

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

LOUIS AGRE, et al.,)
) 2:17-cv-04392 (MMB)
 Plaintiffs,)
)
 v.)
) December 6, 2017
 THOMAS W. WOLF, et al.,)
) Philadelphia, PA
)
 Defendants.) P.M. Session

TRANSCRIPT OF TRIAL DAY 3
BEFORE THE HONORABLE MICHAEL M. BAYLSON,
D. BROOKS SMITH AND PATTY SHWARTZ
UNITED STATES DISTRICT JUDGE

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1 (Court resumes in session at 1:22:59)

2 JUDGE SMITH: Please be seated. So counsel, having
3 recessed with a witness, a faux witness appearing on the stand
4 and reading a deposition transcript, how should we proceed?

5 MR. TORCHINSKY: Your Honor, I think that what is,
6 Professor Gimpel has a time constraint. We had him here
7 yesterday for testimony, and he has to get home this evening.

8 JUDGE SMITH: Right. I was afraid of that, that's --

9 MR. TORCHINSKY: With agreement from plaintiffs we'd
10 like to put Professor Gimpel on while the designations are
11 being finally worked out. I think we have all four of the
12 remaining deposition transcripts that were taken in the last 48
13 hours, and I think that all three parties, all three groups of
14 parties are conferring right now on those designations.

15 So actually, if the Court would agree to hear from
16 Professor Gimpel --

17 JUDGE SMITH: Certainly, certainly. And we all
18 commend counsel for working out the issues with respect to both
19 of the Legislative defendants' witnesses so that we can
20 streamline these proceedings. Thank you.

21 MR. TORCHINSKY: And Your Honor, again, we would like
22 to do that with the Court's understanding and everyone else's
23 understanding that we're not waiving our opportunity to file.
24 Well, we actually did file our Rule 50 motion.

25 JUDGE SMITH: We got it.

1 MR. TORCHINSKY: Thank you, Your Honor.

2 JUDGE SMITH: Yes, yes. And the record I'm confident
3 is clear on that. Thank you.

4 MR. TORCHINSKY: Thank you, Your Honor.

5 JUDGE SMITH: All right, so Professor Gimpel may be
6 recalled to the stand.

7 MR. GORDON: The defendants call Professor Gimpel.

8 JUDGE SMITH: Professor Gimpel, having previously
9 been qualified as an expert to testify, is retaking the stand.
10 PROFESSOR JAMES GIMPEL, DEFENDANT'S WITNESS, PREVIOUSLY SWORN,
11 RESUMES THE STAND

12 CONTINUED DIRECT EXAMINATION BY MR. GORDON:

13 Q Good afternoon, professor.

14 A Hi.

15 Q Did you write a report in this matter?

16 A Yes.

17 Q And what were you asked to do?

18 A I was asked mainly to respond to the report filed by Mr.
19 McGlone.

20 Q And so before we get to the report, let's just briefly
21 discuss sort of redistricting in general, just to give a broad
22 overview for the rest of your testimony. Please just very
23 briefly take us through what the redistricting process is.

24 A Well, every decennial census, so every 10 years, there's
25 a full accounting of the population. And then the U.S. House

1 needs to be apportioned by population, pretty strict equal
2 population criteria. It sits now at about 710,000.

3 Q And in Pennsylvania who conducts redistricting?

4 A Traditionally --

5 Q Of the Congressional districts?

6 A Yes, traditionally it's fallen in the hands of State
7 Legislature.

8 Q And as a result of the 2010 census what happened in terms
9 of redistricting in Pennsylvania?

10 A Well, one of the most notable things that the new map
11 makers had to accommodate was the loss of a seat in the western
12 part of the State because of population loss.

13 Q And how many districts did Pennsylvania go from and to
14 after the decennial census?

15 A Moving from 19 to 18.

16 Q And what would the effect be in general, moving from 19 to
17 18 districts, Congressional districts in Pennsylvania?

18 A Well, you know, if in the decennial interval the
19 population loss would have been a full Congressional district's
20 worth of people, 710,000, perhaps the results for the map
21 makers wouldn't have been so dramatic.

22 But in fact, you can lose an entire seat even if the
23 population drops far less than an entire seat's worth of
24 population. So in fact, in western Pennsylvania the population
25 loss was perhaps 100,000, okay. But because Pennsylvania did

1 not grow relative to faster-growing states in the west and the
2 south, that dictated that we have a seat loss here in the
3 State.

4 The complication, of course, is that since we lost the seat
5 with only 100,000 population decline in that area around
6 Allegheny County, those 500,000 to 600,000 people then had to
7 be parceled out or apportioned across the rest of the State.
8 And that of course had a ripple effect on boundaries throughout
9 the State.

10 Q And approximately what, how many people is there per
11 district, or was there allocated per district in Pennsylvania
12 after the 2010 census?

13 A About 710,000 and some change, about 710,000.

14 Q All right. And so plaintiff's expert Mr. McGlone
15 identified approximately 3 traditional distracting principles
16 among probably others, among those being contiguity,
17 compactness and communities of interest. Do you agree that
18 these are, are these traditional distracting principles that
19 are considered?

20 A Oh, certainly. Those are important traditional
21 redistricting criteria. There are others, though, that I list
22 on Page 2 of the report.

23 Q And thank you for mentioning that. Moving to Page 2 of
24 your report, what are some of the other traditional
25 redistricting principles that are considered?

1 A Well, again, going well back into political science and
2 redistricting literature, consistency with past districts is
3 important, equal population of course is very important.
4 Congressional districts must adhere quite strictly to equal
5 population. There's the communities of interest criteria, not
6 just minimizing county and municipal boundary splits, but
7 possibly also recognizing other communities of interest as the
8 Legislature may dictate.

9 Certainly political balance among or between the
10 parties is an important consideration. Also incumbency
11 protection is an important consideration, and it goes all the
12 way back in redistricting literature quite some distance into
13 the 60s and 70s.

14 Q And what role does --

15 MR. PERSON: Objection to lack of foundation, move
16 to strike the testimony.

17 JUDGE SMITH: Overruled.

18 Q And what role does political geography have in assessing
19 traditional districting principles?

20 A Well, political geography is fundamental because of course
21 we have to draw boundaries around people and not rocks and
22 trees, to paraphrase Justice Douglas. So as a consequence the
23 population settlement pattern of the State becomes quite
24 critical and the boundaries then have to encircle populations
25 as they're settle across the terrain of the State.

1 Q All right, thank you. We'll come back to political
2 geography in a little bit. But for now, let's go to
3 compactness. So what does compactness as a general point
4 measure?

5 A Well, compactness measures the aerial or territorial
6 density of the district. So a small perimeter is gauged to be
7 desirable, you know, certainly whenever possible. It enhances
8 things like accessibility and again might help maintain a
9 community of interest if it's compact.

10 Q And what does a compactness score on its own tell you
11 about the district?

12 A Well, my sense is that compactness needs to be judged with
13 other criteria in mind. By itself it's not a very helpful
14 kind. You know, for one thing, you know, as I said just a
15 couple of minutes ago, you do need to look at compactness
16 relative to the way the population is settled, because the
17 point is not to encapsulate just turf or territory, but to
18 encapsulate population. And sometimes with a small or compact
19 district you can't actually capture the necessary population.

20 Q And is there anything you can determine about a map
21 maker's intent just by looking at the compactness score of a
22 map?

23 MR. PERSON: Objection, lack of foundation.
24 Leading.

25 JUDGE SMITH: I'm not going to, I'm not going to rule

1 on the objection on that grounds. I'm not sure what you meant.
2 It seems to me to be a very broad question.

3 MR. GORDON: Sure, no problem, Your Honor. I'll try
4 to clarify it.

5 Q When looking at a specific compartment score of a
6 district, does that compactness score in and of itself tell you
7 anything about the intent of the map maker?

8 MR. PERSON: Objection, vague, leading.

9 JUDGE SMITH: Overruled.

10 A I don't see how compactness alone can tell you anything
11 about the intent of the map maker, because after all, you know,
12 compactness could be associated with any number of underlying
13 populations traits, depending how the population is settled,
14 what the radius, say, of the circle is, okay, you know, how the
15 circle has shifted around the map is going to matter.

16 All of those things matter. It's very possible to obtain
17 different partisan balances by shifting a circle around on a
18 map. It's a very compact shape, and yet by moving it around
19 you can make that compact shape reveal partisan majorities that
20 are very lopsided.

21 Q Okay. So speaking of what you just mentioned there about
22 compact shape, turning to Figure 1 in your report on Page 11,
23 which has been marked as Legislative Defendant's-10, and I'll
24 just hold for Your Honors to --

25 JUDGE SMITH: Defendant's-10?

1 MR. GORDON: Yes, Your Honors. And it would be Page
2 11.

3 Q Can you explain for the Court, Professor Gimpel, what
4 Figure 1 is?

5 A Well, Figure 1 is a map of a part of Western Pennsylvania.
6 The map is centered on Allegheny County. The County boundaries
7 are in green. And the spheres are, they're not exactly
8 circles, but the spherical objects represent hypothetical
9 districts. And each one aggregates up the underlying precinct
10 population to the boundaries of the shape.

11 And so what I'm trying to show is that by taking the most
12 compact shape possible, a circle or a sphere, and shifting it
13 around on a map, you can generate very different partisan
14 results. Should I continue?

15 Q It's easier, it's your answer.

16 A Okay. So there are some figures associated with the
17 circles in the table on the bottom of the page. If we look,
18 for example, let me see if I have my glasses so I can zero in
19 here.

20 Q And excuse me, for a reference for the Court.

21 A Yeah.

22 Q You're referring to Table 1, Changes in the Partisan
23 Composition of 3 viable compact districts?

24 A Sure. Yes, exactly. So the entry for 8-1 on the top row
25 gives you the partisan composition of the State Level Executive

1 Offices, for example. And that's 62 percent Democratic and 34
2 percent Republican for the light blue circle, okay. When I
3 encompass those precincts in that part of Allegheny County,
4 that's the division of the vote that I get.

5 Now I shift that compact shape a little bit to the east,
6 you know, toward West Moreland County, for instance, and it's
7 roughly the same population, not way off, and I get 8-3, okay,
8 the dark blue, which would be 69 percent Democratic, 26.9
9 percent Republican.

10 And then in the middle of those, that would be the purple
11 circle. If I shift to the south, I get a more competitive
12 district, and that would be 53.1 percent Democratic, 43.3
13 percent Republican.

14 So the point is it's pretty straightforward, it's to say
15 that even with compact shapes I can shift them around to get
16 different partisan balances, and that goes for the Presidential
17 election results, too, which are on the bottom of the table. I
18 won't bore the Court with those details.

19 So you know, again, looking at the shape alone doesn't tell
20 you very much. You need to look at the underlying population
21 encompassed by the shape.

22 Q All right, Professor, and this might be sort of a self-
23 evident question, but to your knowledge why don't map makers
24 use circular districts when drawing a map?

25 A Well, most commonly it's because the population settlement

1 pattern is not circular. Now in urban areas there is in
2 Sociology discussion of concentric ring-type settlement
3 patterns emanating out from central cities. So perhaps the
4 closest place where you can find a circular shape or a very
5 compact shape would be in a very dense urban population.

6 But you get much outside very dense cities, and you
7 begin to see shapes following lots of settlement patterns that
8 are determined by the terrain. Highways, rivers, lakes,
9 mountain chains, all kinds of features of the terrain will
10 dictate human settlement.

11 Q So on the topic of human settlement, if you turn to Table
12 7, this is Page 23 of LD-10, Your Honors, Table 7 labeled Total
13 Splits in Counties and Municipalities under Recent Pennsylvania
14 Redistricting Plans. Can you explain to the Court what this
15 table is?

16 JUDGE BAYLSON: This is still in P-10?

17 MR. GORDON: This is still P-10.

18 JUDGE BAYLSON: Page number?

19 MR. GORDON: Page 23, Your Honor.

20 JUDGE BAYLSON: All right, Table 7. Thank you.

21 MR. GORDON: Table 7, yes, sir.

22 Q I interrupted you. Yes.

23 A So certainly one traditional redistricting criteria in
24 Pennsylvania that's longstanding is to try to minimize the
25 number of split counties and municipalities across the State as

1 you draw the boundaries. And you know, this is for the
2 straightforward reason that Counties and Municipalities have
3 governments of their own and, you know, we should try to avoid
4 splitting them when we create districts for Congressional
5 representation.

6 And the split counts here simply reflects the number of
7 split Counties and Municipalities resulting in the 1992 plan,
8 the 2002 plan and the 2011 plan.

9 Q And Professor, what happened between 2002 and 2011 in
10 terms of County and Municipality splits?

11 A Well, there was a modest reduction in the number of County
12 splits and a more noticeable reduction in the number of
13 Municipality splits.

14 Q Okay. And now I'll direct your attention to the
15 difference between 1992 and 2002, and it looks like there's a
16 great increase in splits. What do you attribute that to?

17 A Well, one of the major complications of that redistricting
18 in Pennsylvania was the loss of 2 seats. And you know, I am
19 sure that that created a great deal of chaos and trouble for
20 the map makers in moving from the 1992 plan to the 2002 plan.

21 MR. PERSON: Objection, the testimony is speculation
22 and lacking in foundation.

23 THE COURT: I'll sustain the objection.

24 Q Professor Gimpel, what kind of things, what kind of map
25 making, what kind of redistricting decisions might be made that

1 would result in an increase of Municipality and County splits?

2 A Well, I think that equal population criteria being as
3 strict as it as and it's something that the map maker has to
4 start with, it creates a lot of problems of this kind. And
5 particularly in the face of a seat loss, okay, because you have
6 to find a way to attain balance across the districts and of
7 course every time, and you don't just focus on one district at
8 a time, okay, because you're trying to equalize population
9 across the entire State's worth of districts, okay.

10 And so, you know, moving the boundary a bit in one district
11 is inevitably going to affect the population of the other, or
12 others, and so it becomes quite a complicated balancing act to
13 try to equalize population cross 18 districts and not split at
14 least a few Counties and Municipalities.

15 MR. PERSON: Objection. Your Honors, under rule I
16 believe it's 608B which generally applies to cross examination
17 but I'll explain why I think it's applicable in this instance.
18 You can't elicit testimony from a party where you don't have a
19 good faith basis that there will be admissible evidence
20 consistent with that.

21 What I understand the prior to be and what I expect
22 future testimony to be is eliciting testimony on direct
23 examination, albeit it not cross, from Dr. Gimpel as to what
24 factors may have been applied in drawing any of the contours of
25 the redistricting maps and the 2011 map.

1 But I do not believe, having reviewed the witness list
2 and evidence in the record to date, that the Legislative
3 defendants intend on putting any direct evidence into play as
4 to what factors were considered in drawing the Legislative
5 maps. And I'd ask that testimony that suggests that one factor
6 or the other was considered not be entertained by the Court,
7 Your Honors.

8 MR. GORDON: May I speak, Your Honor? Other than
9 that obvious factors that he just stated, that 608 applies to
10 not direct questioning, I would also like to point out that he
11 is essentially testifying as to his opinion on what map makers
12 take into account as being a map maker himself, having
13 testified before in trial, and having studied the subject over
14 26-plus hears.

15 JUDGE SMITH: The objection is overruled. It goes
16 without saying that this witness cannot testify to nor
17 speculate as to what the determinations, the reasons for
18 certain determinations made by the State Legislature. He can
19 certainly testify as he has in the general sense to factors
20 that are taken into account, and other matters regarding
21 geography, population and so forth.

22 MR. GORDON: Thank you, Your Honor.

23 BY MR. GORDON:

24 Q Professor Gimpel, in your expert opinion what is the
25 relationship between compactness and competitiveness when

1 you're looking at Congressional districts?

2 A I'm not sure there is a relationship. Honestly, I'm not
3 sure there is a relationship because as I testified a few
4 minutes ago it's entirely possible to use a compact shape to
5 develop or obtain a competitive result. It's also entirely
6 possible that in order to obtain a competitive district you
7 have to draw a rather distorted shape with protrusions and
8 extensions and, you know, arms and necks and all kinds of
9 strange looking shapes.

10 Imagine trying to draw a competitive district somehow in
11 the area of Philadelphia City proper. In order to obtain a
12 competitive district in the Philadelphia City proper, that
13 area, it would have to extend well out into the suburbs to
14 encompass Republican populations. I don't see how it could be
15 very compact.

16 Q Okay. So now moving onto the discussion of equal
17 population which you identified previously as a traditional
18 districting criteria, generally speaking what impact does equal
19 population have on the drawing of districts?

20 A Well again, equal population and Congressional districts
21 is where you have to start. Now with State Legislative
22 districts you have some leeway, okay. But equal population in
23 Congressional districts is a very strict criteria. That is, in
24 fact, the preeminent criteria because if you are off the
25 Justice Department will almost certainly take notice.

1 So you know, the fact is, is that the map makers have
2 to balance the populations across districts and draw the
3 boundaries as such, and we have about 710,000 per district.
4 That is not easily done, particularly in the face of a seat
5 loss.

6 Q And so on top of that seat loss, because Pennsylvania lost
7 a seat, what had to happen to the rest of the districts within
8 Pennsylvania?

9 MR. PERSON: Objection, leading.

10 A There has --

11 JUDGE SMITH: Excuse me just a moment.

12 THE WITNESS: I'm sorry, I'm sorry.

13 JUDGE SMITH: What had happened, what was?

14 MR. GORDON: I believe I phrased it what would have
15 to happen --

16 JUDGE SMITH: Ask the question again, please.

17 MR. GORDON: Okay, sorry, Your Honor.

18 Q Because as you just testified Pennsylvania lost a seat
19 from 19 to 18, what occurs with the rest of the districts
20 because of that seat loss?

21 A Well, their boundaries have to be adjusted. Most
22 immediately of course the area of the seat loss was District 4
23 in the Allegheny County area, Allegheny County itself if 14,
24 okay, but District 4 was near there. And again, the State of
25 Pennsylvania lost a seat, not losing the full district's worth

1 of population but only about 100,000 people in that area, and
2 they lost a whole seat. So that left 550,000, 600,000 having
3 to be parceled out in the area around that seat and areas
4 further afield.

5 This was complicated. This is why you see substantial
6 shifts in that area to the south. The Third District, the
7 boundaries moved down sharply. The District 18 moved, the
8 boundaries there moved up. Allegheny's district boundaries
9 themselves are altered.

10 Two districts are combined, the old 4th with the 12th.
11 Because of the 3rd District shifting southward, the 5th
12 District moves into Erie County. The District next to the
13 5th, the 10th, its boundaries are shifted westward.

14 It is as chain reaction of very serious boundary
15 adjustments caused by the seat loss. It was not trivial, it
16 was extremely complicated.

17 Q Okay. So just to drill down on this complication, so when
18 you move a population from one district to another district,
19 and that district shares a border, what happens to the lines
20 between the districts?

21 A Well, bear in mind one of the other obstacles in map
22 making is that you're shifting population in chunks. It would
23 be ideal if you could shift individuals from district to
24 district. It would make life a lot easier, okay. But in fact,
25 you have to move chunks of people, by precinct, by cells,

1 little cells on the map, precincts or blocks.

2 So that means you're moving 500, 600, 800, 1,000 people at
3 a time, okay. You don't have the luxury even of moving
4 households, right, much less individuals. So what that means
5 if, of course, any movement of 1,000, 800, 500 here, 1,000
6 there, you're altering the population of both districts, okay.
7 District 3 and District 5, for instance, if we're talking about
8 Erie. And you know, the move back and forth in those chunks of
9 800 to 1,000 to 500, you know, eventually it starts looking
10 like a pretty strange map sometimes.

11 Q All right. So moving on to looking at the past districts
12 of Pennsylvania from after the 2002 map to now the current 2011
13 map, what role do past districts have on drawing new districts?

14 A Well, no map maker that I've ever seen or heard about
15 starts with a clean slate. You don't start Tabula Rosa, okay,
16 as if Pennsylvania has no districts. That's ludicrous, okay.
17 Every map maker starts with the districts that are in place,
18 okay.

19 And you know, the presumption I think is minimal change if
20 possible, because of course continuity is desirable. You want
21 continuity in representation. There's very hard political
22 science evidence that when voters are orphaned by moving them
23 out of the district that they were in, they turn out less, the
24 concrete impact on their behavior in a negative direction.

25 So the presumption is you want to alter the boundaries

1 subtly, if at all. Now again, you know, depending on the
2 population and how much apportionment is required, you know,
3 sometimes more radical changes are needed. But you do start
4 with the existing boundaries.

5 Q So in terms of sort a continuity between the maps, what
6 role does incumbency protection play in that process?

7 A Incumbency protection has a long history. Incumbency
8 protection is a very important part of representation and
9 furthering representation because after all, we know from a lot
10 of political science literature dating back decade that members
11 of Congress acquire expertise over the course of their service.
12 That expertise greatly facilitates the representation of their
13 constituents.

14 Not only do they get to know their constituents' interest
15 better over the course of several terms, okay, but they get to
16 know how to navigate, for instance, the complicated
17 labyrinthian network of federal agencies on behalf of their
18 constituents.

19 Immigration, Social Security, Veterans benefits. You think
20 they go to Congress just knowing that? No, this is all
21 knowledge that has to be acquired. Incumbency protection
22 facilitates that very important aspect of representation.
23 Representation does not boil down simply to following the
24 electoral winds, sweeping all of the incumbents out when Trump
25 wins, and then sweeping all of the incumbents out again when

1 the pendulum swings the other way. That's not representation.

2 Q So then based on your research what benefits do incumbents
3 derive from having more senior members of Congress represent
4 them?

5 A Oh, how long have you got? I mean, the list is endless.
6 I mean, seniority is important to the Committee system in the
7 sense that you acquire seniority, you get more power and
8 influence in the Committee system.

9 You certainly acquire more knowledge and respect. It
10 follows from that within the Chamber. You have the opportunity
11 to become a leader within the Chamber. All of these things
12 redound to the benefit of constituents back home in
13 Pennsylvania.

14 Q All right, absolutely. Thank you so much. And then
15 moving on to population, sort of settlement patterns or
16 political geography of Pennsylvania. How is the population
17 sort of dispersed throughout Pennsylvania?

18 A Well, you know, naturally you have two very urban
19 concentrations, but of course Philadelphia is the much larger
20 of the two. So you know, you have the Philadelphia area and
21 the Pittsburgh area.

22 But then, you know, you have some very significant and
23 consequential mid-size cities dotted throughout the State.

24 Q And is there is any relation, well, let me rephrase that,
25 sorry, strike. What is the relationship between population

1 density and voting patterns, if any?

2 A Well, population density seems to be associated with a
3 heavily Democratic voting block, and increasingly so with time.

4 Q And does the, what impact does population density have on
5 drawing maps? Or drawing Congressional districts?

6 A Well, population density, well, you know, naturally as I
7 said you have to draw the districts around where the
8 populations are settled. You know, naturally you can draw more
9 compact districts in urban areas, you know, the more urbanized
10 the more dense, the easier it is to draw them in a compact way.

11 You know, as you move outward it becomes a little more
12 difficult, particularly in transition areas, urban to suburban,
13 you know, suburban to rural.

14 Q And so along those lines what are the biggest centers of
15 Democratic voters in Pennsylvania?

16 A Well, naturally it would be Allegheny and of course
17 southeast Pennsylvania, Philadelphia and its immediate suburbs.

18 Q And so what impact does that democratic vote
19 concentration, those Democratic vote concentrations have on
20 drawing maps?

21 A Well, obviously you're going to have very strong
22 Democratic majorities in a lot of the more urban districts
23 because of the way the Democratic population is settled and
24 concentrated in urban areas.

25 Q Now shifting a little bit more to the variability between

1 partisanship and voter registration that you highlighted in
2 your report. In Pennsylvania do people register by political
3 party?

4 A They do.

5 Q And what relation is there, if any, to party registration
6 and election performance?

7 A Well, there's a pretty strong correlation. I mean, I
8 think any campaign manager realizes if you have one piece of
9 information about a voter you would like to have their party
10 identification. It certainly guides their voting./ I don't
11 think that there's any question about that, no one would
12 contest that.

13 Having said that, you know, it's not 100 percent, there's
14 substantial deviation from party registration in many
15 instances. You know, voters are thoughtful, I walked in about
16 11 a.m. this morning, I heard a very thoughtful witness from
17 the plaintiffs making some very thoughtful remarks and comments
18 suggesting that she herself was very thoughtful about
19 representational issues.

20 So it seems to me that if she represents typical
21 Pennsylvania it shows you that voters are not just strictly
22 prisoners of their party ID.

23 Q And so have you had an opportunity to review Pennsylvania
24 voting patterns and registration numbers?

25 A Yes.

1 Q I want to turn your and the Court's attention to Table 2,
2 this is on Page 14 of Legislative Defendant's-10 still, Your
3 Honors. And Table 2 is entitled 2016 Vote Percentages for
4 Various Offices by Congressional District in Comparison to
5 Party Registration Figures.

6 Professor Gimpel, can you explain to the Court what this
7 table shows generally?

8 A Sure. Well, in 2016 there were a number of elections in
9 Pennsylvania. Across District 1 for example, reading across
10 the top row, in the Presidential election in Congressman
11 Brady's district the Republican Presidential candidate received
12 18.2 percent of the vote, the Democratic Presidential
13 candidate, 79.4. The Attorney General, the Treasurer, the
14 Auditor, the U.S. Senator, so forth.

15 Okay, under R-reg and D-reg, those are the Republican and
16 Democratic registration figures as of the fall of 2016. R-max
17 and D-max, that's just simply the figure for the highest
18 Republican percentage among those offices, which was 20 percent
19 Republican for the U.S. Senate seat. And for the Democrat it
20 was 81.5 percent for the Attorney General.

21 Okay, and all I do here in the Diff-R and Diff-D is
22 subtract the Republican registration from the maximum
23 Republican vote for that year. Okay, so the Republican
24 registration, 15.2 minus 20 leaves you 4.8, that's all.

25 And for Democratic registration, 73.2 minus 81.5 is going

1 to leave you 8.3.

2 So that just shows you the difference between Republican
3 registration and the maximum Republican vote among those
4 offices that were at the top of the ticket and where the
5 difference between Democratic registration and the maximum
6 Democratic vote for those offices that were at the top of the
7 ticket last year.

8 Q Okay. And I want to take you through a couple of these
9 just to sort of get a better understanding of what this is
10 trying to show you. If I can direct your attention to District
11 9, number 9 on the left-hand row.

12 A Yes.

13 Q What is the number, can you remind the Court what the
14 number 20.8 means in Dif-R?

15 A Okay, so that's the difference between the Republican
16 registration figure of 48.6, okay, and 69.3, which is the
17 maximum vote for the offices that were at the top of the
18 ticket. And of course that went to the Republican Presidential
19 candidate. So you know, that's a pretty big difference between
20 Republican registration and the Republican vote, all right

21 And District 9 of course would be Congressman Shuster's
22 district for reference, and you can see that party registration
23 doesn't predict the Presidential vote very well that particular
24 year, a 20.8 percent difference.

25 Q Okay, thank you. I want to direct you again to one more

1 of these, District 12, if I may. I see it's a -17.32 Dif-R.
2 What relationship does that have to some of the elections in
3 that district?

4 A Okay, so once again this suggests that the Republican
5 registration in District 12 is at 41.2 and the maximum
6 Republican vote at the top of the ticket last year was 58.5.
7 Once again, that occurred in the Presidential contest. And the
8 difference between those two is 17.3. It suggests once again
9 there is substantial deviation from the balance of partisanship
10 in the voting in that District for last year.

11 Q All right. Now I want to ask you a hypothetical right now
12 based on the data you have on this table. Assuming --

13 MR. PERSON: Objection, calls for speculation.

14 MR. GORDON: An expert --

15 JUDGE SMITH: I didn't hear the whole question.

16 JUDGE SHWARTZ: Counsel, if I could just ask the
17 witness. He said there was a deviation between partisanship.
18 Or did you mean party registration?

19 THE WITNESS: Party registration.

20 JUDGE SHWARTZ: Okay, thank you.

21 THE WITNESS: Yes.

22 Q Okay, and going back to the original question, looking at
23 Table 2 and the data therein, hypothetically assuming these,
24 sorry, let me start over. Hypothetically if you assume every
25 District votes in line with their party registration, how many

1 seats would the Democrats win?

2 MR. PERSON: Objection, it calls for speculation.

3 JUDGE SMITH: No, it's simply using the statistics.

4 A Yeah, I mean, I can go down and count. But the Democrats
5 have an edge in 9, is, yeah, 9. Democrats have an edge in 9.

6 Q Okay. So hypothetically speaking if only Democrats and
7 Republicans voted in any given district and they voted exactly
8 in line with their party registration, how many seats would the
9 Democrats win?

10 A 9.

11 Q Thank you. Now I want to turn you and the Court's
12 attention to Table 3, which is on Page 16 of the same LD-10,
13 Your Honors. Table 3 is titled the Association Between Party
14 Registration and Party Identification for Pennsylvanians in
15 2016.

16 Professor Gimpel, can you explain for us what this table
17 shows?

18 A It's rather simple. I took a recent survey from 2016 last
19 fall and did a cross tabulation between party identification,
20 which would be on the row, by party registration, which is on
21 the column, okay. And the question really the Table is asking
22 is just what is the relationship between party of registration
23 and the way voters self-identify, okay.

24 Q Okay, and then turning your attention now to Table 4,
25 House Vote Preference and 7-point Party Identification in

1 Pennsylvania 2016, same page, 16. Can you explain first what
2 do you mean by 7-point party identification?

3 A Okay, sure. Political scientists have long known probably
4 at least from seminal works in the 1950s that party
5 identification can be summarized on a 3-point scale, but often
6 the 3-point scale as used in Table 3 does exaggerate the number
7 of independents. And the reason why it does is because some
8 people when asked do you identify as a Republican, Democrat or
9 Independent might be a little bit reluctant to commit at first.
10 But if they're urged to commit by a follow-up question they
11 will often then say okay, I lean Democratic or I lean
12 Republican in my inclination.

13 So over the course of doing political behavior research
14 political scientists have used the general party ID question
15 followed by a question about leaning in order to tease out
16 these more nuanced aspects of partisanship than can be obtained
17 simply using the 3-point scale.

18 By the way, the reason why people do say that they lean in
19 one direction or the other is simply because when they get into
20 the voting booth it's commonly the case that they don't have an
21 independent option, okay. And so habitually they tend to vote
22 Republican or Democratic even though they might initially say
23 they're independent. If there are no independent options, and
24 often there aren't, they their behavior is actually to support
25 one of the two major parties.

1 And you know, so this is the, a bit of encapsulation of the
2 rationale for the 7-point scale, and it shows you that there
3 are gradations between strong Democrat and strong Republican
4 where people, you know, may vary a bit in their behavior in the
5 voting booth.

6 Q All right. And so applying at some point party
7 identification, what does this table show?

8 A Well, it tends to show that, you know, in these middling
9 categories where part commitment isn't as strong you may well
10 have some defection from the usually preferred party. So the
11 not strong Democrats, for instance, 73 percent of them reliably
12 vote Democratic, okay. But if you go down to the next cell, 27
13 percent of the not strong Democrats in Pennsylvania last year
14 said that they intended to vote for the Republican House
15 candidate.

16 Okay, if we switch over to the right side of the table and
17 look at the not strong Republicans about 6.1 percent of the not
18 strong Republicans intended to cast Democratic votes. 93.9
19 percent of the not strong Republicans were going to stay with
20 the Republicans.

21 So you know, this is the value I think of the 7-point
22 scale is that you get to look at the people who are not as
23 strong in their party identification and see just how again
24 malleable or mutable their actual behavior in the voting booth
25 can be.

1 Q And then turning your attention to Table 6 on Page 20 of
2 LD-10, Table 6 is titled 2009 and 2010 Party Registration
3 Percentages Calculated within 2011 Congressional Districts.

4 A Yes. Okay.

5 Q And I'm sorry, can you please explain to the Court what
6 this table is saying?

7 A Well, so here in the 2011 District boundaries I aggregated
8 up, the party registration figures from the fall of 2009 and
9 the fall of 2010. The reason why aggregated the 2009 and 2010
10 data up to the 2011 boundaries as opposed to, say, the 2016
11 party registration data is because after all it would have been
12 the 2009 and the 2010 figures that map makers would have been
13 somewhat familiar with, or it would have been the reality at
14 least that they were confronting at the time that the District
15 map, the 2011 District map was draw.

16 So that's why it's specifically 2009 and 2010 rather than
17 2016.

18 Q Okay. And then sort of finally, Professor, when looking at
19 Mr. McGlone's report, based on your expertise what is the
20 utility of conducting this sort of exam or visual test that Mr.
21 McGlone conducted in his report?

22 A Well, my impression was that Mr. McGlone was a bit hasty
23 in concluding that partisan intent was behind the districts and
24 the district drawing.

25 MR. GORDON: Can I have one second, Your Honor?

1 JUDGE SMITH: Yes.

2 Q And a quick follow-up, Professor Gimpel. Why do you make
3 that determination?

4 A Well, for one thing it seems to me that if partisan intent
5 was behind the district maps from 2011, they look pretty
6 incompetent. Honestly. Look at these figures. You know, many
7 of these districts are evenly divided. Now my class will try
8 to actually draw a more partisan map with partisan intent in
9 mind. I think we can do a better job of it.

10 MR. GORDON: Thank you, Your Honors. I have no
11 further questions at this time.

12 JUDGE SMITH: Thank you. Cross examine.

13 MR. PERSOON: Thank you, Your Honor.

14 CROSS EXAMINATION BY MR. PERSOON:

15 Q Dr. Gimpel, you just testified that the McGlone conclusion
16 was hasty, correct?

17 A Yes.

18 Q Is it your opinion today in court that his conclusion was
19 unreasonable?

20 A Yes.

21 Q What is the basis of that conclusion?

22 A I don't think that the McGlone report seriously considered
23 the alternative explanations. I think that there are important
24 alternative explanations that need to be considered before you
25 conclude that one factor predominated.

1 Q Now wouldn't a better alternative conclusion investigation
2 include asking the people who actually drew the map what they
3 intended?

4 A I think that that's certainly an important aspect. You
5 know, if you have people who drew the map saying that, you
6 know, they did it with partisan intent, that needs to be
7 considered.

8 Q Can you think of, in fact can you identify here today any
9 better piece of evidence as to whether that map was intended to
10 be a partisan gerrymander than asking the people in charge of
11 drawing the map?

12 A Well, I think that that's an important piece of evidence
13 for intent is if the map makers said that it wasn't that --

14 Q I'll ask my question again. Can you think of any single
15 better piece of evidence in determining the intent of a map
16 than asking the people who drew the map.

17 MR. GORDON: Objection, Your Honors. He's asking the
18 witness to draw a legal conclusion as to intent of the map
19 makers. And the best evidence.

20 JUDGE SMITH: No, he's not. I'll overrule the
21 objection.

22 A I think that's an important piece of evidence. If the
23 map makers, you know, it depends on who they are. There's a
24 lot of people involved here. But if the map makers are
25 indicating that they were specifically drawing districts for

1 partisan purposes, then that's definitely an important piece of
2 evidence. I would like to know who this group is since so many
3 people were involved.

4 Q Well, you said, you know, I may have misheard --

5 THE COURT: Excuse me. What do you mean, this group?
6 What group?

7 THE WITNESS: Well I think there's a large group of
8 people that we consider the map makers.

9 JUDGE SMITH: Right.

10 THE WITNESS: Of course, there are the GIS
11 specialists themselves. And then there are of course the
12 Legislators that we heard testimony about earlier that had to
13 actually cast votes, so --

14 JUDGE SMITH: Thank you.

15 Q Do you know who drew the map?

16 A I don't know exactly who the people were that drew the
17 map.

18 Q And that's because you didn't talk to a single person who
19 drew the map, did you?

20 A No, I didn't.

21 Q Can you remind me who your client is who is paying you to
22 offer this report?

23 A Well, it's Mr. Torchinsky's law firm.

24 Q Do you understand who Mr. Torchinsky's client is?

25 A The General Assembly of the State of Pennsylvania.

1 Q So you were working for the Attorney of the General
2 Assembly in your opinion, correct?

3 A Yes.

4 Q Were you given access to the General Assembly to prepare
5 your report?

6 A Well, I gather that some, it came together quickly. But I
7 gather that some of the data came from the General Assembly so
8 I didn't go to Harrisburg and actually track down the people.
9 It was passed through counsel to me.

10 Q So you talked to an attorney, right?

11 A Yes.

12 Q And you didn't talk to a single Legislator, did you?

13 A No, I didn't.

14 Q You didn't talk to Senator Scarnati?

15 A No.

16 Q And you understand that Mr. Torchinsky represents Senator
17 Scarnati, right?

18 A Oh, yes.

19 Q You didn't talk to Representative Turzai either, did you?

20 A No.

21 Q Did you talk --

22 A I did read the deposition.

23 Q Did you talk to Erik Arneson?

24 A No.

25 Q Did you talk to a Mr. Schaller?

1 A No.

2 Q Did you talk to a Mr. Memmi?

3 A I did not talk to Mr. Memmi, no.

4 Q Do you know who Mr. Memmi is?

5 A I do know who he is.

6 Q Can you tell the Court who Mr. Memmi is?

7 A He advises counsel and advises Mr. Torchinsky in this
8 case.

9 Q If you knew that Mr. Memmi was the only person charged
10 with drawing the contours of the maps in the redistricting bill
11 of the Senate of 2011 redistricting map that was introduced in
12 Senate Bill 1249, do you think it would be important to get his
13 opinion as to what the intent was?

14 A Mr. Memmi's opinion? Yes.

15 THE COURT: How do you spell that?

16 MR. PERSON: M E M M I.

17 Q Now you testified that on the basis of Table 6 that if
18 this was meant to be a gerrymander it's pretty incompetent,
19 correct?

20 A Yes.

21 Q What if this, you've also in your report and in your
22 testimony talked a little bit about incumbency protection,
23 right?

24 A Yes.

25 Q What's the general boost that an incumbent has over a

1 challenger in terms of percentages in the election?

2 A Well, often it's considerable. Of course, that's variable
3 as well across states and districts. But the incumbents, you
4 know it's true incumbents are re-elected at a very high rate.
5 And you know it may be 10 to 15 points of an edge.

6 Q So tell me right now when you describe that gerrymander,
7 and that's my word not yours, I understand, when you describe
8 that gerrymander as incompetent how did you account for
9 incumbent advantage when you made that statement?

10 A Well, when I think of districts that are completely out of
11 play, that you might just let go uncontested, I think of
12 districts that are more out of balance than most of these. You
13 know, take 13 for instance, this is Mr. Boyle's, Congressman
14 Boyle's District. Even at a substantial advantage of 58
15 percent and with Mr. Boyle having run uncontested I don't
16 consider that seat to be unassailable.

17 I don't think that strategists down in Washington consider
18 that seat to be an impenetrable fortress. I don't know if Mr.
19 Boyle will draw a challenger this year, but I don't consider 58
20 percent to be enough of an edge to completely insulate him from
21 defeat.

22 Q I'm sorry, Dr. Gimpel, maybe I did a bad job of asking
23 questions so I'll try again. When you made that statement
24 describing this gerrymander, my words not yours, as
25 incompetent, did you account for the incumbency effect?

1 A I think that the incumbency effect, you know, probably
2 provides a certain amount of advantage, yes. But I think it's
3 substantially more, you know, the incumbence effect is, you
4 know, maybe, it could be 5, 6, 8 points in some places.

5 Q A little bit earlier you testified it could be 10 or 15,
6 right?

7 A Sure, in some places, you know, absolutely.

8 Q So, and I just want to make sure, maybe you spoke a little
9 bit hastily earlier on your direct examination when you
10 described that gerrymander, my words not yours, as incompetent.
11 But if you want, if you look for a variable of plus or minus 10
12 or 15 percent on those, do you still maintain your opinion that
13 this would be an incompetent gerrymandering?

14 A I --

15 MR. GORDON: Objection, Your Honor, argumentative.
16 He phrased his question in terms of hastiness.

17 JUDGE SMITH: He did phrase it, but I think the
18 question is entirely proper. It's essentially a hypothetical.

19 A I'll try my best to answer your question. I view this,
20 you know, I study campaigns and elections, I've been studying
21 that for a long time. And I view these figures from the
22 standpoint, you know, of a strategist who was deciding where to
23 recruit challengers and what districts to pass up.

24 And I'm telling you that I don't see very many of these
25 districts that should go unchallenged on that basis. I see

1 that most of these districts should draw a challenger. And I
2 would be that in 2018 a lot of these districts will draw
3 challengers, probably very serious challengers. You may even
4 see in 2018 some incumbents upset, okay, in the coming
5 election.

6 So I don't see these numbers as prohibitive at all
7 from the standpoint of fielding challengers. A number of these
8 districts are screaming for challengers.

9 Q Let me ask you this to follow up, Dr. Gimpel. How many
10 Congressional campaigns have you managed who have won?

11 A I've been involved in a number of Congressional campaigns,
12 I've not managed any. I've certainly studied Congressional
13 campaigns at great length and written about them.

14 Q So it's true, isn't it sir, that you have never managed
15 and won a Congressional district, let alone won challenging and
16 entrenched incumbent?

17 A No.

18 Q Now you talked a little bit about the voter registration
19 and how it would lead to I think you said 8 or 9 Democratic
20 seats, is that right?

21 A Yes.

22 Q Do you know when the Republicans drew this map if they
23 looked at voter registration?

24 A Well, I would imagine that voter registration and party
25 registration, all of these figures would be relevant and would

1 be considered. You're looking at voting-age populations, for
2 instance, when you're redrawing maps and --

3 Q I'm not asking about you, Dr. Gimpel. I'm asking do you
4 know what the people who drew the map looked at?

5 A I don't know exactly what they looked at.

6 Q So you don't know if they looked at voter performance, do
7 you?

8 A I don't know for certain.

9 Q Do you know at all?

10 A I, most map makers would look at that. But I don't know
11 that they looked at it, no.

12 Q You know, I was looking over your report last night and
13 you had an interesting statement about how Legislators have
14 this just intrinsic knowledge of their District.

15 A Yes.

16 Q From where the last post office is to the last remaining
17 Blockbuster or Pizza Hut.

18 A Yeah.

19 Q And they've got this real intrinsic knowledge of the
20 District --

21 A Yes.

22 Q -- that allows them to represent it.

23 A Yes.

24 Q Based on that, if we take that as true, your words not
25 mine, isn't it true that such a Legislature could have real

1 intrinsic District knowledge apart from these voter
2 registration figures that would allow them to perform an
3 effective gerrymander to their benefit?

4 A I think they would have that knowledge, and there's
5 evidence going back quite some distance that Legislators could
6 engage in redistricting without having a lot of data. So we've
7 underwent the data revolution recently. But you didn't need
8 that in 1960.

9 Q But as you said, the single most important piece of
10 information is vote registration, true?

11 A Party registration, if you're in a party registration
12 state, is a very important piece of information.

13 Q Your words, it's the one piece of information you want,
14 right?

15 A If you, especially if you're in the business of running
16 and winning campaigns. You know, it is the one best guide to a
17 voter's behavior, yes.

18 Q Now would it change your opinion about whether this is,
19 well, let me strike that. Do you have any opinion on whether
20 this map was intended to be a partisan gerrymander in favor of
21 Republicans?

22 A I don't know that for certain, no. I don't know that for
23 --

24 Q And you're not offering any opinion one way or the other
25 here in court today, are you, sir?

1 A Well, I'm suggesting that there's evidence for a lot of
2 things going on in this map. A lot of things other than
3 partisan intent, okay. There are a lot of things going on in
4 this map.

5 Q But you're not offering an opinion as to whether partisan
6 intent was a factor or the most important factor, are you?

7 A Well, I don't think it was the most important factor, so
8 that would be my opinion. The map does not reflect that
9 partisanship was the most important factor. That would be my
10 opinion.

11 Q But you have no opinion on whether it was a factor, do
12 you?

13 A Well, look, it's easy to conflate things like incumbency
14 protection with partisanship because, you know, if you are
15 trying to protect incumbents then, you know, possibly giving
16 them a point or two of an edge, you know, would be a pretty
17 usual and typical and ordinary thing to do.

18 Now, you know, you could read that, I suppose, as partisan
19 but you have to remember that we have Mr. Brady and Mr. Evans
20 in Congress as well, and Mr. Boyle is in Congress, and Mr.
21 Cartwright is in Congress, and Mr. Doyle on the other end of
22 the State is also in Congress. So you've got the Democrats on
23 the map as well, and you have to see what happened with their
24 districts.

25 Q Would it change your opinion about the contours of this

1 map and whether they're a result of neutral redistricting
2 criteria if you knew that the people who drew the map sought
3 out partisan data to use?

4 A You know, you might want that for a lot of reasons, okay.
5 You might want partisan data, you know, for your research and
6 your redistricting for a lot of reasons. And you know, that
7 does not in and of itself prove to me that there was partisan
8 intent. There are many reasons why you would want to look, for
9 example, at the distribution of partisans of in an area.

10 Q But if you --

11 A For example, you know, looking at communities of interest,
12 you might want to look at the partisans in an area.

13 Q But if you were of the mind to engage in a partisan
14 gerrymander, that's the one piece of information you'd want?

15 A Well, --

16 MR. GORDON: Objection, Your Honors, it calls for
17 speculation. If we were in --

18 JUDGE SMITH: Rephrase the question please.

19 Q But if a person was intending to engage in a partisan
20 gerrymander in their favor, the one piece of information they
21 would want to make sure to have is party affiliation, correct?

22 A Well, yes, I mean, you would need that.

23 Q Would it change your opinion if you knew that the
24 Republican caucus, the Republican Senate caucus, drew multiple
25 versions of this map with input from the partisan Congressmen

1 whose districts were being modified before resulting on this
2 final map?

3 A That is a --

4 MR. GORDON: Objection, assumes facts not in
5 evidence.

6 MR. PERSOON: Under 608B I have a good faith basis to
7 ask the question on cross examination, Your Honor.

8 JUDGE SMITH: State the question again, please. I
9 have to admit I was thinking about something else in my notes
10 when it was said.

11 Q Would it change your opinion if you knew that the
12 Republican Senate caucus drew multiple maps, multiple drafts
13 that they saved with the input from partisan Congressmen whose
14 districts were being modified before resulting on the final map
15 that was introduced into the House Legislature?

16 JUDGE SMITH: Is that, state your objection, please.

17 MR. GORDON: Objection, it assumes facts not in
18 evidence and calls for speculation.

19 JUDGE SMITH: How much of that is already in
20 evidence, and if it's not in evidence how and when do you
21 intend to place it into evidence?

22 MR. PERSOON: We intend to place it in through the
23 deposition testimony of Erik Areneson, Your Honor.

24 JUDGE SMITH: Very well. Obviously it will be
25 subject to be stricken if that doesn't prove to be the case.

1 But we'll allow it based on your representation.

2 MR. PERSON: Thank you, Your Honor.

3 A So it's a common practice in redistricting to consult
4 incumbent members whose districts are at stake. They also of
5 course have a great deal of local expertise. It might be
6 invaluable to actually have that degree of expertise come to
7 bear in the process.

8 Members of Congress get to know their districts over the
9 course of years quite well. It might be a poor map without
10 that input. And no, I don't think that members of Congress
11 have their eye solely on the partisan composition of their
12 districts. There are other things that they care about, a lot
13 of other things.

14 Q What other things does Bill Shuster care about?

15 A I think that Mr. Shuster, along with --

16 MR. GORDON: Objection, Your Honor, it calls for
17 speculation to what Mr. Shuster -

18 JUDGE SMITH: Yes, I'll sustain the objection.

19 MR. PERSON: And I move to strike previous answer as
20 lacking in foundation. He testified that they care about lots
21 of other things and I'm trying to probe what the basis of that
22 testimony --

23 JUDGE SMITH: I think that's a permissible answer
24 based upon his general study and his long history in political
25 science and relevant fields. But asking a concern that a

1 specific individual Congressman has does call for speculation.

2 MR. PERSON: I understand, Your Honor.

3 Q Now Dr. Gimpel, you're aware, are you not, that since this
4 map was put in place the Congressional delegation from the
5 State of Pennsylvania has had 13 Republicans and 5 Democrats
6 every year. True, sir?

7 A Yes, that's my understanding.

8 Q And is it also true, sir, that you attached zero
9 significance to the fact that since the 2011 map there's been
10 that identical representation, as steady as the North Star,
11 true sir?

12 A I think that the incumbents and the high incumbent
13 reelection rate has a great many sources. It's not solely the
14 result of how the boundaries have been drawn.

15 Q So that 13 to 5 consistency is of no significance to you
16 in constructing your opinion today delivered to this Court,
17 true, sir?

18 A I don't see that as germane to my opinion about the
19 district in Pennsylvania.

20 Q Now you testified that you studied Pennsylvania politics
21 and history, true?

22 A Yes.

23 Q And you're teaching a class on the redistricting process
24 right now, right?

25 A Yes.

1 Q Do you know how variable the Congressional delegation was
2 in terms of a Republican and Democratic mix before the 2011
3 map?

4 A I am in general terms aware of some of the shifts in
5 representation. Yeah.

6 Q And isn't it true, sir, that prior to the 2011 map there
7 was consistently variability in the partisan makeup of the
8 Congressional delegation from the State of Pennsylvania?

9 A Some variability. I don't have the facts, you know, right
10 at my fingertips in terms of what that variability looked like.

11 Q And isn't it true, sir, that since the 2011 map there's
12 been zero variability?

13 A Yes, that's true although, you know, bear in mind the
14 percentages, the margins of victory do vary. So don't forget
15 that. I mean, you can't just look at winners and losers
16 simply, you know, look at the percentages because they often
17 display trends.

18 Q Sir, would you be surprised to know that in the first
19 election under the 2011 map there were roughly 5.2 million
20 votes cast in the State of Pennsylvania?

21 A Okay.

22 Q Do you agree that sounds reasonable?

23 A Okay.

24 Q What percentage of that vote do you think the Democrats
25 got?

1 A Well, it's a very divided State. So you know, I would
2 suspect that the State was, you know, reasonably divided.

3 Q Would you disagree if I told you that the Democrats won
4 roughly 52 percent of the overall Congressional vote that year?

5 A Okay, okay.

6 Q Now thinking back to what I just said, does it change your
7 opinion at all about the purpose of this map when you consider
8 the fact that since it was put in place, well, let's just look
9 at the first year. That in the first year it was put in place,
10 despite the Democrats winning the majority of the overall

11 Congressional votes, they had 5 out of 18 congressional seats?

12 A I think here's the issue, you know, and it goes back to my
13 testimony about the population distribution of Pennsylvania.
14 You have Democrats who are very highly concentrated in a couple
15 of urban areas. You know, by tradition seats 1 and 2 are
16 concentrated or emanate from the City of Philadelphia, okay.
17 Philadelphia is large enough that it can't have a seat of its
18 very own, okay, and so there have to be 2 seats emanating out
19 of the Philadelphia area.

20 And then of course you have the Allegheny seat which also
21 by tradition has been given 1 member of Congress. And those
22 are very concentrated Democratic populations. So naturally
23 when you look at how densely concentrated the populations are
24 in those districts, it's going to, it's going to inexorably
25 mean that outside of those populations the Democrats will be

1 more dispersed and there will be a more even balance or even
2 Republican edge.

3 And I think that's, you know, what's important about the
4 population distribution, that the Democrats in the State are
5 very highly concentrated. If they were dispersed and the
6 Republicans are concentrated I guess we'd be arguing on
7 opposite sides.

8 Q You're familiar Dr. Wendy Cho, correct?

9 A Yes.

10 Q You've authored a number of papers with her?

11 A Yes.

12 Q Would you consider her a friend?

13 A Yes.

14 Q A colleague?

15 A Yes.

16 Q Are you familiar with MCMC analysis?

17 A Yes, I'm familiar with it.

18 Q Are you familiar, have you ever talked to Dr. Cho about
19 her MCMC analysis of Pennsylvania?

20 A I have not talked to her specifically about that.

21 Q Are you aware of any study of an MCMC analysis of
22 Pennsylvania?

23 A I am vaguely aware of a second case pending at the State
24 level in which there is a report by a mathematics professor,
25 Mr. Pegden (phonetic), that is of this genre.

1 Q And maybe you can tell the Court, I've been using the
2 phrase. What's an MCMC analysis?

3 A Well, it's a simulation study in which a variety of trial
4 plans under specified criteria are simulated and the maps and
5 the results produced and analyzed next to the existing map?

6 Q And it's in essence, if I'm correct, Markov Chain Monte
7 Carlo --

8 A Yes.

9 Q -- method analysis, runs a very large number of
10 simulations --

11 A Yes.

12 Q -- to see how likely it is that this map would have
13 resulted, correct?

14 A Yes, that's correct.

15 Q Are you, did you consider preparing your opinion as to
16 whether Mr. McGlone's report was hasty or accurate, did you
17 consider other person's opinions about whether the Pennsylvania
18 map was likely to be the result of a partisan gerrymander?

19 A No, not at the time that I wrote my, this response to Mr.
20 McGlone.

21 Q Since writing the report have you considered that, in
22 preparing for your testimony, perhaps?

23 A I've looked at it and I do have some problems and issues
24 with the simulation approach.

25 Q Which report did you look at, sir?

1 A I looked at a report by Professor Chen for the other case.

2 Q Which other case, sir?

3 A The case, the League of Women Voters which is coming up in
4 State Court.

5 Q Did that report suggest that the map was a result of a
6 partisan gerrymander upon performing an MCMC analysis?

7 A That report did suggest that that was the case, yes.

8 Q In reviewing that did you find, did you change your
9 opinion at all since you wrote this report?

10 A No, I --

11 MR. GORDON: Objection, Your Honor. He's, Professor
12 Gimpel was hired as an expert to review Mr. McGlone's report
13 and offer testimony as to the fact as it pertains to this case.
14 Counsel is bringing in facts from a different case and
15 different reports that --

16 JUDGE SMITH: Actually, he's not bringing in facts.
17 What he's asking is --

18 MR. GORDON: I mean, not fact, excuse me. I'm sorry.

19 JUDGE SMITH: He asked have you relied on it, and
20 that's a permissible area of inquiry, what an expert witness
21 has relied upon and what that expert witness has not relied
22 upon.

23 MR. GORDON: Understood, Your Honor.

24 Q Did reviewing that opinion that said in, summarize your
25 testimony, that said that the 2011 map was a result of a

1 partisan gerrymander upon an MCMC analysis, did that change
2 your opinion about your own conclusions?

3 A It did not. There are major methodological problem with
4 both of those reports.

5 Q Are you aware of any report that you've reviewed either in
6 preparing your report or preparing for your testimony today
7 that's found that upon performing an MCMC analysis that the
8 Pennsylvania map was not the of a partisan gerrymandering?

9 A There are a lot of negatives and --

10 Q I'll try to rephrase it if you, I take it that you didn't
11 understand the question.

12 A Quite a few negatives, yeah, that's right.

13 Q Have you read any report that says affirmatively with any
14 degree of certainty that this map, the 2011 Pennsylvania map,
15 was not the result of partisan gerrymandering?

16 JUDGE SMITH: Let me ask you to refine it further,
17 because report could be a newspaper story --

18 MR. PERSON: Thank you, Judge.

19 JUDGE SMITH: It could be someone's oral
20 representation or it could be an academic study of some kind.

21 Q Are you aware of any, what you would deem to be a
22 reputable academic report that says the 2011 map did not result
23 from partisan gerrymandering with any degree of certainty?

24 A I'm not aware of any report like that. But there's not a
25 lot out there, there's not been that much written about the

1 2011 map. This is a pretty recent case, there isn't a lot of
2 literature out there.

3 Q Did you look for such a report?

4 A I looked for everything coming out over the last 3 years,
5 and you know, I didn't see anything other than reports that
6 have been handed off to me through counsel.

7 Q And when you were looking for those reports, how many
8 reports did you find that said it was the result of partisan
9 gerrymandering?

10 A Well, once again I, there's not a lot out there. So the
11 answer is I didn't find any that indicated that either. There
12 just isn't a lot of academic literature or scholarly literature
13 about the Pennsylvania case yet. You know, in 18 months I
14 think that's going to change. So that's where I am.

15 Q Are you aware that --

16 A It may well be that, you know, the Pegden report for the
17 other case and the Chen report for the other case become part
18 of the body of academic literature, but those papers haven't
19 been published yet. It's very new.

20 Q Did you review those 2 reports?

21 A I'm more generally aware of the Pegden report. I have
22 looked at the Chen report.

23 Q The Pegden report is published on SSRN, correct, sir?

24 A It may well be, it may well be. You might be right about
25 that. I was not, I did not have that at my fingertips, but I

1 won't contest it.

2 Q Did you check the SSRN in looking for these reports?

3 A Well you know, ordinarily a Google scholar search will
4 capture everything on SSRN, yeah. And it's, a google scholar
5 search is actually very thorough and you know, I use JSTOR and
6 a couple of other things. But the Pegden report was sent to me
7 and I was, like I said, I have not studied it in depth.

8 Q So to summarize you've seen at least 2 reports that say
9 this was a result of partisan gerrymandering.

10 A Yes.

11 Q You've seen zero reports that say it was not a result of
12 partisan gerrymandering?

13 A That's correct.

14 Q And that did not impact your opinion at all, true sir?

15 A Well, no, because it's, you know, it's very early in the
16 study of this map. You know, this case is not very old and the
17 case is prompting a lot of interest and a lot of research. But
18 you know, inevitably academic research takes a while to catch
19 up with litigation and, you know, the interest of the general
20 public.

21 Q Now sir, you're familiar with a study that was performed
22 about partisan dating preferences on the OkCupid sites, true?

23 A I'm aware of that.

24 Q And isn't it true, sir, that that site showed that when
25 persons have access to information like party affiliation they

1 act on it. True, sir?

2 A Yes.

3 Q Do you think that that conclusion is isolated to dating?

4 A No.

5 MR. GORDON: Objection, Your Honor. There's been no
6 evidence that Professor Gimpel has any academic research or
7 knowledge of how people date. I mean, this is going, I don't
8 understand where this is going at this point.

9 MR. PERSON: Judge, this isn't --

10 JUDGE SMITH: Well, it's really interesting stuff,
11 but I, you know, I think it may be a subject for another
12 proceeding.

13 MR. PERSON: Judge, if I can explain relevance.

14 JUDGE SMITH: The study itself I don't think is
15 necessary to your line of inquiry.

16 MR. PERSON: If I can explain the relevance, Your
17 Honor.

18 JUDGE SMITH: I think I know the relevance. That's
19 why I said I think your inquiry as to how discrete partisan
20 interests may affect or not affect various human experiences is
21 perfectly appropriate. But you're referencing a specific study
22 that's not in evidence and I'd rather you perform, you pursue
23 the line of questioning with another reference point. I've
24 given you the latitude to proceed with the line of questioning.
25 Unless you intend to come back in your case with part of it

1 directed toward dating.

2 MR. PERSON: It's not about dating, Judge. If you
3 recall, Dr. Gimpel was offered as an expert in a number of wide
4 ranging areas, and he's been offered to testify at some length
5 with on the basis of that. I'm similarly looking to test his
6 analysis and conviction of his opinion on the basis of the body
7 of his own work. He's lectured on the OkCupid study previously
8 and the finding was that when people have access to information
9 like partisan affiliation, they act on it. I think that's
10 relevant to determining what the intent was in drawing the map.

11 JUDGE SMITH: If he had utilized that report in any
12 fashion before, whether it's lecturing or academic writing,
13 I'll permit the question.

14 BY MR. PERSON:

15 Q Dr. Gimpel --

16 A Okay.

17 Q It's true, is it not, that it's recognized in the social
18 sciences that when people have access to information like
19 partisan affiliation they act on it, true?

20 MR. GORDON: Objection, Your Honor, asked and
21 answered.

22 JUDGE SMITH: That's all right, let's move on. Okay,
23 answer the question please.

24 A Okay. So here's what I would say about that study, a very
25 interesting study. I think here's the problem with that

1 particular piece of research, and that is if people on the
2 OkCupid site are provided with information about the
3 partisanship of a potential mate they will use it. But that
4 does not mean that they seek it out when it isn't there, and
5 that, folks, that, folks, is the crucial distinction.

6 It's very different if you have a piece of information
7 available on a site or about a neighborhood or about a store or
8 a business, okay, and you have that information present and you
9 use it. It's very different, a much bigger step if you don't
10 have that information but you seek it out.

11 And you see, that's what makes potential mates on the
12 OkCupid site don't do. There's no evidence that they seek out
13 that information when it isn't there.

14 The same is also true of neighborhoods. If a realtor puts
15 partisanship and information about a neighborhood or a zip
16 code, will prospective homeowners use it? Of course they will.
17 Why wouldn't they use it, okay, along with income and any other
18 piece of information that's on the site. But it doesn't mean
19 that they seek out that information online, you know, going to
20 the County Clerk's Office to look at the party registration
21 records and the precincts of that particular zip code.

22 You see, that's the difference, and it's a very
23 important difference. And that's why that paper did not make
24 it into the top journal.

25 Q So it's human nature that if you've got information you're

1 going to use it, right?

2 A You'll use that information to some degree, I suppose.
3 But will you seek it out if it isn't there? Is it that
4 important to you?

5 JUDGE SMITH: Are we still on the subject of dating?

6 MR. PERSON: I'll move forward, Your Honor.

7 JUDGE SMITH: It's been so long since I was in that
8 particular situation that I'm beginning to lose track here just
9 what purpose these questions have.

10 MR. PERSON: I'll put an exhibit up. May I use
11 Elmo, Your Honor?

12 JUDGE SMITH: Certainly.

13 MR. PERSON: I have put on the projector for the
14 Court, this is the colored in version of Plaintiff's Exhibit
15 25. I think this thing may have been entered in later on in a
16 different number. I'm sorry, Your Honor.

17 JUDGE SMITH: That's all right.

18 BY MR. PERSON:

19 Q Do you recognize this shape, Dr. Gimpel?

20 A This is District 7y.

21 Q Do you disagree that the non-compact shape of the 7th
22 District offers evidence of partisan gerrymandering?

23 A There are alternative explanations.

24 Q I'll ask my question again, Dr. Gimpel. Sitting here
25 today do you disagree that the non-compact shape in the 7th

1 District offer evidence of a partisan gerrymander?

2 A I disagree. The shape does not give you any indication of
3 what partisanship looks like inside this District. It could be
4 100 percent Democratic based on the shape. It could be 75
5 percent Democratic, it could be 0 percent Democratic, it could
6 be 80 percent unaffiliated, how about that? The shape tells
7 you nothing about the underlying partisanship of the District,
8 absolutely nothing.

9 Q Now you cited 10 traditional redistricting criteria in
10 your paper, true, sir?

11 A Yes.

12 Q So tell me how the Pennsylvania Republican Senate caucus
13 applied your first principle of contiguity in drawing the 7th
14 Congressional District?

15 MR. GORDON: Objection, Your Honor, it calls for
16 speculation.

17 JUDGE SMITH: I'll sustain the objection.

18 Q Tell me, you don't know, well, let me rephrase that, Your
19 Honor, I'm sorry. Looking at what's on the screen before you
20 can you tell me how your principle, your first principle of
21 contiguity is satisfied?

22 A Well, contiguity I suppose is satisfied with these
23 connections that are drawn so that the District does not show
24 islands.

25 Q So contiguity is satisfied if the land mass is connected

1 by a stretch of land 10 feet, is that your testimony?

2 A Some contiguous parcel.

3 Q Now looking at your third factor, compactness of shape, do
4 you believe the 7th Congressional District complies with that?

5 A It is not compact. It is not compact.

6 Q Do you have any knowledge as to whether it satisfies your
7 fourth factor of consistency with past districts?

8 A Well, there is some congruity with past districts along
9 the Delaware border and in Delaware County in particular.
10 That's where the consistency is, and it's my understanding
11 that's the densest part of the population of the district is
12 along the border there in Delaware County.

13 Q You fault Mr. McGlone for finding that this shape is
14 evidence of partisan gerrymandering, true, sir?

15 A The shape alone is not evidence of partisan
16 gerrymandering. It is not.

17 Q Is it your opinion that this shape is consistent with the
18 past district?

19 A It's somewhat consistent with the past district. You
20 can't say it's entirely consistent, of course no district is.
21 But you know, there is some congruence with the past district
22 there in Delaware County and again adjacent to the Delaware
23 border.

24 Q Is there any mathematical concept that would allow you to
25 measure consistency with past district?

1 A Well, I suppose the one obvious one would be the
2 percentage of constituents that remain in the district from the
3 previous election, sorry, from the first election prior to the
4 redistricting to the first election after the redistricting.
5 If you were to look at the intersection of those two
6 populations or what you might call the percentage in common
7 across that inter-district period, then that could be used as
8 an approximate measure.

9 Q And you didn't perform that calculation for District 7,
10 did you?

11 A I didn't. It's a good idea, it's a good idea. I wish I
12 would have.

13 Q And would it change your opinion about whether this map is
14 evidence of partisan gerrymandering if you knew that it
15 increased the number of split county municipal boundaries over
16 its predecessor district?

17 A Not when I understand how difficult it is to get the equal
18 population. Again, when you're talking about trying to get,
19 find somewhere on the map exactly 710,000 voters without any
20 deviation, okay, there are going to be some weird shapes
21 because you're going to have to take a few precincts here and a
22 few precincts there. And I'm telling you when you're actually
23 in the process of map making and you're trying to make those
24 very fine balances, shifts back and forth, and you're doing it
25 in chunks rather than by households or individuals, you wind up

1 with some weird shapes.

2 You know, one of the things going on here in this map is
3 careful consideration of what the alterations in this map do to
4 the neighboring districts as well in terms of their
5 populations. So that's also a delicate balancing act that the
6 map makers have to consider. What is going on with the
7 neighboring districts as we draw, you know, one protrusion, or
8 we try to make the district more compact or more distended.

9 Q Now Dr. McGlone --

10 JUDGE SMITH: I think you have the name.

11 MR. PERSON: Oh, I'm sorry.

12 JUDGE SMITH: Dr. Gimpel.

13 Q Dr. Gimpel, is it fair to say that one of the assumptions
14 underlying your report is that it's lawful to engage in
15 partisan gerrymandering?

16 A I don't think that that's the assumption. I do think that
17 there's an assumption that incumbency protection is a
18 longstanding principle of the redistricting process, extremely
19 traditional, reaching back decades, and legitimate to enhance
20 representation of the people of Pennsylvania.

21 Q So you disagree, sir, that your report assumes that
22 partisan gerrymandering is legal?

23 A I don't make that assumption. I do make the assumption
24 that incumbency protection is a traditional redistricting
25 criteria, and my understanding is that that's really a

1 fundamental area of disagreement between the two sides.

2 Q And you also agree that it's legitimate to try to
3 politically balance districts between the two major parties,
4 correct, sir?

5 A Yes. Yes, that's listed here. I think that's important.

6 Q Sir, do you think it's fair to describe our 2-party
7 political system as a political duopoly?

8 A It seems to be much of the time, yes, seems to be much of
9 the time.

10 Q So you would agree, sir, it's a political duopoly?

11 A Yes, I would agree.

12 Q And would you agree that under your rules, your 10
13 traditional criteria, it's lawful and desirable for those 2
14 participants in a duopoly to fix the game for themselves, true
15 sir?

16 A Like I said a few minutes ago I stand by the principle of
17 incumbency protection as important to enhance representation of
18 the citizens of Pennsylvania and other States. I don't think
19 that that's rigging the game, you know, unless as I said, you
20 know, you would like to say that, you know, Mr. Doyle and Mr.
21 Boyle and Mr. Cartwright and Mr. Brady, you know, other
22 Democrats in the delegation have rigged the game for
23 themselves.

24 Q I'm presenting on the overhead projector system, I believe
25 it's Page 19 of Plaintiff's Exhibit 8, the Dan McGlone report.

1 Do you see that, Dr. Gimpel?

2 A What am I looking at?

3 Q This is a blowup of part of the 7th District that we were
4 just looking at before. Now do you see those 3 spots where the
5 line juts out to exclude blue areas?

6 A To, so here, here, here? Okay, I guess so. I suppose so.
7 Okay, I see, so you're marking them here?

8 Q Here, here and here.

9 A Okay, right. Right. Okay, so what are we doing there,
10 we're excluding or including?

11 Q Those are carved out of the district.

12 A Okay.

13 Q And if you want, I'll zoom out for a moment, and then I'll
14 zoom back in. Would that help you observe it, Dr. Gimpel?

15 A Um huh. Yes, please. Thank you. Okay.

16 Q So there you see it zoomed out.

17 A Right.

18 Q Now we'll zoom in for a closer look.

19 A Okay.

20 Q Is it your opinion, Dr. Gimpel, that those 3 specific acts
21 of drawing a map are consistent with your 10 principles?

22 A Well, I need a little more information, please. I mean,
23 you know, I need to know a little bit more about these areas.
24 You know, coloring them in blue is again, you know, sort of a
25 hasty rush to judgment. You know, you're pushing readers of

1 the report to a conclusion that may not be justified if we had
2 more complete information.

3 After all, these are not just Republicans and Democrats on
4 the map, these are people, right, that we're drawing boundaries
5 around. They're not just Republicans and Democrats but they're
6 actually people. And it would be kind of nice to know a little
7 bit about the economy and demography of some of these places
8 before I make a judgment like that.

9 I don't think McGlone cares about that, because he was in a
10 rush to make judgments like this. But I do care and I would
11 like to know a little bit more about these places. I do know
12 that Kennett Square, for what it's worth, is known for being a
13 mushroom growing area. I don't know if that has any relevance,
14 but I'd like to know.

15 Q You examined a number of features of the maps that were in
16 the McGlone report, correct, sir?

17 A Yes.

18 Q And it's your opinion that the features of the map that
19 can be explained as preserving a community of interest rather
20 than packing and cracking as McGlone found, correct?

21 A Yes, absolutely.

22 Q Do you know what percentages of those instances that were
23 on one hand by McGlone characterized as packing and cracking,
24 and in your view considered preserving a community of interest,
25 do you know what percentage of those happen to favor

1 Republicans?

2 A No, I don't know. I think that the map is pretty
3 complicated and there are places where packing or grouping as
4 it's called by McGlone could be interpreted as also in service
5 of preserving a community of interest. But I don't know the
6 percentage.

7 Q Sir, do you agree as a political scientist that when a
8 series of decisions overwhelmingly favors one side over the
9 other in a zero sum game it is reasonable to infer that the
10 purpose was to favor that side?

11 A So well, say, go ahead and rephrase that. It's late in
12 the day and I'm having a little trouble following, so go ahead.

13 Q Do you agree as a trained political scientist that when
14 there's a series of decisions operating in a zero sum game
15 between two parties and the vast majority of those decisions
16 favor one side over the other that it's reasonable to infer
17 that it was intended that way?

18 A Well, see, here's the problem with that line of reasoning,
19 okay, and it's very fundamental to the disagreement, I guess,
20 in the case. The problem is, is that partisanship is highly
21 associated with a lot of other factors, a lot of other
22 variables. You know, we have a close association between
23 partisanship and race, for instance. In many states and in
24 many places we have a close association between partisanship
25 and income. There are places where partisanship is highly

1 associated with cultural attributes, for instance, such as
2 religious affiliation.

3 So you know, again you can't look at the map and conclude
4 just because one area is red and one area is blue that it's all
5 about partisanship. Because folks, once again, these are not
6 just Republicans and Democrats on this map. These are people,
7 people, please, with many attributes. Economic, educational,
8 religious, class, occupational. Many attribute are present on
9 the map. It's not just all partisanship that these map makers
10 are taking into account.

11 Q But the one piece of information you want is party
12 affiliation, correct?

13 A It is an important piece of information when running a
14 campaign, you know, when I'm trying to win an election
15 campaign.

16 MR. PERSON: Nothing further for this witness.

17 MR. GORDON: Your Honors, I just have a brief
18 redirect.

19 JUDGE SMITH: Very well.

20 REDIRECT EXAMINATION BY MR. GORDON:

21 Q Hello again, Professor Gimpel. Just a few more questions
22 for you here. You were just asked about 2 reports in the other
23 case, is that correct?

24 A Yes, yes.

25 Q When did you get these reports?

1 A I'm thinking 4 days ago.

2 Q To your knowledge have either of these reports been peer
3 reviewed?

4 A No, they have not been peer reviewed. It's, I --

5 Q And -- I'm sorry.

6 A Yeah, I'm pretty sure that the SSRN site is not for peer
7 reviewed work, it's for work that's just prior to peer review,
8 about to be submitted. So that's the correction there. It's
9 the closest one, but the Chen report, not, it is not.

10 Q And these reports, have they, do you know of any way
11 they've been tested at all?

12 A I'm sorry, the reports, have they been examined, or?

13 Q Sorry. Their methodology that's in those reports as
14 applied to this been tested at all?

15 A It's very early, you know. The reports for this second
16 case just arrived. So I don't see how they could have been
17 subjected to much evaluation.

18 Q So at this point would you say that they've only been,
19 these are just the opinions of 2 individuals?

20 A Well, so far.

21 MR. GORDON: One second, Your Honor.

22 Q And just a few follow-up things. There was reference by
23 counsel of John Memmi before. Is he employed by HVJT,
24 Holtzman, Vogel, Josefiak & Turchinsky, mine and Mr.
25 Turchinsky's firm?

1 A He's an advisor to Mr. Torchinsky. I imagine that means
2 he's employed.

3 Q Do you know who hired him?

4 A I don't.

5 MR. GORDON: I have nothing else, Your Honor.

6 JUDGE SMITH: Cross.

7 MR. PERSON: No recross, Your Honor.

8 JUDGE SMITH: No recross? Judge Baylson has a few
9 questions.

10 BY JUDGE BAYLSON:

11 Q Sir, have you done any studies on voter turnout?

12 A Yes, sir.

13 Q And how that may be affected by redistricting one way or
14 the other?

15 A I am aware of several political science studies not
16 authored, one on that subject. But I am aware of several
17 political science studies by authors Trey Hood, Seth McKee,
18 John Patrocik, a few others.

19 Q Do you know if they make any conclusions of the effect of
20 alleged gerrymandering on voter turnout?

21 A Yes. When voters are orphaned, as it's called, by them
22 being redrawn into a different district, the turnout often
23 drops. And it's suggested that the reason for that is the
24 familiarity connection is severed. And by the way, this is
25 taken as an argument for why you'd like to preserve continuity

1 in the districts and not radically redraw them if you can avoid
2 it.

3 Q All right. My next question is are you familiar with any
4 discussion studies about gerrymandering on reasons that have
5 nothing to do with politics such as economics or education or
6 geography, and are you aware if that those were a part of
7 discussion in --

8 A A major, right.

9 Q -- the debates leading up to the constitution?

10 A Yeah, a major factor is communities of interest, of
11 course. And those can be taken to mean county splits and
12 should be avoided. And we should try to keep cities whole to
13 the extent we can. And of course communities of interest can
14 be defined as economic communities of interest, it could be,
15 for instance, you want to keep a military base whole, a Native
16 American Indian reservation you want to encompass entirely
17 within one district. It could be taken to mean that perhaps a
18 college or university be encompassed as a community of
19 interest.

20 So a port, such as the Port of Charleston, South Carolina,
21 because of its importance as a port might want to be encircled
22 as its own district. The City of Pittsburgh.

23 So I think, yes, I think that in the history of
24 redistricting there are lots of examples where communities of
25 interest have been defined, say, in cultural terms as in the

1 Native Americans or possibly in economic terms such as a port
2 city, you know, military base, these kinds of things.

3 JUDGE BAYLSON: All right, thank you.

4 JUDGE SMITH: In light of the Court's questions, are
5 there any questions from the Legislative defendants?

6 MR. GORDON: No, Your Honor.

7 JUDGE SMITH: Plaintiffs?

8 MR. PERSON: None, Your Honor.

9 JUDGE SMITH: Thank you very much, Doctor. You may
10 step down. May the witness be excused?

11 MR. GORDON: Yes, the witness can be excused.

12 JUDGE SMITH: We'll take a brief recess at this time.
13 (Court stands in recess at 3:03:51)

14 (Recording resumed at 3:15:04)

15 JUDGE BAYLSON: All right, during the testimony of the
16 last witness my deputy brought in six copies of the Schaller
17 transcript. Despite and I'm not being critical of anybody
18 here, but despite everybody's attention to be brought to this
19 courtroom, they were just brought to the clerk's office and
20 were sitting on a table in a sealed envelope until somebody
21 recently opened them up. But here are six copies.

22 MR. DOYLE: Your Honor we actually have copies and
23 have done our designations already, so.

24 JUDGE BAYLSON: I'll take three or one of each. You're
25 going to need them? All right, so we'll take three for each

1 one of us and we'll, you can do with what you want, the other
2 two.

3 MR. DOYLE: Thank you. Your Honor I'm going to
4 suggest --

5 JUDGE SMITH: Excuse me.

6 MR. DOYLE: We have I think three marked up copies of
7 the Arneson and Schaller depositions with designations noted.
8 But we don't have enough for someone to have one on the witness
9 stand. I'm going to suggest we put one on the overhead so
10 that.

11 JUDGE SMITH: Or you're welcome to use mine and I'm
12 simply share with --

13 MR. DOYLE: Well these are highlighted and designated.
14 Just so everyone can see that.

15 JUDGE SMITH: Okay, good enough.

16 MR. GORDON: Your Honor if I might suggest, it may be
17 better for just two people to stand at the podium. I think
18 trying to read and flip on the ELMO is going to be really
19 challenging. Yeah, I think that may be better. That way --

20 JUDGE SMITH: Yes, that may well be a more efficient
21 way to proceed. All right, could you indicate for the record
22 what and where we are resuming.

23 MR. PERSON: Your Honor I think we'll pick up at page
24 18, line 14 of the deposition of Eric Arneson.

25 JUDGE SMITH: Very well.

1 MR. PERSON: May I proceed Your Honor?

2 JUDGE SMITH: Please.

3 Q "Do you intend to deny today sir that the 2010
4 Congressional map did in fact favor Republicans?

5 A I don't feel like I have any expertise in that. You need
6 to speak to campaign type people, probably or something.
7 That's well beyond my scope of expertise."

8 Q "This is turning to page 20, line 10 Your Honor. "And you
9 did manipulate the contours of the Congressional districts in
10 the 2011, map, correct?

11 A I don't, I don't know. I don't think I did. I was much
12 more focused on the State Senate. The time frames were wound
13 up overlapping despite our desire at least at a staff level,
14 not to have that happen. Those first two weeks in December,
15 the Congressional plan was moving through the General Assembly
16 and the Legislative Reapportionment Commission established by
17 the State government was also doing it's final work on the
18 State House and State Senate plans."

19 "At some point during some draft map, I am sure that I did
20 manipulate the lines. It's a great phrase, but I don't know
21 that anything I did is in that final Congressional plan."

22 Q "So there were multiple versions of the map?"

23 A There were multiple versions of everything map. I mean, I
24 don't know what a version is. Just to the extent that, you
25 know, you don't instantly say whoosh, magic, here is the map

1 and it's done and nobody is ever going to change it."

2 "You start with what, where the map was previously. You
3 have to remove a district. You have to equalize the population
4 in the districts and insure that you comply with the Voting
5 Rights Act, et cetera. Account for that, for the problem shift
6 from west to east, all those things. And so yes, clearly there
7 is more than one draft of a map as you are developing the
8 process. In fact, there was more than one version in Senate
9 Bill 1249 as I recall."

10 Q "And I think there was a, there was a misspeaking. It was
11 account for the population shift from west to east, not problem
12 shift.

13 A Account for the population shift from west to east, all
14 those things."

15 Q "So when you were working on those maps with the Republican
16 caucus, where would you save those drafts?

17 A On a server or hard drive set up by the Senate Republican
18 Computer Services."

19 Q "And do you remember was there a naming protocol for those
20 files?

21 A "Yeah, I never saved a Congressional plan to my
22 recollection. We did try to keep things organized. John Memmi
23 who worked in the office was much more that kind of granular
24 level sort of guy."

25 Q "Continuing to page 24, line 17. "What was the naming

1 protocol used for the Senate maps?

2 A I don't recall."

3 Q "Do you know if those files still exist today?

4 A I have no idea."

5 Q "Do you know roughly how many draft maps were saved in that
6 manner?

7 A No, sir."

8 Q "For the 2011 map?

9 A No, sir."

10 Q "Do you know how many draft maps of the senate map you had?

11 A No, sir."

12

13 MR. PERSON: Continuing at page 26, line 15.

14 Q "Is it true sir that the 2011 map was drawn by the
15 Republican caucus and not in any committee?"

16 MR. MORRIS: "Objection, form."

17 UNIDENTIFIED PARTY: That's overruled.

18 MR. GORDON: "Why is that not true?" Oh, sorry, go
19 ahead. This is your line.

20 MR. PERSON: No, the witness, drawn by the Republican.

21 MR. GORDON: Okay. "Drawn by" -- I'm sorry, the
22 question is it true sir --

23 MR. PERSON: Page 26, line 20.

24 MR. GORDON: Got it.

25 A "Drawn by the Republican caucus and not in any committee,

1 as phrased I'd say no, that is not true."

2 Q "Why is that not true?"

3 A Because the staff working on it was the same staff that
4 worked on the State Senate plan with the Legislative
5 Reapportionment Commission. But we had discussions with the
6 Senate Committee staff. So I mean the caucus doesn't draft
7 anything, people draft things. So I'm not trying to be obtuse
8 here, but I don't --"

9 Q "So these maps that we talked about is draft maps that were
10 being saved on the Republic Senate computer facilities, right,
11 were any documents involved? Were they in the room when those
12 maps were being drawn?"

13 A In the room, no. Involved, we took input from a lot of
14 people including Democrats."

15 Q "Which Democrats did you take input from?"

16 A The only one I remember primarily and it's so long ago
17 there may have been others. But the one I remember primarily
18 was Congressman Bob Brady."

19 Q "He's a Congressman? He's not a member of the Pennsylvania
20 government, is he?"

21 A That's correct."

22 MR. PERSON: Counsel would like to make a correction
23 on page 28, line 10. The witness said the only one. The
24 actual testimony did not include the word only. I just simply
25 stated one. Continuing at line 18.

1 Q "Why did you take input from Congressman Brady?

2 A He offered it. We didn't turn down input from anybody. I
3 don't remember. Look, I could be wrong on this. I don't
4 remember the Senate Democratic staff or members giving us the
5 kind of input they did on the State Senate map. The State
6 Senate map was a lot of back and forth. It's entirely, it's an
7 entirely different process as I'm sure you are aware."

8 "I don't remember them offering it. They may have. And if
9 they did, we considered it. But I don't recall that happening.
10 We certainly would never have told them, you know, go away, we
11 don't want to hear from you. That would not have been anything
12 like our style."

13 Q "What was your role in drawing the 2011 map?

14 A The Congressional map was pretty minimal. The State Senate
15 map a lot more involved. Congressional map, I was much more at
16 the macro level of trying to reinforce that laundry list of
17 things that I said I needed, that we needed to comply with
18 earlier."

19 Q "To your knowledge, who was kind of the point person or put
20 another way, who was in charge of getting the 2011 map done?

21 A Well on a technical level in our caucus, John Memmi needed
22 to do the technical work. But it was a collaborative process
23 with the House, the Senate, the Governor's office. You know
24 it's small task to get a bill through the Senate and the House
25 and signed by the Governor, let alone a bill with this much

1 attention that has this much impact, all that kind of stuff."

2 "So look, it sounds odd. But in cases like that
3 there's rarely a person who is in charge. It's a lot of
4 negotiations, a lot of discussions, a lot of back and forth, a
5 lot of just trying to cobblestone something together that you
6 can get 26 votes, 102 votes and the Governor to sign."

7 Q "Were there limitations on which persons had the right to
8 kind of go into the file and save a new version of the map?"

9 A It wasn't crowd source if that's what you're asking."

10 Q "No, I'm trying to figure out like some files can have
11 restricted access, you can have user privileges.

12 A Okay."

13 Q "Who had the equivalent right, whether by authority right
14 whether by authority or computer access?"

15 A Right."

16 Q "To access those draft maps that we talked about.

17 A Right, right."

18 MR. PERSON: Continuing on page 32, line 4.

19 A "In terms of who could access it, my recollection is that
20 the Senate Republic Computer Services folks set up a, I'm not
21 the greatest on technical stuff. But I believe they set up a
22 separate server that was accessible only by computers in the
23 little suite where the redistricting office was. And the only
24 people in our caucus who had practical access to that are
25 myself and John Memmi."

1 "I believe that Drew Cromton (phonetic) in the Senator
2 Scarnati's office had a work station in that suite. But as
3 sure as I'm sitting here today, he never once accessed that
4 computer, let alone the files that were on that server."

5 Q "Is that what was called the redistricting room?"

6 A Sure, sure. Some people called it that. I called it
7 that."

8 Q "Isn't it true sir that you looked at and considered
9 partisan voter data in drawing the 2011 map?"

10 A Could you tell me what you mean by bipartisan voter data?"

11 Q "Information showing which way a household is likely to
12 vote."

13 A No, I don't think you can get to, at least we didn't have
14 any data that would show us how a household is likely to vote."

15 Q "Maybe I should bring it up a level, how a precinct is
16 likely to vote."

17 A We did have available, publicly available, historical
18 voting data from previous elections that had taken place. So
19 to the extent that past performance can be an indicator of
20 future behavior which is not always going to be true, not even
21 close, but we did have previous election data, publicly
22 available election data available to us as well."

23 Q "And isn't it true that you used that data in the course of
24 drawing the 2011 map?"

25 A During the course of drawing the map, we certainly made

1 ourselves aware of that data. We often got questions from
2 different people, some of whom we hoped would vote for a plan
3 at the end, as to what districts, what the proposed districts
4 had done in certain previous elections. And you know, we would
5 have looked like smacked ass if we didn't, pardon me. We would
6 have looked like, we would have looked like we weren't doing
7 our job if we didn't know the answer to those questions."

8 Q "And that included Congressman Bill Brady?"

9 A I don't know Congressman Bill Brady. Congress?"

10 Q "Bob Brady?"

11 A I'm from out of town."

12 MR. GORDON: Oh, sorry.

13 A "Bob Brady. I am from out of town."

14 MR. GORDON: I'm sorry, it was just Bob Brady.

15 MR. PERSON: I think it was line 24.

16 MR. GORDON: Very good.

17 A "I don't know if ever, I don't know if we ever shared any
18 of it with him. Like I'm saying, the data is publicly
19 available so it's not rocket science to look at the contour of
20 a district, plug into a system and figure out what previous
21 election results were. I would wager that there's at least
22 dozens of consultants in Pennsylvania that could do that. And
23 I couldn't begin to guess how many there are in Washington,
24 D.C."

25 Q "Is it your testimony today that you only used publicly

1 available data sets?

2 A Yeah, yeah, we used publicly available data from the census
3 as corrected by the Legislative Reapportionment Commission.
4 Corrected isn't the word they used, but basically what it means
5 is that Pennsylvania has a couple of counties where precinct
6 lines or ward lines or division lines or whatever, counties,
7 have different names for them. Don't always line up with
8 census block lines."

9 "So the Reapportionment Commission as one of its first
10 tasks took that census data, had a consultant review it. Those
11 agreed to by all four caucuses and corrected so that we were
12 all working. That it was very minimal type of stuff. You
13 know, you are talking about a couple of people, a couple of
14 dozen people here and there."

15 "Anyway, we had that available. And that information, that
16 data set, when it was corrected, was posted on the Legislative
17 Reapportionment Commission's website. So that was publicly
18 available. And then yeah, historical voting data from the
19 Department of State, that was available to the public as well."

20 Q "Did any consultant help organize those two sets of data?

21 A Other than the consultant that I just mentioned who was
22 hired by all four caucuses and that was a guy named Fred F R E
23 D, Hejazi. I think that's H E J A Z I, with City Gate, GIS if
24 memory serves correctly. Other than that no, we didn't use
25 any. The Senate Republic Caucus didn't use any. I can't speak

1 to the other three caucuses."

2 Q "Isn't it true that at the time you drew the 2011 map, you
3 intended a fixed outcome of the 12/6 or 13/5 Republicans over
4 Democrats Congressional mark up until the next redistricting?

5 A No. I wish I could have that kind of prognostication
6 powers. We intended to respect incumbency which is a
7 traditional redistricting principle."

8 "And my recollection is that at the time we drew the new
9 map, it was 12/7 in terms of Republicans and Democrats. But we
10 had just been through a decade in which the map started with a
11 Republic majority of members in Congress. It shift to
12 Democratic majority of members in Congress halfway through the
13 2000 decade. And then by the end, it had switched back again."

14 "So, you know, I think trying to, trying to do that is at
15 some level folly because you are always going to have voters
16 doing exactly what they want to."

17 Q "Are you aware sir that that Congressional make up has not
18 deviated from 13 to five since the map was put into place?

19 A I wouldn't have been aware of it. But I'll take your word
20 for it. Honestly, Congress is so far down on my list of things
21 I pay attention to these days. And even at time, and even at
22 the time was far below the State Senate."

23 Q "And isn't it true sir that you considered data from
24 Democratic wave years in the course of drawing the 2011 map?

25 A What's a Democratic wave year?"

1 Q "Do you know what a Democratic wave year is?

2 A I don't know what you think a Democratic wave year."

3 Q "What do you understand the phrase wave year to mean in
4 politics?

5 A When a particular party, in this case Democrats, outperform
6 their historical norm, but I don't know."

7 MR. PERSON: Continuing on line 17.

8 Q "So with that understanding --"

9 MR. MORRIS: "Let him finish responding."

10 MR. PERSON: "I thought he had finished.

11 A "I don't know if that means outperforming a little bit,
12 outperforming. I don't know when it becomes a wave versus a
13 little something less than a wave."

14 Q "Isn't it true that you consider data from Democratic wave
15 years in the course of drawing the 2011 map?

16 A I don't know. If you ask me about a particular year, if
17 you say did you use data from 2010, I will say yes. If you say
18 2008, I will say yes. If you say 2006, I would say I don't
19 recall, but probably. I think that we probably did."

20 "So whether any of those were Democratic wave years by my
21 definition or anybody else's, I don't know. Show me some data
22 and I'll analyze whether it's a wave year or not. I don't have
23 that, I just don't remember that."

24 Q "But how many different drafts of the 2011 map did you
25 draw?"

1 A I didn't draw any drafts of the 2011 Congressional map."

2 Q "Do you know how many different drafts --

3 A John Memmi."

4 Q "John Memmi was involved in drawing?

5 A Boy it's, no, no I don't."

6 Q "Could you place it as more than six?

7 A Yes."

8 Q "Could you place it at more than 10?

9 A Yes. Because again, you know, it's a question of if, you
10 know. I will live in Cornwall Borough, Lebanon County. If
11 Cornwall Borough is in a particular House District,
12 Congressional District in this map and it just gets switched
13 with a municipality that's theocratically say exact equal
14 population, but then you also make 42 other changes, you know.
15 I think the software may have had some, I think may have had
16 some automatic save feature. So I don't know how you count
17 versions of maps."

18 Q "What was the software?

19 A We in the Senate Republican Caucus use AutoBond. I believe
20 the name, I believe the name was for the map drawing."

21 Q "Do you know why the drafts that didn't make it into the
22 final bill were rejected?

23 A Well many of them didn't have equal population. Many of
24 them may not have, I don't know. Again, I don't know what a
25 draft of a map is."

1 "But just speaking generally, I'm sure that at some point
2 there was a version that probably we were concerned about
3 complying with, a version that we were concerned about
4 complying with the Voting Rights Act."

5 "I mean there's an infinite number of reasons. At some
6 point like I said, we got input from Congressman Brady so we
7 tried to take that into account. But it didn't all work. So,
8 to my recollection, exactly right. Because he didn't have a
9 zero deviation. So I mean, there's any number of reasons. I
10 don't want to belabor it."

11 Q "To your knowledge who had the authority to reject a draft
12 map?"

13 A A majority of members of the Pennsylvania Senate. I mean
14 let me back up just a little bit there. To reject a draft map,
15 you know, I mean, if it didn't have population, if we didn't
16 believe that it complied with Voting Rights Act, all of those
17 other things, we would have never presented it to anybody
18 higher than us."

19 Q "Do you know how many maps were presented to the Senate
20 Republic Caucus?"

21 A To the caucus" --

22 MR. PERSON: I'm sorry, we misunderstood a mark. If
23 the witness can read page 43, beginning at line 9. This is in
24 response to the question.

25 MR. GORDON: Yes.

1 MR. PERSON: "To your knowledge who had authority to
2 reject a draft map."

3 MR. GORDON: Okay.

4 A "So at that level, I mean the authority, John Memmi had the
5 authority because we weren't going to say hey, here is the
6 draft map. By the way, we're off by 2,000 people."

7 Q "Do you know how many maps were presented to the Senate
8 Republican Caucus?"

9 A To the Caucus as a whole which is a very different question
10 than to caucus members in having discussions about them, I
11 would think two would be my recollection. The two that we
12 eventually, that were eventually in place in the versions of
13 Senate Bill 1249 that had full plans in it."

14 Q "And do you know how many versions were presented to
15 individual members of the caucus for review?"

16 A Typically full state wide maps, I'm sure we shared a half a
17 dozen or so with Senator Pileggi. And mostly members are
18 pretty parochial. There are 50 members of the State Senate.
19 So obviously they each represent one fiftieth of the State, two
20 percent of the State. And they need to care about that two
21 percent."

22 "So, you know, we might have had questions from members.
23 That said, what are you doing to County X or County Y. Is it
24 going to be kept whole. Is it going to be split. Tell me
25 about that. Describe the, you know, those kinds of things."

1 MR. PERSON: One correction. The testimony was read
2 as "And they need to care about that two percent." And the
3 deposition testimony was "And they tend to care about that two
4 percent."

5 MR. GORDON: I stand corrected. "And they tend to care
6 about that two percent."

7 Q "So was the practice to show kind of subparts of the entire
8 map to individual Senate members?"

9 A Mostly the practice was just to have conversations with
10 them. That was typically enough. Because it's not, again it's
11 not rocket science."

12 Q "At the time you believed that partisan gerrymandering was
13 just a part of lawful politics, correct?"

14 MR. MORRIS: "Objection to form."

15 A "We were very aware" --

16 JUDGE SMITH: That's overruled.

17 A "We were very aware of Vieth versus Jubelirere which I
18 think what you said is a pretty good description of what the
19 U.S. Supreme Court said in Vieth."

20 Q "Were you given any guidance as to how much gerrymandering
21 was too much?"

22 MR. MORRIS: "Objection to form and to the extent that
23 to provide an answer to that question might encroach upon the
24 attorney/client privilege, I'm instructing you not to answer
25 that question. To the extent you can answer it outside the

1 attorney/client privilege or information given to you by
2 counsel, you are free to answer."

3 JUDGE SMITH: Has he in fact answered?

4 MR. PERSON: Yes.

5 JUDGE SMITH: All right.

6 A "No, I don't remember anybody ever saying to us that some
7 measure of partisan gerrymandering would cross the line that
8 was too far. I also don't remember the inverse, that anybody
9 saying we had to have at least this much partisan
10 gerrymandering."

11 Q "Did any attorney give you legal advice with respect to,
12 any legal advice with respect to drawing the map?

13 A Yes."

14 Q "Who?

15 A Brian Paszament of Blank Rome."

16 Q "When and how did he give you that information?

17 A Oh, boy, when? Our engagement is a matter of public record
18 with the Senate. But my memory of it is 2010. We started
19 those conversations. Again -- "

20 Q "In person?

21 A Yes, sir. Began in 2010 I believe. Continued through
22 2011. And at least for the State Senate plan, through 2012,
23 via telephone, via email, via in person discussion in
24 Philadelphia and in Senate offices. I think that's it."

25 MR. PERSON: Continuing on page 49, line 2.

1 Q "You've had in front of Mr. Arneson what has been marked as
2 Plaintiff's Exhibit 1. Do you recognize this document?

3 A Speaking, I don't recognize this specific document. I
4 recognize that it shows a map of basically the lower western,
5 southwestern quadrant of Pennsylvania."

6 MR. PERSON: And Judge we'd like to present it,

7 JUDGE SMITH: Probably would be --

8 MR. PERSON: It's actually in the record as --

9 JUDGE SMITH: More important for the Court to know what
10 the document is and what the exhibit number is.

11 MR. PERSON: Plaintiff's Exhibit 34 Your Honor.

12 JUDGE SMITH: Thank you.

13 MR. PERSON: For anyone who is listening it's the
14 Culligan map (phonetic) of the Seventh Congressional District.

15 I'm mistaken. It's 35. This is a Grayscale map with
16 the phrase CD 18 Maximized at the top.

17 JUDGE BAYLSON: What you used yesterday was 34.

18 MR. PERSON: That's the document you had, 30 and 34.
19 Judge Baylson thank you for the correction.

20 Q "Do you recognize this document?"

21 MR. GORDON: I'm sorry.

22 MR. PERSON: Pick up at line 6, page 49.

23 A "Speaking -- I don't recognize this specific document. I
24 recognize that it shows a map of basically the lower western,
25 southwestern quadrant of Pennsylvania."

1 Q "In the course of working on the 2011 map, did you see
2 documents or screen shots similar to this?"

3 A Yes."

4 Q "And can you tell us and the Court what this document, or
5 if it was actually a screen shot originally, what it represents
6 or shows?"

7 MR. MORRIS: "Objection calls for speculation."

8 UNIDENTIFIED PARTY: "Overruled."

9 A "Thank you. And I'm sorry, the question was basically
10 describe what I'm looking at?"

11 Q "Yeah, what is it to your knowledge."

12 A It's a map of the southwest quadrant roughly. Speaking of
13 Pennsylvania, it looks to me like Allegheny County, surrounding
14 counties and a few that are even a little further away than
15 that, with black and white shading which I believe represents
16 some kind of Congressional map probably. It doesn't look like
17 a Senate map or anything. It's certainly not a State House
18 map. And it says CD at the top. I assume that means
19 congressional district."

20 Q "It says CD 18 maximized, correct?"

21 A Yes, sir."

22 Q "Do you know what that means?"

23 A No, sir."

24

25 Q "Do you know what program produced this document?"

1 MR. MORRIS: "Objection, he already told you he doesn't
2 know what the document is."

3 UNIDENTIFIED PARTY: "Sustained."

4 Q "So you do not recognize this an output of the AutoBond
5 program, correct?"

6 A Correct. This does not appear to me to be anything that
7 came out of our redistricting office."

8 Q "Looking in the top left hand corner of the documents, do
9 you see numbers one through 18 with various letters and numbers
10 after it?"

11 A Yes, sir."

12 Q "Do you know what those mean?"

13 A I have a better than elementary guess, but I don't know for
14 certain."

15 MR. MORRIS: "Objection, please don't speculate."

16 Q "What's the basis of your guess?"

17 A Having seen similar markings through the years."

18 Q "Where have you seen similar markings through the years?"

19 A Typically in media accounts of whether or not districts are
20 Congressional districts or viewed as competitive."

21 Q "And on the basis of that prior knowledge what do you
22 understand the number R-5 to mean?"

23 MR. MORRIS: "Objection, calls for speculation."

24 UNIDENTIFIED PARTY: "Overruled."

25 A "It means that the district leans to Republican to whatever

1 extent the 5 indicates, which I don't, I don't know what that
2 means."

3 Q "Is it your testimony today sir that in your work on the
4 2011 map you never considered numbers such as R-5?

5 A In my work, yeah, that's my testimony. Again I had very
6 minimal input into that actual drafting of the Congressional
7 plan. But that's, I did not make, I did not take those numbers
8 into account."

9 Q "You had been in the redistricting room with other people,
10 correct?

11 A Yes."

12 Q "Did you ever hear other persons in the redistricting room
13 using those terms?

14 A Yes."

15 Q "Who did you hear using those terms?

16 A I don't know if it was in our redistricting office.
17 Occasionally we would have conversations in the House
18 Redistricting Office. But people I heard using these terms,
19 redistricting staff from the House."

20 "And just to be clear, my testimony is not that I never
21 said one of those things. Your question to me previously was
22 did I use this when I was drawing. So just people having
23 discussions in our office, House redistricting staff, Senate
24 redistricting staff. I don't know that it went beyond that."

25 Q "Are those all Republican staff?

1 A Yes."

2 Q "So you guys would talk shop about redistricting, is that
3 fair to say?

4 A Sure."

5 Q "And in the course of talking shop about redistricting,
6 would you personally use terms like this?

7 A Occasionally."

8 Q "In what context would you use them?

9 A In the context of wanting to be able to describe to the
10 members of the Senate Republican Caucus in a way that was
11 easiest for them to understand what the historical voting data
12 looked like. These, if they are what I think they are, are
13 basically a summary of previous election data."

14 Q "And that's because the use of previous election data
15 showing the partisan voting tendencies was one of the factors
16 used in drawing the map, correct?

17 A It was a factor that we looked at. As to the people
18 drawing the maps, I don't know what they used or didn't use.
19 But it was, that previous election data was something that was
20 available to us."

21 "Again, we wanted to respect incumbency. And the incumbent
22 members of Congress tended to be very concerned with what their
23 districts looked like in every sense of the word."

24 Q "Which incumbent members of Congress did the redistricting
25 team talk to?

1 A Well talked to, actual members of Congress we spoke to
2 include Congressman Schuster, there were others. But Schuster
3 and Brady are the only two that I have specific recollection of
4 anything more than a very cursory discussion along the lines of
5 hey, redistricting is coming up, do a good job."

6 Q "What do you understand a good job to mean?"

7 A To comply with equal population. To comply with the
8 Federal Constitution. Comply with the State Constitution, the
9 Voting Rights Act. To take into account the fact that we were
10 losing a Congressional district. The fact that, the fact, the
11 fact that, the fact in and of itself would mean that there will
12 be vast changes all over the state."

13 "To take into account the shift from west to east of
14 population during the course of the previous decade and to
15 respect incumbence."

16 Q "Did you ever tell anyone that redistricting was a success?"

17 A I'm sure I did, yeah. We got a bill enacted into law. As
18 far as I was concerned, that was a success."

19 MR. PERSON: Then I confronted the witness with
20 Plaintiff's Exhibit 15 which is the trial exhibit 15.

21 Q "Mr. Arneson do you recognize what the first page of, what
22 the first, this first page is a print out from?"

23 A I recognize that it appears to be an outlook meeting of
24 some sort."

25 Q "And are you one of the required attendees listed on this

1 meeting to happen August 17th, 2011?

2 A Yes."

3 Q "And what does the subject mean to you?

4 A It means that somebody, I see now the organizer is Senator
5 Scarnati. So Senator Scarnati wanted to discuss redistricting
6 with Senator Pileggi and myself."

7 Q "And what's the location?

8 A B-57. B-57 was, sounds like the redistricting office. DC
9 conf call, I don't remember what that means."

10 MR. PERSON: Continuing page 60, line 3.

11 Q "Do you recall persons from the redistricting team having
12 meetings in Washington, D.C.?"

13 MR. MORRIS: "Objection, vague, Simply references any
14 meeting in Washington, D.C. at any time apparently."

15 UNIDENTIFIED PARTY: "Overruled."

16 A "How are we defining the redistricting team?"

17 Q "What does that mean to you? I've used the term a few
18 times.

19 A It means me, John Memmi, Dominick Pileggi."

20 MR. PERSON: Continuing page 65, line 1.

21 Q "Do you recall attending any meetings in 2011 with any
22 member of Congress?

23 A Yes, sir."

24 Q "Describe for me please.

25 A Well Congressman Schuster, we had a meeting with

1 Congressman Schuster where I believe it was John Memmi and
2 myself. I believe, I'm not certain if a meeting took place in
3 2011. I don't know. I know that we met with Congressman
4 Schuster in 2011."

5 Q "And what did you and Mr. Memmi and Congressman Schuster
6 discuss at that meeting?

7 A As I recall, he was sharing some general thoughts of the
8 outline of whichever number Congressional district it is that
9 he represents."

10 Q "He was expressing his preferences, correct?

11 A Sure, yes."

12 Q "And those preferences were taken into account when drawing
13 the map, correct?

14 A To some extent, yes. I don't recall it being specific."

15 MR. PERSON: Continuing page 71, line 13.

16 Q "You talked with Senator Scarnati and Pileggi a fair amount
17 during the year 2011, correct?

18 A Yes, sir."

19 Q "Did they ever talk with you about attending Congressional
20 delegations in Washington, D.C.?

21 A At least Senator Pileggi did. I don't have any
22 recollection of speaking to Senator Scarnati about that."

23 Q "Did Senator Pileggi talk with you about what he did at
24 those meetings in Washington, D.C.?

25 A Only in the most general of terms."

1 Q "Did you understand based on your conversations with
2 Senator Pileggi that his meetings in Washington, D.C. were in
3 part to talk about redistricting?

4 A Not at any substantive level, no."

5 Q "What do you mean by not at any substantive level?

6 A Talking about redistricting can be everything from hey,
7 don't forget redistricting is happening to, you know, I think
8 division 1 of ward 4 of blah, blah, should be in a particular
9 Congressional district. I'm sure based on my recollection of
10 my conversation with Senator Pileggi that the term
11 "redistricting" came up. But I also have zero recollection of
12 there being any specific actionable point coming back to us
13 from that kind of conversation."

14 MR. PERSON: Continuing page 76, line 2. I think this
15 is within Plaintiff's Exhibit 15 still.

16 Q "Turn to page 750 please. Who is Jim Gerlach?

17 A A former Congressman from Pennsylvania. Before that, a
18 State Senator from Pennsylvania."

19 Q "Do you recall in 2011 having communications or meetings
20 with Jim Gerlach or a representative on his behalf with regard
21 to redistricting?

22 A I think I did talk to somebody on his staff. I don't
23 remember ever speaking to Congressman Gerlach. Again, at any
24 substantive level at all. I think I spoke to a member of his
25 staff. My recollection is that the questions were about

1 timing. What we saw as the timing of getting a redistricting
2 bill to the Governor's Office."

3 Q "And at the time to your knowledge was Jim Gerlach in the
4 United States Congress?

5 A Yes."

6 Q "When Senator Scarnati would come to the redistricting
7 room, what actions or conversations would take place?

8 A We would almost exclusively discuss the State Senate
9 redistricting, particularly at this point. This is days before
10 the Legislative Reapportionment Recommission we having its
11 final, final meeting, at least at that part of the process. So
12 that would be my guess as to what this is, is to narrow down
13 what his, not to narrow down, but to amplify what his
14 understanding was of the map that Senator Pileggi was likely to
15 propose at the Legislative Reapportionment Commission for State
16 Senate districts."

17 Q "Did that understanding involve an understanding of the
18 voter data in each district?"

19 MR. PERSON: Picking up at page 79, line 2.

20 A "No, we never went district by district across the State
21 looking at voter data."

22 Q "Did those conversations ever involve voter data?"

23 A Yes."

24 Q "So you were having discussions in the redistricting room
25 with Senator Scarnati in 2011 about the particular voter data

1 that was used to draw the contours of the State Senate
2 boundaries, correct?

3 A I don't know about the particular data. The conversation
4 tended to be much more like, you know, what will Senator X
5 think about this district. Have you talked to Senator X, that
6 kind of thing. I'm not sure as I sit here today that Senator
7 Scarnati asked for any real specifics along those lines."

8 Q "Did any elected official make requests to you to make a
9 district either in the State Senate or in the U.S. Congress to
10 have more Republican voters in it?

11 A No, not in those terms. Any time you make a change, there
12 were will be more or fewer Republican voters or Democratic
13 voters or Independent voters in a district, of course. But I
14 don't, geese, I don't know, I don't remember anyone saying, you
15 know, make a change that puts more Republicans in this district
16 or that district."

17 Q "So they would present you with a proposed geographic
18 changes?

19 A Sometimes, yes. Sometimes that would happen."

20 Q "Did you ever notice if those proposed geographic changes
21 would tend to affect a partisan gerrymandering?"

22 MR. MORRIS: "Objection, vague as to whether or not
23 we're speaking about the Congressional map at this point.
24 We're talking about the State. Also argumentative and calls
25 for speculation."

1 MR. PERSON: I responded, "Right now we're speaking of
2 both, either one."

3 UNIDENTIFIED PARTY: "All right, I'll allow the
4 question."

5 A "Yeah, you know. Look, again, when a change is made I
6 expect that somebody will ask me about the population data,
7 census data, all those things that I've gone through a number
8 of times now, respecting incumbency. And as I indicated
9 earlier, fully expected to receive questions from people who
10 may or may not vote for the Congressional plan and people who
11 may or may not choose to run for reelection under the Senate
12 plan as to what prior elections look like in those districts."

13 Q "I'll present you with Plaintiff's Exhibit 25."

14 MR. PERSON: The Plaintiff's trial Exhibit 25. We'll
15 pick up at page 82, line 20.

16 Q "Looking at this, do you recall the various shapes of some
17 of the Congressional districts that were put in place by the
18 2011 map?"

19 A Without getting, you know, really zoomed in and/or being
20 able to verify the authenticity of the document, it appears to
21 be what was enacted when Senate bill 1249 became law."

22 Q "Is it your testimony today that the district contours
23 reflected on this map are the result of neutral, non-partisan
24 considerations alone?"

25 A I've been through the list a couple of times. But, you

1 know, there is, there are any number of reasons districts get
2 shifted around. And I don't always, I don't know why people
3 made those changes. Again, I didn't draw, I didn't draw this
4 map so I didn't draw this map."

5 Q "Do you know who did?"

6 A The people I mentioned before in terms of the technical end
7 of things, John Memmi. I think, well, John Memmi is the only
8 one I know. There were people in the House Republican caucus
9 as well. I don't know for sure which of them was involved.
10 And that's it, I think. The Governor's Office had input but I
11 don't think that they had anybody drawing."

12 Q "Did you use any consultants to assist in drawing the map?"

13 A The Senate Republican Caucus did not."

14 MR. PERSON: Continuing page 87, line 12.

15 Q "Are you familiar with the terms of packing and cracking in
16 the context of redistricting?"

17 A Yes, sir."

18 Q "Do you deny that the 2011 map was drawn in part through
19 the use of packing and cracking?"

20 MR. MORRIS: "Objection, vague, calls for speculation."

21 UNIDENTIFIED PARTY: "Was the question do you have any
22 knowledge?"

23 MR. PERSON: "Do you deny that the 2011 map was drawn
24 in part through the use of packing and cracking."

25 UNIDENTIFIED PARTY: "I'll allow it."

1 A "I didn't draw the 2011 map."

2 Q "So you don't deny it?"

3 MR. MORRIS: "Objection, asked and answered.
4 Argumentative."

5 UNIDENTIFIED PARTY: "He's repeatedly said he didn't
6 draw the map. Next question."

7 MR. PERSON: Continuing page 88, line 24.

8 Q "Mr. Arneson do you know that based on the voter data that
9 there's well in excess of 800,000 more Democrat votes in the
10 Congressional election since the map was drawn each year for
11 Democrats over Republicans, correct?"

12 A No, no, sir, that's not something I pay attention to."

13 Q "So you have no knowledge as to whether there's more
14 Democratic votes for members of Congress collectively than
15 Republican?"

16 A I've read that in reports. I've never independently
17 investigated it."

18 Q "Do you believe that to be true?"

19 A I generally trust reporters."

20 Q "Do you have any explanation that you can give the Court as
21 to how the application of non-partisan neutral criteria
22 resulted in drawing maps that elected 13 to five Republican
23 majority in Congress despite the fact that there were so many
24 more Democratic votes overall?"

25 MR. MORRIS: "Objection, it's value. It also calls for

1 lay opinion. Mr. Arneson is not here today as an expert."

2 UNIDENTIFIED PARTY: "Sustained."

3 MR. PERSON: Continuing page 92. This is the cross or
4 rehabilitation. The cross I guess.

5 MR. PASZAMANT: The rehabilitation of the deposition.
6 It's before he then went into direct questioning thereafter.
7 And it's very brief.

8 MS. HANGLEY: I'm sorry, I didn't have a chance to look
9 at this section. So, I hate to interrupt things, but I wonder
10 if we could have a brief break for me to see what's designated.

11 JUDGE SMITH: Sure.

12 MR. PERSON: As far as I'm concerned, it's not up to
13 me.

14 MS. HANGLEY: Well then, it will only take a second.

15 JUDGE SMITH: Take the time to look at it.

16 MS. HANGLEY: And it ends at page 94? All right, you
17 can go ahead. Sorry for the interruption.

18 Q "You were answering your examination by Mr. Person several
19 questions which involved or included the term manipulate or
20 manipulating, do you recall that?

21 A Yes, sir."

22 Q "What did you interpret that term to mean in responding to
23 those questions?

24 A Simply modifying the boundary of a district or multiple
25 districts. And any time you move a boundary, you are dealing

1 with more than one district. So modifying the boundary of
2 districts."

3 Q "So sir fair to say you had involvement in the creation of
4 Senate Bill 1249?

5 A Some, yes. I did not have, you know, I did not draw the
6 map that led to Senate Bill 1249. But I did have some
7 involvement in the process."

8 Q "Okay. And what was that involvement sir?

9 A I was Senator Dominick Pileggi's Communication and Policy
10 Director. As " --

11 MR. PERSON: "I think that that question was the
12 beginning of the direct examination on the legislative
13 defendant's case in chief, is that correct?"

14 MR. MORRIS: "Yes, and perhaps even the one before. I
15 had a singular area that I asked Mr. Arneson about. It had to
16 do with the term manipulated or manipulation or something akin
17 to that. That's the end of it in terms of rehabilitating him."

18 MR. PERSON: "Would you like us to reread that Mr.
19 Arneson to correct the record or can we simply state that it
20 ends after the statement" --

21 JUDGE SMITH: Just a moment. I would like to correct
22 the record if it needs to be required, to be corrected so Mr.
23 PASZAMANT --

24 MR. PASZAMANT: I have no objection to that Your Honor.
25 Absolutely not.

1 JUDGE SMITH: All right.

2 MR. PERSON: Would he like us to reread just the
3 portion in that is meant to be the rehabilitation. It will
4 take probably two minutes Judge.

5 JUDGE SMITH: I think we all got it.

6 MR. PERSON: And just to the record's clear, the last
7 sentence that was part of the rehabilitation or the cross
8 examination was the sentence, "So modifying the boundary of
9 districts". And the first, the beginning sentence That was
10 excluded that was meant to be the direct examination of the
11 Legislative defendant's case in chief began, "So sir fair to
12 say you had involvement in the creation of Senate Bill 1249."

13 MR. PASZAMANT: That's correct Your Honor.

14 JUDGE SMITH: Very well.

15 MR. PERSON: Nothing further for this witness at this
16 time. All right. Would you like us to proceed with putting in
17 the testimony of Mr. Schaller Your Honor?

18 JUDGE SMITH: Yes, let me ask though if you could
19 project at this point how much testimony, approximately how
20 long you believe it would take.

21 MR. TORCHINSKY: Your Honor his entire transcript was
22 about half the length of Mr. Arneson's.

23 JUDGE SMITH: It did appear rather brief to me from the
24 quick look I took at it, look at it.

25 MR. TORCHINSKY: I think it was 75 pages -- Your Honor

1 I've just been told that apparently 75 of the 93 pages have
2 been designated, almost in their entirety. Mostly designated
3 by plaintiffs Your Honor.

4 JUDGE SMITH: Yes, I think we should proceed.
5 Accomplish as much as we can.

6 MR. TORCHINSKY: Your Honor we may be able to get
7 through reading all that. Assuming That we complete the
8 reading of Mr. Schaller's testimony, can I ask what the Court's
9 intention is as to scheduling for the rest of the day today and
10 tomorrow?

11 JUDGE SMITH: We don't know. I mean that's the entire
12 point.

13 MR. TORCHINSKY: Okay.

14 JUDGE SMITH: It's the reason I asked how long you
15 thought that was going to take. Because we would ordinarily
16 recess at 4:30. We're willing to go beyond that.

17 MR. TORCHINSKY: So are we Your Honor.

18 THE COURT: Then we need to see what housekeeping if
19 any we need to accomplish.

20 MR. TORCHINSKY: Thank you Your Honor.

21 JUDGE SMITH: So let's just get on with the Schaller
22 depo. In fact what we should do is have one marked copy of
23 each of these deposition transcripts, as marked, made part of
24 the record, not merely for our use.

25 MS. BALLARD: So we call to the stand William Schaller.

1 And we treat him as being sworn.

2 Q "Mr. Schaller your full name please.

3 A William Schaller. It's S C H A L L E R."

4 MS. BALLARD: Your Honor we're turning to page 4, line
5 6.

6 Q "Okay, who did you work for?

7 A I worked for the House Republican Caucus of the
8 Pennsylvania General Assembly."

9 Q "All right, what is that House Republican Caucus?

10 A That is the caucus of all Republican members elected to the
11 State House."

12 Q "Okay. Is it an official committee?

13 A No."

14 MS. BALLARD: Going down to page 5 Your Honor, it's
15 about halfway through. Page 5, line 11.

16 Q "Have you ever worked on any maps to redistrict a
17 Congressional district in Pennsylvania?

18 A Yes."

19 Q "What years did you do that?

20 A I did that in 2001 and 2011."

21 Q "And how did you get that assignment?

22 A I was assigned that by the majority leaders or leaders of
23 the caucus."

24 Q "And do you know how the leaders of the caucus related to
25 the leaders in the House?

1 A In my mind they're the same."

2 Q "And has the Republican Caucus been the majority caucus
3 since 2011 to your recollection?

4 A No."

5 MS. MAGEE: I'm sorry, I think that said 2000, not
6 2011.

7 MS. BALLARD: You're so right, thank you.

8 Q "Since 2011 to your recollection.

9 A No."

10 Q "Do you remember whether the Republican Caucus was the
11 majority caucus when you worked on the 2001 map?

12 A Yes."

13 Q "Okay, let's talk about the 2011 map first. What was the
14 role you played?"

15 MS. MAGEE: "And there was an objection lodged to this
16 -- Well no, there was just a statement made by counsel
17 reserving on a prior issue."

18 JUDGE SMITH: "And counsel said you can go ahead."

19 A "It was to coordinate the Caucus' participation in
20 developing a Congressional plan."

21 Q "And that's what I would consider to be the map?

22 A Yes."

23 Q "Okay. Did any other people participate, any other people
24 from the legislature, legislators themselves, legislators'
25 staff, participate with the Caucus in developing the map?

1 A Yes."

2 Q "Who was that?"

3 A There was my staff, Bob Nye. Do you need me to spell
4 that?"

5 Q "Sure."

6 A N Y E. And Tom Weeter W E E T E R."

7 Q "Anyone else?"

8 A There's various leadership staff."

9 Q "Those being? Do you remember whether there were there
10 other staff people from any other Congressional members, I'm
11 sorry, House members?"

12 A State House members?"

13 Q "Yes."

14 A Their leadership staff is aware of the press going on."

15 Q "But they didn't participate in your actual process of
16 developing the map?"

17 A Yeah, I'm not sure the word process. That's -- "

18 Q "Did you have meetings?"

19 A That's who I worked for, so."

20 Q "Okay, did you have meetings in which you worked on
21 developing the map?"

22 A Meetings with leadership staff?"

23 Q "Of anyone where you actually got down to brass tacks and
24 worked on the map?"

25 A Yes."

1 Q "Who were they?"

2 A That would be my staff."

3 Q "And did any staffers from the Senate leaders participate?"

4 A We were in discussions about the map. We would not sit all
5 in a room and draw a map."

6 Q "Was there a name of a room you would sit in?"

7 A It was in my office."

8 Q "Okay, so you had discussions with the Senate staff, but
9 they didn't participate in the meetings in your office, is that
10 what you're saying?"

11 A Well I would meet sometimes in my office, sometimes in
12 their office."

13 Q "Let's talk about what you actually did when you were
14 meeting to draw up the map."

15 A I'm sorry, what was that?"

16 Q "Yes, I'm sorry. Could you tell me what you actually did
17 when you were drawing the map?"

18 A I don't really recall minute details of the meetings."

19 Q "In general what do you recall?"

20 A That they worked on their section of the map."

21 Q "They begin?"

22 A The Senate, the Senate staff."

23 Q "Okay, how did their section of the map get determined?"

24 A I don't know."

25 Q "All right. And you worked on a particular section of the

1 map, you and your staff?

2 A Yes."

3 Q "Okay, what was your section?

4 A We developed the western part of the State."

5 Q "Do you know whether the Senate staff themselves met in the
6 same way that you met to develop their part of the map?

7 A I don't know."

8 MS. MAGEE: "And there was an Objection placed".

9 JUDGE SMITH: Yes and no grounds stated. Next
10 question.

11 Q "Who gave you the charge to develop the map or section of
12 the map? Who told you to do that?

13 A That just comes with the job. That wasn't any specific
14 order."

15 Q "Okay. Did you talk to any House leadership about what you
16 were supposed to be doing?

17 A Yes."

18 Q "Who did you talk to?

19 A It would be Leader Turzai and Speaker Sam Smith."

20 Q "And what did Leader Turzai tell you about your job as far
21 as developing the map was concerned?

22 A I don't really recall any specific, what my job was. My
23 title was Director of Reapportionment Services so I was doing
24 reapportionment."

25 Q "Okay. Do you recall whether David Turzai told you

1 anything about any role that partisan data would play in your
2 development of the map?

3 A I don't recall any conversations."

4 Q "How about Speaker Smith?

5 A I don't recall any conversations."

6 Q "What was your understanding about how you were supposed to
7 use any partisan data, if at all, in developing the map?"

8 MS. MAGEE: "Object to form. Can we clarify what
9 partisan data means."

10 Q "By partisan data I mean data that includes the voter
11 registration of Republicans, Democrats and others and the voter
12 performance in the past elections. How the elections came out,
13 Republican, Democrat and others.

14 A It was one of many factors."

15 Q "And how do you know that?"

16 A Through past practice."

17 Q "And the 2001 map?"

18 A Yes."

19 Q "And how do you know with regard to the 2001 map that you
20 were supposed to use partisan data as one of the many factors
21 for the 2001 map?"

22 MS. MAGEE: "Objection, mischaracterizes the witness'
23 testimony. Go ahead."

24 Q "So going back to your past practice, I believe you talked
25 about, that's how you know and you were going to be using

1 partisan data as one of many factors in 2002. How did you know
2 that?

3 A It's information that elected officials are interested in
4 seeing."

5 Q "Information that elected officials are interested in
6 seeing in connection with how the partisan data affects the
7 drawing of the lines in the maps?

8 A No, I wouldn't say that."

9 Q "Well why were they interested in seeing it, if you know.

10 A Just to see how they would, how their district or an area
11 is performing."

12 Q "And when you say that the -- who was it that was
13 interested in seeing, if you remember.

14 A The elected officials."

15 Q "Okay. And that's the State elected officials?

16 A And federal."

17 Q "Let's talk about the 2011 map. So they were interested,
18 elected officials, State and Federal, were interested in
19 seeing, correct me if I'm wrong, they were interested in seeing
20 how the partisan data came out or showed up on the maps you
21 were drawing, is that right?"

22 MS. MAGEE: "And there was an Objection placed and if I
23 read this correctly, I believe it's to the way that she's
24 mischaracterizing what he said about the partisan data and the
25 interested officials -

1 JUDGE SMITH: And he was permitted to answer, is that
2 right?

3 MS. BALLARD: Yes, he was.

4 MS. MAGEE: Ms. Ballard actually rephrases the
5 question.

6 JUDGE SMITH: That's what I thought. She rephrases the
7 question on the top of page 15, is that correct?

8 Q "Were they interested in seeing the relationship between
9 the parties and the data and the maps you were drawing?

10 A They could be, I can't say all of the reasons they were
11 interested in the map. That would be one factor."

12 Q "Would be the partisan data? I'm sorry.

13 A Would be the partisan data."

14 Q "All right, do I understand correctly that you're
15 interested in looking at a map that you were drawing and seeing
16 where the Republican and Democratic voters were and where the
17 outcomes of prior elections, Republican and Democratic, in
18 Republican and Democratic terms were located on the map?

19 A Not as a location. Going through the district, just more
20 as a district total."

21 Q "Congressional district total?

22 A Congressional district total."

23 Q "So they wanted to know, all right, look at the
24 Congressional District that that you've drawn, what's the
25 percentage of the Republican and Democratic registered voters,

1 what's the percentage election results, past elections,
2 Republican and Democratic and the total district that was done.
3 Am I right?

4 A If that's what they asked."

5 Q "Is That what they asked?

6 A Not all the time."

7 Q "Did they ever ask that?

8 A I don't really recall. I don't, because I did not meet
9 with every single member of Congress."

10 Q "Well did you meet with any members of Congress?

11 A A couple. Well, during the formation of the map, a
12 couple."

13 Q "Do you remember who they are?

14 A I only recall one."

15 Q "Who was that?

16 A Congressman Thompson."

17 Q "Was he a Republican or a Democrat?

18 A Republican."

19 Q "Did you ever meet with any Democratic legislators, State
20 or Federal in connection with your drawing of the map?

21 A No."

22 Q "Do you know whether the Senate staff -- okay, and is it
23 your recollection that you only met with one or two Republican
24 Congressman in connection with the drawing of the 2011 map?

25 A That's my recollection is one."

1 Q "Okay.

2 A I don't know if there was a second. I can't recall a
3 second."

4 Q "And do you know what district he was, that he represented?

5 A Five. District Five."

6 Q "He was an incumbent?

7 A Yes."

8 Q "And do you know whether the 2011 map made a change to
9 District Five in comparison to the 2001 map?

10 A Based on population and geography, yes."

11 Q "Again was there any input or influence of partisan data in
12 that change?

13 A I don't recall."

14 Q "You mentioned that partisan data was one of the many
15 factors you used in developing the 2011 map. What were the
16 other factors?

17 A Population, what I call existing patterns of
18 representation."

19 Q "What's that"

20 A What the districts looked like previously."

21 Q "And in what way?

22 A Just what areas they represented of Pennsylvania."

23 Q "And what is that, just geographic areas?

24 A Yes."

25 Q "Any others?

1 A Voting rights, information."

2 Q "Anything else?"

3 A You would consider where incumbent, incumbent residency."

4 Q "Anything else?"

5 A And some standard factors of split geography and
6 contiguity."

7 Q "Just for the record, can you tell us what contiguity is?"

8 A That all districts connect."

9 Q "All right. Anything else?"

10 A That's all I recall."

11 Q "How about compactness?"

12 A Given Pennsylvania was losing a Congressional district and
13 the districts are large, it's not a factor."

14 Q "All right. How would you describe the data that you had
15 to work with, the partisan related data that you had to work
16 with?"

17 A It was election results."

18 Q "Election results broken down by?"

19 A By precinct."

20 Q "Did you have election results by precinct in 2000?"

21 A Yes."

22 Q "Where did you get that data?"

23 A It was from our, well, Department of State. Pennsylvania
24 Department of State."

25 Q "Are you saying that the Pennsylvania Department of State

1 provided you with election results by precinct in both 2000 and
2 2010?

3 A They provided to the, what's called the Legislative data
4 processing center."

5 Q "Do you know whether that data was available to the general
6 public?

7 A Through the Department of State, I believe it's available
8 to the public."

9 Q "And we're talking about the data that shows the election
10 results by party, right?

11 A Yes."

12 Q "And by precinct?

13 A Yes."

14 Q "Do you know where the Department of State got that data?

15 A I don't know for sure, but I believe they collect it from
16 the counties."

17 Q "So you think that the counties have the election results
18 by party and by precinct to give to the Department of State in

19 --

20 A I believe so. I believe they are required to report to the
21 Department of State."

22 Q "And how do you know that? What is the basis of your
23 belief?

24 A Because, I just want to word this correctly. Because every
25 election has to be certified by the Department of State and

1 therefore they would need the election results."

2 Q "And you think those results were available to the public?"

3 A I don't know for sure. I believe they are."

4 Q "And what did you do with the partisan data that you
5 received from the Department of State? Who did you get the
6 partisan data from?"

7 A We got election results from the Legislative data
8 processing."

9 Q "I'm sorry, what's that?"

10 A It's a non-partisan agency of the General Assembly."

11 Q "And it's called the what?"

12 A Legislative data processing center."

13 Q "That's a non-partisan Department of State Office?"

14 A No, it's a non-partisan organization of the General
15 Assembly."

16 Q "Do you know how the Legislative data processing center
17 took and/or received this data?"

18 A From the Pennsylvania Department of State."

19 Q "Do you know whether any caucus or committee of the Senate
20 had the same partisan data?"

21 A I don't know for sure."

22 Q "Did you ever see any map that was produced by a caucus or
23 a committee of the Senate during the 2011 map project?"

24 A A complete map?"

25 Q Yes.

1 A "No, I don't recall seeing a complete map."

2 Q "How about a map of your half of the State?"

3 A I don't recall seeing."

4 Q "What do you recall seeing in the way of any map from the
5 Senate side?"

6 A The east."

7 Q "Eastern part of the State?"

8 A Eastern part of the State."

9 Q "And do you remember when you saw that?"

10 A I don't recall."

11 Q "Do you remember what you did with those maps?"

12 A They were not maps, plural."

13 Q "Or map?"

14 A As we moved through the legislative process to complete the
15 map, they had their part, we had our part."

16 Q "When you talk about the Legislative process, what do you
17 mean?"

18 A The Congressional redistricting is a piece of legislation.
19 Has to pass the House and Senate, signed by the Governor."

20 Q "When do you think you started working on the development
21 of the 2011 map in relation to January of 2007?"

22 A January of -- we didn't start before 2011."

23 Q "And during the year 2011 roughly do you recall when you
24 started?"

25 A There was some initial discussions, consultations. I would

1 say in the summer sometime. I don't recall exactly when."

2 Q "And who were those initial consultations with?

3 A Probably internally."

4 Q "What does that mean?

5 A I just, within our House Republican Caucus."

6 Q "How do you produce a map, any map?

7 A This map is produced through the Legislative process where
8 it has to get 102 votes in the House, 26 in the Senate and the
9 Governor signed off on it. So it's, that process that you go
10 through to get the necessary votes to pass a map."

11 Q "This map itself I'm asking about, how do you come up with
12 a map?

13 A You've got -- "

14 Q "You've got the data that you describe and you come up with
15 a map. How do you do it? Sit at a table, work it out eyeball,
16 put information into a computer? How do you do it?

17 A We had redistricting software."

18 Q "Okay, what was that? What did that do?

19 A It took small polygons and made larger polygons."

20 Q "Can you explain that in a little more detail please? I'm
21 sorry a little more detail for me.

22 A We take municipality boundaries, county boundaries. And
23 the bigger polygon would be the Congressional District."

24 Q "Okay. And how if you know, how did the computer go from
25 the small polygons to the larger polygons after the program did

1 that?

2 A It's a manual process."

3 Q "I'm sorry, I'm asking about the redistricting software.

4 A Right, that's a manual process. You click and add
5 yourself, there's nothing automatic."

6 Q "Okay, you click and add to what?

7 A Say one municipality A and B can go to district 1."

8 Q "That's a possibility you say. And let's try, let's see
9 what happens when this municipality --

10 A No, that's me explaining how - "

11 Q "Well, you have to let me finish my question.

12 A Sure."

13 Q "Let's say a municipality, you can click on add and you see
14 how it comes up in terms of the larger polygon. See where it
15 lets up?

16 A It's, describing how the software works is just clicking on
17 that municipality and assigning it to a Congressional
18 district."

19 Q "Okay, so you click on that municipality and you assign it
20 to a Congressional district, is that right?

21 A Yes."

22 Q "And did you do that more than once with regard to any
23 particular map?

24 A Well that's, well, yes."

25 Q "Okay. And did you click on one of the municipalities is

1 one go round? Did you say, all right, I'm going to take
2 Redding and assign it to this Congressional District, York and
3 assign it to that Congressional District. Did you assign all
4 of the municipalities at once to the various Congressional
5 Districts?

6 A No."

7 Q "So you did them one at a time?

8 A We did the parts we were working on."

9 Q "With regard to the parts of the State you were working on.

10 A Can you go back and ask the first question."

11 Q "Okay, let's just talk about the part of the State you were
12 working on.

13 A Okay."

14 Q "Okay. And you had the Senate working on the eastern part
15 of the State.

16 A I did not have them working on it. That was not my
17 decision."

18 Q "Okay. Who decided how to divide the State?

19 A I don't know."

20 Q "And do you know whether your part of the State plus the
21 Senate part of the State added up to the whole state?

22 A Yes."

23 Q "It did add up to the whole State, your part and the
24 Senate's part?

25 A Yes."

1 Q "Okay. So you're working on the western half of the State
2 and you say you just clicked within a particular municipality.
3 You put it into a Congressional District. And my question is
4 do you put all of the municipalities into the Congressional
5 District before you --

6 A No."

7 Q "Do them one at a time?"

8 A You can select any number."

9 Q "Okay. What else do you click?"

10 A That's all I click is the geography."

11 Q "Okay and what do you get out of the program?"

12 A You get the municipalities or counties assigned to a
13 Congressional District."

14 Q "I thought that's what you told the computer you wanted?"

15 A Right and then you get a, you get a representation of it in
16 a map."

17 Q "Okay. If the representation doesn't come out one person,
18 one vote, then what do you do?"

19 A Well it has to come out to one person, one vote."

20 Q "Why is that?"

21 A Because the 2001 map had a deviation of 19 people and the
22 Federal Judge said that's not good enough. Each district has
23 to be exact population."

24 Q "Okay. So when you click in the municipalities and you
25 tell the computer what Congressional district to put them in, I

1 take it then the computer is programmed to tell whether you
2 have one person, one vote in that district after you click, is
3 that right?

4 A No, that's not exactly right."

5 Q "Okay, how does it work?

6 A It will tell you the population. And once the map is
7 together, you have to get down to one person, one vote and
8 that's a manual process."

9 Q "Okay. How do you decide what the boundaries of the
10 district that you're putting the municipalities in?

11 A We look at the factors I mentioned earlier. Well, you have
12 to start with something that outlines the district boundaries"

13 --

14 JUDGE SMITH: That's your question.

15 UNIDENTIFIED PARTY: Sorry.

16 Q "Well you have to start with something that outlines the
17 district boundaries to tell the computer put York the number 12
18 or 13 or whatever, right?

19 A Well there are existing patterns of representation."

20 Q "Sorry?

21 A The existing patterns of representation."

22 Q "What do you mean?

23 A That's what the districts look like currently at the time.

24 Q "The 2002 map?

25 A Correct."

1 Q "Okay. Now you've gone to, from 19 to 18 districts, right?

2 A Correct."

3 Q "Okay. So when you're telling the computer to put a
4 municipality into a district, are you using the 2019 district
5 or the 2018 district?"

6 MS. MAGEE: "Objection to form 2019".

7 MS. BALLARD: I'm so sorry, thank you.

8 Q "Are you using the 2002 districts or the 2010 district --

9 A We overlay the 2002 districts. And once there's a seat
10 loss it goes to another state, then we have to work out how we
11 address that geography that is left behind with that lost
12 seat."

13 Q "Before you click what municipality go into the new
14 geography, right?"

15 A Yes."

16 Q "All right, so you're clicking in the municipalities. And
17 you said it was, you tell the computer what district they're
18 supposed to go in, right?"

19 A Yes."

20 Q "And the districts you're talking about are the 2011
21 districts, right, the new districts?"

22 A Yes."

23 Q "And how do you tell the computer what the outline is of
24 the new districts?"

25 A Each municipality is assigned a Congressional district

1 number."

2 Q "Isn't it true that before you do this process of putting
3 the municipalities into the district you have to know the
4 boundaries of the district?"

5 A No."

6 Q "Why not?"

7 A Because you're creating new Congressional districts."

8 Q "Let's take a municipality, you're the edge of an old
9 Congressional district. How do you decide whether to tell the
10 computer let's say just for example, near the edge between 12
11 and 13, hypothetically right, how do you decide whether to tell
12 the computer to put in 12 or 13?"

13 A Based on population what those districts need population
14 wise."

15 Q "Well, population isn't the only thing that determines the
16 actual shape of 12 and 13, am I right?"

17 A It's the leading factor compiling Congressional districts
18 because they have to be equal population."

19 Q "Of course. But can you draw the new 12 in many different
20 shapes to come out with equal population. And you can draw
21 District 13 in many different shapes that can come out with
22 equal population, right?"

23 MS. GALLAGHER: Objection.

24 MS. BALLARD: You can answer.

25 A I could not. I don't have authority to do that nor do I

1 have the time to do that."

2 Q "Who did that?

3 A Nobody from my office."

4 Q "Do you know who did that?

5 A I have no idea who did that."

6 Q "Am I getting this right before you click on a
7 municipalities and put them into the new district somebody
8 presented you with a map of what the new district is going to
9 look like?

10 A That's not correct."

11 Q "Tell me how you knew what districts to put the
12 municipalities in.

13 A It goes back to the legislative process and the factors
14 that go into the map. And the legislative process is getting
15 the necessary votes to pass a piece of legislation and that
16 comes filtered down to me through the process through various
17 discussions and consultations."

18 Q "And who was involved in those discussions and
19 consultations if you know?

20 A It could be House leadership, Senate, governor's office,
21 Congressional members."

22 Q "Do you know whether there were any Democrats involved in
23 that process in those discussions?

24 A For the House side, no."

25 Q "Don't know or there weren't any Democrats?"

1 A For me being engaged in discussions, no. I don't know if
2 there were discussions based on a leadership level."

3 Q "So am I right that, I get what you're saying, somebody
4 handed you a map and said these are the districts for 2011.
5 You just tell the computer to make whatever adjustments are
6 needed to make a population equal?

7 A That's not correct."

8 Q "Explain to me what you received in terms of the map to
9 work with?

10 A I did not receive a map."

11 Q "Okay. Mr. Schaller, how did you know what the boundaries
12 were of the districts for the 2011 map when you were going
13 through the process of taking the municipalities and putting
14 them in the district, how did you know what the boundaries
15 were?

16 A Through, again it's through the consultations. This is a
17 legislative process to create a piece of legislation."

18 Q "Okay. So by the time you were putting the municipalities
19 into districts, you already knew what essentially roughly what
20 the boundaries of the districts were, right?

21 A Can you repeat that question?"

22 Q "Okay. When you were going through the process of putting
23 the municipalities into the districts, you already knew what
24 the boundaries of the districts were?

25 A In some instances."

1 Q "Which would --

2 A One would be the Senate working on the east."

3 Q "Let's talk about your work on the western half of the
4 state. When you were going to through the process of putting
5 the municipalities into the districts, you already knew what
6 boundaries of the districts were, am I right?

7 A Not exactly the boundaries."

8 Q "Okay. Then what?

9 A But a general conceptual idea of the district."

10 Q "All right. Then you're putting the municipalities in.
11 You're asking the computer what question are they equal in
12 population?

13 A No."

14 Q "No? What else are you asking the computer to tell you?

15 A I'm not asking the computer to tell me equal population.
16 We're just putting it in there and we're seeing the population
17 numbers as they turn out."

18 Q "All right. What else are you seeing? What other
19 information are you putting into this, shall we call it
20 tentative map that you received of the district boundaries?

21 A I'm not receiving a map."

22 Q "Are you receiving --

23 A Again, it goes back to consultation. It's a process of
24 working on areas."

25 Q " What I don't understand is when you're putting the

1 municipalities into districts, how do you know the shape of
2 those districts? You have to know what you're putting the
3 municipalities into, am I right?

4 A Yes."

5 Q "How do you know the shapes of the districts you're putting
6 the municipalities into?

7 A It goes back to the consultation from that. I don't recall
8 all of the little discussions and meetings and what came out
9 but in the west, there was a seat loss so you have to put two
10 members together."

11 Q "I understand that.

12 A And that starts your map boundaries, once it's determined
13 how you're dealing with the seat loss."

14 Q "Who start the map boundaries?

15 A I don't understand that question."

16 Q "Okay. I understand what you're telling me. Before you
17 click in the municipalities, into the different districts, you
18 know something about the map boundaries, right?

19 A We know existing patterns of representation."

20 Q "Okay. What kind of patterns and representation are you
21 talking about?

22 A The geography and population patterns."

23 Q "That's all?

24 A We have other data in our database."

25 Q "What other data?

1 A The election results."

2 Q "I'm really having trouble understanding what you're doing.
3 I apologize.

4 A Well, it's over six years ago."

5 Q "You're getting ready to work on a new map now?"

6 A No."

7 Q "So you have already put into this computer the election
8 results.

9 A It's a database that we use for state redistricting, we
10 just use for Congressional redistricting."

11 Q "There in the computer the election results?"

12 A I phrase it as they're in the database but yeah, if you
13 want to say in the computer."

14 Q "Okay. And they're by precinct?"

15 A There are various levels. There's counties, municipal
16 levels, precincts."

17 Q "All right. So that data is already in this computer,
18 right?"

19 A Yes."

20 Q "Who owns the computer?"

21 A I'm sorry, who what?"

22 Q "Owns."

23 A Owns?"

24 Q "Owns."

25 A House Republican caucus."

1 Q "And this is the data that we talked about before, right?

2 A Right."

3 Q "Okay. And the program who wrote the program if you know?

4 A The redistricting software program?"

5 Q "Yes. The program that you're talking about where you put
6 in the municipalities.

7 A That's from an outside vendor."

8 Q "Okay. Do you know whether it's publicly available?

9 A Yes."

10 Q "What it's called?

11 A It was software is called Autobound, it's one word, I
12 believe."

13 Q "You mention that one of the factors you considered was
14 splits. What data did Autobound have to work with about the
15 splits?

16 A Well, it's based on the geography layers that you have."

17 Q "The geography layers, what's that?

18 A The counties, municipalities, precincts."

19 Q "And you mentioned the Voting Rights Act. What does
20 Autobound use to determine what it's supposed to do under the
21 Voting Rights Act?

22 A The software doesn't determine what it's supposed to do but
23 we have the census population in the database."

24 Q "By race?

25 A By race."

1 Q "And how about contiguity, what does the data that the
2 computer contains that Autobound can use to consider the
3 question of contiguity?

4 A The same geography levels."

5 Q "Okay. That's where the countries are, where the
6 municipalities are, et cetera?

7 A Yes."

8 Q "Can you agree with me, Mr. Schaller, first let me see if I
9 understand. What the computer has so far as data to work with,
10 there's the partisan data that we talked about earlier.

11 A Yes."

12 Q "The election results precinct by precinct and county, and
13 the election results by party?

14 A Yeah, it's the same because they're categorizing partisan
15 data. Election results, the same thing."

16 Q "All right. And it has the geography data for the
17 municipality, county and municipalities are, right?

18 A Yes."

19 Q "That would be county lines of municipality lines.

20 A And precinct lines."

21 Q "Precinct lines. Does it have any data about the suburbs
22 of the municipalities?

23 A Just municipal lines. There is no designation of suburbs."

24 Q "So it does have partisan data for the precincts in the
25 suburbs, right?

1 A It has the election data, yes."

2 Q "Okay. By party.

3 A By party, yes."

4 Q "Okay. And it has the racial data by census population,
5 right?

6 A Yes."

7 Q "Now, by --

8 A It can be by all levels."

9 Q "Okay. And it has pardon me, if I've already said this,
10 but the maps show the county lines and municipal lines?

11 A Yes."

12 Q "Okay. Now, you have all that data in the computer and you
13 could come out with plenty of different maps that have equal
14 populations, right?

15 A I could not."

16 Q "Somebody could.

17 A Somebody, yeah."

18 Q "How, I mean would it depend to some degree on how you
19 would prioritize these factors?

20 A There's some call for speculation but I for me, my factors
21 were driven by population as the first factor because of what
22 happened in 2002."

23 Q "All right. Who would think about the different options
24 that one can come up with for district lines for this data that
25 would end up with something close to equal population?

1 A Again, it goes back to the process of getting input from
2 the various stakeholders if you will. And a piece of
3 legislation, that the map is created over the short time period
4 that we have to create it."

5 Q "Are you saying that the stakeholders will look at the
6 possible maps and say well, I think we should move this over
7 here. We should draw this one a little differently or
8 something like that? I mean how did the stakeholders come up
9 with a potential map of the outlines of the districts? How did
10 they do that?"

11 MS. GALLAGHER: Objection, foundation.

12 JUDGE SMITH: It's overruled.

13 A "I can't speak for those involved but going just to the
14 west, when you determine your seat loss, that has the map
15 starting to take on a form. And then if you look at District
16 14, which is based on Pittsburgh, that district down, your map
17 starts to take shape."

18 Q "How does it do that? How does the map start to take
19 shape? Maps don't take shape by themselves, right?"

20 A No, but if you're again a stakeholder, the State
21 Legislature, Congressmen in the west have or not the areas and
22 what they would like to have in them."

23 Q "Okay.

24 A Based on what criteria I don't know."

25 Q "And so do you know whether they have the partisan data

1 available to them as well when they're acting as stakeholders
2 and saying what partisan matter they want or don't want?

3 A I don't know."

4 Q "And do you receive, we're going to go off the record here.
5 Do you receive basically one map to work with, get down into
6 detail to make sure the populations are equal?

7 A I do not receive a map."

8 Q "Did you receive more than one map?

9 A As a discovery point?"

10 Q "Yes.

11 A No."

12 Q "How many did you normally receive typically?

13 A I did not really receive any."

14 Q "Okay. You received no maps. How did you decide where to
15 put the municipalities?"

16 MS. GALLAGHER: Objection, this was asked and
17 answered.

18 MS. BALLARD: Yes, it was asked. We don't have an
19 answer.

20 Q "How did you decide where to put the municipalities?

21 A I did answer, that it's the legislative process with the
22 stakeholders involved and starting to put components on the map
23 together."

24 Q "So you've got to start in putting the components on the
25 map together. What do you receive that you used to click

1 button the municipalities into Exstart (phonetic)?

2 A They're the result of conversations and discussions of
3 consultation."

4 Q "I understand what you're saying about the source. What
5 I'm asking you is, what did you have to work with to click the
6 button to put the municipalities somewhere?

7 A I don't necessarily need someone to hand me a map to add
8 municipalities."

9 Q "What did you work with? What did you have that to use to
10 tell the computer put this municipality here?

11 A The geography layers in the software."

12 Q "That's all you tell the computer to do is put the
13 municipality in that County?

14 A Well, I don't understand that question."

15 Q "Okay. The municipalities in the County, sorry, I read --

16 A The municipalities in the County?"

17 Q "I thought you said at the beginning of the deposition that
18 you tell the computer --

19 A In the Congressional district."

20 Q -- where to put the municipality in the Congressional
21 district, right?

22 A Yes."

23 Q "How do you know what the Congressional district is?"

24 MS. GALLAGHER: Objection, this has been asked and
25 answered.

1 Q "How do you know what the lines are?"

2 MS. GALLAGHER: Asked and answered.

3 MS. BALLARD: That was never explained.

4 Q "Where are the lines that you're saying put the
5 municipality into 12?"

6 A Existing patterns."

7 Q "Put into 13?"

8 A They're forming on the computer."

9 Q "But you've already gotten something that's a start from
10 the legislative process about possible maps, am I right?"

11 A No."

12 Q "Okay. What do you have from the legislative process?"

13 A It could be parts."

14 Q "I mean you're part of the state."

15 A Again, it could be components of a map."

16 Q "Okay. A few districts you're saying?"

17 A It could be discussions on a district in pointing a County
18 in. I don't need a map to say put County A into District one.
19 I can see that on my computer screen it has done that way."

20 Q "How do you know what the discussions are? There's lots of
21 discussions that you're talking about."

22 A Just communication."

23 Q "From whom?"

24 A From the stakeholders involved."

25 Q "Do they communicate with you directly or did they have one

1 person who funneled their discussions to you?

2 A It was various ways."

3 Q "All right. So you're receiving something that's the
4 result of discussions with the stakeholders about what they
5 want and what they don't want, am I right?

6 A Correct."

7 Q "Okay. And are you starting to develop a sample map that
8 tries to incorporate what these discussions indicate about what
9 the Congressmen want and don't want?

10 A We can put in parcel parts of maps of the map."

11 Q "Okay. So you take a parcel part of the map based on what
12 the Congressman wants and you put it into the computer?

13 A I'm not receiving the map. Maybe there's some confusion
14 here."

15 Q "There's a suggestion, I'm sorry, okay.

16 A There's a suggestion that I'm receiving maps and it's going
17 into the computer. The computer screen, if you would give me
18 10 counties you want in the district, I can see the 10 counties
19 on my screen. I don't need a map to show me the 10 counties."

20 Q "Okay. But how do you know what 10 counties the
21 Congressman want in a district?

22 A That can filter through discussions."

23 Q "Now, in some of these filtered through discussions came to
24 you?

25 A Yes."

1 Q "So you know there's a possible district can contain
2 certain counties as a result of what different Congressman want
3 and you try out different possible outcomes to know what
4 municipalities to put in different outlines?

5 A There's really only one map that may be tweaked around the
6 edges."

7 Q "You said you don't receive a map. How do you develop that
8 map? How do you get something up on the screen to put the
9 municipalities into?

10 A Through consultations with the stakeholders."

11 Q "The stakeholders don't all want the same thing, am I
12 right?

13 A I don't recall."

14 Q "You don't?

15 A I don't recall."

16 Q "All right. Do you recall ever having, trying one possible
17 map that addresses what the stakeholders have told you, putting
18 the municipalities in and then trying a different possible map?

19 A There may have been adjustments made."

20 Q "Okay. And what role did your work, what role in your work
21 did the partisan data play?

22 A It was just one of the factors involved."

23 Q "I know, but what role did you, you had the partisan data
24 in the computer. When did you put the municipalities into the
25 arrangement that you've learned that the Congressman wanted,

1 I'm sorry. When you put the municipalities into the
2 arrangement, that you learned that the Congressman wanted, did
3 you also get a result that shows something about partisan data
4 about that what you had on the screen in addition to the
5 population data?"

6 MS. GALLAGHER: Okay, I'm going to object,
7 mischaracterizing the witness' testimony. He has never said he
8 has drawn a map based on what Congressmen want. That's what
9 you keep trying to get him to say.

10 JUDGE SMITH: And she says okay, fair enough. States
11 another question.

12 Q "You get information from the State Legislators and the
13 Congressmen about what they want, am I right?

14 A Yes, they're part of the stakeholders."

15 Q "And who else?

16 A There's leadership staff. There's negotiations with
17 Senate."

18 Q "All right. So you get information from all of the
19 stakeholders, am I right?

20 A Yes."

21 Q "Lots of information they're giving you but doesn't make it
22 clear what you should put on your computer screen, right?

23 A I wouldn't characterize it that way."

24 Q "How would you characterize how you decide what to put on
25 your computer screen based on all of the input you get from all

1 of the stakeholders?

2 A It's what agreements were reached."

3 Q "All right.

4 A To what goes in."

5 Q "So by the time you're getting something to put up on a
6 screen, already the result of a bunch of agreements, right?

7 A In many instances."

8 Q "In every instance?

9 A I can't recall if every."

10 Q "But even as a result, all their agreements, it's not
11 completely determined what shape you're going to put on your
12 screen, right?

13 A You would completely determined, no."

14 Q "All right. Sometimes these maps will divide a
15 municipality into two pieces, right? There's a split?

16 A Yes."

17 Q "When you get all of this information from the
18 stakeholders, have they already told you how to split a
19 municipality?

20 A I don't recall specific instances."

21 Q "Do you recall any instances where the information you have
22 from the stakeholders included the lines of the splits that
23 resulted came out from the 2011 map?

24 A I don't recall."

25 Q "You really don't recall anything about that?

1 A I don't recall receiving information on splits."

2 Q "The 2011 map though that was produced ultimately has
3 splits, how did they get in there?

4 A Population."

5 Q "That's all?

6 A From my perspective, population to get each district on
7 target."

8 Q "There's more than one way to get a certain number of
9 people from one district to another, to generate a full
10 confirmation, right?

11 A Yes."

12 Q "You can split, or you can get a section of people in the
13 neighboring county or something like that. There's lots of
14 ways to do it, am I right?

15 A Yes."

16 Q "Okay. How did you decide how to do it?

17 A It's just the result of those consultations and driven by
18 voting rights, driven by population, driven by income and
19 residency, driven by seat loss. It goes back to those
20 factors."

21 Q "And is it also driven by what the stakeholders told you
22 about what they wanted?

23 A If there's an agreement reached."

24 Q "There's no agreement reached, how do you draw a line to
25 split the municipality?

1 A Based on population."

2 Q "You decide what possible lines to draw based on
3 population. You just agreed splitting a municipality, you can
4 take a bunch of people from here, put them there, there's more
5 than one way to do it. If you don't have an agreement, how do
6 you decide to do it?

7 A Based on again population, existing patterns of
8 representation where the incumbents reside. Those are all
9 factors that we take in."

10 Q "But you've also got something in the program about splits,
11 right?

12 A A visual, you can see when it splits."

13 Q "That's all?

14 A Yeah, as you're creating a map."

15 Q "You haven't told the computer to create something to try
16 to minimize the number of splits.

17 A No, I don't think it was, it could be done."

18 Q "All right."

19 JUDGE SMITH: Answer?

20 MR. PERSON: Oh, I'm sorry.

21 MS. BALLARD: Line 14.

22 MR. PERSON: Page 53.

23 JUDGE SMITH: Yes.

24 MR. PERSON: Or beyond my skill level.

25 JUDGE SMITH: Correct.

1 Q "Okay. So is it fair for me to say by the time the
2 challenge of creating map comes to you, whatever you're
3 receiving already reflects what the stakeholders want.

4 A In many instances."

5 Q "What do you mean by many instances?"

6 A I can't recall in every instance that it reflects what they
7 want. I don't know."

8 Q "And this is a result of stakeholders on the Republican
9 side of the legislative --

10 MS. GALLAGHER: Objection, foundation.

11 JUDGE SMITH: Overruled.

12 A "From my perspective, yes. I don't know what consultations
13 between Republicans and Democrats occurred at a leadership
14 level."

15 Q "Okay. Did you have any consultants working with you in
16 your job putting the municipalities into the districts and
17 having the computer tell you how that results in population?

18 A No."

19 Q "Did you ever work with any consultants in process of
20 making --

21 A No."

22 MS. BALLARD: Page 55, line 19.

23 Q "Have you ever heard of a project called Red Map?"

24 A Yes."

25 Q "What is it?"

1 A I don't really know."

2 Q "What do you sort of know?

3 A I've read about them in the newspapers."

4 Q "Okay. Have you ever heard anything about the red map was
5 involved in any way in Pennsylvania redistrict?

6 A I have no knowledge of their involvement."

7 Q "Has anybody from the caucus ever suggest to you that you
8 contact Hoefeller (phonetic)?

9 A Not that I recall, no."

10 Q "Do you know whether anybody from the caucus themselves
11 contacted Hoefeller?

12 A I don't know."

13 Q "And what about Jankowsky (phonetic), do you know whether
14 caucus ever suggested to you that you contact Jankowsky?

15 A No."

16 Q "Okay. And do you know if anyone office or their staff
17 contacted Jankowsky?

18 A I don't know."

19 Q "After you and your staff created the first map that you
20 would create after you received input that the legislators
21 stated federal (inaudible - coughing). Let's take the first
22 map that you would produce. What would you do with it?

23 A That would be if anybody requested to see the map."

24 Q "Okay. Did anybody ever request to see the map?

25 A If they were, well, yes."

1 Q "How do you know?"

2 A Because there were meetings, consultations and again, it
3 goes to the legislative process. We need to round up votes."

4 Q "All right. Did any of these maps come back to you?"

5 A I don't recall that there were plural maps. I don't recall
6 whether they came back or not."

7 Q "Do you remember whether any map ever came back to you to
8 be reworked after you had provided it to the Republican
9 Congress?"

10 A In the digital age it's not necessarily that paper maps are
11 going back and forth. It could have been after again the
12 consultations that verbally suggested changes were made."

13 Q "Okay, verbally meaning somebody called you and suggest
14 making a change?"

15 A Called me, emailed me, I don't recall."

16 Q "Who do you recall if anyone ever called you or emailed
17 you?"

18 A I don't recall specific instances but it could have been
19 leaders or leadership staff."

20 Q "All right. And this communication would include a
21 suggestion or change."

22 A It could."

23 Q "Do you remember whether it ever did?"

24 A I don't recall."

25 Q "And then if you recall would you make that change?"

1 JUDGE SMITH: And then there is an objection.

2 MS. BALLARD: Which I think is crossed off. Just keep
3 going.

4 JUDGE SMITH: Very well.

5 A "If there was a suggestion I can make the change, yes."

6 Q "Okay. And then what would you do with the change?"

7 A I could leave it in the computer."

8 Q "Oh, I'm sorry."

9 JUDGE SMITH: I'm curious as to what the X's mean?
10 That's why I indicated that there was an objection. I didn't
11 know whether the following so many lines would it be read or
12 not.

13 MS. BALLARD: Here's what the X's mean, Your Honor.
14 Actually, -- Redline down the side, that's our --

15 JUDGE SMITH: Right, I know that.

16 MS. BALLARD: So why don't you go with page 59, Mr.
17 Witness?

18 A "Not necessarily. I would send information back to the
19 caucus."

20 Q "Okay. So the caucus sends you information suggesting they
21 make you make a change. You make the change. Then what?"

22 MS. GALLAGHER: Objection, speculation.

23 JUDGE SMITH: Overruled.

24 A "Which I don't know what they would be."

25 MS. BALLARD: I think you skipped one.

1 A "Then we move on to whatever the next issue is in the map."

2 Q "Which?"

3 A Which I don't know what they would be."

4 Q "Did anyone give you any instructions when you were asking
5 the computer to generate the first map about how to prioritize
6 the, as you said many factors that would go into the map?"

7 A I don't recall."

8 Q "Are you aware of any limitations that you were permitted
9 to put on the use of the factors in terms of their importance?"

10 A I don't recall any limitations."

11 Q "Did you in connection with producing your first map looked
12 at all based on the elections data, partisan elections data,
13 did you look at all of the percentage of past election
14 performance, Republican and Democrat and the district as a
15 whole based on the partisan data that you have?"

16 A Percentages? No."

17 Q "Anything, any results of the partisan data, did you use
18 any partisan data that influenced your view of the results that
19 came out of the computer?"

20 A For me, no."

21 Q "For anyone?"

22 A I don't recall."

23 Q "Do you recall whether when you gave the map, first map
24 that you produced to the caucus, did it include any reflection
25 of the partisan data?"

1 A I don't recall partisan data being there."

2 MS. BALLARD: So why don't we mark this -- If I can
3 just have a moment, Your Honor? All right, Your Honor, I'm
4 sure this is in our exhibit book but I can't put my finger on
5 it.

6 JUDGE SMITH: This is the Schaller 2 that is appended
7 to the deposition transcript?

8 MS. BALLARD: Yes, if you have it.

9 MR. TORCHINSKY: Excuse me, Your Honor, I don't
10 believe that this in the plaintiff's exhibit list or in the
11 exhibits that were introduced yesterday.

12 MS. BALLARD: That's possible that it's not.

13 JUDGE SMITH: I know in going through my binder, I
14 have not seen this one. I saw I believe some other expenses or
15 some other travel vouchers, but not this one. The mere fact
16 that we didn't have it yesterday, I don't regard as
17 dispositive.

18 MS. BALLARD: Right. I really could use a short
19 break.

20 MR. TORCHINSKY: Your Honor, if I can make a
21 suggestion. Why don't we just complete reading the
22 transcripts? I think, I'm assuming as we go through the
23 transcript the questions will make fairly obvious what the
24 document is and then we can deal with the document question at
25 a later time.

1 JUDGE SMITH: I think that's a good suggestion there.
2 There are only about 20 more pages in the document.

3 MR. TORCHINSKY: Thank you, Your Honor.

4 JUDGE SMITH: Or less. I think it would be good for
5 all of us to complete it. We'll rule later.

6 MS. BALLARD: Page 60, line 23.

7 Q "Do you know what this is, Schaller Exhibit 2?

8 A Travel expense reimbursements."

9 Q "This is a travel, request for immediate for a travel
10 expense that you put into the House of Representatives office
11 of the controller?

12 A Yes."

13 Q "And do you know what the travel consisted of?

14 A State government committee hearing on redistricting and
15 meetings with Congressman to discuss redistricting."

16 Q "Okay. Let's start at the bottom, March 30th, 2011
17 meeting. Discussion with Congressmen to, I'm going to withdraw
18 that. The March 30th entry at the bottom says that you
19 attended a meeting. You attended redistricting in discussions
20 with Congressmen, right?

21 A Yes."

22 Q "That was a Republican Congress?

23 A Yes."

24 Q "No Democratic Congressman.

25 A No."

1 Q "What did you hear at this meeting?

2 A I don't recall."

3 MS. GALLAGHER: Objection, calls for hearsay.

4 JUDGE SMITH: Overruled.

5 Q "You don't recall anything?

6 A No, I don't recall any specifics."

7 Q "Do you recall coming out of this meeting or any meeting --

8 UNIDENTIFIED: This was not designated.

9 MS. BALLARD: Oh, I'm so sorry.

10 JUDGE SMITH: That's not designated.

11 MS. BALLARD: I realize that.

12 JUDGE SMITH: Bottom of page 63.

13 MS. BALLARD: Bottom of 63.

14 Q "And what is Schaller's at 3 if you know?

15 A I don't know what this is."

16 Q "Have you ever seen anything like it?

17 A I may have."

18 (Counsel confer)

19 Q "Have you ever seen anything like it on down at the bottom
20 of 63?

21 A I may have."

22 Q "When?

23 A 2011."

24 Q "In the process of drawing the maps?

25 A Sometime in 2011, I don't know when."

1 Q "Before or after the final map came out?

2 A It would have been before."

3 Q "Would it have been something that you received?

4 A I may have received it, yes."

5 Q "Did you or didn't you receive it, Mr. Schaller?

6 A Well, I can't, when I zoomed in on an area, I can't, you're
7 asking me to remember specifics."

8 Q "I'll represent to you --

9 A Plus I'm having trouble with, this is all like one color to
10 me."

11 Q "This is all one color to you?

12 A No, I mean this coming down like that."

13 Q "Okay. So you're talking about the gray that's all one
14 color?

15 A Yeah."

16 Q "I see two different House numbers on it.

17 A And I see two different House numbers on it."

18 Q "All right. Can you agree with me that the darkest part
19 number 14 is probably the area around Pittsburgh?

20 A Yes."

21 Q "Including Pittsburgh?

22 A Yes."

23 Q "All right. And this number 14 does not look like the
24 final District 14 in the map.

25 A No."

1 Q "It doesn't look like?

2 A No."

3 Q "The final district had an extension of the Ohio River,
4 right?

5 A It had a different shape, yeah."

6 Q "Okay. So you saw this before the 2011 map you think?

7 A I believe so."

8 Q "All right. What does CD 18 maximized mean?

9 A I don't know."

10 Q "Have you ever seen that expression before CD 18 maximized?

11 A I don't recall."

12 Q "How about the word maximized in connection with the map?

13 A I don't recall."

14 Q "Let's look at the numbers over in the upper left hand
15 corner, number 1D28.80. What's that?

16 A I believe these are what is called the Cook voting index
17 (phonetic). I'm not exactly sure of the title."

18 Q "And what does the 28.8 symbolize or signify, next to the
19 letter E."

20 MS. GALLAGHER: Objection, calls for information that
21 has not been, we haven't laid a foundation that he has this
22 information.

23 JUDGE SMITH: And he indicates he's not familiar with
24 it anyway.

25 A "I'm not familiar with the voting index."

1 Q "You know who receives Schaller 3 before the final map was
2 drawn?

3 A It may have come into my possession."

4 Q "Where did it come from?

5 A I don't recall."

6 Q "Do you remember whether you ever used any voting, I'm
7 sorry, what did you call these numbers up there, voting
8 something index?"

9 MS. GALLAGHER: Objection.

10 A "I don't know the exact title of it."

11 Q "Okay. Should we just call it the voting index for now?

12 A If you want to."

13 Q "And did they tell you something about past performance in
14 any particular area of the Republicans and Democrats and
15 elections?"

16 MS. GALLAGHER: Objection, calls for speculation.

17 JUDGE SMITH: Sustained, but not on those grounds.

18 MS. BALLARD: I start off again with 67, line 16,
19 Your Honor?

20 Q "Does the number D28.8 indicate to you that something
21 labeled number one Democrats performed very well?"

22 MS. GALLAGHER: Objection, calls for speculation.

23 JUDGE SMITH: Overruled. He may answer.

24 A "One can make that assumption."

25 Q "Well, you're an expert in this map drawing, Mr. Schaller.

1 If you make that assumption, what's it based on?"

2 MS. GALLAGHER: Objection, characterizing this witness
3 as an expert.

4 JUDGE SMITH: Sustained.

5 Q "Well, even if you don't know how that number was arrived
6 at, do you conclude from this that number one, the Democratic
7 voting performance in some past election was accounted for?"

8 MS. GALLAGHER: Objection, calls for speculation.

9 JUDGE SMITH: Overruled. He may answer.

10 A "It's a high number."

11 Q "Compared to the other numbers?"

12 A Compared to the other numbers."

13 Q "All right. Let's look at number 15R1. Does that indicate
14 to you that the Republicans performed better than number 15 to
15 some extent, smaller than the Democratic advantage in number
16 1?"

17 MS. GALLAGHER: Objection, calls for speculation.

18 JUDGE SMITH: Sustained.

19 Q "Going down picking up at page 65, number 19. Do you have
20 any idea whether this map shown in Schaller 3 was ever shown to
21 the Legislators who were giving you information about what they
22 wanted in the map?"

23 A I don't know."

24 Q "Do you know how there was a transition from this map to
25 the actual map you said looked different?"

1 MS. GALLAGHER: Objection.

2 JUDGE SMITH: I don't know what the basis of the
3 objection is. It will be overruled.

4 A "This is not necessarily a starting point or a map that was
5 ever considered to my knowledge."

6 Q "Okay. Ever considered by whom?"

7 A Ever considered by stakeholders involved or a starting
8 point with me."

9 Q "Okay. I think that you can be certain that this map was
10 never considered by your team?"

11 A For me and my staff, I can be certain it wasn't considered
12 by me."

13 Q "Do you know whether it was ever considered by your staff?"

14 A I don't recall."

15 Q "And do you know whether it was ever considered by the
16 staffers?"

17 A I don't know."

18 Q "Let me ask you with regard to any map that had a title
19 that included maximize and that had that kind of information
20 that's in the upper left hand corner, the number D another
21 number the next line and the number possibly an R, another
22 number that kind of information we're looking at up in the
23 corner. If you think might have been the voting index have you
24 ever seen another map, any map that included the word maximized
25 and the voting index information?"

1 A I don't recall seeing maps with both."

2 Q "Do you recall seeing any maps that indicate there's
3 something about this map that's maximized?

4 A I don't recall seeing anything."

5 Q "You don't recall seeing anything voting index range by
6 potential district boundaries?"

7 MS. GALLAGHER: Object to form. Is there a timeframe
8 you're focused on, counsel?

9 MS. BALLARD: Ever.

10 A "Could you repeat the question?"

11 Q "Do you ever recall seeing a map that contained the word
12 maximize, sorry, that contained the kind of voting index data
13 that's contained on this map in the upper left hand corner?

14 A Yes."

15 Q "You did, all right. And what stage of the process did you
16 see such a map for the 2011 process?

17 A When the map was being completed."

18 Q "When the map was completed.

19 A When the map was completed."

20 Q "Can you agree with me that this map was not the same map
21 that was completed?

22 A Yes."

23 Q "Did you ever see one that's different from the map that
24 was ultimately completed contained voting index numbers in the
25 upper left hand corner?

1 A I don't recall."

2 Q "The map that you saw that had the voting index numbers
3 after the completion of the 2011 map, did you notice that the
4 voting index numbers or for each of the draw in districts?

5 A Yes."

6 Q "All right. And did you notice which of the districts have
7 a slight Republican majority or performance, a large one, or a
8 Democratic small advantage or performance and the ones that
9 have a larger advantage or performance, right? Do you remember
10 that?

11 A For the 2011 map? Yes."

12 Q "And what did you do with that information?

13 A It was compiled and presented to various stakeholders
14 involved."

15 Q "And that as far as your recollection is that it was
16 compiled and presented to the various stakeholders involved
17 after the completion of the 2011 map, right?

18 A Yes."

19 Q "And you don't remember whether it was compiled and given
20 to the various stakeholders before the completion of the 2011
21 map?

22 A I don't recall."

23 Q "And do you have any knowledge of where this map came from?

24 A Without seeing the whole map, it's hard to recall."

25 Q "Well, this particular Schaller number 3 contains portions

1 of the State that was included in your area?

2 A Yes."

3 Q "Okay. And can you agree with me, Mr. Schaller, that
4 whoever created this map had the same data that you had?"

5 MS. GALLAGHER: Objection, calls for speculation.

6 JUDGE SMITH: Sustained.

7 Q "Do you know, do you agree with me that they have the
8 partisan election data that you had?"

9 MS. GALLAGHER: Objection, calls for speculation.

10 JUDGE SMITH: Sustained.

11 Q "Do you know how they could have come out with the voter
12 index without the election results?"

13 MS. GALLAGHER: Objection, same grounds.

14 JUDGE SMITH: I'll overrule that objection.

15 A "It's probably but I don't know what election results."

16 Q "They must have had some election results.

17 A They may have."

18 Q "They must have had some information about population,
19 right?"

20 MS. GALLAGHER: Objection.

21 JUDGE SMITH: Sustained.

22 Q "All right. You don't know who they are.

23 A Without seeing the whole map, I don't know. I can't recall
24 this."

25 Q "Do you think there is a whole map?"

1 A I don't, based on this district five, there might be other
2 parts of it."

3 Q "Okay. And how would a whole map help you?

4 A To be able to see the whole map."

5 Q "What difference would that make in your ability to
6 determine whoever made this map had the population data?

7 A That's the assumption that these districts are drawn to
8 exact population."

9 Q "Let me see if I can summarize, Mr. Schaller. Am I correct
10 that your job in connection with drawing the district lines
11 involve making only adjustments for population?

12 A No, not only adjustments."

13 Q "What else did your job involve in terms of drawing lines?

14 A Taking the input from the various stakeholders and forming
15 a map."

16 Q "Forming a map based on all of the factors you've listed?

17 A They're all considered factors, yes."

18 Q "How did you consider that?

19 A There were, I'm not sure I understand the question how."

20 Q "Mr. Schaller, you had this census data, you had the
21 election data. You had the location of (inaudible). Had the
22 information from the stakeholders about what they wanted, what
23 they didn't want. I believe you've agreed with me that with
24 that information you could have come out with more than one
25 map.

1 A It's possible, yes."

2 Q "How did you decide what map to come out with given all
3 those factors to consider?

4 A Based on consultations on how the districts should be put
5 together from the negotiations and discussions with the
6 stakeholders."

7 Q "With the Republican stakeholders, am I right.

8 A Republican stakeholdings."

9 Q "Is that fair for me to say that information you got about
10 the discussions among the Republican stakeholders and that
11 legislative process was probably the most important factor that
12 you used drawing a map --

13 MS. GALLAGHER: Objection.

14 JUDGE SMITH: Overruled.

15 A "Yes, I would say so."

16 MS. BALLARD: That's it, Your Honor.

17 JUDGE SMITH: All right. We've reached a point where
18 we are going to adjourn for the day. We still need to complete
19 the plaintiff's case. There will be other designations placed
20 in the record tomorrow but we will not be having them read on a
21 Q & A basis since we have previous to. I think what the panel
22 would like is a way of providing context for us is that counsel
23 provide some brief description if you will, is that the will of
24 the panel as to three witnesses essentially what they are
25 called for just very briefly what they say, not a reading of

1 the transcript. And then the transcripts will be placed into
2 the record and when the panel will read them.

3 I would also ask that a copy of the designated
4 deposition transcripts which were used this afternoon be marked
5 as exhibits and that we also do some final housekeeping, have
6 them admitted. There are at least the documents at Exhibit 33
7 which have not yet been ruled upon which I would like to get to
8 tomorrow as well before the plaintiff rests. These are various
9 emails and having read through some of them, and speaking only
10 for myself, I'm not sure the context of some of them. A few of
11 them are duplicative at least in that context. So we'll need
12 to go through them seriatim, mark them as 33A, B, C and so
13 forth and have them moved. Anything else?

14 JUDGE SHWARTZ: Just to be sure everybody is clear.
15 Our desire is to close the evidentiary record in the morning so
16 we expect that you would have all the depositions ready to go
17 and because we didn't get on the record that you in fact have
18 them available and can present them tomorrow morning. We just
19 want to hear from you to know that that can be done.

20 JUDGE SMITH: And to add to that, we want to make sure
21 that we have the plaintiff's evidentiary record complete so
22 that plaintiff may rest at which point we do understand that
23 the defense will want to interpose a Rule 50 objection, we can
24 discuss that tomorrow.

25 MR. PASZAMANT: So just so I'm clear, Your Honor,

1 you're not expecting that to the extent for example, I did a
2 direct examination of Mr. Arneson and we will give you that
3 tomorrow morning.

4 JUDGE SMITH: I'm not sure --

5 JUDGE SHWARTZ: Can I ask it in a hypothetical
6 fashion? Hypothetically if the Rule 50 motion is not either
7 ruled upon or if it's reserved or not ruled upon in your favor,
8 would you then expect to be introducing evidence beyond the
9 expert that we heard from today and if so could you just give
10 us an idea of what we would hear?

11 MR. PASZAMANT: Yes, Your Honor, I would. I would
12 expect that we would be introducing some of the transcript
13 testimony for Mr. Arneson that lies beyond page 93, that's what
14 I would expect.

15 MS. GALLAGHER: We will do the same for Mr. Schaller.

16 JUDGE SMITH: Good enough. I mean that certainly
17 should not be a problem.

18 JUDGE SHWARTZ: And is there any other evidence and
19 we're doing this in part for planning purposes?

20 MR. PASZAMANT: I think the only other things that
21 come to mind is that Representative Vitale was deposed. I
22 expect the plaintiffs want to introduce some of that testimony.
23 We would want to introduce some of that as well if we had to
24 present our case and the same would also hold true, although I
25 didn't attend the deposition but I'm assuming that will be the

1 case for Senator Leach. Those are the ones that come to mind.

2 JUDGE SMITH: Let's ask the plaintiff to indicate
3 specifically everything they intend to place into evidence
4 and/or the record before they rest.

5 MR. GORDON: I'll try, Your Honor. We intend to
6 introduce the deposition or designated portions of the
7 deposition of Representative Vitale, Senator Leach. We have a
8 very small housekeeping item. This is a copy of we intend to
9 add an additional day of the House of the Commonwealth of
10 Pennsylvania their deliberations on Senate Bill 1249.

11 JUDGE SMITH: Has the defense seen this?

12 MR. GORDON: They've seen it. They agree it's a
13 matter of public record and they agree we're going to have that
14 marked as 35. I can hand it up now or tomorrow.

15 JUDGE SMITH: We'll do it tomorrow.

16 MR. GORDON: We intend to, the remaining plaintiffs
17 have been in deposition and we'll summarize as I understand the
18 highlights of each deposition so you know what each one
19 contains in terms of a fair summary, sort of like an offer of
20 proof except for those matters.

21 MR. PASZAMANT: Just an administrative question. In
22 terms of the transcripts, and the designations within the
23 transcripts I recall one of the procedural orders talked about
24 different colors, yellows and blues perhaps. I don't recall
25 all that was in there. Am I wrong, Judge Baylson?

1 JUDGE BAYLSON: I don't recall that.

2 MR. PASZAMANT: Then maybe I'm thinking of another
3 case. You know we've got a couple of things going on. Setting
4 that aside, is there a preference, is it a hard copy you would
5 like of the transcripts? Would you like them electronic?

6 JUDGE SMITH: I had in mind hard copies and my
7 colleagues say likewise.

8 MR. PASZAMANT: Very good. Thank you.

9 MR. GORDON: One other we've been planning for both
10 sides or all sides. Is there going to be closing argument in
11 this matter?

12 JUDGE SMITH: As long as things move at the pace that
13 we anticipate tomorrow and you know if the matter proceeds
14 beyond the Rule 50 stage, yes. We're assuming that, the panel
15 I know would want to hear oral argument.

16 MR. TORCHINSKY: Excuse me, Your Honor, I'm not sure
17 that our closing argument and our Rule 50 arguments are going
18 to be very different from each other. In light of the fact
19 that our experts have basically already been presented to the
20 panel and you know we've got a couple more designations, I
21 don't anticipate a real distinction between a closing argument
22 that would occur at the conclusion of the defense case and a
23 Rule 50 motion. I don't know if the Court wants to take that
24 into account.

25 JUDGE SMITH: Let the panel discuss that and why don't

1 we figure that out tomorrow? Interestingly, the panel has
2 already had some procedural discussion on that very point and
3 we've gone back and forth on it. So let's discuss tomorrow
4 whether we should compact the two or whether you want to do it
5 separately or how we should go about it.

6 MR. TORCHINSKY: And Your Honor, is the Court going to
7 ask the plaintiffs to respond to the Rule 50/52 motion we filed
8 earlier today in writing?

9 JUDGE SMITH: Well, they don't have to respond in
10 writing but I would certainly expect they would want to respond
11 at least here in open court.

12 MR. GORDON: Just also make it clear that we had
13 intended to have Tom Geoghegan argue the Rule 50 motion and I
14 was going to do the closing, to integrate all of the evidence
15 you've heard, marshal it, I'm happy to do it in certain time
16 limits but I think it's important and it would afford insight.

17 JUDGE SMITH: I already said we want to hear closing
18 argument, counsel, no question about that. We'll see how we
19 move along tomorrow and then decide whether time, any time
20 constraints are called for. We'll deal with those housekeeping
21 matters tomorrow. Mr. Aronchick, you've been extremely
22 restrained or at least quiet today and I don't want you to
23 leave with the sense that you've been ignored in any way.

24 MR. ARONCHICK: I don't think I have been. I intend
25 to address the Court tomorrow.

1 JUDGE SMITH: Very well. Thank you very much. All
2 right with that said, we will reconvene tomorrow at 9 a.m.

3 * * *

4
5
6 C E R T I F I C A T I O N

7
8 I, Tracy Gribben, court approved transcriber,
9 certify that the foregoing is a correct transcript from the
10 official electronic sound recording of the proceedings in the
11 above-entitled matter.

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13
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DATE

20