona, and Pittsburgh. I mean, it's just,
14 it is an unbelievably high bar to come in and to take
15 that seat from Shuster.

16 Q Now, if Mr. Shuster, Congressman Shuster should run into
17 similar problems as his dad and there are no more
18 Shuster sons to run, what would you think would be the
19 possibility of an open seat election?

20 A. Well, it happened, because -- oh, if there's no more
21 Shusters?

22 Q If we took the name recognition, because you said that's
23 a factor in that district.

24 A. Yeah. I think it's still an overwhelmingly Republican
25 district, and I think, again, you have Republican

1 registration coupled with all the different media
2 markets that you have to buy, and the amount of money
3 that it would cost to be there, I think it would be
4 very, very difficult for a Democrat to win that
5 district.

6 I can't see that as a district where the Democrats
7 would put money into, and it's because of the number of
8 media markets that you would have to buy. I mean, man,
9 this is an astoundingly high-cost district to run in. I
10 was saying something before, I said it's a good thing
11 that Shuster's father put all those highways in
12 Pennsylvania, because these congressmen are going to
13 need them to get around.

14 Q I'm still waiting for Interstate 99.

15 These four pages that we've been focusing on this
16 morning which have the title U.S. Congressional
17 Districts 2002 dash Act 1 Election Results, were those
18 part of Exhibit 56 in the Erfer hearing?

19 A. I don't know the answer to that.

20 MR. SPIVA: I can confirm, if you want. Unless you
21 want him to say whether or not it was, but if you just
22 want to know --

23 MS. SHOREY: I just want to confirm that.

24 MR. SPIVA: I believe they were.

25 MR. MACH: We have a copy of 56 here if you want to

1 look at it.

2 THE WITNESS: Without looking through every --

3 BY MS. SHOREY:

4 Q Just at these particular pages, which I think are
5 those four that we've been relying on.

6 A. Yes. Yes.

7 Q So that packet, because if I remember correctly, you had
8 Exhibit 56 that you were using during the hearing?

9 A. Yes.

10 Q Okay. And so there's no -- these aren't new from then?

11 A. No.

12 Q It's the same data?

13 A. No, correct.

14 Q We forgot to have you identify which maps you actually
15 looked at in doing your analysis. Beyond No. 6 --

16 A. I really just needed the maps, and I can't tell you
17 which particular -- I looked at the conference plan map,
18 okay?

19 Q That's Act 1, correct.

20 A. Right. Because that gave me an idea of where, you know,
21 where the districts were.

22 I looked a little at the smaller maps just so I
23 could see some of the names of the municipalities and
24 whatever.

25 And I looked at the old map, the '92 map, just to

1 compare. And then I looked at the alternative maps to
2 see how they would look compared to the Act 1 map.

3 Q Now, so you didn't really rely on any of the maps that
4 were not admitted at the Erfer hearing?

5 A. No. Just the ones, I mean, there are some of these
6 maps, you know, I'm trying to -- probably not. You'd
7 have to ask me about them, whether I relied on them,
8 but. The funny ones, the ones that look like somebody's
9 on acid.

10 Q Right, the ones that deal with vote strength by VTD, did
11 you --

12 A. No. I couldn't read that.

13 Q Now, is there any data, new data that you are going to
14 look at in preparation for your testimony in federal
15 court?

16 A. I don't know the answer to that. I don't, unless
17 counsel gives me something that I don't have, you know,
18 that we think of something, I don't assume anything. No
19 one's told me about anything, and I haven't asked for
20 anything else.

21 I think, actually, the only thing I've probably
22 asked for is just a narrative of -- a breakdown of the
23 alternative plans by municipality to just basically
24 break out which municipalities are in each of the plans,
25 that's it.

1 Q So is it fair to say that your testimony in Erfer is
2 basically your opinion that you'll be testifying to in
3 federal court?

4 A. If Mr. Krill or you ask me the same questions, you'll
5 get the same answers. Except if Krill asks me where the
6 northernmost municipality in Bradford County is, I may
7 have to try to look that one up.

8 Q This pack that you said, you got this from counsel?

9 A. Yes.

10 Q It has at the bottom what looks like a web site address.
11 Is that the www.cq.com? Is this stuff available on the
12 internet, do you know?

13 A. I don't know. I would imagine. Whenever you want, you
14 know, whenever you want committee assignments or
15 whatever of congressmen, they're not hard to find.

16 Q And just so the record's clear, this was the packet that
17 is labeled Pennsylvania.

18 Now, who engaged you for this? Do you have an
19 agreement letter for this?

20 A. No.

21 Q Do you know who is paying you?

22 MR. SPIVA: I'd ask you not to speculate. If you
23 know, you can answer.

24 THE WITNESS: I believe -- I'm going to invoice
25 Jenner and Block. I think it's the congressmen, it's

1 the congressmen from Pennsylvania, or the, you know, the
2 congressional Democrats in Washington. But I'm really
3 not sure.

4 MS. SHOREY: That's it.

5 MR. SPIVA: Okay. I don't have any questions.

6 MS. SHOREY: Okay. I think we're done.

7 (Whereupon, the deposition was concluded at
8 1:12 p.m.)

9 * * * * *

COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF DAUPHIN)

I, Emily R. Clark, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Dauphin, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

LARRY CEISLER

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Harrisburg, Pennsylvania, this 14th day of February, 2002.

NOTARIAL SEAL
EMILY R. CLARK, Notary Public
Harrisburg, Dauphin County
My Commission Expires July 9, 2005

Emily R. Clark
Emily R. Clark
Reporter - Notary Public

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RICHARD VIETH, NORMA JEAN
VIETH, and SUSAN FUREY,

Plaintiffs,

Y.

COMMONWEALTH OF
PENNSYLVANIA, et al.,

Defendants.

No. 1:CV-01-2439

Judge Sylvia H. Rambo

NOTICE OF DEPOSITION

Please take notice that the undersigned counsel for defendants Lieutenant Governor Jubelirer and Speaker Ryan has rescheduled the oral deposition of Larry Ceisler at the office of Kirkpatrick & Lockhart LLP, 240 North Third Street, Harrisburg, Pennsylvania, beginning at 10:30 a.m., Thursday, February 14, 2002, and continuing until completed. The testimony will be taken before an officer duly authorized by the laws of the United States to administer oaths and to take testimony and shall be recorded by stenographic means. Mr. Ceisler is directed to bring with him for our examination all documents he considered in forming his conclusions.

Dated: February 11, 2002

John P. Krill, Jr.
Kirkpatrick & Lockhart LLP
240 North Third Street
Harrisburg, PA 17101
(717) 231-4500

**DEPOSITION
EXHIBIT**

EXHIBIT
Leisler #1

2-14-2 EC

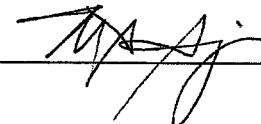
CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2002, I served a copy of the foregoing Notice of Deposition by facsimile and first class mail indicated on the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

.....
RICHARD VIETH, NORMA JEAN VIETH, . NO. 1:CV-01-2439
and SUSAN FUREY, .
Plaintiffs, . Judge Sylvia H. Rambo
vs. .
COMMONWEALTH OF PENNSYLVANIA, .
et al., .
Defendants. .
.....

Deposition of: SUSAN FUREY
Taken by: Defendants
Date: February 13, 2002, 2:05 p.m.
Before: Emily Clark, RMR, Reporter-Notary
Place: Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, Pennsylvania

APPEARANCES:

JENNER & BLOCK
BY: DANIEL MACH, ESQUIRE
BRUCE V. SPIVA, ESQUIRE

For - Plaintiffs

KIRKPATRICK & LOCKHART
BY: JOHN P. KRILL, JR., ESQUIRE
MARSHA SAJER, ESQUIRE

For - Defendants

EXH
C

ORIGINAL

I N D E X

WITNESS

Susan FureyExamination

By Mr. Krill

3

By Mr. Mach

12

EXHIBITS

(None marked)

* * * * *

1 SUSAN FUREY, called as a witness, being duly
2 sworn, was examined and testified, as follows:

3 BY MR. KRILL:

4 Q State your name, please.

5 A. My name is Susan Furey.

6 Q Where do you live?

7 A. I live at 507 Bryn Mawr Avenue in Bala Cynwyd,
8 Pennsylvania.

9 Q Is that your only residence?

10 A. Yes, um-hum.

11 Q How are you employed?

12 A. I am employed, really, self-employed as a consultant,
13 and I work --

14 Q All right. What is the nature of your consulting work?

15 A. I work with an organization and it's called the Five-
16 County Democratic Women's Coalition.

17 Q What is that organization?

18 A. It's a network of women and people that care about the
19 issues that they care about, that work together to
20 empower and enable others for political action for the
21 issues they care about.

22 Q All right. So it's an organization that focuses more on
23 issues than on particular candidates; is that correct?

24 A. It can do that. Sometimes does, um-hum, or either,
25 um-hum.

1 Q And are you compensated by this organization?

2 A. Yes.

3 Q Is the Five-County Democratic Women's organization a
4 client of yours?

5 A. Well, it's hard -- it's really what I am, I work in a
6 role in which I guide them and I work as someone that
7 organizes them. So in a way you could say that, yes.

8 Q Do they pay you as an employee?

9 A. No. They pay me as a consultant.

10 Q All right. So you are self-employed?

11 A. Um-hum.

12 Q Okay. Now, do you have any other clients or consulting
13 arrangements?

14 A. Not at this time.

15 Q Are you doing any volunteer work of a political nature?

16 A. I do that occasionally, depending on -- I might do that
17 in certain races, if I'm asked, um-hum.

18 Q Are you working right now for any candidates or
19 prospective candidates for public office?

20 A. By working you mean volunteering?

21 Q Yes.

22 A. Or do you mean --

23 Q Let's start with volunteering. Are you volunteering
24 your services for any prospective candidate for public
25 office?

1 A. It's hard to say. I am doing some work for, if you want
2 to call it, for the governor's race for Pennsylvania.

3 Q For which candidate?

4 A. Ed Rendell.

5 Q Who is your Congressman?

6 A. Well, it had been Joe Hoeffel.

7 Q Are you doing any work for Congressman Hoeffel?

8 A. No.

9 Q Have you done any work for Congressman Hoeffel?

10 A. I volunteered.

11 Q Are you a registered voter?

12 A. Yes.

13 Q How long have you been a registered voter?

14 A. Since I was 18. I'm trying to remember, it's a long
15 time ago, but I believe I was registered when I could
16 register to vote, um-hum. I think I was 18.

17 Q Now, when you vote, you don't always pull a straight
18 party lever, do you?

19 A. Each time I vote, I think about the issues and the
20 candidates, so I vote my conscience at the time.

21 Q And does that mean that you don't always pull a straight
22 party lever?

23 A. Sometimes not. It's been probably -- most times I would
24 say I would vote for those candidates that reflect my
25 issues, and so oftentimes that is Democratic, but there

1 might have been one time or other I didn't do that.

2 Q Can you bring yourself to say that there have been
3 occasions when you've actually voted for Republicans?

4 A. I can say that I have done that once.

5 Q Now, I'm talking about all elections, elections for
6 governor, elections for U.S. Senator, elections for
7 Congress, elections for state legislature.

8 Can you recall more than one Republican candidate
9 for whom you voted in any federal, state or local
10 election?

11 A. I can only recall the one time.

12 Q Who was that?

13 A. That was for Specter, Arlen Specter.

14 Q Did you vote in last year's statewide judicial races?

15 A. Oh, yes, um-hum.

16 Q For whom did you vote for Supreme Court?

17 A. Do you want me to tell you who I voted for?

18 Q Yes, please.

19 A. Okay. I voted for Kate Ford Elliott.

20 Q For whom did you vote for Superior Court?

21 A. I'm trying to remember. Oh, dear. I think it was David
22 Wecht. I believe it was Wecht. I think it's W-E-C-H-T.

23 Q All right. There were three seats open.

24 A. I know there were, right, yeah.

25 Q Did you vote for three candidates for the Superior

1 Court?

2 A. If indeed there were three candidates open, I voted for
3 three candidates.

4 Q Okay. You know it's possible to do what they call
5 bullet voting and just vote for one?

6 A. For one, I know.

7 Q But you think you voted for three?

8 A. Yes, because I think we needed three. Yes.

9 Q Did you vote for Mary Jane Boas for Superior Court?

10 A. No.

11 Q For Commonwealth Court there were also three races. Do
12 you recall? Three seats open in last year's election.

13 A. Um-hum.

14 Q Excuse me. Would you please say yes or no?

15 A. Oh, okay. I'm trying to remember. I'm not sure if I
16 can remember all these things, so I'm not -- I don't
17 want to give you any misinformation.

18 Q That's fine. Let me try to refresh your memory. For
19 Commonwealth Court, did you vote for Robin Simpson?

20 A. No.

21 Q Did you vote for Mary Hannah Levitt?

22 A. No.

23 Q Did you vote for Renee Cohn?

24 A. I don't recall. I really can't tell you, I can't
25 remember.

1 Q Okay. So you're saying you might have voted for one of
2 those three?

3 A. Well, my recollection -- I'm trying to think. I
4 remember voting for Barbara Holland, and she was for
5 municipal court, and -- but I can't remember exactly
6 how -- I cannot remember exactly how I voted. That's
7 the fairest answer I can give you.

8 Q Okay. Now, are you one of the plaintiffs in the case
9 that is now pending in the United States District Court
10 for the Middle District of Pennsylvania at docket number
11 CV-01-2439?

12 A. I believe -- if that's the Complaint, yes. If that's
13 the Complaint.

14 Q Yeah. I'm handing you a document. Do you recognize
15 that?

16 A. Yes, I do.

17 Q All right. The record should show that I've handed the
18 witness a copy of the Amended Complaint in this matter.

19 A. Yes. When you gave all the numbers, I just was not
20 zeroing in on all numbers.

21 MR. KRILL: Rather than clutter the record by
22 attaching this as an exhibit to the transcript, I'd just
23 appreciate if counsel would stipulate that I've shown
24 the witness the Amended Complaint.

25 MR. MACH: Yes, it appears to be the Amended

1 Complaint.

2 BY MR. KRILL:

3 Q You're represented here by counsel today, aren't you,
4 Ms. Furey?

5 A. Yes, I am.

6 Q And that's the lawfirm of Jenner and Block; is that
7 correct?

8 A. Yes, I am, um-hum.

9 Q And how did you meet counsel, your counsel?

10 A. I met them through and talked with them through another
11 source, someone who called me up and told me about this
12 case and asked if I would consider being a plaintiff in
13 the case, and that's how I got to them.

14 Q Who was that person?

15 A. Her name is Nora Winkelman.

16 Q Who is Nora Winkelman?

17 A. Nora is the -- she's a lawyer and she is the head of
18 the, Democratic head of the Lower Marion Narberth
19 Democrats. That's in Montgomery county.

20 Q Now, are you familiar with the allegations of the
21 Amended Complaint that I showed you?

22 A. Yes, I am familiar, right, um-hum.

23 Q When you agreed to become a plaintiff in this case, did
24 you agree to pay counsel fees?

25 A. No.

1 Q Did you agree to pay the costs of litigation or to share
2 in the costs of litigation?

3 A. No.

4 Q Did you incur any financial obligation with respect to
5 the cost of litigation?

6 A. No.

7 Q To your knowledge, who is paying for the lawsuit?

8 A. I really don't know.

9 Q Have you met Richard Vieth?

10 A. Yes. The other -- you mean the other plaintiffs?

11 Q Yes. Have you met Mr. Vieth?

12 A. Yes, I met Mr. Vieth.

13 Q Have you Norma Jean Vieth?

14 A. Yes.

15 Q When did you first meet them?

16 A. I just met them actually today for the first time.

17 Q Now, you're aware, aren't you, that the Commonwealth of
18 Pennsylvania has a new statute for congressional
19 districting?

20 A. Yes, I am aware, um-hum.

21 Q And you're aware, aren't you, that it is Act 1 of 2002?

22 A. Let me -- you're asking me if I'm aware if it's called
23 Act 1?

24 Q Yes.

25 A. I didn't know it was called Act 1, but I know that it

1 was -- it's now in, it's been enacted.

2 Q And under Act 1, in which district do you believe that
3 you reside?

4 A. I will currently then reside in District 6, I mean, as
5 the new law would be enacted.

6 Q And do you intend to go to the polls and vote in the
7 primary election in District 6?

8 A. Yes, I would imagine, um-hum.

9 Q Has any obstacle been put in your way of getting to the
10 polls and voting?

11 A. No physical, no. There's nothing that's stopping me
12 from going, no.

13 Q All right. And you intend to vote in the general
14 election in the fall, don't you?

15 A. Um-hum, yes, I do.

16 Q And Pennsylvania law is not putting any obstacles in the
17 way of you getting to the polls and voting for the
18 candidate of your choice in the fall, is it?

19 A. I guess it depends on what you mean getting in my way.
20 No, I can go and vote for the person I suppose I would
21 like to vote for, yes, I can do that. I can physically
22 walk in and vote for that person, yes.

23 Q All right. And if you don't like either of the two
24 candidates, or three candidates, if there are minor
25 party candidates on the ballot, when you vote, you can

1 write in a candidate of your choice on the ballot, can't
2 you?

3 A. Technically I could do that, yes.

4 Q Have you ever done that? Have you ever written in a
5 candidate?

6 A. No.

7 Q But you're aware that you can do that?

8 A. I'm aware, um-hum.

9 Q You haven't done any analysis of the voting statistics
10 or of the population configuration of your congressional
11 district, have you?

12 A. Are you referring to the congressional district as it is
13 or as it was?

14 Q As it is, yes.

15 A. I have not had the opportunity, no, at this point, no.

16 Q All right. So when the Complaint --

17 MR. MACH: I'm sorry, I just want to register an
18 objection after the fact as vague, analysis being vague.

19 MR. KRILL: I have no further questions.

20 MR. MACH: We might, if you just give us one
21 minute.

22 MR. KRILL: Sure.

23 MR. MACH: I have just a couple questions.

24 BY MR. MACH:

25 Q As a general matter, would you say that you

1 consistently vote for Democratic candidates for
2 Congress?

3 MR. KRILL: Objection, leading.

4 BY MR. MACH:

5 Q You can answer.

6 A. Answer it? In general, yes, I vote for candidates who
7 reflect my issues and my values, and which for the most
8 part that is a Democratic candidate.

9 Q And do you intend to do so in the future?

10 A. Most probably, yes, um-hum.

11 MR. MACH: Okay.

12 MR. KRILL: That's it. Thank you very much.

13 (Whereupon, the deposition was concluded at
14 2:21 p.m.)

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COMMONWEALTH OF PENNSYLVANIA)
) SS.
COUNTY OF DAUPHIN)

I, Emily R. Clark, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Dauphin, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

SUSAN FUREY

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Harrisburg, Pennsylvania, this 13th day of February, 2002.

NOTARIAL SEAL
EMILY R. CLARK, Notary Public
Harrisburg, Dauphin County
My Commission Expires July 9, 2005

Emily R. Clark
Emily R. Clark
Reporter - Notary Public

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

.....
RICHARD VIETH, NORMA JEAN VIETH, . NO. 1:CV-01-2439
and SUSAN FUREY, .
Plaintiffs, . Judge Sylvia H. Rambo
vs. .
COMMONWEALTH OF PENNSYLVANIA, .
et al., .
Defendants. .
.....

Deposition of: NORMA JEAN VIETH
Taken by: Defendants
Date: February 13, 2002, 3:04 p.m.
Before: Emily Clark, RMR, Reporter-Notary
Place: Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, Pennsylvania

APPEARANCES:

JENNER & BLOCK
BY: DANIEL MACH, ESQUIRE
BRUCE V. SPIVA, ESQUIRE

For - Plaintiffs

KIRKPATRICK & LOCKHART
BY: JOHN P. KRILL, JR., ESQUIRE
MARSHA SAJER, ESQUIRE

For - Defendants

ORIGINAL

I N D E X

WITNESS

Norma Jean ViethExamination

By Mr. Krill

3

By Mr. Mach

15

EXHIBITS

(None marked)

* * * * *

1 NORMA JEAN VIETH, called as a witness, being duly
2 sworn, was examined and testified, as follows:

3 BY MR. KRILL:

4 Q State your name, please.

5 A. Norma Jean Vieth.

6 Q And where do you live, Mrs. Vieth?

7 A. 632 Laurel Lane, Lancaster, PA.

8 Q By the way, I called you Mrs. Vieth. Are you married to
9 the plaintiff in this matter, Richard Vieth?

10 A. Yes.

11 Q And how are you employed, Mrs. Vieth?

12 A. I'm retired.

13 Q Before you retired, how were you employed?

14 A. I was an educator.

15 Q Taught school?

16 A. (Witness nodded head affirmatively.)

17 Q Please answer yes or no so the reporter can take down
18 your answer.

19 A. Yes.

20 Q This transcript will be typed up and it will just be
21 words.

22 Are you represented by counsel today?

23 A. Yes.

24 Q And who is your counsel?

25 A. Mr. Mach.

1 Q Mr. Mach. And do you know what firm he's with?

2 A. You're Jenner Block.

3 Q And when did you meet Mr. Mach?

4 A. I met Mr. Mach today for the first time physically.

5 Q Have you met any other lawyers at Jenner and Block?

6 A. No.

7 Q When was your first conversation with any lawyer at
8 Jenner and Block?

9 A. That would have been on the telephone a few days ago
10 with that -- now wait.

11 Q Well, is your answer a few days ago?

12 A. Well, no. I'm trying to think. The lawyer I first
13 talked to, he was with that firm in Washington. I want
14 to be correct about that.

15 Q And that was just a few days ago?

16 A. No. We talked with a lawyer, I'm not sure of the firm,
17 that I first talked to about a month ago.

18 Q A month ago?

19 A. Yes.

20 Q Now, you said a few days ago. Did you have another
21 discussion?

22 A. I'm talking about Mr. Mach.

23 Q Okay. And who was the lawyer a month ago?

24 A. Pirelli. Mr. Pirelli. Pirelli. Yes.

25 Q And --

1 A. And he's from Washington.

2 Q How did you come into contact with Mr. Pirelli?

3 A. Through my son.

4 Q And your son is an administrative assistant to
5 Congressman Borski; is that right?

6 A. That's correct.

7 Q And what did your son tell you about Mr. Pirelli?

8 A. That he would contact us.

9 Q And what did Mr. -- well, that was about a month ago.
10 Can you pin down the date?

11 A. I can tell you it was before Christmas, so that would be
12 November. That would be more than a month ago.

13 Q Now --

14 A. I believe that's correct. I believe that's correct.

15 Q Have you ever seen the Amended Complaint in your
16 lawsuit?

17 A. May I ask for clarification? Is that the last one,
18 called the amended one?

19 Q Yes.

20 A. The current?

21 Q Yes.

22 A. Yes, I have.

23 Q When did you see that?

24 A. I had seen that, I just saw it for sure to read
25 carefully a couple days ago. I had seen it before and

1 finally -- well, that's it.

2 Q You didn't draft the Amended Complaint, did you?

3 A. No.

4 Q You didn't provide your lawyers with any factual input
5 into the Amended Complaint, did you?

6 A. No.

7 Q Are you paying for your lawyers' fees for this lawsuit?

8 A. No.

9 Q Are you paying the costs for this lawsuit?

10 A. No.

11 Q Who is?

12 A. I don't know.

13 Q Are you under any obligation to pay your lawyers
14 anything in this case?

15 A. No.

16 Q To your knowledge, is there any contingent fee agreement
17 in this case?

18 A. Again, clarify. With the lawyers, you're talking?

19 Q With the lawyers.

20 A. Between the lawyers and me?

21 Q Yeah.

22 A. No.

23 Q How about, would your husband have one?

24 A. Well, you would have to ask my husband that.

25 Q Well, I'm just asking you if you know.

- 1 A. I don't know, no.
- 2 Q To your knowledge, your husband has no agreement?
- 3 A. No.
- 4 Q Now, are you a registered voter in Pennsylvania?
- 5 A. Yes, I am.
- 6 Q Are you registered with a party?
- 7 A. Yes.
- 8 Q What party?
- 9 A. Democratic.
- 10 Q How long have you been a registered voter in
- 11 Pennsylvania?
- 12 A. In Pennsylvania, 1972.
- 13 Q And have you always been a registered Democrat?
- 14 A. Yes.
- 15 Q Have you missed voting in any elections since 1972?
- 16 A. I may have missed in some judge's elections in
- 17 Lancaster, if that's what you're referring to. Any
- 18 election, you just said?
- 19 Q Yes.
- 20 A. That might have happened, but -- okay.
- 21 Q Now, but you're a pretty regular voter, right?
- 22 A. Very.
- 23 Q And you care about the issues, don't you?
- 24 A. Absolutely.
- 25 Q And you evaluate candidates based on the issues that

1 they stand for; isn't that right?

2 A. That's one of the things. Yes, the answer's probably
3 yes to that, yes, um-hum.

4 Q Well, you would also look at the character of the
5 candidate, too, wouldn't you?

6 A. Yes.

7 Q And the issues and the character of the candidate matter
8 more to you than how a candidate is affiliated with a
9 political party; isn't that right?

10 A. I take each candidate as it comes and look at that
11 person and weigh it that way.

12 Q Now, do you know what congressional district you live
13 in?

14 A. 16th.

15 Q And that's under the newly enacted districting law?

16 A. That's been the 16th.

17 Q And you're still in the 16th?

18 A. That's correct.

19 Q Now, because you look at the issues that the candidate
20 stands for and the quality of the candidate's character
21 and so forth, is it fair to say, Mrs. Vieth, that you
22 don't just automatically pull a straight party lever
23 when you vote?

24 A. I can say that most of the time I vote Democratic.

25 Q And does that mean that some of the time you vote for

1 Republican candidates?

2 A. I can't remember if I ever did or when I did.

3 Q But is it fair to say that some of the time you think
4 that you have, without being able to identify particular
5 candidates?

6 A. I'm not sure. I'm not sure.

7 Q Now, you plan to vote in the spring primary election,
8 don't you?

9 A. Yes.

10 Q Are you aware of any obstacles to your getting to the
11 polls and exercising your right to vote that have been
12 placed in your way by Pennsylvania's new congressional
13 districting statute?

14 A. Would you mind repeating that again? That question,
15 please.

16 MR. KRILL: Would you read it back, please.

17 (Question read.)

18 THE WITNESS: No, I don't.

19 BY MR. KRILL:

20 Q So you're as free to exercise your vote as you ever
21 were, aren't you?

22 A. That's correct.

23 Q Now, are you aware, Mrs. Vieth, that if you go to the
24 polls and you don't like any of the candidates who
25 appear on the ballot, that you are free to write in the

1 name of a candidate of your choice?

2 A. Yes.

3 Q Have you ever done that?

4 A. Probably not. And I can't remember exactly because it's
5 been a long time.

6 Q But you've been in the situation, haven't you, when you
7 go to the polls and you either don't know any candidates
8 for a particular office, or know them and don't like any
9 of them?

10 A. When you say I don't know, I do my homework, so I don't
11 know what you mean by I don't know, because I do know a
12 lot. I try as much as possible to know a lot.

13 Q Excellent.

14 A. When I vote for a candidate, I look at many things, not
15 one issue. So I have to make a choice, and I do.

16 Q Did you vote in last year's general election for
17 statewide judicial candidates?

18 A. That's the judges, isn't it, that you're talking about?

19 Q Yes.

20 A. I don't recall if it was -- I think I did. I don't
21 recall if that was the one I'm referring to with the
22 judges, but usually I do. So I can't answer yes or no
23 to that one.

24 Q So you might not have voted?

25 A. I might not have voted in that one.

1 Q Let me see if I can refresh your recollection. Do you
2 recall voting last November for a candidate for the
3 Pennsylvania Supreme Court?

4 A. I can't recall.

5 Q Do you recall that you were entitled last November to
6 vote for three candidates for the State Superior Court?

7 A. Was I able to, you asked me?

8 Q Do you recall that you were entitled to?

9 A. Entitled to. I don't remember the numbers.

10 Q Now, do you recall voting for, let me suggest some names
11 of candidates, for the Superior, Court Mary Jane Boas?

12 A. I don't remember, sorry.

13 Q Mary Flaherty?

14 A. The name is somewhat familiar.

15 Q Sounds familiar?

16 A. Sounds familiar.

17 Q Do you think you might have voted for her?

18 A. That's what I'm saying to you, I'm not sure.

19 Q Okay. Do you recall that last November you were
20 entitled to vote for up to three candidates for the
21 Commonwealth Court of Pennsylvania, which is another
22 statewide court?

23 A. Don't know.

24 Q All right. Let me see if I can refresh your memory by
25 suggesting some names. Do you recall seeing a name on

1 the ballot of a candidate Renee Cohn?

2 A. Don't remember, sorry.

3 Q James Didaro?

4 A. I don't remember.

5 Q Robin Simpson?

6 A. Don't remember. That name is familiar.

7 Q Mary Hannah Levitt?

8 A. Don't remember the name, sorry.

9 Q Do you recall voting for any of the candidates that I've
10 named?

11 A. Don't remember, sorry.

12 Q Do you recall when Senator Specter ran for re-election a
13 few years ago?

14 A. I recall him being in elections.

15 Q Did you vote for him?

16 A. I don't know who was running against him at the time,
17 and I don't know when you're referring to.

18 Q Well, let's see. How about in 1998, do you recall
19 Senator Specter running then?

20 A. I don't recall which year.

21 Q Okay. And you know what? Neither do I, frankly, and
22 this is not a quiz, you won't be graded on it. But what
23 I'd like to know is, do you recall him running for
24 reelection in recent memory?

25 A. Certainly. Yes.

1 Q Did you vote for him?

2 A. I don't remember that. I need to know who the other
3 person was. I don't remember.

4 Q Governor Ridge ran for governor twice. Did you vote for
5 him either time?

6 A. No.

7 Q No?

8 A. No.

9 Q Now, in last year's election there were some statewide
10 races for executive branch offices. Forgive me, not
11 last year but in 1999.

12 Do you recall Auditor General Bob Casey Jr. running
13 against State Representative Katie True?

14 A. Yes.

15 Q Who did you vote for in that race?

16 A. I voted for Casey.

17 Q You voted for Bob Casey Jr.; is that right?

18 A. Um-hum, that's correct.

19 Q And do you recall State Treasurer Barbara Hafer running
20 for reelection recently?

21 A. Yes.

22 Q Did you vote for Treasurer Hafer?

23 A. Don't remember.

24 Q So you might have voted for Treasurer Hafer; is that
25 correct?

1 A. I don't remember, sorry.

2 Q Okay. You're telling me, then, that you can't swear
3 that you did not vote for Barbara Hafer; is that right?

4 A. All I'm saying is I don't remember.

5 Q So you can't remember voting for certain Republicans who
6 are considered liberal Republicans; is that correct?

7 A. That's correct.

8 Q Is it fair to say that the closer a Republican gets to
9 the, let's say, to liberal principles, that the less
10 likely you are to remember whether or not you voted for
11 that Republican?

12 MR. MACH: Objection, vague, and mischaracterizes
13 the testimony, and asked and answered.

14 BY MR. KRILL:

15 Q So you've studied the candidates, you always study
16 candidates and their issues, and yet you cannot say that
17 you've always voted for a Democrat; isn't that true?

18 A. If you're asking me --

19 MR. MACH: Objection, vague. And in all elections
20 are you asking about?

21 MR. KRILL: Yes.

22 THE WITNESS: Would you rephrase that question
23 again, please? Say that again.

24 MR. KRILL: Read it back.

25 (Question read.)

1 THE WITNESS: I cannot say that I have always voted
2 for a Democrat.

3 MR. KRILL: Nothing further. Thank you.

4 MR. MACH: I have a couple questions.

5 BY MR. MACH:

6 Q In races for the United States House of
7 Representatives, is there a party for which you have
8 consistently voted?

9 A. Absolutely. It's been Democratic.

10 Q Do you intend to do so in the future?

11 A. Yes.

12 MR. MACH: Nothing further.

13 MR. KRILL: Nothing further. Thanks very much.

14 (Whereupon, the deposition was concluded at
15 3:22 p.m.)

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COMMONWEALTH OF PENNSYLVANIA)
) SS.
 COUNTY OF DAUPHIN)

I, Emily R. Clark, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Dauphin, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

NORMA JEAN VIETH

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Harrisburg, Pennsylvania, this 14th day of February, 2002.

NOTARIAL SEAL
 EMILY R. CLARK, Notary Public
 Harrisburg, Dauphin County
 My Commission Expires July 9, 2005

Emily R. Clark
 Emily R. Clark
 Reporter - Notary Public

(The foregoing certification does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

.....
RICHARD VIETH, NORMA JEAN VIETH, . NO. 1:CV-01-2439
and SUSAN FUREY, .
Plaintiffs, . Judge Sylvia H. Rambo
vs. .
COMMONWEALTH OF PENNSYLVANIA, .
et al., .
Defendants. .
.....

Deposition of: RICHARD VIETH
Taken by: Defendants
Date: February 13, 2002, 2:40 p.m.
Before: Emily Clark, RMR, Reporter-Notary
Place: Kirkpatrick & Lockhart
240 North Third Street
Harrisburg, Pennsylvania

APPEARANCES:

JENNER & BLOCK
BY: DANIEL MACH, ESQUIRE
BRUCE V. SPIVA, ESQUIRE

For - Plaintiffs

KIRKPATRICK & LOCKHART
BY: JOHN P. KRILL, JR., ESQUIRE
MARSHA SAJER, ESQUIRE

For - Defendants

ORIGINAL

I N D E X

WITNESS

Richard ViethExamination

By Mr. Krill

3, 8

By Mr. Mach

8

EXHIBITS

(None marked)

* * * * *

1 RICHARD VIETH, called as a witness, being duly
2 sworn, was examined and testified, as follows:

3 BY MR. KRILL:

4 Q State your name, please.

5 A. Richard Vieth.

6 Q Mr. Vieth, have you appeared here today pursuant to a
7 Notice of Deposition in the case of Richard Vieth, Norma
8 Jean Vieth and Susan Furey versus the Commonwealth of
9 Pennsylvania, et al.?

10 A. I guess so. I heard about it by phone. I have not been
11 subpoenaed or received anything in writing. Is that
12 what you're asking?

13 Q Yes. Thank you. How are you employed?

14 A. Retired.

15 Q Before you retired, what was your means of employment?

16 A. I taught at Lancaster Theological Seminary.

17 Q Are you a registered voter?

18 A. Yes.

19 Q How long have you been a registered voter?

20 A. Let's see. 53 years.

21 Q Where do you live?

22 A. Lancaster, Pennsylvania. You want the full address?

23 Q Please.

24 A. 632 Laurel Lane, Lancaster, Pennsylvania, 17601.

25 Q Under the new congressional districting plan enacted by

1 the Pennsylvania General Assembly, in what congressional
2 district do you live?

3 A. 16.

4 Q And under the previous plan, who was your Congressman?

5 A. Joseph Pitts.

6 Q And under the new plan, is there a Congressman resident
7 in your district? An incumbent Congressman?

8 A. Yes.

9 Q And who is that?

10 A. Joseph Pitts.

11 Q And what is --

12 A. Did I understand the question correctly?

13 Q Yes, you did, and you answered it.

14 A. All right.

15 Q Thank you.

16 A. It's just a strange question.

17 Q And what is his party affiliation?

18 A. Republican.

19 Q Are you registered with one party as a voter?

20 A. Yes.

21 Q Which party?

22 A. Democratic.

23 Q Now, in 53 years of voting, Mr. Vieth, you haven't
24 always pulled a straight party lever, have you?

25 A. Not every time.

- 1 Q So sometimes you vote for Republicans; is that correct?
- 2 A. School board, yes.
- 3 Q Now, do you look at the qualifications of candidates to
- 4 make your decision as to whom to vote for?
- 5 A. Yes.
- 6 Q Now, you've heard the term yellow dog Democrat, haven't
- 7 you?
- 8 A. I think I have.
- 9 Q What's your understanding of it?
- 10 A. I don't have an understanding of it.
- 11 Q If you felt that a Democrat was less qualified for a
- 12 position than a Republican opponent in a given political
- 13 race, you'd vote for the more qualified candidate,
- 14 wouldn't you?
- 15 A. If I thought that the Republican stood for the
- 16 principles of the Democratic party better than the
- 17 Democratic candidate would, I would consider voting for
- 18 him or her.
- 19 Q Now, are you represented by counsel this morning?
- 20 A. Yes.
- 21 Q This afternoon, excuse me.
- 22 A. Yes.
- 23 Q And who is that?
- 24 A. It's Mr. Mach.
- 25 Q And do you know what firm he's with?

1 A. No, I don't.

2 Q How did you meet Mr. Mach?

3 A. I talked to him over the telephone.

4 Q Before you became a plaintiff, or afterwards?

5 A. Afterwards.

6 Q How did you become a plaintiff in this matter?

7 A. I was asked if I would be willing to support this
8 Complaint.

9 Q Who asked you?

10 A. My son.

11 Q And what does your son do?

12 A. My son is the administrative assistant to Congressman
13 Borski.

14 Q Now, are you paying the attorneys' fees and costs in
15 this lawsuit?

16 A. No.

17 Q Who is?

18 A. I don't know.

19 Q Are you under any obligation that you know of to your
20 counsel to pay them any fees or costs?

21 A. I am not.

22 Q You said you would be willing to support any candidate
23 who supports the principles of the Democratic party.
24 You're aware, aren't you, that in many political races
25 that Democrats and Republicans move towards the center,

1 to try to occupy the center ground on the issues?

2 A. Yes.

3 Q And there are many cases, therefore, aren't there,
4 Mr. Vieth, where the lines are really blurred on the
5 issues?

6 MR. MACH: Objection, vague.

7 THE WITNESS: I mean, I'll try to think of one, and
8 I can't think of one that would illustrate your point.

9 BY MR. KRILL:

10 Q Well, do you recall when President Clinton adopted the
11 strategy of triangulating and, in fact, moved towards
12 the Republican party, towards the end of his first term
13 in office?

14 A. Can you explain triangulating? It's not a term I'm
15 familiar with.

16 Q You've never heard of that?

17 A. Never heard of that.

18 Q Do you recall President Clinton supporting deficit
19 reduction as a top priority of his administration?

20 A. That's a good Democratic principle.

21 Q I see. It was also a good Republican principle, wasn't
22 it?

23 A. They took it away from the Democrats on occasion, yes.

24 Q Now, have you ever had the chance to review the Amended
25 Complaint in this case?

1 A. Yes.

2 Q You didn't draft it, though, did you?

3 A. No. I'm not a lawyer.

4 Q You didn't provide any factual input yourself to the
5 lawyers who drafted the Complaint, did you?

6 A. No.

7 MR. KRILL: I have no further questions. Thanks.

8 MR. MACH: I have a few.

9 BY MR. MACH:

10 Q How long have you lived in Pennsylvania?

11 A. Since 1972. That's 30 years.

12 Q And in that time have you voted in congressional
13 elections?

14 A. Yes, every one.

15 Q Is there a party that you have consistently voted for?

16 A. Democratic party.

17 Q Do you intend to do the same in the future?

18 A. Yes.

19 MR. MACH: Nothing further.

20 BY MR. KRILL:

21 Q Okay. Let me ask you this. You say you've
22 consistently voted in congressional elections for
23 Democrats; is that right?

24 A. Yes.

25 Q All right. By that did you mean that you consistently

1 voted for Democratic candidates for the House of
2 Representatives in Congress?

3 A. Yes.

4 Q Now, how about for United States Senator, did you
5 support Senator Specter in his campaign for re-election
6 a few years ago?

7 A. No, I did not.

8 Q But you've supported other Republicans in other races,
9 other than in races for House?

10 A. Local races, yes. Some of these I know, you know,
11 they're personal friends, school board.

12 Q Now, you say you've voted in Pennsylvania basically all
13 your adult life; is that right?

14 A. I've only lived in Pennsylvania the last 30 years.

15 Q Okay. All right, 30 years, then. Under the new
16 congressional districting law, you intend to go to the
17 polls and vote in the spring primary, don't you?

18 A. Yes, I do.

19 Q You're not aware of any impediment in the law that will
20 block you or hinder you from going to the polls and
21 voting, are you?

22 A. No.

23 Q Now, you're aware, aren't you, that if you don't like
24 either of the candidates in a race for Congress, that
25 you can write in the name of a candidate of your choice,

1 correct?

2 A. Yes.

3 Q Have you ever done that?

4 A. I don't believe so.

5 Q How about in a primary election?

6 A. No, I don't believe so .

7 MR. KRILL: I'm going to ask counsel's indulgence
8 because I'm certainly going beyond the scope of his
9 cross-examination, but I'll wrap this up very shortly.

10 BY MR. KRILL:

11 Q Did you vote in the municipal election last fall, last
12 November?

13 A. I do not live in the City of Lancaster so I could not
14 vote in the municipal election. I live in Lancaster
15 County.

16 Q All right. But you're aware, aren't you, that there
17 were seven statewide judicial races for appellate courts
18 last year?

19 A. Yes.

20 Q Did you vote for any of those candidates?

21 A. I voted for -- yeah, I voted for those offices, yes.

22 Q Okay. Do you recall for whom you voted for the State
23 Supreme Court?

24 A. No, I really don't.

25 Q Do you recall for whom you voted for Superior Court?

1 A. No, I do not.

2 Q Do you recall for whom you voted for Commonwealth Court?

3 A. No, I do not.

4 Q Let me see if I can just refresh your memory briefly,
5 and then I think we're done.

6 Let's for Commonwealth Court, do you recall whether
7 you voted for Renee Cohn? Does that name ring a bell?

8 A. I'm afraid not. You know, those offices come up and go
9 so quickly, I do my homework, I make my choice, and then
10 I forget about it.

11 Q Okay. Are you sure, though, that you did vote for those
12 offices?

13 A. Yes, I am. Yes, because I can remember the difficult
14 preparation of reading all of those credentials for the
15 different offices.

16 Q Okay. So you didn't just pull a straight party lever,
17 you know, automatically for those offices, did you?

18 A. No, I did not. In fact, I don't think there was a party
19 lever for -- I may be wrong on that. I don't recall
20 that they were on the lever.

21 Q All right. But you looked at the records of the
22 individual candidates; is that right?

23 A. Yes. I always read the League of Women Voters material.

24 Q But you can't think of a single candidate that you voted
25 for?

1 MR. MACH: Asked and answered.

2 THE WITNESS: Yeah, I answered that. No, if I
3 tried to answer I couldn't be sure that I would be right
4 on that.

5 MR. KRILL: Okay. All right. Thanks very much.

6 THE WITNESS: Okay.

7 (Whereupon, the deposition was concluded at
8 3:02 p.m.)

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COMMONWEALTH OF PENNSYLVANIA)
) SS.
 COUNTY OF DAUPHIN)

I, Emily R. Clark, Reporter and Notary Public in and for the Commonwealth of Pennsylvania and County of Dauphin, do hereby certify that the foregoing testimony was taken before me at the time and place hereinbefore set forth, and that it is the testimony of:

RICHARD VIETH

I further certify that said witness was by me duly sworn to testify the whole and complete truth in said cause; that the testimony then given was reported by me stenographically, and subsequently transcribed under my direction and supervision; and that the foregoing is a full, true and correct transcript of my original shorthand notes.

I further certify that I am not counsel for nor related to any of the parties to the foregoing cause, nor employed by them or their attorneys, and am not interested in the subject matter or outcome thereof.

Dated at Harrisburg, Pennsylvania, this 14th day of February, 2002.

NOTARIAL SEAL
 EMILY R. CLARK, Notary Public
 Harrisburg, Dauphin County
 My Commission Expires July 9, 2005

Emily R. Clark
 Emily R. Clark
 Reporter - Notary Public

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CERTIFICATE OF SERVICE

I certify that on February 22, 2002, I caused a copy of the foregoing Memorandum of Law in Support of Presiding Officers' Motion to Preclude Expert Testimony by Larry Ceisler to be served on the following in the manner indicated:

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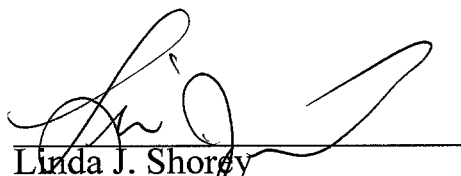
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