

EXHIBIT R

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

-----x

O. JOHN BENISEK, et al.,

Case No. 13-cv-3233

Plaintiff(s),

v.

LINDA H. LAMONE, et al.,

Defendant(s).

-----x

VIDEOTAPED DEPOSITION OF WILLIAM S. COOPER

Washington, D.C.

May 23, 2017

Reported by: Linda S. Kinkade RDR CRR RMR RPR CSR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 WILLIAM S. COOPER
2 May 23, 2017
3 9:37 a.m.
4
5 The following is the transcript of the
6 videotaped deposition of WILLIAM S. COOPER held at
7 the offices of Mayer Brown LLP, 1999 K Street, NW,
8 Washington, DC 20006, and reported by Linda S.
9 Kinkade, RDR, CRR, RMR, RPR, CSR, and Notary Public
10 within and for the District of Columbia.
11
12
13
14
15
16
17
18
19
20
21
22

Page 2

1 APPEARANCES:
2 On Behalf of Plaintiff:
3 Mayer Brown LLP
4 1999 K Street, NW
5 Washington, DC 20006
6 T 202.263.3221
7 By: Stephen M. Medlock
8 smedlock@mayerbrown.com
9 By: Michael B. Kimberly
10 mkimberly@mayerbrown.com
11
12 On Behalf of the State of Maryland and the Witness:
13 Office of the Attorney General
14 200 St. Paul Place
15 Baltimore, Maryland 21202
16 T 410.576.7005
17 By: Jennifer L. Katz
18 jkatz@oag.state.md.us
19
20 Also present:
21 Nhat Pham, Video Operator
22

Page 3

1 INDEX OF EXAMINATION
2 EXAMINATION OF WILLIAM S. COOPER PAGE
3 BY MR. MEDLOCK 8
4
5 E X H I B I T S
6 NO. DESCRIPTION PAGE
7 Exhibit 157 Declaration of William S. Cooper.. 22
8 Exhibit 158 Corrected version of Population .. 58
9 Summary Report
10 Exhibit 159 Brief in Opposition to Petition .. 64
11 for Writ of Certiorari
12
13
14
15
16
17
18
19
20
21
22

Page 4

1 PROCEEDINGS
2 VIDEO SPECIALIST: This is the videotaped
3 deposition of William S. Cooper, in the matter of O.
4 John Benisek, et al. v. Linda H. Lamone, et al., in
5 the United States District Court for the District of
6 Maryland, case number 13-CV-3233.
7 This deposition is being held at 1999 K
8 Street, northwest, Washington, D.C. The date is May
9 23rd, 2017. The time is 9:37. My name is Nhat Pham
10 on behalf of Digital Evidence Group. Our court
11 reporter is Linda Kinkade also on behalf of Digital
12 Evidence Group.
13 Will counsel please introduce themselves and
14 state who you represent.
15 MR. MEDLOCK: Yes. Stephen Medlock, and
16 with me is Michael Kimberly, and we represent the
17 plaintiffs in this case.
18 MS. KATZ: Jennifer Katz, Attorney
19 General's Office, representing the defendants.
20 VIDEO SPECIALIST: Will the court reporter
21 please swear in the witness.
22 WILLIAM S. COOPER,
having been first duly sworn, was
thereafter examined and testified as follows:

Page 5

1 EXAMINATION
2 BY MR. MEDLOCK:
3 Q. Good morning, Mr. Cooper.
4 A. Good morning.
5 Q. We were introduced off the record, but can
6 you please state and spell your full name for the
7 record?
8 A. My name is William S. Cooper,
9 W-I-L-L-I-A-M, S period, C-O-O-P-E-R.
10 Q. Mr. Cooper, am I correct that you've been
11 in a fair number of depositions before?
12 A. I have.
13 Q. Okay. Since this isn't your first rodeo,
14 I'll skip all the formalities, but if you don't
15 understand my question at any point, please tell me
16 and I'll try and correct it. Okay?
17 A. Certainly.
18 Q. Okay. Have you met with anyone to prepare
19 for this deposition?
20 A. Briefly spoke with Jennifer Katz over the
21 phone yesterday but no significant preparation.
22 Q. When you say briefly spoke over the phone

Page 6

1 with Jennifer Katz yesterday, how long did you speak
2 over the phone?
3 A. Maybe five minutes.
4 Q. Okay. Beyond that phone conversation with
5 Ms. Katz, did you do anything else to prepare for
6 today's deposition?
7 A. The day before yesterday I reread my
8 declaration that was prepared about three weeks ago,
9 and that's the extent, although I did see the
10 experts' replies that were produced last evening by
11 your side, so I quickly skimmed over those.
12 Q. Okay. In total how much time do you think
13 you spent preparing for your deposition today?
14 A. An hour a day or so ago, and I guess you
15 could say an hour last night in Front Royal.
16 Q. Okay. So two hours total?
17 A. Right.
18 Q. Did you review any documents besides your
19 own report and the reply reports that were submitted
20 last night?
21 A. No, I have not seen the original reports
22 filed by the State -- by the plaintiffs' experts.

Page 7

1 Q. When you say you haven't seen the original
2 reports submitted by the plaintiffs, does that mean
3 you haven't seen them at all or you didn't review
4 them for your preparation for the deposition?
5 A. I have not received them. I've not
6 reviewed them. I've not seen them.
7 Q. Okay. So that's it. You've never seen
8 them.
9 A. Never.
10 Q. So you've never seen the original expert
11 report of Professor McDonald?
12 A. Of Professor McDonald, no, I did not.
13 Q. And you've never seen the original expert
14 of Dr. Morrison; is that correct?
15 A. No, I did not.
16 Q. So you're not in a position to critique
17 the opinions offered by Professor McDonald in his
18 original report; is that right?
19 A. I was not asked to critique those
20 opinions, and I'm not in a position to fully critique
21 them, no.
22 Q. And you're not in a position to critique

Page 8

1 the opinions offered in Dr. Morrison's original
2 report either; is that correct?
3 A. No, other than perhaps through some
4 responses perhaps that might have shown up in
5 Dr. Morrison's response to his original report, as
6 well as Dr. McDonald's, but, again, my role in this
7 case, as I understand it, has been very limited just
8 to produce the exhibits that are attached to my
9 declaration that was filed three weeks ago.
10 Q. Have you spoken to any other testifying
11 experts in this matter?
12 A. Only Dr. Lichtman early on who called and
13 requested that I produce a plan that would have
14 resulted in a democratic majority in all eight of the
15 congressional districts, which I called the 8-0 Plan
16 what was attached to my declaration.
17 Q. Okay. When you say Dr. Lichtman reached
18 out to you early on, when did Dr. Lichtman reach out
19 to you?
20 A. Early on for me would have been around the
21 10th of April.
22 Q. 10th of April. Okay. And how long did --

Page 9

1 how did that conversation take place? This was it
2 over the phone, in person, email?
3 A. Over the phone. He had just called -- he
4 called and described the case and assigned that task
5 to me, which was to produce an 8-0 Plan, and that was
6 the extent of it.
7 Q. Sure. How long did that phone
8 conversation with Dr. Lichtman last?
9 A. You know, it might have lasted ten
10 minutes. We are both experts in another case in
11 Terrebonne Parish, Louisiana, so I had just seen him
12 prior to that phone call. So I'm not sure if we
13 really talked the entire time about -- about the
14 Maryland Congressional case.
15 Q. So out of that ten-minute phone call, some
16 percentage of it may have actually been about another
17 case?
18 A. Could have been. Could have been.
19 Q. Can you estimate for me what percentage of
20 that ten-minute phone call was actually spent
21 speaking about this case in Maryland?
22 A. No. Well, I really have very little

Page 10

1 recollection of the context of the call other than
2 his request that I take a look at the adopted plan
3 and develop a new plan that would have a 8-0 partisan
4 Democratic majority for the Congressional plan.
5 Q. What did Dr. Lichtman tell you about the
6 case during that phone conversation?
7 A. Very little. I mean, I don't -- I don't
8 specifically recall the details of our conversation,
9 but the objective of the call was to make the request
10 that I produce a plan that had an 8-0 democratic
11 majority. He also stipulated that I should not
12 change Congressional District Six.
13 Q. Okay. Did Dr. Lichtman tell you anything
14 about the legal theories at play in this case?
15 A. No.
16 Q. Did Dr. Lichtman tell you anything about
17 the prior deposition testimony in this case?
18 A. No.
19 Q. Did Dr. Lichtman discuss any of the
20 documents that had been produced in this case?
21 A. No.
22 Q. Did you ask Dr. Lichtman to see any

Page 11

1 deposition testimony before you got involved in the
2 case?
3 A. No.
4 Q. Did you ask Dr. Lichtman to send you any
5 documents that had been produced in this case before
6 you got involved?
7 A. No.
8 Q. Did you ask to see a copy of any of the
9 pleadings in this case before you got involved in the
10 case?
11 A. No.
12 Q. Who actually retained you in this case?
13 Was it Dr. Lichtman or was it the Office of the
14 Attorney General?
15 A. The Office of the Attorney General. They
16 called me later that day or the next day or emailed
17 me and asked me to sign a retainer agreement.
18 Q. Before you signed the retainer agreement,
19 did you ask the Office of the Attorney General any
20 questions regarding the case?
21 A. No, nothing further beyond -- I don't
22 recall if we had a phone conversation or if it was --

Page 12

1 I mean, I think initially -- oh, no, I believe that
2 initially I received an email wondering if I would be
3 available for a brief phone call, and that would have
4 been from Sarah Rice. And beyond that we had the
5 discussion about drafting a plan that had a majority
6 democratic congressional district -- well, eight
7 majority democratic congressional districts, and
8 there was little discussion of details beyond that.
9 Q. You said you got an email from Sarah Rice
10 at the Office of the Attorney General regarding
11 having -- setting up a phone call; is that right?
12 A. Right.
13 Q. To your recollection what day did you get
14 that email on?
15 A. Sometime around the 10th or 11th of April,
16 give or take a couple of days.
17 Q. Okay. Understood. Did Ms. Rice in her
18 email say anything to you about the case other than
19 to ask to set up a phone call?
20 A. That was it, just a phone call.
21 Q. Did she attach any case documents --
22 A. No.

Page 13

1 Q. -- to the email?
2 A. No. As I indicated, the first case
3 documents I really saw for this case would have been
4 the experts' replies that I received last night
5 around 7 or 8:00.
6 Q. Okay. So before 7 or 8:00 last night you
7 haven't seen any documents that were produced in this
8 case; is that right?
9 A. That's correct. I think I went online and
10 saw a brief maybe or something that had been filed in
11 the case sometime ago.
12 Q. Do you know what court that was filed in?
13 A. I don't recall. I think it was the
14 district court, one of the district courts in
15 Maryland. It was not the opinion, I don't believe.
16 And I may have seen a news story about it, but
17 that's -- that's it.
18 Q. Okay. So --
19 A. This is an extremely limited role for me
20 for a lawsuit involving voting.
21 Q. I understand. I want -- I just want to
22 understand the limitations of the role.

Page 14

1 A. Yeah.
2 Q. You said that you had a phone conversation
3 with Ms. Rice before you were retained. Was anyone
4 else on that phone call?
5 A. No.
6 Q. How long did that phone call last?
7 A. Again, I'm just throwing out five minutes
8 because these have not been lengthy discussions.
9 Q. Okay.
10 A. The conversation with Allan Lichtman may
11 have been a little longer, but, again, that was
12 because we had just seen one another in another
13 lawsuit down in Terrebonne Parish, and, you know, you
14 talk about other stuff, so ...
15 Q. What information was relayed to you during
16 that five-minute phone call with Ms. Rice?
17 MS. KATZ: Objection.
18 Q. Go ahead.
19 MS. KATZ: What are you trying to get to?
20 MR. MEDLOCK: These are conversations
21 before he was retained, so Rule 26 wouldn't apply.
22 So I'm just trying to understand what he was told

Page 15

1 before he was retained.
2 MS. KATZ: Okay.
3 A. Well, I think she asked me to send a
4 document that would demonstrate my experience in
5 voting cases, and really I don't think there was much
6 discussion of the content of the case at that point.
7 Q. So she asked you to send a CV to her; is
8 that right?
9 A. Right.
10 Q. Did she state that she would send you any
11 documents before you were retained other than the
12 retention agreement?
13 A. No.
14 Q. Did you ask to see any documents before
15 you were retained?
16 A. No, because it was my understanding at the
17 time that my role was simply to produce an 8-0 Plan.
18 Q. Can you explain to me how producing an 8-0
19 Plan is relevant to the plaintiffs' legal claims in
20 this case?
21 A. No. I'm not a lawyer.
22 Q. Can you explain to me how producing an 8-0

Page 16

1 Plan is at all relevant in this case?
2 A. Well, because my knowledge of the case is
3 very limited, frankly, I cannot other than clearly it
4 would show that a more partisan plan could have been
5 drawn quite easily, assuming this plan is partisan,
6 which I really can't claim one way or the other given
7 my limited role.
8 Q. How does being able to draw an 8-0 Plan
9 shed any light on the claims at issue in this case?
10 A. I don't know.
11 Q. When did you begin drafting your expert
12 report?
13 A. Let's see. Do you know when it was filed?
14 I believe it was filed -- I know. It was filed on a
15 Saturday. Might have been Saturday, or I thought it
16 was going to be filed on a Saturday.
17 I think it was filed on a Monday, wasn't it,
18 Jennifer.
19 Q. I believe it was May 7th.
20 A. May 7th. So I drafted it on May 4th and
21 part of May 5th and emailed it, I think, on Friday,
22 the 5th.

Page 17

1 Q. How many hours did you spend drafting your
2 expert report?
3 A. The report itself, the declaration maybe
4 six hours; the work involving developing the
5 exhibits, probably about 12 or 13 hours.
6 Q. How much total time have you spent
7 consulting on this litigation?
8 A. Well, up to today, I believe it's been
9 about 20 hours, 21 hours probably, not counting
10 today.
11 Q. Okay. So up until today 20 or 21 hours;
12 is that right?
13 A. Right. I don't typically charge for
14 travel time.
15 Q. Good to know. Did you at all discuss your
16 conclusions with former Secretary of State Willis?
17 A. No, I did not.
18 Q. Have you reviewed former Secretary of
19 State Willis's expert submission in this case?
20 A. I have not. Although yesterday I did
21 receive an email from Jennifer in the early
22 afternoon.

Page 18

1 MS. KATZ: Okay. You don't have to -- I
2 would object to giving any information about what we
3 discussed.
4 A. I see. Okay.
5 Q. I don't want to get into anything that
6 you've discussed with counsel since you were
7 retained, but what I do want to know is have you
8 reviewed any of Secretary Willis's submissions in
9 this case?
10 MS. KATZ: If you have, you can answer.
11 A. Well, I've seen a couple of maps that were
12 attached as an appendix to his report, although I
13 didn't really see his report.
14 Q. Okay.
15 A. That was what I was referring to in the
16 previous point about our --
17 Q. Understood. Understood.
18 A. -- conversation or email yesterday.
19 Q. Okay. And, again, I don't want to get
20 into the substance of that conversation. I just want
21 to focus on what you actually received and reviewed
22 from Secretary Willis's submission in this case.

Page 19

1 Did you actually look at the body of his
2 report?
3 A. I did not look at the body, and I really
4 only saw a couple of maps because the email was
5 rejected apparently by my email provider and because
6 of the size of the maps.
7 So I saw a couple of maps that I think showed
8 congressional districts, and I don't even remember
9 what year those particular maps depicted.
10 Q. Do you ever --
11 A. Oh, I know, it was actually -- it was like
12 mid 1800s, I think, which wasn't terribly helpful to
13 me.
14 Q. Why wasn't it terribly helpful to you?
15 A. Well, I found, as I was preparing -- after
16 preparing my report, I did find on the State of
17 Maryland's website a map of the 1972 congressional
18 plan, and I found that to be more helpful because
19 it's more current. At that point in time One Person,
20 One Vote was in effect, so it's in the recent past.
21 Q. So as someone who -- well, let me back up
22 because we haven't talked about your CV yet, but you

Page 20

1 have considerable experience consulting with
2 localities and states regarding redistricting plans,
3 correct?
4 A. Well, the vast majority of work I do is
5 for civil rights organizations, primarily involving
6 Section 2 lawsuits, occasionally One Person, One Vote
7 lawsuits. I've never consulted with a state to
8 develop a redistricting plan. I have consulted with
9 --
10 Q. Litigants?
11 A. -- some local jurisdictions, governing
12 bodies, to develop local plans. In fact I'm
13 currently working with the City of Wenatchee,
14 Washington on developing a plan.
15 Q. So you've consulted with localities and
16 litigants primarily; is that correct?
17 A. Yes.
18 Q. You mentioned that you've worked on
19 Section 2 Voting Rights Act litigation and One
20 Person, One Vote litigation; is that right?
21 A. That's correct.
22 Q. To your knowledge have you ever been

Page 21

1 retained to offer opinions in a First Amendment case?
2 A. No.
3 Q. Do you know if this is a First Amendment
4 case?
5 A. I gathered that from the plaintiffs' reply
6 reports that I saw last evening.
7 Q. When you actually drafted your expert
8 report and submitted it, were you aware that this was
9 a First Amendment case?
10 A. No. I understood it in the context of a
11 partisan gerrymandering case.
12 Q. But you didn't understand any of the
13 underlying legal theories; is that right?
14 A. No. I'm not a lawyer, so even if I had
15 reviewed the case materials, my comments wouldn't
16 count for anything.
17 Q. I understand that, but you didn't -- when
18 you were drafting your expert report, you didn't have
19 an understanding of the legal theory behind the case;
20 is that right?
21 A. No.
22 (Exhibit 157 marked for

Page 22

1 identification.)
2 Q. So I've put in front of you what we've
3 marked as Exhibit 157 to this deposition. It's a
4 copy of your declaration with all of the appendices
5 as it was originally submitted.
6 Can you just flip through it and confirm that
7 fact for me?
8 A. Yes, I think this is the declaration I
9 filed.
10 Q. Am I correct, sir, that your report cites
11 all the documents and data that you relied upon to
12 come to your opinions in this case?
13 A. I believe so, yes.
14 Q. If you don't cite a document in your
15 report, then you didn't rely upon it; is that right?
16 A. Well, not necessarily. It's possible I
17 overlooked something, but I try to be as
18 comprehensive as I can be.
19 Q. Okay. So --
20 A. For example, I have not seen the 1972 map
21 that I referred to previously at the time that I had
22 prepared this map.

Page 23

1 Q. Well, have you ever seen a copy of the
2 deposition of former Governor Martin O'Malley?
3 A. No. I saw excerpts in one of the expert's
4 reports last evening as I was skimming through them.
5 I think that may have been Dr. Morrison's report.
6 Q. So prior to last evening you've never seen
7 any portion of Governor O'Malley's report.
8 A. No.
9 Q. Governor O'Malley's deposition, I should
10 say.
11 A. No, I have not.
12 Q. And you didn't review Governor O'Malley's
13 deposition before drafting your report, correct?
14 A. No. As I say, I saw nothing relating to
15 this case except something, a brief or something,
16 that was prepared by one of the parties in this case
17 a couple of years ago, but I have not seen -- I had
18 not seen any documents at all.
19 Q. Okay. And then am I correct that you
20 never reviewed the deposition of Eric Hawkins before
21 drafting your report?
22 A. No.

Page 24

1 Q. Do you know who Eric Hawkins is?
2 A. No.
3 Q. You never met him before?
4 A. No. Who is he?
5 Q. He's a G.A.S. consultant. That's why I
6 asked.
7 A. Oh, okay. Your consultant or someone
8 else?
9 Q. Someone else's. Do you know if any of the
10 deposition testimony that has been submitted by the
11 fact witnesses in this case is in any way relevant to
12 your conclusions?
13 MS. KATZ: Objection.
14 A. How would I know?
15 Q. Well, I guess that's my question. How
16 would you know if you haven't looked?
17 A. Right.
18 Q. Okay. Am I correct that in your report
19 you don't cite a single deposition that was taken in
20 this case?
21 A. Well, we're sort of repeating what has
22 already been said. I have not read any depositions,

Page 25

1 so naturally I would not cite any of the depositions.
2 Q. Okay. And you don't cite any documents
3 that were produced by any of the parties or third
4 parties.
5 A. That is correct, because, as I've
6 indicated repeatedly, I have not seen any of the
7 documents in the case.
8 Q. Do you know if -- do you have any way as
9 you sit here today of knowing whether any of the
10 documents that were produced in this case have any
11 bearing on the opinions that you offer in your
12 report?
13 A. I do not.
14 Q. To this day have you reviewed a copy of
15 plaintiffs' second amended complaint?
16 A. No.
17 Q. Have you ever reviewed a copy of the
18 defendants' answer to the second amended complaint?
19 A. Not to my knowledge.
20 Q. Do you know if those pleadings are in any
21 way -- do you have any way of knowing whether those
22 pleadings are in any way relevant to the opinions

Page 26

1 that you offer in your report?
2 A. I do not know.
3 MS. KATZ: Objection.
4 Q. Have you reviewed the District Court's
5 motion to dismiss opinion in this case?
6 A. No. Well, you know, again, I looked at
7 one document in April. It may have been the original
8 complaint filed by you. It could have been something
9 from a court. I just did a Google search on Benisek
10 and that was the first thing that popped up. But
11 beyond that, I really just didn't go into it because
12 I viewed my role in this case as being fairly limited
13 to just producing an 8-0 Plan.
14 Q. Okay. So besides doing the Google search
15 and looking at the reply reports that you saw at 7 or
16 8:00 last night, you haven't looked at any documents
17 regarding this case in the course of your work in the
18 case; is that right?
19 A. I have not.
20 Q. Did you conduct any interviews to come to
21 the conclusions expressed in your report?
22 A. I did not.

Page 27

1 Q. Did you ever ask to interview any members
2 of the Governor's Redistricting Advisory Committee or
3 GRAC?
4 A. I did not.
5 Q. Did you ever ask to interview any members
6 of the Maryland General Assembly prior to writing
7 your report?
8 A. I did not.
9 Q. Am I correct that your expert report
10 contains no analysis of whether the 2011
11 congressional map in Maryland was drawn with a
12 specific intent to impose a burden on a particular
13 group of voters?
14 A. It does not. That was not my task.
15 Q. Then am I also correct that your expert
16 report contains no analysis of whether the 2011
17 congressional map in Maryland was the product of
18 partisan gerrymandering?
19 A. It does not.
20 Q. Isn't it true that your expert report
21 contains no analysis of whether the individuals that
22 drew the 2011 Maryland congressional map took into

Page 28

1 account data reflecting Maryland citizens' voting
2 history?
3 A. I do not know that.
4 Q. And you didn't perform that sort of
5 analysis in your report; is that correct?
6 A. The adopted plan?
7 Q. Yes.
8 A. No, I did not.
9 Q. And for the adopted plan --
10 A. Well, I mean, I did in a sense because I
11 started with the adopted plan as I was developing the
12 8-0 Plan. I did have information about the
13 democratic vote in 2008 election by congressional
14 district. That was the extent of.
15 Q. Well, do you know whether the individuals
16 at -- do you have any opinion as to whether the
17 individuals that drafted the 2011 adopted
18 congressional plan took into account data reflecting
19 voters' voting history?
20 A. I do not know.
21 Q. Do you have any opinion on whether the
22 individuals that drew the 2011 adopted congressional

Page 29

1 map took into account data reflecting party
2 affiliation?
3 A. I do not know.
4 Q. Am I correct that your expert report
5 contains no analysis of whether the Maryland
6 legislature's mapmakers were motivated by a specific
7 intent to burden supporters with a particular
8 political party?
9 A. It does not. I was not asked to do that.
10 Q. Isn't it true that your expert report
11 contains no analysis of vote dilution?
12 A. It does not, although I was careful to
13 maintain two majority African-American congressional
14 districts as I drew the 8-0 Plan.
15 Q. You express no opinions in your report
16 regarding vote dilution with respect to the adopted
17 congressional map, correct?
18 A. I do not.
19 Q. Did you do any analysis to determine
20 whether Maryland's 2011 congressional map was
21 consistent with historical congressional district
22 lines?

Page 30

1 A. Not within the context of my report, no.
2 Q. When you say not within the context of
3 your report, you're referencing the fact that outside
4 the context of your report you looked at the 1972
5 map?
6 A. I looked at the 1972 map and I also looked
7 at -- it was a difficult map to really see on the
8 website of the State, but it also showed the 1990
9 map, and I think in both instances Congressional
10 District Six did not extend all the way across the
11 state.
12 Q. Do you know in those two instances how far
13 Congressional District Six extended into Montgomery
14 County?
15 A. In the '70s I don't think it extended
16 into -- I don't think it extended into Montgomery
17 County, but it did extend into Howard County.
18 Q. How about in the 1990 map?
19 A. I don't recall. I don't believe it did,
20 though.
21 Q. As someone who is experienced consulting
22 in redistricting litigation and consulting for

Page 31

1 localities in redistricting matters, how often do you
2 take into account the way the district, congressional
3 district lines looked in the 1790s?
4 A. 1790s?
5 Q. Yes.
6 A. I -- well, I don't ever recall looking at
7 a plan going all the way back to the 1790s.
8 Q. Okay. In your professional experience how
9 often do you look at a plan going back to the 1800s?
10 A. Probably never. I primarily rely on plans
11 that go back no more than 30 years to the '70s or
12 '80s.
13 Q. Okay. How often --
14 A. I think I did look at plans -- I'm
15 involved in a lawsuit working on behalf of the Navajo
16 Nation in Utah, and in that instance I think I did
17 look at districts that go back to the 1950s for the
18 county board of commissioners.
19 Q. Okay. Outside of this one instance where
20 you were consulting for the Navajo Nation, can you
21 think of any other instance where you have gone back
22 to look at maps as they existed before the One

Page 32

1 Person, One Vote standard was adopted by the Supreme
2 Court?
3 A. May have in Mississippi, for example --
4 Q. Okay.
5 A. -- in some localities there, but it would
6 be rare to go that far back in time.
7 Q. Why would it be rare?
8 A. Because it was a long time ago.
9 Q. Okay. And in congressional redistricting
10 cases can you think of any instance where you've ever
11 looked back at maps, congressional maps, as they
12 existed before the One Person, One Vote standard as
13 part of your work?
14 A. Well, first, let me stress that I focus
15 primarily on local redistricting.
16 Q. Sure.
17 A. I've only been involved in maybe three
18 congressional redistricting cases in my life. One of
19 those was in the 2000s in Mississippi, and I don't
20 think I went back past 1990 congressional plan there.
21 The other was just a brief declaration I filed
22 in Miller v. Johnson in Georgia in the 1990s. And I

Page 33

1 was also involved in Fletcher v. Lamone here in
2 Maryland in 2011. And in that case I also played a
3 very limited role, so I did not look at historical
4 congressional districts.
5 Q. Okay. And so this is only your fourth
6 congressional redistricting case that you've been
7 involved with; is that correct?
8 A. In terms of litigation, yes.
9 Q. Okay. In the course of your work in this
10 case did you look at -- did you consider any data
11 regarding educational attainment in Maryland?
12 A. In this case I did not. I routinely do it
13 in all Section 2 cases. I look at a wide range of
14 data reflecting socioeconomic status for a given
15 jurisdiction. So I have that information available.
16 I mean, I can crank it out real fast. But in this
17 case my role was so limited that I just didn't go to
18 that extent.
19 Q. So you routinely, as part of your
20 consulting work, do access sort of socioeconomic
21 data; is that correct?
22 A. Yes. I have all that information

Page 34

1 downloaded from the Census Bureau of American
2 Community Survey site for the 2015 one-year survey
3 and the 2011 to 2015 five-year survey. And I can
4 batch produce 50-page reports showing socioeconomic
5 status comparing African Americans, whites and
6 Latinos, but, of course, those charts are produced
7 primarily for the Section 2 lawsuits I'm involved in.
8 Q. So you have that socioeconomic data at
9 your fingertips, it sounds like; is that right?
10 A. Basically, yeah.
11 Q. And you could have looked at that
12 socioeconomic data in this case, but you did not.
13 A. Well, again, I had a very limited task to
14 perform, and that was to demonstrate that I could
15 create eight congressional districts that had a
16 partisan democratic majority.
17 Q. Do you believe that that socioeconomic
18 data is in any way relevant or has any bearing on
19 your work in this case?
20 A. It's background information. I'm from
21 Virginia, so Maryland is not far in territory, so
22 I've been around the state a little bit. So, I mean,

Page 35

1 I know -- I know a little bit without even going to
2 the data.
3 Q. In drafting your proposed 8-0
4 congressional map, did you do any analysis of
5 existing communities of interest?
6 A. I did not -- I did not perform an analysis
7 of existing communities of interest, no, in a formal
8 framework.
9 Q. Sure. Did you do any analysis in an
10 informal framework of existing communities of
11 analysis -- existing communities of interest in your
12 8-0 Map?
13 A. Well, I guess, informally I noticed that
14 in the adopted plan, as you know, in the 2000s
15 adopted plan, District One extended into Annapolis
16 and Anne Arundel County, crossing the 301 bridge.
17 And in the 2011 plan that part of District One was
18 removed.
19 So I was aware that, you know, Annapolis is
20 really different from the Eastern Shore in some ways,
21 even though they both border on the Chesapeake. So I
22 understood perhaps the rationale as to why Annapolis

Page 36

1 was removed from District One.
2 Q. Beyond this rationale that you've
3 described for removing Annapolis from the First
4 Congressional District in the adopted plan, did you
5 do any other informal analysis of communities of
6 interest when drafting your 8-0 Plan?
7 A. No, because it truly is a draft. It's not
8 intended to be set in stone, and I suppose I could be
9 requested to produce another one. These plans are
10 not hard to do, and I could look further into
11 existing communities of interest, if need be.
12 Q. Have you been asked to do that?
13 A. No, I have not.
14 Q. Did you do any formal Voting Rights Act
15 analysis like you would do in Section 2 litigation
16 regarding the 8-0 Map that you drafted?
17 A. Well, I'm a -- I'm a Gingles 1 person. I
18 don't -- I'm not a political scientist, so I
19 typically -- I never actually try to determine what
20 is an effective district and what is not an effective
21 district, and how a minority group might perform
22 given certain percentages.

Page 37

1 But I am cognizant of the fact that there have
2 been for the past 30 years almost two majority black
3 districts in Maryland, and I'm also aware that
4 there's a significant Latino population in Maryland.
5 So it's clear to me that, given that reality,
6 there would be no need to have districts that are
7 much higher than around 50% black voting age
8 majority, if that high. Given yesterday's Supreme
9 Court ruling in North Carolina, I suspect that in
10 Maryland one could reduce the black VAT in those
11 districts into the 40s and still have districts that
12 perform.
13 Q. Did you perform any analysis -- actually
14 let me back up. When drafting your 8-0 Map, did you
15 consider any measurement of compactness?
16 A. I did look at compactness scores for that
17 plan.
18 Q. Where are those scores reported in your
19 expert declaration?
20 A. They are not reported.
21 Q. Why did you not include them in your
22 expert declaration?

Page 38

1 A. I wasn't really asked to.
2 Q. Okay.
3 A. But my assessment upon -- upon running the
4 compactness scores for the 8-0 Plan is that they are
5 within the norm of congressional districts
6 nationwide.
7 Q. Can you tell me what the -- what
8 compactness measurement you used?
9 A. I looked at Reock and Polsby-Popper
10 scores.
11 Q. And what were -- can you tell me what
12 those scores were?
13 A. Don't have them memorized.
14 Q. Okay. So as you sit here today you can't
15 actually tell me what the exact compactness scores
16 were?
17 A. No, but all the plans scored -- all the
18 districts scored above .20 Reock, and I think maybe
19 the lowest Polsby-Popper score was somewhere in the
20 low teens for maybe District Two or Three. I don't
21 recall. It's been a month.
22 Q. And for the ease of the court reporter,

Page 39

1 could you spell the two measurements that you're
2 using?
3 A. R-E-O-C-K, Reock, in the USA, and
4 Polsby-Popper, P-O-L-S-B-Y dash P-O-P-P-E-R.
5 Q. Okay. Thank you. All right. You have
6 your declaration in front of you still? Okay.
7 I'm on the first page. There's a -- at the
8 very top there's a reference to O. John Benisek, and
9 he's a plaintiff; is that right?
10 A. Surely he is.
11 Q. Okay. How many other plaintiffs are there
12 in this case?
13 A. I do not know.
14 Q. Can you name any other plaintiffs in this
15 case?
16 A. I cannot name any other plaintiffs.
17 That's not that unusual, though.
18 Q. Okay. All right. Let's turn to page --
19 I'm sorry -- Section 5 of your report, which is on
20 page 5 as well. In that section you state that
21 populations shifted from Congressional District Six
22 to Congressional District One under the adopted 2011

Page 40

1 plan; is that right?
2 A. Right.
3 Q. Did you do any analysis of why that
4 population shift from Congressional District Six to
5 Congressional District One occurred?
6 A. No. I just know it happened.
7 Q. So you simply compared the 2001 map with
8 the 2011 map, and you were able to determine that
9 part of Congressional District Six moved to
10 Congressional District One; is that right?
11 A. That is correct. Again, this was a
12 request that I received from the defendants'
13 attorneys. It was not in the initial request from
14 Alan Lichtman.
15 Q. Oh, okay. Anyone can go on the website --
16 on the Maryland Department of Planning website -- and
17 compare the 2001 and 2011 maps, correct?
18 A. You can, at least from a hundred thousand
19 feet. You can't take things down to the block or
20 precinct level, I don't think, although it is a very
21 good website in terms of the maps that they produce.
22 Q. Okay. So anyone can look at those two

Page 41

1 maps and determine that part of Congressional
2 District Six moved to Congressional District One,
3 correct?
4 A. I think so. I believe there's sufficient
5 detail.
6 Q. Okay. I mean, there's no -- there's no
7 real scientific analysis to it. You're just looking
8 at the two maps; is that right?
9 A. Well, you're looking at the two maps and
10 then looking at the underlying population data to
11 calculate the number of people who were moved from
12 one place to the other.
13 Q. Sure. But you don't even need to look at
14 underlying population data to come to the conclusion
15 that people -- that there were people who were in
16 Congressional District Six that were moved to
17 Congressional District One, correct?
18 A. That's correct.
19 Q. And you don't need any sort of scientific
20 background to come to that conclusion.
21 A. No. You have to understand how to use GIS
22 software, presumably, to arrive at a calculated

Page 42

1 bottom line total.
2 Q. Sure.
3 A. But, yes, you can see that people in Cecil
4 and Harford Counties that were previously in District
5 Six are no longer in District Six.
6 Q. So let's look at --
7 A. Previously meaning in the 2000 plan.
8 Q. Sure. Let's look at paragraph 18 of your
9 report, which is on the next page.
10 In paragraph 18 you state -- and I'm on the
11 second sentence -- "to compensate for this population
12 loss, 106,562 persons in Harford, Baltimore and
13 Carroll Counties were shifted from CD 6 under the
14 2002 plan into CD 1 under the 2011 plan."
15 Did I read that correctly?
16 A. Right. And I think I just misspoke when I
17 said Cecil County. I think it was in --
18 Q. Carroll?
19 A. It was in District One, in both the 2011
20 and the 2002 plan. It was Carroll County that was
21 shifted out.
22 Q. Okay. Understood. Thank you for the

Page 43

1 clarification.
2 Did you do any analysis to determine whether
3 the boundaries of Congressional District Six were in
4 fact redrawn due to changes made to Congressional
5 District One?
6 A. I'm sorry. What was the question?
7 Q. Did you do any analysis to determine
8 whether the changes made to Congressional District
9 One necessarily meant that there had to be changes to
10 Congressional District Six?
11 A. Well, I mean, it stands to reason that, if
12 you remove 106,000 people from Congressional District
13 Six, additional population had to be picked up from
14 somewhere.
15 Q. Did you do any analysis as to whether it
16 was necessary to move over 300,000 people out of
17 Congressional District Six as it existed in the 2001
18 plan?
19 A. No.
20 Q. Did you look at any documents to do any
21 analysis of why the boundaries of Congressional
22 District Six were actually redrawn?

Page 44

1 A. No. As I've stated repeatedly, I did not
2 see any documents that had been produced for this
3 case other than the two expert reply responses from
4 last -- that I saw from yesterday that were filed
5 yesterday.
6 Q. So you can't say, as you sit here today,
7 with any degree of scientific certainty why the
8 boundaries of the Sixth Congressional District were
9 actually redrawn the way they were in the 2011
10 adopted plan.
11 A. No. I don't -- again, it would have -- to
12 have that information, of course, would mean going
13 beyond the experts' report and probably doing as you
14 suggested earlier today, going back and looking at
15 the contemporaneous accounts from declarations and
16 depositions, which some of the legislators and others
17 may have filed in this case, or just public
18 statements from -- from public hearings at that time.
19 Q. Sure.
20 A. That would have gone way beyond the scope
21 of my agreed task for this case, though.
22 Q. I understand.

Page 45

1 MR. MEDLOCK: Why don't we take a quick
2 five-minute break.
3 VIDEO SPECIALIST: Going off the record at
4 10:22.
5 (Proceedings recessed.)
6 VIDEO SPECIALIST: Back on the record at
7 10:24.
8 BY MR. MEDLOCK:
9 Q. All right. I'd like to move to page 2 of
10 your report, and I'm looking at paragraph 6 under
11 "Purpose of Declaration." Can you let me know when
12 you get there?
13 A. Page 2.
14 Q. Yep.
15 A. Oh, here we are.
16 Q. All right. So in paragraph 6 you state
17 that the defendants' attorneys asked you to, quote,
18 develop a hypothetical congressional map for Maryland
19 so that all eight districts have a democratic
20 majority without changing current CD 6 using
21 information that was available in 2011.
22 Did I read that correctly?

Page 46

1 A. Yes. That was my summary of the request,
2 right. I'm not quoting them directly.
3 Q. Sure. Sure. Understood. In performing
4 that analysis, you were able to obtain voting history
5 information from publicly available sources, correct?
6 A. That's right, but, as part of my initial
7 discussion with Alan Lichtman -- my memory has been
8 jogged a little bit -- and I mentioned to him that I
9 had been involved in the Fletcher v. Lamone case and
10 that I already had a database with the results of the
11 2008 presidential primary, and his assessment was
12 that would be sufficient for the task that he and the
13 attorneys were requesting that I perform.
14 Q. Okay. And where did you get the data from
15 the 2008 -- did you say presidential primary or
16 president general election?
17 A. Presidential general election.
18 Q. Okay. Where did you get the data
19 regarding the 2008 presidential general election for
20 that database?
21 A. It's the same dataset I used in Fletcher
22 v. Lamone, and it came from the Harvard Election Data

Page 47

1 Archive.
2 Q. Okay.
3 A. I am aware after reading Professor
4 McDonald's report that there may be some errors in
5 that database. I don't know that to be a fact,
6 though, so I'll have to check on that.
7 Q. So have you done --
8 A. Not his report, his reply report I
9 received last night.
10 Q. Sure. Since receiving that reply report,
11 have you done any analysis to determine whether there
12 are in fact errors regarding how certain precincts in
13 Montgomery County are calculated?
14 A. I have not looked at the data.
15 Q. Do you plan to do so?
16 A. I may, if the attorneys want me to.
17 Q. Okay. So sitting here today you just
18 don't know one way or the other whether the Harvard
19 dataset is sufficiently correct regarding Montgomery
20 County to support your opinions?
21 A. I'm going to make the bold assessment that
22 it is sufficiently correct. If there are errors,

Page 48

1 they may or may not have affected the figures
2 prepared in my report, but I'm sure I could make
3 adjustments to still have 8-0 for a hypothetical
4 plan.
5 Q. Do you know how, if at all, those errors
6 in the Harvard data would affect your current 8-0
7 Map?
8 A. No, because I don't know which precincts
9 were involved. I mean, it could be that those
10 errors, if they exist, actually result in the
11 democratic percentage in Districts Two or -- what is
12 it -- Eight -- some of the other -- some of the other
13 congressional districts in Montgomery County. It
14 could turn out that it reduces the democratic
15 percentage. I don't know. I have to check it out.
16 Q. So you just simply don't know one way or
17 the other as you sit here today how the error in the
18 Harvard data affects any of your analysis.
19 A. I do not, although I have strong suspicion
20 that it wouldn't change things very much or
21 Dr. McDonald would have made a bigger issue of it.
22 Q. Okay. So besides the amount of rhetoric

Page 49

1 that Dr. McDonald addresses to this point, you don't
2 have any sense of the size of any error, if any, that
3 could be caused by using the Harvard data.
4 A. Correct, but I still stand by my belief
5 that, even if it's fairly significant, I could
6 probably still get an 8-0 Plan in Maryland.
7 Q. So you had -- I'd like to take you back
8 for a second. You said you had 2008 presidential
9 data that you had in a database; is that correct?
10 A. Yes. It's just downloaded off of the
11 Internet from the Harvard Election Data Archive that
12 is precinct-level data, at least in the case of
13 Maryland for the 2008 presidential election. Some of
14 the other state datasets may have registered voters
15 or other political contests, so it varies from state
16 to state.
17 Q. If you wanted to, could you have gotten
18 additional voter -- voter history information
19 regarding other political contests in Maryland and
20 put that into your database?
21 A. If I wanted to, I assume that I could have
22 obtained general information, other information

Page 50

1 perhaps from the State of Maryland.
2 Q. Okay. How about in the Harvard dataset?
3 Does the Harvard dataset contain data regarding
4 elections other than presidential elections?
5 A. You know, I don't recall. It is possible
6 that there is information in there about
7 congressional races in 2008, but I don't know for a
8 fact. I've looked -- I've used the Harvard datasets
9 in other states, and they really vary, but
10 Dr. Lichtman agreed that the presidential election of
11 '08 would be the best proxy, so that's the one I
12 used -- the best partisan proxy.
13 Q. Why did you believe that the presidential
14 election of '08 was the best partisan proxy?
15 A. Because this is an attempt to show what
16 might have been drawn in 2011, and that would have
17 been very current data --
18 Q. Okay.
19 A. -- as opposed to the 2012 election, which
20 had not yet taken place.
21 Q. Can you use past election data to make
22 inferences about how future elections will turn out

Page 51

1 in particular congressional districts?
2 A. Well, that's certainly the procedure that
3 is often used. It may not always turn out to be the
4 case. I think in this instance the presidential
5 contest of '08 tracked the 2012 election results
6 pretty closely.
7 Q. Okay. So using the presidential election
8 data of '08 was -- in this case -- was actually a
9 very good predictor of how congressional elections
10 would turn out in the congressional districts that
11 you drew; is that right?
12 A. I think -- just eyeballing -- not -- not
13 the congressional districts that I drew necessarily.
14 Q. Okay.
15 A. But looking at the presidential contests
16 of 2008 and comparing that to how Democrats fared in
17 the 2012 congressional contests, it's pretty close.
18 I mean, it's obviously not going to be exact, but the
19 result was that you had seven Democrats elected, and
20 the percentages by which they were elected, you know,
21 reasonably tracked the 2008 presidential contest.
22 Q. Okay. So the next step in your analysis,

Page 52

1 as I understand your report, is you took this data
2 regarding the 2008 presidential election from your
3 dataset and then you input it into Maptitude; is that
4 correct?
5 A. Right.
6 Q. And you used Maptitude for redistricting,
7 is that the name of the software?
8 A. Yes.
9 Q. What version did you use?
10 A. I used the version that was released in
11 the 2000s. I have the 2016 vanilla Maptitude that's
12 not got the redistricting component, but rather than
13 forking out \$2,000 a year, I still use the older
14 version for my redistricting work, and then for some
15 components of my redistricting work, like geocoding
16 or other kinds of analysis, I use the 2016 Maptitude.
17 Q. Okay. So you go back and forth between
18 the two?
19 A. Yeah, constantly.
20 Q. Okay. So using Maptitude and the publicly
21 available 2008 presidential election data, you were
22 able to redraw the boundaries of Maryland's

Page 53

1 congressional districts in such a way that you would
2 get an 8-0 Map, correct?
3 A. Right. While at the same time maintaining
4 two majority black congressional districts, which,
5 arguably, may not need to be majority black to
6 perform, and if didn't need to be majority black to
7 perform, one could, of course, create stronger
8 democratic partisan districts, I believe.
9 I also, of course, as part and parcel of this
10 little task, protected all incumbents. Had I not
11 protected all incumbents, it would be easier to
12 maintain a stronger Democratic majority in those same
13 districts. Because three of the incumbents at the
14 time lived within a three-mile radius of one another,
15 and Representative Cummings was only about six miles
16 down the road. So basically you had four -- four
17 incumbents living in a straight line making it a
18 little more problematic to draw the districts.
19 Q. When you say --
20 A. If you're going to protect incumbents.
21 Q. Sure. Sorry. I didn't mean to step on
22 you there.

Page 54

1 When you say you protected all incumbents,
2 were you protecting all Democratic incumbents or all
3 incumbents generally in your answer?
4 A. All of them. I mean, there's no incumbent
5 that's paired with another.
6 Q. Okay. How were you protecting Republican
7 incumbent Roscoe Bartlett in your 8-0 Map?
8 A. Well, he's in a Democratic majority
9 district, but certainly he could run in that district
10 and not -- not impossible to think that he could have
11 prevailed. Perhaps if he changed his policies, I
12 don't know, but certainly didn't have to run against
13 another Republican or another Democrat. He would
14 have been the incumbent in that district.
15 Q. I see.
16 A. And I didn't change District Six anyway.
17 That was not my charge. Well, that was my charge not
18 to change District Six, but to take the other seven
19 districts and draw it.
20 Q. Right. So Congressional District One,
21 Andy Harris's district, when you say you protected
22 him as an incumbent, you didn't -- what you mean by

Page 55

1 that is you didn't pair him with another incumbent.
2 A. That's right.
3 Q. Okay. Do you know whether the individuals
4 that were responsible for drawing Maryland's 2011
5 congressional map had a copy of Maptitude?
6 A. I do not know.
7 Q. Do you know whether the individuals that
8 were responsible for drawing Maryland's 2011
9 congressional map had access to voter history data?
10 A. I don't know.
11 Q. Do you know whether they had access to
12 party affiliation data?
13 A. I don't know. It would not surprise me if
14 the answer to all three of those is yes, but I really
15 don't know.
16 Q. Why wouldn't it surprise you?
17 A. Well, most legislatures have information
18 available about voter history, as they're developing
19 voting plans, and I'm sure well over half have copies
20 of Maptitude.
21 Q. So --
22 A. But I don't know, again, I don't know the

Page 56

1 facts in this instance.
2 Q. Sure. Let's move to actually looking at
3 your map.
4 So I am on the first page of your map that
5 looks like this. It says 8-0 Plan 4-17-17 draft. It
6 should be right after one of the blue dividers.
7 A. Got it.
8 Q. Are you with me?
9 A. Right.
10 Q. Okay. So just looking at your map, the
11 Congressional District Five, that congressional
12 district crosses the Chesapeake Bay; is that right?
13 A. It does. The 301 bridge and crosses the
14 Chesapeake Bay to include part of Anne Arundel,
15 Annapolis, and also all of Calvert and part of Prince
16 George's.
17 Q. Okay. What are the major military
18 installations in Maryland?
19 A. That I cannot tell you.
20 Q. Could you point to where they would be on
21 this map?
22 A. No, I cannot.

Page 57

1 Q. Did you ensure whether -- did you ensure
2 that all of the major military installations in
3 Maryland are in Congressional District Two?
4 A. I did not. And I assume they are not.
5 (Exhibit 158 marked for
6 identification.)
7 Q. All right, sir. So I'll represent to you
8 that Exhibit 158 is a corrected version of your
9 Population Summary Report that appeared in your
10 original report that was provided to us yesterday.
11 A. That is correct.
12 Q. Okay. Why did you amend this Population
13 Summary Report?
14 A. Oh, I had a typo in the bottom line
15 percentages. I had indicated that the unadjusted
16 percent non-Hispanic whites statewide was, I think,
17 42.8%, and actually that's the minority population
18 percentage. So I corrected that typo to reflect the
19 actual unadjusted non-Hispanic white 18-plus
20 population, which is 57.22.
21 Q. Was that a typo or a miscalculation?
22 A. It was not really a miscalculation. I

Page 58

1 think it was maybe a copy-and-paste error is what it
2 was.
3 Q. Okay.
4 A. I have, you know, I had other columns in
5 there, one of which would have been percent minority,
6 and I think I just accidentally copied that into
7 this, this spreadsheet.
8 Q. Okay. Do you know --
9 A. I do want to make one other correction,
10 though.
11 Q. Sure.
12 A. I found the percent unadjusted
13 non-Hispanic 18-plus, it indicates -- it should
14 indicate that at the top of the -- at the rows at the
15 top, not just non-Hispanic white, but 18-plus
16 non-Hispanic white.
17 Q. I see. So if I'm looking at the columns
18 on this report and I'm working from the right to the
19 left, that's the second column from the right.
20 A. Right.
21 Q. It currently says, percentage unadjusted
22 NH, meaning non-Hispanic white. That should actually

Page 59

1 read percentage unadjusted 18-plus non-Hispanic
2 white.
3 A. Exactly.
4 Q. Is that correct?
5 A. Right, to be consistent with two columns
6 to the left, which also report 18-plus -- or actually
7 across the board they're like, what, five columns, I
8 guess, that show voting age population.
9 Q. Was that another copy-and-paste error?
10 A. No. That might be a failure to type in
11 18-plus. It's possible that it has something to do
12 with the width of the column and that somehow or
13 another 18-plus got squeezed out of that column as it
14 was printed. I'll have to check.
15 Q. Okay. Besides those two corrections that
16 you've made, are there any other corrections that you
17 see that need to be made to this Population Summary
18 Report as you sit here today?
19 A. No.
20 Q. Okay. I'd like to focus on the deviation
21 column for a second. Do you see that? It's the
22 third from the left.

Page 60

1 A. Yes.
2 Q. Okay. What does deviation mean in this
3 instance?
4 A. Well, it just means the number of persons
5 over or above what would be population equality,
6 which is zero, that is a requirement in congressional
7 redistricting. And since this is just sort of a
8 hypothetical draft plan, I did not zero out the
9 districts, which would have taken a little while to
10 do, and involved some precinct splits. So I just
11 reported this to make the point. I could always zero
12 them out, if need be.
13 Q. Why did you not decide to split precincts
14 in your draft 8-0 Map?
15 A. Well, there are some split precincts
16 because I started with Congressional District Six,
17 and I think there were some precinct splits there,
18 but it's generally good practice not to split
19 precincts, if you can, when you're drawing a
20 state-level plan. Usually you end up having to split
21 precincts to comply with One Person, One Vet,
22 particularly if you're working with congressional

Page 61

1 plans, which ultimately require it seems zero
2 deviation.
3 So you're guaranteed to have -- if you have an
4 eight congressional district plan, you're probably
5 going to have 20 to 30 split precincts just to get
6 everything to equal zero.
7 Q. Okay. Let me unpack a little bit of your
8 answer there.
9 You said under One Person, One Vote, when
10 you're working with congressional plans, that
11 ultimately requires you to get as close to zero as
12 possible, correct?
13 A. It does. Although there was a
14 congressional plan adopted in West Virginia, and that
15 case was litigated to the Supreme Court, I believe
16 sometime in 2011, and I think the Supreme Court
17 allowed West Virginia to have a deviation that was
18 beyond zero percent because the issue related to
19 splitting counties, and for whatever reason it was
20 deemed okay for West Virginia to have a deviation
21 that went over zero.
22 Q. Do you know whether Maryland has

Page 62

1 historically attempted to get as close to arithmetic
2 equality between its congressional districts as
3 possible?
4 A. Probably in 2000, but I think prior to
5 that time most likely no, particularly for state
6 legislative plans.
7 Q. How about congressional plans?
8 A. I don't know, but I would be surprised if
9 they were to hit zero percent deviation prior to the
10 2000 round of redistricting.
11 Q. After the 2000 round of redistricting, do
12 you know whether it was the policy of Maryland to
13 achieve as close to zero percent deviation as
14 possible?
15 A. I think that's probably the case.
16 Q. Okay. Let's look --
17 A. Because the existing plan is zero
18 deviation across the board, except for maybe one
19 district, because you can't always balance it out
20 just perfectly.
21 Q. Okay. Let's look at the first two
22 districts in the deviation column. Congressional

Page 63

1 District One has a deviation of -- a positive
2 deviation of 900, correct?
3 A. Correct.
4 Q. And Congressional District Two has a
5 negative deviation of 1,064, correct?
6 A. Correct.
7 Q. So the delta between those two, the
8 difference between those two districts, is 1,964
9 people, correct?
10 A. That's correct.
11 Q. Okay.
12 (Exhibit 159 marked for
13 identification.)
14 Q. So I've put in front of you what we've
15 marked as Exhibit 159 to your deposition. It's a
16 court filing in the Supreme Court of the
17 United States titled "Brief in Opposition to Petition
18 for Writ of Certiorari," correct?
19 A. Yes.
20 Q. Okay. And if you look at the counsel of
21 record underneath that, that was filed by the Office
22 of the Attorney General in April of 2015, correct?

Page 64

1 A. That's correct.
2 Q. And the case caption reads Shapiro vs.
3 Mack. Do you see that?
4 A. I do.
5 Q. Do you know if Shapiro vs. Mack is in any
6 way related to this case?
7 A. I don't know, though I do think I recall
8 that someone named Shapiro had a lawsuit filed
9 regarding redistricting at the state level or
10 congressional level in Maryland. I don't know why I
11 remember that, but I do.
12 Q. Okay.
13 A. But I don't know the specifics.
14 Q. Okay.
15 A. I don't even know if it was for the
16 congressional plan or for the state legislature.
17 Q. Okay. Got it. So I want to move to page
18 5 of the brief, and the page numbers are at the top.
19 Are you with me on page 5?
20 A. I am.
21 Q. Okay. I'd like to direct your attention
22 -- do you see the sentence that begins with, "as

Page 65

1 indicated by the district population"? It's about
2 five lines down -- actually six.
3 A. On page 5?
4 Q. Page 5.
5 A. I see as potential remedies ... but I
6 don't see "as indicated." Where is as indicated? I
7 see "as many."
8 MR. KIMBERLY: Line 6 from the top.
9 Q. Line 6 from the top. Do you see Resp --
10 A. Oh, I'm sorry, there it is. "As
11 indicated," right.
12 Q. All right. That section reads, quote, "as
13 indicated by the district population table appearing
14 to the left of each proposed alternative map, the
15 plans petitioners offered had districts deviating
16 from the ideal equal population by as many as 760
17 persons," and then there's a citation, "and
18 population variances between districts of as many as
19 1,103 persons," there's another citation. "Unlike
20 Maryland's enacted plan, which achieved the maximum
21 equality of district population mathematically
22 possible, none of the district plans proposed by the

Page 66

1 petitioners purported to come close to the, quote,
2 precise mathematical equality that this Court has
3 demanded of Congressional districts."
4 Did I read that section correctly?
5 A. I believe so.
6 Q. So in this brief the Office of the
7 Attorney General criticized a proposed map that had
8 deviations of as many as 760 persons and population
9 variances between districts as many as 1,103 persons,
10 correct?
11 A. That appears to be the case.
12 Q. Okay. In your proposed 8-0 Plan the
13 largest deviation, as we already discussed, is 1,964
14 persons, correct?
15 A. Well, this is all apples and oranges.
16 This is a draft plan just to make a point. And, you
17 know, if you want, when I get back to Virginia, I'll
18 sit down and zero it out and send it to you. It
19 might take a couple of hours, split a few more
20 precincts, but it's not going to change the results
21 at all.
22 Q. Okay. So do you believe that the

Page 67

1 criticism contained on page 5 of this brief is valid
2 when applied to your analysis?
3 A. No, it's not. It's probably valid when
4 applied to work that was done in the Shapiro case,
5 because, presumably, the plan that was presented in
6 the Shapiro case was a plan that would have been
7 proffered as a possible remedy. And what I am
8 proposing here is not being proffered as a possible
9 remedy; it's being shown as a hypothetical plan and
10 nothing more, which is why I didn't take the time to
11 zero it out, but I could easily do so and it wouldn't
12 change anything.
13 Q. In your 8-0 Map in its current form could
14 it be adopted by the Maryland legislature?
15 A. After a couple hours' work when I get back
16 to Virginia, yes.
17 Q. So it would need to be --
18 A. Arguably, it would be, yes, because it
19 complies in every other way, setting aside your issue
20 at hand, which is the First Amendment theory, as well
21 as potential partisan gerrymandering, if you prevail
22 on that claim, but clearly it would be something that

Page 68

1 the State of Maryland could adopt, but I would need
2 to zero it out.
3 Q. I just want to be clear about the answer
4 to my question. Is it your testimony that this 8-0
5 Map that we're looking at in your expert submission
6 could be adopted by the Maryland legislature without
7 any further revisions?
8 A. It could be adopted, but presumably
9 someone would challenge it on One Person, One Vote --
10 on a One Person, One Vote issue. But my point is
11 simply that I did not produce this to demonstrate a
12 plan that the State of Maryland would be adopting.
13 It's simply a hypothetical draft to demonstrate that
14 one could have drawn an 8-0 Plan back in 2011.
15 Q. Okay.
16 MR. MEDLOCK: Let's take five more
17 minutes. I may be done, but I want to check with my
18 colleague. Okay?
19 VIDEO SPECIALIST: Going off the record at
20 10:52.
21 (Proceedings recessed.)
22 VIDEO SPECIALIST: Back on the record at

Page 69

1 10:54.
2 MR. MEDLOCK: Mr. Cooper, I have no more
3 questions. Thank you for your time today.
4 THE WITNESS: Well, thank you.
5 VIDEO SPECIALIST: Going off the record at
6 10:54.
7 (The deposition of WILLIAM S. COOPER
8 adjourned at 10:54 a.m.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Page 70

1 CERTIFICATE
2 I, LINDA S. KINKADE, Registered Diplomat
3 Reporter, Certified Realtime Reporter, Registered
4 Merit Reporter, Certified Shorthand Reporter, and
5 Notary Public, do hereby certify that prior to the
6 commencement of examination the deponent herein was
7 duly sworn by me to testify truthfully under penalty
8 of perjury.
9 I FURTHER CERTIFY that the foregoing is a true
10 and accurate transcript of the proceedings as
11 reported by me stenographically to the best of my
12 ability.
13 I FURTHER CERTIFY that I am neither counsel
14 for nor related to nor employed by any of the parties
15 to this case and have no interest, financial or
16 otherwise, in its outcome.
17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my notarial seal this 24th day of
19 May 2017. My commission expires July 31, 2017.
20
21
22

NOTARY PUBLIC IN AND FOR
THE DISTRICT OF COLUMBIA

Page 71

1 William S. Cooper c/o
2 Office of the Attorney General
3 200 St. Paul Place
4 Baltimore, Maryland 21202
5
6 Case: O. John Benisek, et al. v. Linda Lamone, et al.
7 Date of deposition: May 23, 2017
8 Deponent: William S. Cooper
9
10 Please be advised that the transcript in the above
11 referenced matter is now complete and ready for signature.
12 The deponent may come to this office to sign the transcript,
13 a copy may be purchased for the witness to review and sign,
14 or the deponent and/or counsel may waive the option of
15 signing. Please advise us of the option selected.
16 Please forward the errata sheet and the original signed
17 signature page to counsel noticing the deposition, noting the
18 applicable time period allowed for such by the governing
19 Rules of Procedure. If you have any questions, please do
20 not hesitate to call our office at (202)-232-0646.
21
22

Sincerely,
Digital Evidence Group
Copyright 2017 Digital Evidence Group
Copying is forbidden, including electronically, absent
express written consent.

Page 72

1 Digital Evidence Group, L.L.C.
2 1730 M Street, NW, Suite 812
3 Washington, D.C. 20036
4 (202) 232-0646
5
6 SIGNATURE PAGE
7 Case: O. John Benisek, et al. v. Linda Lamone, et al.
8 Witness Name: William S. Cooper
9 Deposition Date: May 23, 2017
10
11 I do hereby acknowledge that I have read
12 and examined the foregoing pages
13 of the transcript of my deposition and that:
14
15 (Check appropriate box):
16 () The same is a true, correct and
17 complete transcription of the answers given by
18 me to the questions therein recorded.
19 () Except for the changes noted in the
20 attached Errata Sheet, the same is a true,
21 correct and complete transcription of the
22 answers given by me to the questions therein
recorded.

DATE WITNESS SIGNATURE

DATE NOTARY

Page 73

<p>1 Digital Evidence Group, LLC 2 1730 M Street, NW, Suite 812 3 Washington, D.C. 20036 4 (202)232-0646 5 6 ERRATA SHEET 7 8 Case: O. John Benisek, et al. v. Linda Lamone, et al. 9 Witness Name: William S. Cooper 10 Deposition Date: May 23, 2017 11 Page No. Line No. Change 12 13 14 15 16 17 18 19 20 21 _____ 22 Signature Date</p> <p style="text-align: right;">Page 74</p>	