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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,

v.

THE COMMONWEALTH OF
PENNSYLVANIA; MARK S.
SCHWEIKER, *et al.*,

Defendants.

No. 1: CV 01-2439
Judge Rambo, Judge
Yohn, Judge Nygaard

**PLAINTIFFS' MEMORANDUM IN OPPOSITION
TO DEFENDANTS' MOTION TO EXCLUDE
EXPERT TESTIMONY BY LARRY CEISLER**

FILED
HARRISBURG

FEB 27 2002

MARY E. D'ANDREA, CL
Per DEPUTY CLERK

Plaintiffs submit this response to Defendants' motion to exclude the
expert testimony of Larry Ceisler.

Mr. Ceisler's testimony concerning Act 1's effects on the Pennsylvania political system will be highly relevant to the Court's evaluation of any purported justifications the Defendants may assert for Act 1's violation of the Constitution's one-person, one-vote mandate, and to any remedy this Court may provide for that violation. Moreover, Mr. Ceisler is uniquely qualified to provide such testimony, given his extensive background and experience in Pennsylvania politics. Over the course of the past 25 years, Mr. Ceisler, who is a political science graduate of American University, has worked on more than 50 campaigns at every level of Pennsylvania politics, run a political consulting firm, and regularly provided political analysis for Pennsylvania television news.

Given Mr. Ceisler's background, Defendants cannot seriously contend that he lacks expertise in Pennsylvania politics and the voting behavior of Pennsylvania residents "beyond that possessed by a layperson," Def. Mem. at 4. The appropriate forum for Defendants to air their criticisms of Mr. Ceisler's conclusions is the courtroom, where they are free to cross-examine Mr. Ceisler and to present any contrary evidence they may be able to marshal. There is no basis, however, for excluding Mr. Ceisler's testimony altogether.

A trial court may admit expert testimony under Federal Rule of Evidence 702 if the testimony meets three requirements: (1) it is offered by a qualified expert, (2) the process or technique the expert used in formulating the opinion is reliable, and (3) the expert's testimony is sufficiently relevant to the case that it assists the trier of fact. *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 741-43 (3d Cir. 1994). Courts generally perform this screening function to determine the reliability and relevance of expert testimony before it is presented in order to prevent jury confusion and in order to assist the jury in reaching accurate results. *Id.* at 744. In a bench trial such as this one, however, the more appropriate method is to allow expert evidence to be tested by cross-examination and the presentation of contrary evidence. As both the "gatekeeper" and the trier of fact, the trial court may determine whether and how much to credit expert testimony after – rather than before – it is presented. *E.g., Volk v. United States*, 57 F. Supp. 2d 888, 896 n.5 (N.D. Cal. 1999); *Ekotek Site PRP Comm. v. Self*, 1 F. Supp. 2d 1282, 1296 n.5 (D. Utah 1998). But whether this Court conducts this analysis before or after trial,

it is clear that Mr. Ceisler's testimony amply satisfies the requirements of Rule 702.

First, it is clear that Mr. Ceisler, by virtue of his extensive background and involvement in Pennsylvania politics, as well as his extensive knowledge of state politics, is qualified to give expert testimony in this case.¹ The Third Circuit has recognized that expertise may be based on practical experience like Mr. Ceisler's, since "[a] broad range of knowledge, skills, and training qualify an expert as such." *Waldorf v. Shuta*, 916 F. Supp. 423 (D.N.J. 1996); *see also Elcock v. Kmart Corp.*, 233 F.3d 734, 742 (3d Cir. 2000) (noting that the Third Circuit "has had, for some time, a generally liberal standard of qualifying experts") (citing *Paoli*, 35 F.3d 717; *Hammond v. Int'l Harvester Co.*, 691 F.2d 646, 652-53 (3d Cir. 1982); *Knight v. Otis Elevator Co.*, 596 F.2d 84, 87-88 (3d Cir. 1979)).

Mr. Ceisler is a longtime Pennsylvania political consultant and commentator who has been intensively involved in state politics for the past 25 years. Both during the course of his education and after he received his bachelor's degree in political science from American University in 1979, Mr. Ceisler has worked on more than 50 campaigns at every level of Pennsylvania politics, from a Philadelphia mayoral race to congressional and presidential campaigns. Tr. of Comm. Ct. Hearing at 159 (attached as Exh. C). Mr. Ceisler has also worked in politicians' offices, including the office of a Pennsylvania member of the U.S.

¹ In its recent hearing addressing state law challenges to Act 1, the Commonwealth Court of Pennsylvania qualified Mr. Ceisler as an "expert in Pennsylvania politics." The court noted that "Mr. Ceisler used his experience and knowledge of Pennsylvania and past elections to explain the likely impact of Act 1 as well as the impetus behind its passage." *See Recommended Findings of Fact and Conclusions of Law, Erfer v. Commonwealth*, 14 M.M. 2002, at ¶ 45 (attached as Exh. B).

House of Representatives and the office of the Mayor of Philadelphia. In addition, he provides political analysis for Fox TV news in Pennsylvania. Ceisler Dep. at 5-19 (attached as Exh. A). In short, Mr. Ceisler's education, background, and experience have accorded him substantial expertise in Pennsylvania politics.

Defendants acknowledge that practical experience such as Mr. Ceisler's can qualify a witness as an expert, but they seek to avoid the logical consequence of the legal standard they cite by mischaracterizing Mr. Ceisler's extensive expertise as merely a "general familiarity with Pennsylvania politics," Def. Mem. at 6. It is hard to imagine, however, how anyone could have a more extensive "familiarity" with Pennsylvania politics at all levels.

Second, Mr. Ceisler's method is straightforward: he reaches his conclusions "by applying his significant experience, training, and skills to the facts provided him." *Roberson v. City of Philadelphia*, No. CIV. A. 99-3574, 2001 WL 210294, at *4 (E.D. Pa. Mar. 1, 2001). Courts have held that Rule 702 requires nothing more when an expert's testimony is based on the expert's experience and specialized knowledge rather than scientific inquiry. While the method of applying one's experience to the facts presented is not "formal [or] testable," courts have held that it is sufficiently reliable to satisfy the Federal Rules. *Id.*; see also *Waldorf*, 916 F. Supp. at 431 (finding expert testimony reliable where it is "clearly derived from [the expert's] own experience in the field . . . and from recognized sources with which [the expert] would be expected to be familiar").

Here, Mr. Ceisler applied his substantial "working knowledge" of Pennsylvania politics in order to evaluate the materials he was given. Ceisler Dep.

at 33 (attached as Exh. A). These were precisely the type of materials Mr. Ceisler would use in his capacity as a political consultant and commentator in order to make crucial evaluations about the conduct of political campaigns and the likely outcome of races: the redistricting map created by Act 1, as well as other maps considered by the parties, the final vote on the map, election returns, and the data and statistics associated with the redistricting maps. Mr. Ceisler looked at voting statistics for 19 elections and then predicted voter behavior in the districts created by Act 1. He projected the future outcomes based on his extensive knowledge of the candidates, issues, races, and political geography of Pennsylvania. *Id.* at 47-80. Based on his expertise, Mr. Ceisler concluded that Act 1 reflected considerable partisan bias, and was likely to produce a skewed congressional delegation consisting of only 5 Democrats and 14 Republicans. *Id.* at 46-47.

Defendants seek to undermine Mr. Ceisler's testimony by pejoratively characterizing it as merely "anecdotal," Def. Mem. at 5. But the examples Defendants cite in fact illustrate the importance of Mr. Ceisler's knowledge of local issues and political geography. For example, while the data on voter performance clearly support Mr. Ceisler's conclusions about Congressman Mascara's prospects in the new 18th Congressional District, Ceisler goes well beyond the numbers to explain how the character of the district has been fundamentally changed from rural to suburban and how that change affects the issues of concern to voters in the 18th District, and the type of candidate those voters are likely to support. This testimony is not merely "anecdotal"; it is, rather, political analysis of the type that has been Mr. Ceisler's business for the better part

of the past 25 years. The same is true for Mr. Ceisler's assessment of the candidates' prospects in the new 17th, 13th, and 9th Districts, all of which analyses depended on Mr. Ceisler's extensive knowledge of the voting patterns of those regions of Pennsylvania in addition to mere numbers. Strikingly, Defendants do not suggest that Mr. Ceisler's analysis is wrong, only that it is not quantitative. But Rule 702 permits *qualitative* analysis based on experience, knowledge, skills, and training. Fed. R. Evid. 702. If Defendants believe that Mr. Ceisler's analysis is incorrect, their proper remedy is demonstrate that to the Court via cross-examination or contrary evidence, not to exclude the evidence in its entirety.

Contrary to Defendants' assertions, Mr. Ceisler's testimony is not "unreliable" simply because it is not based in formal "methods and procedures of science," in accordance with the factors set out in *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993) and *Paoli*, 35 F.3d at 742 n.8. Def. Mem. at 9. To accept Defendants' suggestion that only "scientific" expert testimony is admissible would be to deny the clear value of qualitative analysis of elections and the factors that influence their outcomes to the resolution of voting rights cases. *See Barnett v. City of Chicago*, 969 F. Supp. 1359, 1369 n.4 (N.D. Ill. 1997), *aff'd in part, vacated in part on other grounds*, 141 F.3d 699 (7th Cir. 1998) ("Candidates, or others significantly engaged in politics, who must necessarily develop an ability to analyze voters' preferences, can also provide helpful testimony concerning voting patterns."); *see also Perez v. Pasadena Indep. Sch. Dist.*, 958 F. Supp. 1196, 1204 (S.D. Tex. 1997), *aff'd*, 165 F.3d 368 (5th Cir. 1999); *Vera v. Bush*, 933 F. Supp. 1341, 1350 n.13 (S.D. Tex. 1996).

As the Supreme Court has emphasized, the reliability inquiry is meant to be a flexible one. The *Daubert* factors were not intended to be exhaustive, nor to apply to every case. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 158 (1999). Lower federal courts have recognized that the *Daubert* factors, which were designed in the context of scientific testimony, may have no application at all where expert testimony is based on the expert's experience and specialized knowledge of a particular field. See *United States v. Hankey*, 203 F.3d 1160, 1169 (9th Cir. 2000) ("The *Daubert* factors (peer review, publication, potential error rate, etc.) simply are not applicable to this kind of testimony, whose reliability depends heavily on the knowledge and experience of the expert, rather than on the methodology or theory behind it."); accord *Roberson*, 2001 WL 210294, at *3, *4 n.7.

To say that Mr. Ceisler's method is not a formal scientific method is not, however, to say that it is, as Defendants attempt to label it, "inconsistent," Def. Mem. at 10. Defendants' example of Mr. Ceisler's supposed inconsistency is simply a mischaracterization of his testimony. Mr. Ceisler did not state that voter's party registration would be decisive in some districts but not others. Rather, he testified that the registered Democrats packed into the five Democratic-leaning districts under Act 1 tend to identify more with the Democratic Party and focus on the Party's issues – that is, that they are not only registered Democrats, but individuals who vote for Democrats. Ceisler Dep. at 49-50 (attached as Exh. A). Once again, the example that Defendants cite demonstrates the importance of Mr. Ceisler's substantial knowledge of regional voting patterns in reaching his

conclusions, rather than relying on a cursory examination of voter registration statistics.

Moreover, Mr. Ceisler's conclusions cannot possibly be characterized as "unreliable" because he based those conclusions in part on documents that summarized the number of municipal splits created by Act 1 and various alternative maps. The tallies of municipal splits are hardly legal conclusions. In any event, an expert may base his opinion on any facts or data "reasonably relied upon by experts in the particular field in forming opinions or inferences on the subject," whether or not those facts are admissible in evidence. Fed. R. Evid. 703. An expert who qualifies under Rule 702 is deemed to have made appropriate use of the materials with which he is provided. *See Katt v. City of New York*, 151 F. Supp. 2d 313, 357 (S.D.N.Y. 2000).

Finally, Mr. Ceisler's testimony regarding the extreme partisan bias underlying Act 1 is undoubtedly relevant to the state's efforts to defend a map with a 19-person population deviation, as well as to any remedy this Court may provide for the violation of the one-person, one-vote rule.²

But even if there were some question as to the reliability of Mr. Ceisler's conclusions, or the "fit" between his conclusions and the case at hand, the proper response would hardly be to exclude Mr. Ceisler's testimony before it has been presented. As Defendants acknowledge, the purpose of the court's

² Defendants have yet to offer any justification for Act 1's violation of the Constitution's one-person, one-vote mandate. It is likely, however, that Mr. Ceisler's testimony on the intent and effect of Act 1 will be highly relevant to rebut whatever explanation Defendants offer at trial.

“gatekeeping” function under *Daubert* is to ensure that the expert’s testimony “[is] sufficiently reliable so that it will aid the jury in reaching accurate results.” *Paoli*, 35 F.3d at 744 (internal quotation marks omitted). In a bench trial, where the court is at once the “gatekeeper” and the finder of fact, the gatekeeping function is far less essential. *Gibbs v. General Am. Life Ins. Co.*, 210 F.3d 491, 500 (5th Cir. 2000); *Magistrini v. One Hour Martinizing Dry Cleaning*, No. CIV.A.96-4991, 2002 WL 27318, at *n.10 (D.N.J. Jan. 4, 2002); *Volk v. United States*, 57 F. Supp. 2d 888, 896 n.5 (N.D. Cal. 1999); *Ekotek Site PRP Comm. v. Self*, 1 F. Supp. 2d 1282, 1296 n.5 (D. Utah 1998).

Rather than exclude expert evidence before it is presented, courts have found that the “better approach” in a bench trial is for the court to admit the testimony of qualified experts and “allow ‘[v]igorous cross-examination, presentation of contrary evidence’ and careful weighing of the burden of proof to test ‘shaky but admissible evidence.’” *Fierro v. Gomez*, 865 F. Supp. 1387, 1396 n.7 (N.D. Cal. 1994) (quoting *Daubert*, 509 U.S. at 596) *aff’d*, 77 F.3d 301 (9th Cir.), *vacated on other grounds*, 519 U.S. 918 (1996). Although courts may rely on only admissible and reliable evidence in making their rulings, they should determine reliability after they have heard the evidence, rather than excluding crucial evidence before the trial has even begun. *Cf. Ekotek Site PRP Comm. v. Self*, 1 F. Supp. 2d 1282, 1296 n.5 (D. Utah 1998) (reserving a pretrial *Daubert* motion for the close of trial); *Bradley v. Brown*, 852 F. Supp. 690, 700 (N.D. Ind.) (same), *aff’d*, 42 F.3d 434 (7th Cir. 1994).

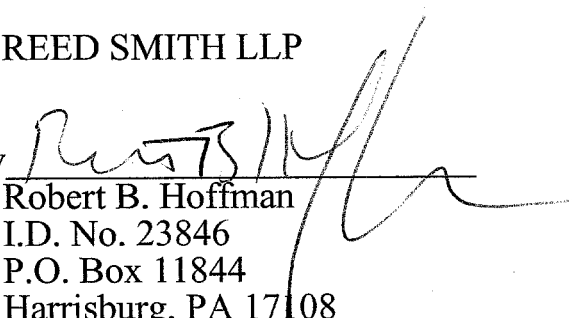
CONCLUSION

For the foregoing reasons, Defendants' motion to exclude the testimony of Larry Ceisler should be denied.

Respectfully submitted,

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Dated: February 27, 2002

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Exh A

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

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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
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 Congressma
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 ou
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 who
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, no
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.

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Ceisler

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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 contract
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

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Ceisler

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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. W
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 probab
18 been involved and worked 50, 60, you know, 60 campaign
19 something like that. Even when, you know, when I live
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 wen

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.

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 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
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
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 th

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 a
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 a
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 1

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

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

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 and
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?

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1 A. That's in the first and second. And the other district
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

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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
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

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
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 t
10 get on the ballot.

11 Q And so we don't know yet who's going to be the candidat
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. B
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:

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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?

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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
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 bi
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 rea
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 Bors

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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 fo
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

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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 th
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 tha
23 district, and he called me, and he has a great name an
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

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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.

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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,

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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 a
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.

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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

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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
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,

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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

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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 candidate
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

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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.

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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
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, election
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,

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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.

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1 Q Let's take the 4th for an example, because the 4th has
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,
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.

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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

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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

Exh B

Lublin assumed they would continue to win if the district did not change very much. Tr. at 55:19-56:12 (Lublin).

45. Petitioners also presented the testimony of Mr. Larry Ceisler, a political consultant and expert in Pennsylvania politics. Mr. Ceisler used his experience and knowledge of Pennsylvania and past elections to explain the likely impact of Act 1 as well as the impetus behind its passage. Tr. at 157:15-160:22, 165:03-04, 165:19-167:22, 168:08-19, 170:24-171:23; 173:24-174:15, 175:17-176:10, 176:20-177:12, 192:07-11 (Ceisler).

**The Effect of Act 1 on Party Membership
on the Congressional Delegation**

46. Act 1, the congressional redistricting plan passed by the General Assembly in January 2002 and signed into law by the Governor, creates only five or six districts that Democrats are likely to win out of 19, giving Republicans a 13-6 or 14-5 likely advantage in the Pennsylvania congressional delegation – even if they receive less than half the votes cast, in which case there is a reasonable likelihood that Democratic candidates will be able to prevail in 2002 and beyond.

47. Act 1 pairs two incumbent Democratic Congressmen into District 13, Congressmen Hoeffel and Borski. Exh. 7; Tr. at 18:14-18:16 (Hoeffel). Congressman Hoeffel testified that it is highly probable that Congressman Borski would defeat him in the Democratic primary but he would lose the general election to a moderate Republican from the Montgomery County portion of District 13. About 53 percent of the 13th District's population live in Montgomery County and about 47 percent live in Philadelphia. Tr. at 19:7-19:19 (Hoeffel). Indeed, Melissa Brown, a Republican from Montgomery County, has already announced her

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Exh C

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1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA
2 JOANN ERFER AND JEFFREY B. ALBERT, : NO. 10 M.D. 2002
3 VS. :
4 THE COMMONWEALTH OF PENNSYLVANIA, :
ET AL., :

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6
7
8 TRANSCRIPT OF PROCEEDINGS
AFTERNOON SESSION

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10
11 BEFORE: The Honorable Dan Pellegrini, Judge
12 DATE: February 1, 2002, 2:00 P.M.
13 PLACE: Courtroom No. 1
South Office Building
14 Fifth Floor
Harrisburg, Pennsylvania

15
16
17 APPEARANCES

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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

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

RICHARD VIETH, NORMA JEAN
VIETH et al
Plaintiffs,

v.

THE COMMONWEALTH OF
PENNSYLVANIA, et al
Defendants.

:
:
:
:
:
:
:
:
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:
:

No. 1: CV 01-2439
Judge Nygaard, Judge Rambo
Judge Yohn

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2002, I caused a true and correct copy of the foregoing document to be served upon the following counsel of record by fax transmission and first class mail, postage prepaid:

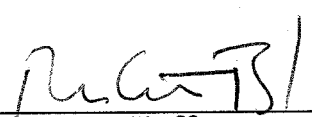
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