

EXHIBIT UU

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. JOHN BENISEK, et al., :
Plaintiffs, :
 : Case No.
v. : 13-cv-3233
 :
LINDA H. LAMONE, et al., :
Defendants. :
- - - - - x

VIDEOTAPED DEPOSITION OF ALLAN J. LICHTMAN, PH.D.
Thursday, May 25, 2017

Reported by: Lori Goodin, RPR, CLR, CRR,
Realtime Systems Administrator

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1 The videotaped deposition of ALLAN
2 J. LICHTMAN, PH.D., was convened on Thursday,
3 May 25, 2017, commencing at 9:55 a.m., at the
4 offices of Mayer Brown LLP, 1999 K Street,
5 Northwest, Washington, D.C., before Lori
6 Goodin, Registered Professional Reporter,
7 Certified LiveNote Reporter, Certified
8 Realtime Reporter, Realtime Systems
9 Administrator, and Notary Public in and for
10 the District of Columbia.
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Page 2

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Marie Rehg, Intern Mayer Brown LLP
Michael Shields, Videographer

Page 3

1 CONTENTS
2 EXAMINATION BY: PAGE
3 Mr. Medlock 7
4 Ms. Rice 177
5
6 INDEX OF EXHIBITS
7 LICHTMAN
8 Exhibit Description Page
9 170 Lichtman's expert report 8
10 171 cover page and 19th page of Senate
11 President Miller's deposition 14
12 172 deposition testimony of
13 Delegate Curtis Anderson 19
14 173 continued deposition testimony of
15 Delegate Curtis Anderson 20
16 174 deposition testimony of
17 O. John Benisek 21
18 175 deposition testimony of
19 Michael E. Bush 22
20 176 Morrison's opening report 66
21 177 Maryland Department of Planning
22 website printout 80

Page 4

1 INDEX OF EXHIBITS (CONTINUED)
2 LICHTMAN
3 Exhibit Description Page
4 178 greatergreaterwashington.org
5 article, 4/27/12 99
6 179 Maryland Democratic Party document 108
7 180 Frederick News Post article 113
8 181 Cook Political Report, 10/11/12 132
9 182 Cook Political Report 139
10 183 Cook Political Report 146
11 184 Revolv article 161
12 185 Maryland's redistricting document 174
13
14 (Original Exhibits included with original
15 transcript.)
16
17
18
19
20
21
22

Page 5

1 PROCEEDINGS
2 THE VIDEOGRAPHER: This is Tape
3 Number 1 of the videotaped deposition of
4 Dr. Allan J. Lichtman taken by plaintiff in
5 the matter of O. John Benisek, et al. v Linda
6 H. Lamone, et al. in the District Court of
7 the District of Maryland, Case Number
8 13-cv-3233.
9 This deposition is being held at
10 1999 K Street, Northwest, Washington, D.C.,
11 20006, on May 25, 2017.
12 The time on the video screen is
13 9:55. And my name is Michael Shields. I am
14 the legal videographer from Digital Evidence
15 Group. The court reporter is Lori Goodin in
16 association with Digital Evidence Group.
17 Will counsel please introduce
18 themselves for the record, beginning with the
19 party noticing this proceeding.
20 MR. MEDLOCK: Sure. My name is
21 Stephen Medlock. I am from the law firm of
22 Mayer Brown LLP. I represent the plaintiffs

Page 6

1 in this action. With me at the table is
2 Micah Stein, Michael Kimberly, Daniel
3 Tingley, and Marie Rehg, all of whom also
4 represent the plaintiffs in this matter.
5 MS. RICE: I am Sarah Rice. I am
6 Assistant Attorney General for the state of
7 Maryland. With me I have Jennifer Katz, also
8 Assistant Attorney General for the state of
9 Maryland.
10 THE VIDEOGRAPHER: Would the court
11 reporter please swear in the witness.
12 ALLAN J. LICHTMAN,
13 a witness called for examination, having been
14 first duly sworn, was examined and testified as
15 follows:
16 EXAMINATION
17 BY MR. MEDLOCK:
18 Q. Good morning, sir.
19 A. Good morning.
20 Q. Could you please state and spell
21 your full name for the record.
22 A. Allan J. Lichtman, A-L-L-A-N, J,

Page 7

1 period, L-I-C-H-T-M-A-N.
2 (Lichtman Exhibit Number 170
3 marked for identification.)
4 BY MR. MEDLOCK:
5 Q. Okay. Sir, I have put in front of
6 you what we are marking as Exhibit 170 to your
7 deposition which is a copy of your report.
8 Can you please flip through it and
9 let me know if your entire report, including your
10 CV, is contained in Exhibit 170.
11 A. I'm not going to go through every
12 page, but it seems to be fine.
13 Q. Okay, good.
14 A. If there is any problems, I will let
15 you know as we go along.
16 Q. Certainly, thank you. And I wanted
17 you to have it so you can refer to it as we go
18 along as well.
19 A. Yes, that is important, I think.
20 Q. Okay. One of the criticisms that
21 you level against Dr. Morrison in your report is
22 that you claim that Dr. Morrison has been

Page 8

1 selective with the facts that he cites; is that
2 correct?
3 A. Absolutely. That is one of many.
4 Q. And that in your mind makes his
5 report unreliable; is that right?
6 A. That is one of the things.
7 Q. That is one of the reasons you
8 believe it is unreliable, correct?
9 A. Yes, because what he is trying to do
10 is assess whether you can establish that there is
11 a community of interest within the 2011
12 Congressional District Plan within CD 6.
13 And he does not, for example,
14 provide the same kind of analysis that he did in
15 his Fletcher report, where he established a
16 community of interest based upon transportation
17 jobs and commuting patterns, and provided quite a
18 few tables about internal transportation
19 linkages. And he had said that was sufficient to
20 establish a community of interest.
21 And, therefore, we can dispute this.
22 But, whether or not it is a community of interest

Page 9

1 on another basis, he leaves out what he had
2 previously testified was sufficient, if not
3 necessary for community of interest.
4 Q. Sure. And to put things in layman's
5 terms, you accuse Dr. Morrison of cherry picking;
6 is that right?
7 A. I don't think accused is the right
8 word.
9 Q. You think he did cherry pick?
10 A. In -- look. All analysis is, you
11 know, you've got to do some selection.
12 But --
13 Q. Uh-huh.
14 A. -- when you ignore your own work --
15 Q. Right.
16 A. -- and leave it out, that, it seems
17 to me, is a pretty serious example of cherry
18 picking.
19 Q. Is it a pretty serious example of
20 cherry picking if you ignore key portions of the
21 facts as well?
22 A. I don't know what that means. I

Page 10

1 mean, there is an infinite number of facts.
2 Q. Sure.
3 A. And you've got to pick and choose
4 among the facts. So, no one looks at all of the
5 facts. I'm certainly not accusing Dr. Morrison
6 of that.
7 Q. Okay. Let me make my, where I gain
8 a bit more concrete.
9 In your report can you turn to Page
10 22.
11 A. Okay. Got you.
12 Q. I'm on Page 22. I'm looking at
13 Footnote 46. You cite to the 9th -- 19th page of
14 Senate President Miller's deposition. Correct?
15 A. Right.
16 Q. And if you turn to Page 23, let's
17 look at Footnote 47. You also cite the 19th page
18 of Senate President Miller's deposition.
19 A. Right, correct.
20 Q. Looking through the footnotes in
21 your report, do you cite any other deposition
22 testimony that was given in this case?

Page 11

1 A. No, because I generally don't rely
2 on depositions, as I've explained many times --
3 Q. Uh-huh.
4 A. -- in my analyses, because they are
5 after the fact.
6 Q. Okay.
7 A. Let me finish. I have more to say
8 about that.
9 Q. Sure.
10 A. Because they are after the fact. In
11 this case many years after the fact.
12 I looked at this for the very, very
13 limited purpose of something that I already knew,
14 quite frankly, because I have been following
15 Maryland politics for decades, that anyone in
16 Maryland politics knows all about the I-270
17 corridor.
18 That has been a live issue in
19 Maryland politics for decades. And you don't
20 have to do, as I did, go through census
21 statistics to know about the I-270 corridor.
22 So, just for that very limited

Page 12

1 purpose, I cited a deposition. But, I don't, in
2 general, rely on after-the-fact recollections.
3 This isn't really an after-the-fact recollection
4 so much.
5 Q. Okay. So, you give, in your
6 analysis, you give deposition testimony less
7 weight; is that right?
8 A. I give more weight to
9 contemporaneous testimony, and that is what the
10 Arlington Heights framework calls our attention
11 to, to contemporaneous statements, not statements
12 made six years after the fact.
13 Q. So, you would, in your analysis you
14 would give more weight to contemporaneous
15 statements of legislators than to deposition
16 testimony in this case; is that right?
17 A. You mixed apples and oranges there.
18 Q. Go ahead then.
19 A. You said contemporaneous statement
20 of legislatures -- legislators, but then you
21 didn't qualify your deposition testimony.
22 Q. Okay. Let me fix the question then.

Page 13

1 A. Yes, please.
2 Q. If you had contemporaneous
3 statements of legislators and deposition
4 testimony from legislators, you would give more
5 weight to the contemporaneous testimony of the
6 legislators, right?
7 A. Yes.
8 (Lichtman Exhibit Number 171
9 marked for identification.)
10 BY MR. MEDLOCK:
11 Q. I am putting in front of you what we
12 have marked as the next exhibit, 171.
13 This is the cover page and the 19th
14 page of Senate President Miller's deposition,
15 correct?
16 A. Right.
17 Q. Okay. And this is the only piece of
18 the deposition testimony in this case that you
19 cite; is that right?
20 A. And I explained why.
21 Q. I understand, but that is the only
22 piece of the deposition testimony you cite; is

Page 14

1 that right?
2 A. Right. For a very limited purpose.
3 Q. All right.
4 A. Not to explain what happened six
5 years ago, but just to validate it, as I said,
6 what everyone who follows Maryland politics, or
7 Maryland at all, knows.
8 Q. All right. Before I get to the next
9 exhibit, is it your testimony that the Arlington
10 Heights factors state that you should not look at
11 deposition testimony?
12 A. Well, they don't call your attention
13 to any after-the-fact testimony.
14 The Arlington Heights framework,
15 like any framework, doesn't go into all of the
16 things you shouldn't do --
17 Q. Sure.
18 A. -- but what it directs you to is
19 contemporaneous statements.
20 And as I've testified many times,
21 this is also my practice as an historian. If you
22 look at my history books --

Page 15

1 Q. Uh-huh.
2 A. -- you will see they rely on
3 contemporary information, information produced at
4 the time of the events.
5 Let me finish.
6 Q. Sure.
7 A. Not information produced later.
8 And I'm not saying, you know, people
9 necessarily fabricate things later, but sometimes
10 they do, because you are dealing with very
11 contentious and hot issues, the kinds of things I
12 write about. People's memories changes, and
13 circumstances change.
14 So, you know, looking later at
15 Governor O'Malley, you've got a guy who wants to
16 be President. Looking later at Doug Gansler, you
17 have a guy who wants to be Governor.
18 So, you know, there are a whole set
19 of factors intervening between material produced
20 at the time of the event and subsequent material.
21 That is why historians and the
22 Arlington framework directs us to contemporaneous

Page 16

1 statements.
2 Q. Isn't it the case that Arlington
3 Heights states that in some extraordinary
4 instances members might be called to stand at
5 trial to testify concerning the purpose of the
6 official action, although even then such
7 testimony would be frequently barred by
8 privilege?
9 A. I don't, I have to say I don't
10 remember Arlington Heights well enough to confirm
11 for you a particular sentence from Arlington
12 Heights. That sounds about right.
13 Q. You don't recall whether Arlington
14 Heights said that in the opinion?
15 A. It sounds about right. I don't
16 recall the exact words.
17 Q. Okay. So, let me ask you another
18 question. Did you look at the contemporaneous
19 statements of Delegate C. Anthony Muse in this
20 case?
21 A. I saw it cited, yes.
22 Q. Do you cite it anywhere in your

Page 17

1 report?
2 A. No.
3 Q. Did you look at the contemporaneous
4 statements from Delegate Curtis Anderson?
5 A. I saw that cited as well.
6 Q. Do you cite it anywhere in your
7 report?
8 A. I don't double cite it, no.
9 Q. Do you -- you don't double cite it.
10 You don't say it at all, is that right?
11 A. No reason to. It has already been
12 cited.
13 Q. So, you just took it for granted
14 that it exists, correct?
15 A. I didn't take it for granted. I saw
16 it cited. And if you want to tell me that your
17 expert cited it inaccurately, that is fine.
18 Q. Did you look at the joint
19 stipulation of fact in this case?
20 A. I don't recall.
21 Q. Do you know if one exists?
22 A. I don't recall.

Page 18

1 Q. Do you -- and you don't cite a joint
2 stipulation of fact anywhere in your expert
3 report, do you?
4 A. Correct.
5 (Lichtman Exhibit Number 172
6 marked for identification.)
7 BY MR. MEDLOCK:
8 Q. Okay. Put in front of you what has
9 been marked as Exhibit 172 to your deposition.
10 MR. MEDLOCK: I don't have copies.
11 I'm not going to have substantive questions
12 about it, though.
13 BY MR. MEDLOCK:
14 Q. If you just look at the cover of it,
15 that is the deposition testimony of Delegate
16 Curtis Anderson, correct?
17 A. Okay.
18 Q. You don't cite that anywhere in your
19 report?
20 A. I have already explained that.
21 Q. You don't rely on it at all?
22 A. Correct.

Page 19

1 Q. You don't give it any weight?
2 A. Well, if the I don't rely on it, it
3 kind of follows that I didn't give it any weight.
4 It is not that I looked at it and decided I
5 didn't give it any weight.
6 Q. Okay.
7 MR. MEDLOCK: Mark the next
8 deposition -- or the next exhibit.
9 (Lichtman Exhibit Number 173
10 marked for identification.)
11 BY MR. MEDLOCK:
12 Q. All right. I have put in front of
13 you the continued session of Delegate Curtis
14 Anderson's deposition.
15 Did you cite that anywhere in your
16 report?
17 A. I think I can give you a generic
18 answer. I do not generally cite depositions
19 after the fact. I do sometimes, because they are
20 after the fact.
21 I saw what your experts have culled
22 out of this and took that into account.

Page 20

1 Q. But, in your -- did you read
2 Delegate Anderson's deposition?
3 A. No.
4 Q. Did you ask to see it?
5 A. I'm not sure I knew it existed,
6 except as cited by -- no, I did not.
7 Q. Okay. So, you didn't know that it
8 existed, other than seeing it cited in someone's
9 expert report?
10 A. The fact that it was cited. That's
11 right.
12 Q. Okay.
13 MR. MEDLOCK: Let's mark the next
14 exhibit.
15 (Lichtman Exhibit Number 174
16 marked for identification.)
17 BY MR. MEDLOCK:
18 Q. I'm showing you Exhibit 174. It is
19 a copy of the transcript of O. John Benisek.
20 A. I don't know what the -- it is a
21 transcript of.
22 Q. It is a transcript of the deposition

Page 21

1 of O. John Benisek.
2 A. Oh, got you, thanks.
3 Q. You didn't ask to see that
4 deposition either, did you?
5 A. I think I gave you a generic
6 explanation about depositions. You can keep
7 asking me, if you want, but that is fine.
8 Q. I want a specific answer to my
9 question. You didn't ask to see that deposition,
10 correct?
11 A. Correct.
12 Q. You didn't read it?
13 A. Correct.
14 Q. And you don't cite it?
15 A. Correct.
16 Q. And you don't, and you do not rely
17 upon it; is that right?
18 A. Correct.
19 Q. Okay.
20 (Lichtman Exhibit Number 175
21 marked for identification.)
22 BY MR. MEDLOCK:

Page 22

1 Q. I've marked Exhibit 175. That is a
2 copy of the deposition of House of Delegates
3 Speaker Michael E. Bush, correct?
4 A. Correct.
5 Q. And, did you ask to see a copy of
6 that deposition?
7 A. I can give you the same answers.
8 Q. You didn't ask, did you?
9 A. No.
10 Q. You didn't read it?
11 A. No.
12 Q. And you didn't cite it in your
13 report?
14 A. Correct.
15 Q. And you don't rely upon it?
16 A. Correct.
17 Q. And therefore you don't give it any
18 weight, whatsoever?
19 A. Well, if I don't rely on it, it kind
20 of follows that.
21 It is not like -- you are kind of
22 putting some words in my mouth here.

Page 23

1 It is not as if I read it and
2 decided not to give it any weight. That is
3 something entirely different.
4 Q. So, you acknowledge that deposition
5 testimony can sometimes be relevant in your
6 analysis, correct?
7 A. Very, very rarely.
8 Q. Well, in fact you did cite Senate
9 President Miller's deposition because you found
10 it to be relevant to a point you were making,
11 correct?
12 A. Just to a very limited purpose. Not
13 to the re-creation of prior events. Just to the
14 point of -- which is not dependent upon a
15 recollection of any prior events or
16 reconstruction of prior events.
17 Just for the very limited purpose of
18 establishing what, as I said, anyone who has been
19 involved or followed Maryland politics knows,
20 that we are all familiar with the I-270 corridor.
21 Q. So, just to get a specific answer to
22 my question.

Page 24

1 You acknowledge that Senate
2 President Miller's deposition was relevant to a
3 point you were making, and you cited it for that
4 purpose, correct?
5 A. But not relevant to the
6 reconstruction of previous events. Just to
7 establish -- I have already told you what I used
8 it for.
9 Q. Okay.
10 A. The very, very limited purpose.
11 Q. How do you know that Delegate
12 Anderson's deposition, Speaker Bush's deposition,
13 O. John Benisek's deposition, are not relevant to
14 other points that you are making in your report?
15 A. They -- it is not impossible that
16 they are, but I felt that the points I made in my
17 report was sufficiently sustained by sufficient
18 logic, evidence, and analysis.
19 And I did not see anything in either
20 plaintiff's experts' opening reports or
21 plaintiff's experts' reply reports, where they
22 had an option to say well, what Professor

Page 25

1 Lichtman said is contradicted by X, Y, Z. I
2 didn't see any of that.
3 Q. You didn't see any of that in the
4 reply reports, correct?
5 A. No, not saying it is contradicted by
6 this particular deposition testimony.
7 Q. Do you recall looking at
8 Dr. Morrison's reply report?
9 A. Of course.
10 Q. Did Dr. Morrison at any point in his
11 reply report state that the opinions you were
12 offering were contradicted by deposition
13 testimony?
14 A. I would have to look at the report.
15 I don't recall him specifically saying that.
16 Q. So, as you sit here, you don't have
17 any specific recollection of that?
18 A. Of him saying a particular point I
19 made is contradicted by this particular piece of
20 deposition testimony, I don't recall him doing
21 that. I've only gotten his report for a day or
22 two, so, I haven't -- but, I don't recall him

Page 26

1 saying that or demonstrating that, no.
2 Q. Do you believe that Arlington
3 Heights is the proper framework for examining
4 intent in this case?
5 A. I think it is a general framework
6 for establishing intent. And if you are a social
7 scientist establishing intent, you need a
8 framework. And I didn't -- let me finish.
9 Q. Sure, go ahead.
10 A. And the Arlington Heights is an
11 absolutely reasonable framework, one I've used
12 many times, and one that is consistent with
13 historical methodology.
14 The only framework I saw -- I saw
15 none in Dr. Morrison's report. And Dr. Morrison
16 admits, which I found quite striking, that he is
17 not an expert in intent, yet he opines on intent
18 extensively.
19 And the only framework I saw in
20 Dr. McDonald's report was the vote dilution
21 framework under the Voting Rights Act. And I
22 explained why that was not a proper framework for

Page 27

1 this analysis.
2 Q. Do you believe that Arlington
3 Heights is the only way that a plaintiff can show
4 evidence of intent in a case like this one?
5 A. Well, you never blanketly state a
6 negative like that.
7 I would certainly be willing to look
8 at an alternative framework. And I looked at the
9 alternative framework that Dr. McDonald presented
10 here and found that it was not a proper or
11 appropriate framework for the analysis of this
12 kind of case.
13 Q. If the plaintiffs had a directed
14 mission from somebody who was involved in the
15 redistricting process that their specific attempt
16 was to flip the 6th District, would that be
17 sufficient evidence of intent in your mind to
18 show that the State of Maryland, its map makers
19 and its legislators, did in fact intend to
20 retaliate against voters based on their political
21 expression?
22 MS. RICE: Objection, vague.

Page 28

1 THE WITNESS: I was going to say the
2 same thing. I don't know what you mean by
3 specific mission. It is so vague, it is
4 impossible to respond to that.
5 BY MR. MEDLOCK:
6 Q. Do you believe that a direct
7 admission from a legislator that they intended to
8 flip the 6th District is relevant in this case?
9 A. It could be relevant, but it is
10 certainly not a proof of retaliation.
11 As I explained in my report, there
12 are lots of alternative explanations other than
13 an intent to retaliate.
14 And, Representative Roscoe Bartlett,
15 himself, the ultimate target of allegations of
16 retaliation, denied that. He said no, they are
17 not trying to retaliate against me for my views.
18 Q. You would find it unusual if a
19 decision maker explicitly says, said we are going
20 to draw the boundaries of a particular
21 Congressional district to limit the ability of a
22 particular group to elect a candidate of their

Page 29

1 choice.
2 You would find that unusual?
3 A. I think we are talking about the
4 racial context, another reason why the racial
5 vote dilution analysis is inappropriate. You are
6 talking about a protected class.
7 And, a very sensitive issue.
8 Q. No, I didn't --
9 A. Let me finish. Let me finish.
10 Q. Okay. I'm just trying to clarify my
11 question.
12 I didn't put racial, any sort of
13 racial analysis into that. It is a general
14 question.
15 A. I've certainly seen lots of
16 admissions that legislators are tending to
17 achieve partisan advantage --
18 Q. Uh-huh.
19 A. -- in redistricting.
20 But, you would not find people
21 admitting that they are attempting to
22 discriminate against protected minorities.

Page 30

1 In fact, in one of the Texas cases I
2 was involved in, Greg Abbott, then the Attorney
3 General, now the Governor, talked about, well,
4 our redistricting is really designed to achieve
5 partisan advantage, and if there is any damage to
6 the voting rights of minorities, that is just
7 collateral. That is not what we are intending to
8 do.
9 Q. So, did you review Governor
10 O'Malley's deposition in this case?
11 A. No.
12 Q. Did you ask to see it?
13 A. No -- oh, I looked at a little piece
14 of it.
15 Q. Okay.
16 A. But, I didn't use it or anything.
17 Q. You said you looked at a little
18 piece of it.
19 A. Yes.
20 Q. Who gave you the little piece?
21 A. The attorneys gave me a little
22 piece -- they gave me the whole thing, and I

Page 31

1 looked at --
2 Q. And they directed you to a
3 particular passage?
4 A. We were discussing the issue of
5 whose map was used. And they said there is some
6 information here about whose map was used. But,
7 I didn't rely on it. I just looked at it.
8 Q. Who actually drew the Maryland, the
9 2011 Maryland Congressional map? Do you know
10 that?
11 A. I think probably the Department of
12 Planning.
13 Q. Do you know that for sure?
14 A. I don't know that for sure, but I
15 believe that is the process. It is a very murky
16 process, exactly who drew the final map.
17 But, I believe it was the Department
18 of Planning.
19 Q. Okay. In your mind, can you explain
20 to me what the process was by which Maryland drew
21 its Congressional map?
22 A. The whole process?

Page 32

1 Q. Yes, so, who starts out drawing the
2 map, and then where does it go after they draw
3 the map?
4 A. I think lots of people submit maps.
5 Q. Who drew the final map?
6 A. I believe the Department of Planning
7 drew the final map that the Governor presented.
8 Q. Who at the Department of Planning
9 drew it?
10 A. I can't say.
11 Q. What evidence do you have that the
12 Department of Planning drew the map?
13 A. That is just my knowledge of how
14 Maryland politics and redistricting works.
15 Q. Isn't it true that the way that
16 redistricting works in Maryland is that the
17 Maryland Congressional delegation draws potential
18 maps and proposes them to the Governor? Isn't
19 that right?
20 A. I think that is probably true
21 everywhere. Congressional --
22 Q. --

Page 33

1 A. Let me finish. Members of Congress
2 certainly have an interest in the particular map,
3 but they are not the decision makers.
4 Q. How do you know that? How do you
5 know that is true in Maryland?
6 A. How do I know that it is true that
7 members of Congress have an interest?
8 Q. No, no. How do you know that the
9 members of Congress in Maryland are not the real
10 decision makers behind the boundaries of the map?
11 A. I didn't say real. I said they are
12 not the decision makers. The Governor submits
13 the plan, and the legislature votes the plan.
14 Q. Okay.
15 A. Members of Congress can present all
16 kinds of things, but they don't make the final
17 decisions.
18 Q. Who in the, who in Maryland
19 government, either federal or state, is the real
20 decision maker behind the boundaries of the map,
21 of the Congressional map?
22 A. I don't know what you mean by real

Page 34

1 decision maker. That is pretty loaded term.
2 But, I will tell you again, the
3 Governor submits the map --
4 Q. Uh-huh.
5 A. -- and the legislature has the final
6 vote on it. And members can present amendments,
7 and amendments get voted.
8 Q. In 2011, who created the map that
9 the Governor proposed?
10 A. You've asked me that numerous times,
11 and I've answered that.
12 As far as I know, the final map
13 would have been from the Department of Planning,
14 with input, of course, from the Governor's
15 Redistricting Advisory Commission which he had
16 set up.
17 Q. Did you interview anyone in the
18 Maryland Department of Planning to come to that
19 conclusion?
20 A. No.
21 Q. Did you review any documents to come
22 to that conclusion?

Page 35

1 A. I think I may have. But, that is
2 just, as I said, mostly based on my general
3 knowledge of how redistricting processes work.
4 Q. You mentioned that you used -- you
5 are using an Arlington Heights framework to look
6 at intent in this case; is that right?
7 A. I didn't say that.
8 Q. Okay.
9 A. I'm not the ones trying to establish
10 intent here.
11 My work, as I explained in my
12 report, was to examine your experts' reports and
13 see whether or not they established intent.
14 And my point was that neither of
15 your experts used either the Arlington Heights
16 framework or any acceptable framework for
17 analyzing intent. There was no framework
18 whatsoever in the Morrison report.
19 Q. Uh-huh.
20 A. And an inappropriate framework in
21 the McDonald report.
22 So, leaving aside anything else that

Page 36

1 is in those reports, they can't establish intent.
2 Q. Do you offer any affirmative opinion
3 regarding specific intent in this case?
4 A. I offer an opinion to the extent
5 that there are lots of alternative explanations
6 which are not explored by your plaintiff's
7 experts, and that your plaintiff's experts, as a
8 result of not exploring those alternative
9 explanations -- well, as well as many other
10 problems and issues, and not having a framework,
11 haven't established anything with regard to
12 intent.
13 Q. I understand that you state that
14 there are alternative plausible explanations for
15 the boundaries of the Congressional districts in
16 the map.
17 But, do you offer an affirmative
18 opinion about what the specific intent of the
19 legislature and its map makers was in 2011?
20 A. No, that was not my task.
21 My task was to see whether or not
22 your experts established what they claimed to

Page 37

1 have established.
2 Q. And, you critique Professor
3 McDonald's vote dilution analysis, correct?
4 A. Very much so.
5 Q. Do you offer an affirmative opinion
6 about vote dilution, yourself?
7 A. I was not aware that vote dilution
8 of minorities was an issue in this litigation.
9 I thought that was settled the
10 Fletcher case.
11 And I don't see anything in either
12 of your expert reports that refer to vote
13 dilution of minorities. Rather, I see an
14 inappropriate attempt by Dr. McDonald to shoehorn
15 the vote dilution type of analysis we use in
16 voting rights that I have used scores of times
17 into this matter.
18 Q. Do you offer any affirmative opinion
19 regarding whether the votes of Republican --
20 whether the voting strength of Republican voters
21 in the 6th Congressional District has been
22 diluted?

Page 38

1 A. I don't use the term, diluted. But,
2 obviously the 6th Congressional District became
3 less Republican after the redistricting. No
4 doubt. That is a fact.
5 Q. That is just obvious, right?
6 A. That is obvious. And I don't think
7 your experts prove much more than that.
8 Q. Anyone who knows anything about
9 Maryland politics knows that the, that it became
10 less likely that a Republican would win in the
11 6th Congressional district after the 2011
12 redistricting; is that right?
13 A. Right. And that virtually
14 automatically follows, as I pointed out, from
15 something that has nothing to do with politics,
16 and that is the decision not to cross the
17 Chesapeake Bay.
18 Once you do that and you move out
19 those 100 and some odd thousand voters from Anne
20 Arundel, you've got to move in Carroll County,
21 Baltimore County and Harford County. And the
22 only way, the only way you can replace that,

Page 39

1 given the geography of Maryland in CD 6 is
2 Montgomery County.
3 Q. So, once a decision was made that
4 the 1st Congressional District would not cross
5 the Chesapeake Bay, in your opinion that made it
6 clear that the, that Republican strength in the
7 6th Congressional District would be diluted?
8 A. I don't use the word, diluted --
9 Q. Sure.
10 A. -- because that is from racial
11 voting rights analysis, and I don't think it is
12 appropriate here.
13 Q. Well, let me --
14 A. I will answer your question, though,
15 but I don't want to take your terminology.
16 Yes, once you move, once you had to
17 move Carroll, and parts of Baltimore and Harford,
18 to replace the population loss from Anne Arundel,
19 which followed from not crossing the Bay, and
20 none of your experts deny that was an objective,
21 the only other place to replace the population in
22 CD 6, you can't take it out of the voting rights

Page 40

1 district, had to be Montgomery County.
2 And you don't need to be a political
3 analyst. You just need to know anything about
4 anything about Maryland politics, to know if you
5 are putting voters in from Montgomery County,
6 because you had to take out voters from Carroll
7 County, that is going to make the district more
8 Democratic.
9 Q. Yes, you don't need to know anything
10 about anything about politics to know if I add
11 Montgomery County to the 6th Congressional
12 District, and get rid of Carroll County, then
13 I've made a more Democratic district; is that
14 right?
15 A. Again you are losing loaded
16 terminology that I'm not going to accept. Get
17 rid of Carroll County implies something that I'm
18 not willing to buy into.
19 Q. I'm not saying we are going to off
20 it, okay?
21 A. But you are implying that they
22 deliberately decided to get rid of Carroll County

Page 41

1 to put in -- that is not what I said at all.
2 Q. I'm not trying to put deliberate --
3 anything deliberate into my question.
4 A. All right, then.
5 Q. What I'm trying to say is once
6 Carroll County is removed from the 6th
7 Congressional District, for whatever reason, and
8 larger portions of Montgomery County are added,
9 again for whatever reason, that makes the 6th
10 Congressional District more favorable to a
11 Democratic candidate, right?
12 A. That is obvious for anyone who knows
13 anything about Maryland politics.
14 Q. Right. So, is not crossing the
15 Chesapeake Bay a, the reason that larger portions
16 of Montgomery County were added to the 6th
17 Congressional District?
18 A. It would make it essentially
19 inevitable that larger portions of Montgomery
20 County had to be added to the 6th district,
21 because there is no other place for population
22 from Carroll, Harford, and Baltimore County could

Page 42

1 have been replaced there.
2 Q. I understand that, but --
3 A. And, as I said, and your experts
4 don't address that. They are talking about all
5 of these population changes, as if the 6th and
6 8th District existed in isolation, and had
7 nothing to do with this decision not to cross the
8 Chesapeake Bay, which isn't even mentioned, even
9 in reply reports, after I spent a good deal of
10 time in my report explaining its central
11 implication here.
12 Q. You also talked about unpacking the
13 8th Congressional District.
14 A. Correct.
15 Q. And in your opinion, unpacking the
16 8th Congressional District also had made it
17 basically a fait accompli, right? That the 6th
18 Congressional District would become more
19 Democratic?
20 A. Yes, I don't see any possible social
21 science standard which says if you are doing a
22 redistricting plan, you have to be forced to

Page 43

1 maintain packed districts because unpacking them
2 is going to affect the partisan composition of
3 other districts.
4 That is a completely incoherent
5 standard that, you know, your experts at least
6 implicitly seem to be adopting.
7 Q. So, when you say that the 8th
8 Congressional District, as it existed before
9 2011, was packed, you mean that there were wasted
10 Democratic votes in that district?
11 A. Lots of them.
12 Q. Right.
13 A. In other words you are talking a
14 district that is what, I'm doing this from
15 memory, around 75 percent --
16 Q. Uh-huh.
17 A. -- Democratic.
18 By any definition of packing,
19 anywhere, that is a packed district.
20 In fact, your own expert
21 Dr. McDonald, and we can discuss that, insists a
22 district is noncompetitive if it is more than

Page 44

1 52 percent.
2 Here we are, you know, more than 20
3 percentage points above and beyond that.
4 Q. Well, we are well beyond that,
5 right?
6 A. Yes, it is a packed district.
7 Q. Well, the way you turn a wasted vote
8 into a nonwasted vote is you move it into another
9 district where it is not going to be wasted,
10 correct?
11 A. Well, you don't know whether it is
12 going to be -- this wasted vote idea is a very
13 tricky concept which I'm sure we will talk about.
14 You don't know in advance what is
15 going to happen when you do a redistricting plan.
16 But, you do know that when you
17 unpack a district, by definition it is going to
18 improve prospects in another district.
19 You don't know if you are going to
20 win it or lose it, but you know prospects, by
21 definition, will improve.
22 So, unpacking a district by

Page 45

1 definition will improve partisan prospects in
2 another district. That is why I found
3 Dr. McDonald's attempt to talk about that so
4 confusing.
5 Q. Okay. You also offer the additional
6 possible justification that Democrats in Maryland
7 could have been responding to Republican efforts
8 to gerrymander other states, correct?
9 A. That is one of the possible -- it
10 has nothing to do with retaliating against people
11 in CD 6. It has to do with responding to the
12 whole context of redistricting, and lots of
13 experts have pointed out you can't apply the same
14 standards to Congressional redistricting as you
15 apply to legislative redistricting, because in
16 legislative redistricting, the state controls the
17 entire set of seats.
18 Whereas, Maryland controls a tiny
19 fraction of seats.
20 Q. Uh-huh. So, in your opinion, it is
21 possible that Maryland Democrats could have seen
22 what was going on in North Carolina,

Page 46

1 Pennsylvania, and then decided we need to
2 increase the number of Democratic seats in
3 Maryland?
4 A. Right, which would have nothing to
5 do with retaliating against, or at least make a
6 seat more competitive and, in addition, as I
7 said, Maryland was lagging.
8 Q. Uh-huh.
9 A. When you look at Maryland at the
10 time of the redistricting, compared to other
11 one-party dominant states, it was a lag. It was
12 way behind other states. Look at Massachusetts,
13 a comparably Democratic state. At the time of
14 the post-2010 redistricting, Massachusetts was
15 9-0.
16 Q. You stated earlier that when you, a
17 state goes through a redistricting process, I
18 think if I can summarize it, you said that the
19 map makers don't necessarily know. They can't
20 predict the outcomes of elections based on the
21 boundaries they are drawing; is that right?
22 A. They can make predictions but they

Page 47

1 don't know for sure.
2 Look what happened in CD 6. In
3 2014, an incumbent democrat, John Delaney, barely
4 held onto that district. He won that district by
5 what --
6 Q. 1 --
7 A. -- 1.5 percentage points, an
8 absolute hair's breadth difference. If a couple
9 of thousand votes had shifted, he would have lost
10 that district.
11 Governor Hogan won that district
12 overwhelmingly, so, yes, you can make
13 predictions, but you don't know for sure whether
14 the votes are going to be wasted or not.
15 Q. So, if a, if another expert in this
16 case testified that using voting history data and
17 a GIS software program, that he could accurately
18 predict future outcomes of elections by drawing
19 the Congressional boundary lines, that would just
20 simply be incorrect?
21 A. He can certainly try to predict
22 them, but those are just predictions.

Page 48

1 If you look at, even the 2012 race,
2 the predictions were off. Based on the district
3 alone, every analyst had it as one of the few
4 competitive Congressional districts in the
5 country.
6 Charlie Cook, you know, maybe the
7 foremost analyst of Congressional districts, had
8 a D-plus-2, which is even within Dr. McDonald's
9 narrowest range for a competition, and yet John
10 Delaney won it by 20 points.
11 And then as an incumbent, he won it
12 by a point and a half. So, lots of things shift.
13 Look at what is happening in
14 Montana. The night before the election,
15 Republican candidate gets cited for assault.
16 Things happen.
17 Q. In the -- so, if an expert testified
18 that he could use publicly available data on
19 voting history and GIS software and create an 8-0
20 map, that would not be correct. You can't just
21 simply draw boundaries and say this is an 8-0
22 map, this is a 7-1 map, this is a 6-2 map,

Page 49

1 correct?
2 A. Incorrect. You can't say for sure,
3 which is the point I'm making, but you can
4 certainly say how districts lean.
5 Q. Okay. So, you can say, as you sit
6 down and draw a map, I have a degree of certainty
7 that this is going to be a 7-1 map, correct?
8 A. I'm not sure that I've seen anyone
9 give me degrees of certainty for that.
10 You can, you know, say likely Dem,
11 leans Dem, toss-up.
12 Q. Uh-huh.
13 A. And, indeed, if the map makers in
14 Maryland were motivated by partisan retaliation,
15 they could have drawn a more democratically
16 inclined map. They didn't have to concede
17 District 1. But, once you didn't cross the
18 Chesapeake, obviously you did.
19 Q. What is your methodology for
20 determining partisan retaliation in this case?
21 A. You know what? Again, my task was
22 not to determine those things.

Page 50

1 My task was to figure out whether or
2 not your experts established that. And I see
3 nothing in any of the reports, not a word, that
4 would establish retaliation against Republicans
5 for their views.
6 And, as I said, even the man
7 allegedly targeted, Roscoe Bartlett, denies that.
8 Q. You don't have an opinion about the
9 proper methodology for determining retaliation,
10 do you?
11 A. I suppose if you had hired me, I
12 might have developed it.
13 Q. But you don't have it, as you sit
14 here today?
15 A. My work is to evaluate whether your
16 experts established it, and quite clearly they
17 don't come close.
18 Q. You don't have an affirmative
19 opinion regarding whether the Maryland
20 legislature and its map makers retaliated against
21 voters in the 6th Congressional District?
22 A. Actually I do, because now I've read

Page 51

1 four reports from experts determined to show
2 that.
3 Q. Okay.
4 A. And they don't come close. So, my
5 opinion is based on what I've seen, the Maryland
6 legislature was not motivated by retaliatory
7 efforts. It is not like, you know, in other
8 contexts, where you can see retaliation against
9 specific individuals.
10 Q. What --
11 A. And, moreover, we have something
12 extraordinary here in Maryland which astoundingly
13 your experts don't even look at. We have the
14 referendum. This is very, very rare.
15 Q. Uh-huh.
16 A. In fact, in all of the cases I've
17 worked on, I can't recall another instance of
18 this, where you actually have the voters
19 themselves weighing in here. And the voters
20 themselves in western Maryland go opposite of
21 what your experts are claiming.
22 They are voting for this map, even

Page 52

1 though right smack in front of them they have an
2 opportunity, if they feel they are being
3 retaliated against, to exercise their protest.
4 So, this is the best evidence I've
5 seen, which your experts don't touch, that this
6 is not a case of partisan retaliation.
7 Q. We will get to the referendum in a
8 second.
9 I want to focus on your opinion that
10 there was no partisan retaliation in this case.
11 You don't express that opinion
12 anywhere in your expert report, correct?
13 A. Well, I expressed the opinion that
14 your experts have not established that. And that
15 is -- let me finish. And that is my task.
16 My task is to look at whether your
17 experts now in four reports have proved what they
18 purport to be proving.
19 Q. So, my question was more focused.
20 My question was, you don't offer the
21 opinion that there was no partisan retaliation
22 anywhere in your report, correct?

Page 53

1 A. I offer the opinion that your
2 experts have not shown any partisan retaliation,
3 and I can reiterate all of my reasons for that.
4 Q. Sure.
5 A. But, there are many, starting with
6 the fact they have no acceptable methodology
7 which means, you know, whatever else they put in,
8 they can't establish that.
9 Q. You would agree with me that there
10 is a difference between saying that other experts
11 have not proven retaliation and offering your own
12 affirmative opinion that there was no retaliation.
13 Those are distinct opinions,
14 correct?
15 A. That is true. And my task was to
16 evaluate your experts and see if they proved what
17 they purport to be proving.
18 And now, having reviewed four
19 reports, I just saw the reply reports --
20 Q. Uh-huh.
21 A. -- they absolutely do not prove
22 partisan retaliation.

Page 54

1 Q. And my question is not focused on
2 the, whether or not Professor McDonald and
3 Dr. Morrison affirmatively proved partisan
4 retaliation.
5 My question is, in your report, do
6 you offer the distinct opinion that Maryland
7 Democrats did not retaliate against voters in the
8 6th Congressional District?
9 A. I do offer the opinion that based
10 upon my review of the evidence and the reports,
11 there was no indication that that was the purpose
12 of this redistricting plan, correct.
13 Q. Okay. So you do offer that opinion
14 in your report?
15 A. Well, again, I'm not sure I come
16 right out and say that, and I didn't have the
17 opportunity in preparing this report to see the
18 reply reports.
19 But my fundamental opinion is that,
20 having examined four reports of experts, for a
21 host of reasons they do not establish that. I'm
22 not, my purpose again is not to offer an

Page 55

1 affirmative opinion on that, but see whether or
2 not that has been established.
3 But given that you have two experts
4 with four reports and they can't establish it,
5 and there are alternative explanations, and there
6 is the statement of Dr. -- excuse me,
7 Representative Roscoe Bartlett, I would say yes,
8 there certainly is not evidence of an intent to
9 retaliate against people because of their
10 political views.
11 Q. So, you stated that upon your review
12 of evidence in the reports, there is no
13 indication that the purpose of the redistricting
14 plan in 2011 was partisan retaliation.
15 What I want to know is, what
16 methodology did you use to come to that
17 conclusion?
18 A. I used my analysis of their reports.
19 I have four reports in front of me.
20 And, I will go through all of the
21 flaws of the reports if you like starting with
22 the lack of a methodology.

Page 56

1 And in four reports they do not
2 establish that, at all.
3 Q. So, what I want to get to is, you
4 said there is no indication of, that there was
5 retaliation, based on, for partisan purposes in
6 this case.
7 You are basing that completely on
8 your review of the expert reports, correct?
9 A. No, not entirely. And --
10 Q. In the materials cited in your
11 report?
12 A. Yes.
13 Q. Okay. And, you didn't use any
14 methodology to come to an affirmative opinion on
15 your own, your own independent opinion, that
16 there was no partisan retaliation in this case?
17 A. I did not do an independent
18 Arlington Heights framework type of analysis.
19 Q. Okay.
20 A. I simply examined, which was my
21 task, whether or not your experts established
22 what they claimed to have established.

Page 57

1 And having looked at all of it now,
2 I come to the opinions I've given you.
3 Q. You mentioned that Roscoe Bartlett,
4 former Congressman Roscoe Bartlett, stated that
5 he believed that there wasn't any partisan
6 retaliation, or intent to retaliate on partisan
7 grounds in this case, correct?
8 A. He said it was nothing -- you know,
9 he is the ultimate target. And he said it is
10 nothing personal. It doesn't have anything to do
11 with me or my views.
12 It just has to do with the bigger
13 context of redistricting.
14 Q. He made that statement after the
15 2012 election, correct?
16 A. I don't remember exact -- I don't
17 think so. I would have to find it. No,
18 May 2012. That is what I thought.
19 Q. May 2012.
20 So, that is after the Governor
21 signed Senate Bill 1 on October 20, 2011,
22 creating the new Congressional map, correct?

Page 58

1 A. And before the referendum.
2 Q. Correct. It was after the
3 redistricting process was over?
4 A. No, the redistricting process also
5 includes the referendum.
6 Q. Okay. So -- but, the Congressional
7 lines had already been created for Congressional
8 District 6?
9 A. But they weren't set.
10 Q. They, you don't think they were set
11 in May --
12 A. Because of the referendum, they
13 could have been voted down.
14 Q. So, it is your opinion that if the
15 referendum had voted down the Congressional lines
16 in the, in Senate Bill 1, then there would have
17 to be an entirely new election. The 2012 results
18 wouldn't apply?
19 A. I'm not saying that at all.
20 Q. Okay so?
21 A. I'm just saying the redistricting
22 process obviously includes the referendum. I'm

Page 59

1 not saying the referendum would invalidate the
2 2012 election, by no means.
3 Q. Okay. But, Senate Bill 1 has
4 already been signed at this point?
5 A. Of course.
6 Q. The legislature has already weighed
7 in, correct? They have already voted?
8 A. Correct.
9 Q. The GRAC has already completed its
10 work?
11 A. Correct.
12 Q. And the Governor has already made
13 his proposal?
14 A. Correct.
15 Q. And this statement was made after
16 all of that was done, correct?
17 A. Correct, but before the referendum
18 when this was still a lively issue.
19 Q. Okay. And because there was a
20 referendum, you believe that that makes, do you
21 believe that that makes Roscoe Bartlett's
22 statement a contemporaneous statement that you

Page 60

1 should give more weight to, rather than it being
2 an after-the-fact statement that you should give
3 less weight to?
4 A. Yes, I would give less weight.
5 This is part of -- see, you don't
6 quite understand what I'm saying. Maybe you do.
7 But, what I'm saying is I look at
8 primarily evidence produced by the events we are
9 examining.
10 And one of the events, of course,
11 the critical event is the redistricting process.
12 And a critical part of the redistricting process
13 is the referendum. As I said, this is quite an
14 extraordinary thing to have a referendum.
15 Q. Uh-huh.
16 A. And so things produced as part of
17 the process, through the referendum, is obviously
18 contemporaneous information, whereas things
19 produced in 2017 is not.
20 The issue of Maryland redistricting
21 is still very much up in the air in May of 2012.
22 Q. Was it still very much up in the

Page 61

1 air, right up until the day that voters voted on
2 the 2012 referendum?
3 A. Absolutely. As we saw just
4 yesterday in Montana, things can happen right on
5 the eve of an election.
6 Q. So, if somebody spoke in October
7 regarding the referendum, that would be a
8 statement that you would give a great deal of
9 weight to.
10 A. Again, it would be a statement I
11 would consider. I would have to look at,
12 whether -- you know, there is lots of other
13 things you would examine other than the timing of
14 the statement.
15 And one of the things that make this
16 statement from Bartlett so strong is not only
17 that it is before the referendum, but it is
18 against interest.
19 Q. So, anything said prior to the 2012
20 redistricting referendum would be relevant to
21 your analysis of intent in 2011?
22 A. Well, again, I'm not going to

Page 62

1 blanketly say everything is relevant, because you
2 have to also examine the particular piece of
3 evidence to decide how it fits in, what kind of
4 weight, and how to analyze it.
5 But it would be at least fair game
6 to check.
7 Q. Sure. And if someone gave a
8 statement against their own personal interest,
9 that would be something that you would give a
10 serious look at?
11 A. I would you take a serious look at
12 it, sure.
13 Q. Okay. Do you cite Attorney General
14 Doug Gansler's comments on the Maryland
15 Redistricting Referendum anywhere in your report?
16 A. They are already cited in, I
17 believe, the report of Dr. Morrison.
18 I already looked at all of the
19 things he cited.
20 Q. And he gave that statement prior to
21 the redistricting referendum, correct?
22 A. Correct.

Page 63

1 Q. And at the time he was the Attorney
2 General of Maryland, correct?
3 A. Correct.
4 Q. And he was involved in redistricting
5 litigation, correct?
6 A. I don't know if there was
7 redistricting litigation at the time.
8 I mean, you -- I'm not sure exactly
9 when the lawsuits were filed --
10 Q. Okay.
11 A. -- so you would have to show me
12 something.
13 Q. Okay.
14 A. I don't remember the exact date of
15 the Gansler statement, so maybe you could give me
16 the statement, and we could talk about it, rather
17 than trying to talk about it from memory.
18 Q. Okay. Okay. Did you rely on
19 Attorney General Gansler's statement at all in
20 your expert report?
21 A. I didn't, I didn't cite it. And I
22 would have to look at it again to refresh my

Page 64

1 memory on it.
2 Q. But, I guess my question is not
3 whether you cited it. It is rely you relied upon
4 it.
5 Did you rely upon it at all?
6 A. I looked at it, to see what it might
7 or might not establish, because it was in one of
8 the reports --
9 Q. Uh-huh.
10 A. -- of your experts. And to that
11 extent I looked at it.
12 But, beyond that --
13 Q. Uh-huh. Do you believe it has any
14 bearing on the opinions you offer?
15 A. I would have to review the statement
16 again.
17 Q. Okay.
18 A. So, if you can show it to me, we can
19 discuss it. I would rather not do it from memory.
20 MR. MEDLOCK: All right. Sure. Why
21 don't we take a five-minute break --
22 THE WITNESS: Good idea.

Page 65

1 MR. MEDLOCK: -- I will get the
2 report and I will show it to you.
3 THE WITNESS: Good idea.
4 MR. MEDLOCK: Perfect.
5 THE VIDEOGRAPHER: Going off the
6 record at 10:47.
7 (Recess taken -- 10:47 a.m.)
8 (After recess -- 10:57 a.m.)
9 THE VIDEOGRAPHER: Going on the
10 record at 10:57.
11 (Lichtman Exhibit Number 176
12 marked for identification.)
13 BY MR. MEDLOCK:
14 Q. All right, sir, I'm showing you
15 Exhibit 176, which is the opening report of
16 Dr. Peter Morrison.
17 I want to direct you to Pages 52
18 and 53.
19 A. Okay.
20 Q. And I'm specifically looking at
21 Paragraph 111 of the report. Can you let me know
22 when you get there.

Page 66

1 A. I'm at 52.
2 Q. Okay. You see Paragraph 111 at the
3 bottom, towards the bottom of the page?
4 A. Yes.
5 Q. And that continues over to Page 53,
6 correct? Is that right?
7 A. Yes.
8 Q. Okay. And that reference,
9 Paragraph 111 quotes from an October 31, 2012,
10 speech that then Attorney General of Maryland,
11 Doug Gansler, gave at the Community College of
12 Baltimore County Essex campus, correct?
13 A. That is what it says, yes.
14 Q. Okay.
15 A. I have no reason to dispute that.
16 Q. Okay. And Attorney General Gansler
17 says, "The third issue is redistricting. And the
18 redistricting is interesting, because I actually
19 have to defend the legislature in its drawings of
20 the map.
21 "So many people have a problem with
22 the way that the state was gerrymandered this

Page 67

1 last time. For example, in the 6th district,
2 Garrett County, Maryland, a very rural agrarian
3 part of the state, is coupled with Potomac,
4 Maryland, in Montgomery County, which is perhaps
5 the most wealthy and least agrarian part of the
6 state.
7 "And yet they are voting for the
8 same representative in the election between
9 Roscoe Bartlett, a longtime Congressman, and John
10 Delaney, sort of a newcomer on the political
11 scene.
12 "So, what happened, we have eight
13 Congressional districts. The democrats had the
14 ability to look at the state gerrymandered in
15 such a way to make it 7 to 1.
16 "They were looking to do, they were
17 looking to do -- they want to make the Eastern
18 Shore, try that again, to make it even more
19 Democratic and make that the 7th Democratic
20 district.
21 "Or western Maryland. They chose
22 Western Maryland, and it is actually a 53 percent

Page 68

1 Democratic district."
2 Did I read that correctly?
3 A. Yes.
4 Q. Okay. Good. I tried, and it was
5 long.
6 A. Very good.
7 Q. Okay. This statement was made
8 around the same time as Roscoe Bartlett's
9 statement that you cite in your report, correct?
10 A. Incorrect.
11 Q. It was made -- they were both made
12 in 2012, correct?
13 A. Oh, well, in that sense, but they
14 were made many months apart. Roscoe Bartlett's
15 was much more contemporaneous to the Governor's,
16 and the legislative part of the redistricting.
17 It was made in May. This one was
18 made what?
19 Q. In October?
20 A. In October, five months later.
21 Q. So, can you explain to me why you
22 rely in your report on Congressman Bartlett's

Page 69

1 statement and do not cite then Attorney General
2 Gansler's statement?
3 A. This says nothing about retaliation.
4 Roscoe Bartlett's statement directly deals with
5 retaliation.
6 Q. So, you believe that Attorney
7 General Gansler's statement about making it a
8 7 -- 7 to 1 has nothing to do with retaliation?
9 A. No. I mean, if every time you had
10 an effect of changing partisan leanings of
11 districts, that was a first amendment
12 retaliation, you would invalidate every single
13 redistricting plan in the country. And you would
14 freeze in every single gerrymander, like that in
15 Pennsylvania.
16 Q. Do you, and you believe that even
17 though Attorney General Gansler uses the phrase
18 that the map was gerrymandered, that has nothing
19 to do with retaliation; is that right?
20 A. People use that term very, very
21 loosely.
22 Q. Uh-huh.

Page 70

1 A. I very much doubt if Attorney
2 General Gansler meant it in a strict social
3 science way.
4 I see statements about
5 gerrymandering all of the time from non social
6 scientists. And it is a very loosely used term,
7 which is why, if you are a social scientist, you
8 actually have to figure out what that means, and
9 how you test it.
10 Gerrymandering is not equivalent to
11 retaliation. And, in fact, Maryland is not even
12 a gerrymandered plan.
13 Q. And, you state -- well, let me back
14 up actually. I -- you don't believe that making
15 the 6th Congressional District a 53 percent
16 Democratic district amounts to retaliation, do
17 you?
18 A. If that was the case, every time you
19 changed the partisan composition of a district,
20 you would have a first amendment violation, and
21 you would have to freeze in place every single
22 gerrymander, because the only way to remedy

Page 71

1 gerrymanders would be to change the partisan
2 leanings of the district.
3 So, I absolutely don't see that as a
4 coherent standard.
5 You can't reason from effect that
6 way or without, you know, having a standard that
7 would be totally contrary to any kind of good
8 public policy or reasonable social science
9 analysis.
10 We struggled in the Veath case, I
11 was the expert in the Veath case, with finding a
12 standard. And I think we found a very reasonable
13 one which was, is a plan structured in such a way
14 that it prevents the disfavored party from
15 getting a majority of the seats, even when they
16 achieve a reasonable level majority of the votes.
17 But, to say any time a district
18 changes its partisan composition, that is a first
19 amendment violation, that to my mind is not a
20 coherent standard.
21 Q. Do you believe that the Veath case
22 sets forth a reasonable way for articulating -- a

Page 72

1 reasonable way for determining whether a
2 redistricting plan violates the first amendment?
3 A. Well, as I remember the Veath case,
4 and it was a long time ago, the court decided
5 that they couldn't come up with a standard for
6 judging when a plan was gerrymandered.
7 And I believe, you know, the
8 standard of, when you do an analysis, even if a
9 disfavored party gets you know, 51, 52 percent of
10 the vote, they still can't translate that into
11 a -- that is a pretty decent standard, and a
12 vastly clearer standard than whatever standard
13 may be proposed here.
14 And I don't really see any standard
15 proposed by your social scientists.
16 Q. Do you -- you don't deny that there
17 was a deliberate dilution of Republican votes in
18 the 6th Congressional District?
19 A. I do not use the word, dilution.
20 Q. Okay. You don't deny that there is
21 a deliberate reduction in the strength of the
22 Republican vote --

Page 73

1 A. Tell me what you mean by deliberate.
2 Q. Do you deny that there was intent by
3 the Maryland legislature to make the 6th
4 Congressional District less Republican leaning?
5 A. I think Democrats in the district
6 were probably pleased to see a more competitive
7 Democratic leaning district created in CD 6.
8 But, as I explained, that kind of,
9 pretty much followed once you made an independent
10 nonpartisan decision not to cross the Chesapeake
11 Bay.
12 Q. That is actually not my question.
13 My question is, if I can get back to
14 it, you don't deny that there was an intent by
15 the Maryland legislature to make the 6th
16 Congressional District less of a Republican
17 leaning district, do you?
18 A. Again, I'm not sure what you mean by
19 that. Was that one of the things that they did,
20 among many? Was that the predominant, the
21 primary motive in the redistricting plan?
22 That is a very vague kind of

Page 74

1 question.
2 Q. Okay. Was one of the considerations
3 that the Maryland legislature and its map makers
4 took into account making the 6th Congressional
5 District less Republican leaning?
6 A. I think there is no question that
7 every single legislature that has ever looked at
8 any redistricting plan, of any kind, anywhere in
9 America, considers a, partisan leanings of
10 districts.
11 Q. Can you tell me, as you sit here
12 today, whether the, whether making the 6th
13 Congressional District less Republican leaning
14 was a predominant factor that the legislature and
15 its map makers considered?
16 A. Oh, I don't think your experts
17 established that at all.
18 Q. I'm not asking that question. I'm
19 asking, not whether our experts established it,
20 whether you have any opinion on it, one way or
21 another?
22 A. And I've said this innumerable

Page 75

1 times. I will say it again.
2 My job was to examine all of the
3 materials produced by your experts and see
4 whether your experts proved what they set out to
5 prove.
6 And in my view, even now having at
7 least had some opportunity to look at two
8 additional reports, they did not prove what they
9 intended to prove.
10 Q. Okay. So, your job, as you see it
11 in this case, is to look at the expert reports
12 that the plaintiff submitted, the opening reports
13 and the reply reports, and critique those
14 reports. That is a large part of your job in
15 this case, correct?
16 A. Right. But critique in the broad
17 sense.
18 Q. Sure. And I'm using it in the broad
19 sense?
20 A. You know, have they established what
21 they intended to demonstrate with respect to an
22 intentional discrimination.

Page 76

1 Q. It is not your job in this case to
2 look at the entire record and determine whether
3 that entire factual record establishes that the
4 Maryland legislature and its map makers had a
5 partisan intent to flip the 6th Congressional
6 District?
7 A. My job was not to redo their job,
8 that's right.
9 My job was not to redo the job they
10 did, but to evaluate the job --
11 Q. Who is they in that sentence?
12 A. I've always talked about plaintiff's
13 experts obviously.
14 Q. Okay. So, your job was not to look
15 at the factual record and determine whether the
16 Maryland legislature and its map makers intended,
17 had a specific intent to retaliate against
18 Republican voters in the 6th Congressional
19 District? It just wasn't part of your job?
20 A. Well, I'm not sure that is correct.
21 My job was to determine whether or
22 not your experts had established that. And, in

Page 77

1 so doing, I looked at those aspects of the record
2 that they present, plus many other things.
3 Q. Uh-huh.
4 A. I'm not just punching holes. That
5 is why I, you know, I objected a bit to the use
6 of the word, critique, because it kind of just
7 suggests I'm just punching holes.
8 I looked, in fact, at a much bigger
9 context --
10 Q. They --
11 A. Let me finish. That they had looked
12 at, looked at things that they don't even
13 mention, like the crossing of the Chesapeake Bay,
14 the packing of CD 8.
15 Q. Where in your report can I find your
16 affirmative opinion regarding the specific intent
17 of the Maryland legislature in the 2011
18 redistricting process?
19 A. You know, we can keep running around
20 this mulberry bush.
21 I told you my job was to determine
22 whether or not that was established by

Page 78

1 plaintiff's experts, in light of what they
2 presented, and in light of a broader look.
3 Q. And --
4 A. As I said, if you wanted -- never
5 mind.
6 Q. No go ahead. You can finish your --
7 A. No, no, I'm done. I'm done.
8 Q. I don't want to step on you.
9 A. I'm done.
10 Q. I want to let you finish.
11 A. I'm finished. I'm finished.
12 Q. Okay. One of the factors that you
13 talked about earlier and in your expert report is
14 the I-270 corridor.
15 A. Correct.
16 Q. And, I think, as you said earlier,
17 anybody with any knowledge of Maryland politics,
18 knows that there is an I-270 corridor, correct?
19 A. And, then more than that,
20 particularly if you are a member of the state
21 legislature, the whole issue of I-270 has been
22 long established and debated, is well known.

Page 79

1 And, lots of the witnesses at the
2 public hearings testified about it.
3 So, my point was, you don't have to
4 do the kind of analysis that I did to know about
5 the Maryland I-270 corridor, its role in jobs,
6 commuting and economic development.
7 And there is a whole report, from
8 the Maryland Department of Transportation that I
9 cite, all about that.
10 Q. Right. What I want to talk to you
11 about is the scope of the I-270 corridor.
12 (Lichtman Exhibit Number 177
13 marked for identification.)
14 BY MR. MEDLOCK:
15 Q. Let me mark the next exhibit, which
16 will be 177.
17 A. Okay, I think I have a whole section
18 of that in my report. I will get to that.
19 Q. Okay, that is fine.
20 MR. MEDLOCK: Actually, can I get
21 that back? I only have three. Sorry.
22 MS. KATZ: Yes, that is fine. We'll

Page 80

1 share.
2 MR. MEDLOCK: No problem. Thanks.
3 BY MR. MEDLOCK:
4 Q. All right. I put in front of you
5 what we've marked as Exhibit 177 to your
6 deposition.
7 A. Yes.
8 Q. Do you have that in front of you?
9 A. Yes.
10 Q. Okay. It is a printout from
11 interactive map that appears in the Maryland
12 Department of Planning website.
13 Showing the eight Congressional
14 districts in Maryland's 2011 Congressional --
15 A. It is very hard to see, but I can
16 kind of see it. It is very small.
17 Q. I understand. Flip to the second
18 page, if you will.
19 A. Yes.
20 Q. Okay.
21 A. That one is even harder to see.
22 Q. Okay. Let me try and make it a bit

Page 81

1 easier then.
2 There, on the left side, there is a,
3 of the page, there is a legend, right, that says,
4 shows the different colors for each Congressional
5 district, correct?
6 A. Yes.
7 Q. Okay. And, the 8th Congressional
8 district is a light purple color, correct?
9 A. Correct.
10 Q. Okay. And, the 6th Congressional
11 District is a light green color, correct?
12 A. That's correct.
13 Q. Okay. And, there are major roadways
14 that are marked on this --
15 A. If you say so. I can't really see
16 them.
17 Q. Do you see a road that goes from
18 Tysons Corner, at the very bottom of the map, and
19 crosses the Potomac into the 8th Congressional
20 District?
21 A. I can't see that. I'm sorry.
22 Q. Sure. Let me help you with it.

Page 82

1 A. Sure.
2 Q. You see this right here. It is
3 Tyson's Corner?
4 A. Way down there.
5 Q. And there is a road that comes up
6 over the Potomac. Correct?
7 A. Yes, I do see that.
8 Q. Okay. That is the Capital Beltway,
9 correct? That is the --
10 A. If you say so. I really can't see
11 anything on this map, but if you say so, I won't
12 argue.
13 Q. You don't have any reason to dispute
14 that right?
15 A. It looks about right.
16 Q. And it is crossing at the American
17 Legion Bridge, right?
18 A. Yes.
19 Q. Okay. And if the I go on I-495
20 towards 270, I am initially in the 8th
21 Congressional District, correct, as I cross into
22 Maryland?

Page 83

1 A. It looks like you are right on the
2 border of 6 and 8, as far as I can see, but --
3 Q. That's right. But if I cross right
4 here?
5 A. Yes, for a tiny piece, you are on
6 the 8th.
7 Q. For a tiny peace I'm in the 8th
8 Congressional District alone, right?
9 A. That's correct.
10 Q. And then if I move up here, and I
11 take the I-270 spur --
12 A. Right.
13 Q. -- I'm on the border of the 6th
14 Congressional District and the 8th Congressional
15 District, correct?
16 A. Correct. You are kind of in both,
17 that's right.
18 Q. That's right. Do you know whether
19 the, is the border of the 6th and the 8th, is
20 that in the median, or is it --
21 A. I can't tell from this. No way to
22 tell.

Page 84

1 Q. Okay. Do you know just from your
2 analysis in this case?
3 A. No, I can't.
4 Q. Okay. And then if I move up on I
5 270, going towards Rockville --
6 A. Yes.
7 Q. -- I am exclusively, again in the
8 8th Congressional District, correct?
9 A. For a brief period, yes.
10 Q. Yes, for a brief period. And then
11 if I move up towards Gaithersburg, if I take the
12 express lanes, and not the local lanes, and save
13 some time, I am in the 6th Congressional
14 District, exclusively, correct?
15 A. Correct.
16 Q. Okay. So, if you look at I-270,
17 portions of it are in the 8th Congressional
18 District. Portions that are on the border of the
19 6th and the 8th, and portions of it are
20 exclusively in the 6th, correct?
21 A. Yes, but you cut this off.
22 Q. I know I did but --

Page 85

1 A. Because all of the rest of it is
2 only in the 6th.
3 Q. But, the answer to my question is
4 yes, correct?
5 A. There is some little piece of it in
6 the 8th, absolutely, of course.
7 Q. And that little piece of it runs
8 through Rockville, correct?
9 A. Absolutely.
10 Q. Right. And one of the ways that,
11 one of the -- you talk about commuting flows,
12 from Frederick to Montgomery County, correct?
13 A. Right.
14 Q. And those commuters are going to
15 places of employment in Montgomery County?
16 A. Correct.
17 Q. From their homes in Frederick
18 County, correct?
19 A. That's right.
20 Q. And one of the major employment
21 centers in Montgomery County is Rockville,
22 correct?

Page 86

1 A. That is probably true. There are
2 others, Gaithersburg, and --
3 Q. Sure, Silver Spring as well?
4 A. I don't know about Silver Spring
5 from up there. You would have to show me the
6 data.
7 Q. Okay. But you don't dispute that
8 some individuals commute from Frederick to Silver
9 Spring, right?
10 A. I assume there is some, but I have
11 to see the data.
12 Q. Okay. And how about Bethesda? That
13 is a major employment center in Montgomery
14 County, correct?
15 A. To some extent, sure, of course.
16 Q. Sure. And Bethesda is in the 8th
17 Congressional District, correct?
18 A. That's correct.
19 Q. And Rockville is in the 8th
20 Congressional District, correct?
21 A. Correct.
22 Q. So, when commuters leave their homes

Page 87

1 in Frederick County, you can't -- and they
2 commute on I-270, you can't say for certain,
3 looking at the data, whether they are travelling
4 to a place of employment in the 8th Congressional
5 District or the 6th Congressional District, can
6 you?
7 A. That's correct, of course.
8 Q. Okay. And so you can't tell me
9 whether the, whether the boundaries of the --
10 well, let me back up.
11 For the boundaries of the 6th and
12 8th Congressional District for some people are
13 dividing their home in Frederick and the place of
14 employment that they commute to, correct?
15 A. That is inevitable. You can't move
16 all of the population into the 6th Congressional
17 District without overpopulating 6 and
18 underpopulating 8. That is not some, you know,
19 scheme here.
20 Q. Right.
21 A. It is just the way the population
22 distributes itself.

Page 88

1 But, the vast majority of I-270 is
2 in 6.
3 Q. Right. It would actually be
4 mathematically impossible to draw a Congressional
5 district that included the entirety of I-270,
6 correct?
7 A. I don't know what you mean by the
8 entirety of I-270.
9 But, you certainly could not move
10 all of Rockville --
11 Q. Right.
12 A. -- into CD.
13 So, what this map does is, as well
14 as you can, because population is population,
15 demography is what it is, it does create an I-270
16 district.
17 Q. Well, can you -- it would have been
18 possible for the map makers to take other
19 portions of Western Maryland out of the 6th
20 Congressional District and just create a
21 Congressional district that include all of the
22 communities along the I-270 --

Page 89

1 A. I don't know. You would have to
2 show me an alternative map that did that.
3 Q. Okay.
4 A. There is a lot of population here.
5 There is not much population out there in Western
6 Maryland. So, I don't think that is possible.
7 Q. So, do you know, as you sit here
8 today, whether that was possible?
9 A. I did not see any such alternative
10 map presented by any of your experts.
11 Q. Well, I, beyond whether there is an
12 alternative map presented by experts, as you sit
13 here today, do you know whether it would have
14 been possible to draw a Congressional district
15 that included all communities along I-270,
16 including Rockville and communities in Bethesda?
17 A. I don't see how that would have been
18 possible in terms of the population.
19 But, if you want to show me an
20 alternative map, I will look at it.
21 Q. Okay. And you cited testimony at
22 public hearings regarding the I-270 corridor,

Page 90

1 correct?
2 A. And more broadly the community of
3 interest that is created by the new CD 6. It is
4 not just limited to I-270. They are talking
5 about a whole host of other things.
6 For example, common media markets.
7 So, it is not limited to I-270. Rather, it is a
8 lot of testimony about why, in fact, new CD 6 is
9 a community of interest, and even more so than
10 old CD 6.
11 Q. Is it, is it your opinion that a
12 congressional district can create a new community
13 of interest?
14 A. No, it doesn't create a new
15 community of interest.
16 Rather, it represents -- this is a
17 big confusion in Dr. Morrison's report.
18 You are not creating this as a new
19 community of interest. Of course not.
20 But, you are recognizing it --
21 Q. Okay.
22 A. Let me finish. But you are

Page 91

1 recognizing it in the way you draw district
2 lines. You are not creating 270. You are not
3 creating the media markets. They exist.
4 Q. Did you consider the Intercounty
5 Connector at all in your analysis of communities
6 of interest?
7 A. I'm not sure they refer to that or
8 not in any of this testimony.
9 They probably might have been in the
10 report of the Maryland Department of
11 Transportation.
12 But, to the extent I look at
13 commuter flows, that, you know, that would be
14 part of it. Whatever roads there are.
15 Q. Did you analyze commuter flows on
16 the Intercounty Connector?
17 A. No, I analyzed commuter flows
18 between counties in CD 6 and the District of
19 Columbia.
20 Q. Did you, do you know whether
21 commuter flow on the Intercounty Connector
22 creates a community of interest?

Page 92

1 A. I think that is exactly the standard
2 that used by Dr. Morrison as a sufficient
3 standard in -- let me finish.
4 Q. Sure, go ahead.
5 A. -- in his Fletcher report. And so,
6 my point here in looking at these commuter flows,
7 is in fact, the commuter flows in CD 6 establish
8 a vastly stronger community of interest than the
9 one that Dr. Morrison defends in his Fletcher
10 report, strictly on the basis of jobs and
11 commuter flows.
12 It was remarkable to me in his reply
13 report that he talks about growth of Hispanic and
14 black populations.
15 If you look at his Fletcher report,
16 the word, black, doesn't appear. The word,
17 African American, doesn't appear. The word,
18 Hispanic, doesn't appear. The word, Latino,
19 doesn't appear.
20 There are six tables. Every one of
21 them is on jobs and commuter flows. That is all
22 he looks at.

Page 93

1 Q. How many reports did Dr. Morrison
2 offer in the Fletcher case? Do you recall that?
3 A. No. But, I was just interested in
4 this one, because this was a report in which he
5 said this is a way you can establish a community
6 of interest.
7 It doesn't talk about census places.
8 It doesn't talk about foreign and native born.
9 It doesn't talk about socioeconomics. It doesn't
10 talk about any of the things that he talks about
11 in his subsequent report.
12 Q. Did you compare any community of
13 interest that would have been created by the
14 Intercounty Connector to any, the community of
15 interest created by the I-270 corridor?
16 A. I did not see anywhere in any report
17 a district based on the Intercounty Connector.
18 And I don't see how you would do that anyway,
19 without interfering with the voting rights
20 district.
21 Q. And so you just didn't do that
22 analysis?

Page 94

1 A. No, I didn't see that as relevant.
2 I didn't see that as a possibility, given the
3 voting rights district.
4 Q. Did you analyze commuter flows on
5 I-495 at all?
6 A. I think I analyzed commuter flows
7 exactly the same way that Dr. Morrison analyzed
8 commuter flows.
9 Within the counties and between the
10 counties and the District of Columbia.
11 Q. Well, I-495 goes through Montgomery
12 County, correct?
13 A. Yes.
14 Q. And it goes into Prince George's
15 County, correct?
16 A. Yes.
17 Q. And, I-495 is a major commuter
18 artery in the, in Montgomery County, correct?
19 A. Correct.
20 Q. And, there are many people in
21 Montgomery County and outside of Montgomery
22 County travel to their place of employment on the

Page 95

1 Capital Beltway, correct?
2 A. We would have to see the data.
3 Q. Do you dispute that?
4 A. I mean, I don't know what you mean
5 by many. I mean you are giving me these vague --
6 if you want to show me data. Yes, there are
7 people who commute along 495. And my data would
8 take all, whatever road they are on --
9 Q. Uh-huh.
10 A. -- my data, which follows exactly
11 the model that Dr. Morrison used in his Fletcher
12 declaration, takes into account commuter flows
13 however, whatever highway they happen to use.
14 Q. Did you compare commuter flows on
15 I-495 to commuter flows on I-270 in your report?
16 A. I just told you, I followed the
17 methodology of the Morrison report and looked at
18 commuter flows across the counties that are in
19 the district and to the District of Columbia.
20 Q. Following that methodology, did you
21 do any analysis to compare commuter flows on
22 I-495 to commuter flows on I-270?

Page 96

1 A. I've already answered that question.
2 I looked at commuter flows -- I will repeat
3 myself -- among the counties and through D.C.
4 Q. So, the answer is no, you didn't do
5 that?
6 A. No, it wasn't necessary.
7 Q. Okay. In your report you have a
8 picture of the MARC rails commuter system,
9 correct?
10 A. Yes. Can you --
11 Q. Sure, I can direct you.
12 A. -- tell me what page it is on.
13 Q. Yes. It is on Page 19 of your
14 report.
15 A. Thank you.
16 Q. Yes.
17 A. I was on Page 20. Just missed it.
18 Q. Okay.
19 A. Yes, there we are.
20 Q. Okay. And you point out that there
21 is a branch of the MARC system that goes up to
22 Frederick, correct?

Page 97

1 A. I think, let me see, yes.
2 Q. Do you know how many riders actually
3 travel from Frederick into Montgomery County on
4 the MARC train?
5 A. We know there is a lot of travellers
6 on the MARC train. I doubt if there is
7 statistics that specific.
8 The point of this was to show that,
9 in fact, there is this MARC rail going through
10 CD 6.
11 Whereas, there is nothing going
12 through the CD 5 that Dr. Morrison defends as a
13 community of interest based on transportation,
14 commuting, and job.
15 Q. So, you were unable to find any data
16 about the number of Mark customers who get on the
17 train at Frederick everyday; is that correct?
18 A. I didn't look at that. It wasn't
19 the purpose of this.
20 Whatever it is, it is more than are
21 getting on the nonexistent trains in the district
22 defended by Dr. Morrison as a community of

Page 98

1 interest.
2 Q. Can you tell me with any certainty
3 how many people actually use that MARC train on a
4 daily basis?
5 A. I think I had some statistics on
6 that. I would have to find them.
7 The MARC Brunswick line has seen a
8 34 percent increase in train ridership in the
9 past decade. There are more cars on the
10 interstate.
11 So, this is a burgeoning expanding
12 ridership, whereas there is none in the district
13 defended by Dr. Morrison.
14 MR. MEDLOCK: All right. We will
15 mark the next exhibit.
16 (Lichtman Exhibit Number 178
17 marked for identification.)
18 BY MR. MEDLOCK:
19 Q. All right, sir. This is an article
20 from greatergreaterwashington.org, entitled New
21 Data Shows Ridership Patterns on the Brunswick
22 Line. That is the line you were just talking

Page 99

1 about, correct?
2 A. Well there, yes, the Brunswick line
3 is one of the lines, yes.
4 Q. Sure. And it is dated
5 April 27, 2012, correct?
6 A. Yes.
7 Q. So, this would have been in that
8 period between when the plan was adopted and when
9 the referendum happened, correct?
10 A. Right. This would have no impact on
11 the adoption of the plan. It might have affected
12 the referendum.
13 Q. Okay.
14 A. I doubt it. Quite frankly, I can't
15 believe that people would look at this and that
16 would turn their votes on the referendum.
17 Q. Let's turn to Page 3 of the report.
18 A. Okay.
19 Q. Do you see a section called the
20 Frederick branch?
21 A. Yes.
22 Q. Okay. I'm looking at the paragraph

Page 100

1 immediately below that. And it is titled -- and
2 I'm looking at the sentence that begins with
3 currently. Do you see that sentence?
4 A. Currently three eastbound trains.
5 Q. Right. And that sentence reads,
6 "Currently three eastbound trains leave Frederick
7 between 5:12 and 7:10 a.m., and three trains
8 bound West for Frederick leave Union Station
9 between 3:50 and 6:30 p.m."
10 Did I get that correct?
11 A. Yes.
12 Q. Okay. Is it your testimony that six
13 daily trains can be evidence of a community of
14 interest?
15 A. I think you are misstating my
16 testimony.
17 Q. Okay.
18 A. My testimony was, I was comparing
19 this district to the district that Dr. Morrison
20 says is a community of interest.
21 Q. Uh-huh.
22 A. And, showing that, not only do you

Page 101

1 have the roadways, you also have this rail
2 connection.
3 So, whatever the numbers are, it is
4 still a contrast to the district that
5 Dr. Morrison defends as a community of interest
6 based on transportation and commuting.
7 Q. In his Fletcher opinion; is that
8 right?
9 A. That's correct.
10 Q. And in his Fletcher opinion,
11 Dr. Morrison stated that there was a community of
12 interest based on, amongst other things,
13 commuters between Baltimore and Washington, D.C.,
14 correct?
15 A. Right. This whole middle strip
16 there that you see going through Howard and
17 Carroll, up to Baltimore, right.
18 Q. Right. And so if I looked between
19 Baltimore and Union Station on, in Washington,
20 D.C., on this map, there is not one. There is
21 two train lines that go between Baltimore Penn
22 Station and Union Station, correct?

Page 102

1 A. Right. But not through this
2 district.
3 Q. Right, but it is not a nonexistent
4 train line. There are actually two of them,
5 right?
6 A. Right. But not in the district.
7 That is the only comment.
8 Q. Okay. So, you said there was a
9 nonexistent train line --
10 A. In the district.
11 Q. -- in this community of interest?
12 A. Well, he doesn't establish
13 communities of interest down here.
14 He is looking at communities of
15 interest running right up through central
16 Maryland.
17 Q. Okay. That is how you interpret his
18 Fletcher report, correct?
19 A. That is what he says. I mean we can
20 go to the Fletcher report, and if you see
21 something different, let's find it.
22 Q. Okay.

Page 103

1 A. But, he is pretty clear in his
2 Fletcher report what he is talking about.
3 Q. Okay.
4 A. Transportation and commuting
5 patterns running through the counties of CD 5 and
6 the Fletcher plan.
7 Q. Okay. And that is how you
8 interpreted his report. You interpret his report
9 to be saying something more broadly about
10 commuter flows between, between the District of
11 Columbia and Baltimore?
12 A. I don't think he is talking about
13 commuter flows, you know, running outside his
14 district.
15 Q. Okay.
16 A. All his, all his tables refer to
17 commuter flows within his district.
18 He is not looking at commuter flows,
19 you know, outside of his district.
20 Q. All right. Let's go back to the
21 exhibit I put in front of you --
22 A. Sure.

Page 104

1 Q. -- under Frederick branch.
2 A. Yes.
3 Q. There are, underneath that paragraph
4 that we are talking about, there is boarding
5 numbers for, that were observed on February 8th
6 and March 14, 2012 there, correct?
7 A. I got you.
8 Q. All right. And, the total number of
9 people who boarded a train on this Frederick
10 branch line on February 8th was 442, correct?
11 A. That is what it says.
12 Q. Okay. And then on March 14th, it
13 was 408 people, correct?
14 A. Yes.
15 Q. Okay. Now, if you look on your
16 report, you've got the marked page in front of
17 you?
18 A. Yes.
19 Q. If you flip to the next page,
20 Page 20, which you were originally on.
21 A. Okay.
22 Q. You cite the testimony of several

Page 105

1 individuals at GRAC hearings, correct?
2 A. Correct.
3 Q. And, some of, and those people are
4 Bob Kresslein, Dan Rupli, R-U-P-L-I.
5 A. Yes.
6 Q. Don DeArmon, Myrna Whitworth, Andrew
7 Duck and Sue Hecht and Elizabeth Paul, in
8 addition to Steve Shapiro. Correct?
9 A. I think, what is that, about ten?
10 Q. It is about seven, I believe.
11 A. Eight, we got it. So, yes, that's
12 correct. Eight is the right number.
13 Q. So, as scientists, we don't have to
14 be correct. We can approximate, right?
15 A. We can approximate, right, you know,
16 throw darts.
17 Q. Exactly.
18 Okay. Bob Kresslein. Do you know
19 where Mr. Kresslein is employed?
20 A. No, I don't.
21 Q. Do you find that -- would that be
22 relevant to your analysis?

Page 106

1 A. Not necessarily.
2 Q. Do you want to know what perspective
3 he is coming at this, his GRAC testimony from?
4 A. Not necessarily.
5 Q. Would you want to know if his
6 testimony was motivated by a partisan intent?
7 A. I don't see how you can determine
8 what the intent of these testimonies. And the
9 people at GRAC have no idea where these people
10 are employed or their intent.
11 But, the fact that so many of them
12 are connected with the Democratic Party indicates
13 their testimony is going to be taken very
14 seriously by the decision makers.
15 Q. Uh-huh. Okay.
16 A. And if you want to, again, I looked
17 at the reply reports after they had a chance to
18 examine this. And I did not see a single thing
19 in any of the reply reports of your experts on
20 showing that Steve Shapiro or Bob Kresslein had
21 partisan motivations in giving their testimony.
22 And their testimony is pretty

Page 107

1 specific.
2 Q. Uh-huh. Yes, that is correct. So,
3 did you do any analysis of who Bob Kresslein is,
4 what, and where he works, at all, in your report?
5 A. No, no.
6 Q. Okay.
7 A. And I doubt if, you know, the GRAC
8 people would have known that, either.
9 Q. Right, right.
10 MR. MEDLOCK: Okay. We will mark
11 the next exhibit.
12 THE WITNESS: It is just a citizen
13 testifying.
14 MR. MEDLOCK: Sure, he is just a
15 citizen?
16 Okay. We will mark the next
17 exhibit.
18 THE WITNESS: And he -- you know.
19 MR. MEDLOCK: Can I get this marked?
20 (Lichtman Exhibit Number 179
21 marked for identification.)
22 BY MR. MEDLOCK:

Page 108

1 Q. Here you go. That is the page of
2 the Maryland Democratic Party. And if you look
3 down below it, on Exhibit 179, it says Bob
4 Kresslein, Treasurer, correct?
5 A. Treasurer of what?
6 Q. The Maryland Democratic Party.
7 A. Okay.
8 Q. Did you think that you should
9 examine whether Bob Kresslein was a senior
10 official in the Maryland Democratic Party before
11 you analyzed his testimony?
12 MS. RICE: Objection.
13 THE WITNESS: I would have had no
14 way of knowing that. But, where I knew --
15 because he didn't identify himself as such,
16 that is all I had to go with.
17 I didn't know who Bob Kresslein was
18 and I had no reason to look at the Treasurer.
19 But I'm not concealing anything
20 here. You can see that I knew there were
21 connections with the Democratic Party.
22 I absolutely put it in there. And,

Page 109

1 as I said, connections with the Democratic
2 Party would be one reason why decision makers
3 in Maryland might take their testimony very
4 seriously.
5 BY MR. MEDLOCK:
6 Q. And when you looked at the record,
7 was there any indication in Mr. Kresslein's
8 testimony that he was affiliated with the
9 Maryland Democratic Party?
10 A. I think he said something about
11 being a Democrat, but that he is here to speak on
12 his own, not through any affiliation. That is
13 what I remember.
14 I don't think he identified any
15 specific affiliation.
16 Q. Okay. And you don't quote that
17 portion of his testimony in your report, do you?
18 A. No. But, it is not like I'm
19 concealing these people's connections with the
20 Democratic Party.
21 Where I knew about it and where I
22 could find it, I put it in.

Page 110

1 Q. You didn't look on the Maryland
2 Democratic Party's website to figure out who Bob
3 Kresslein is?
4 A. No, I did not go beyond what was in
5 the testimony to try to -- and, you know, you can
6 make a point of that if you want.
7 As I said, whenever I knew about
8 their connections with the Democratic Party, I
9 put it in. And most of them were connected.
10 There is nothing concealed here.
11 Q. Did you think to Google the people
12 that you were, who you were citing, to see where
13 they worked?
14 A. I think for the vast majority of
15 them, I knew. And to go beyond that to try to
16 research who they were, I didn't think was
17 necessary.
18 Q. You could have done that, though,
19 right?
20 A. I could do anything.
21 Q. Right. And you chose not to do
22 that?

Page 111

1 A. No, it is not that I chose not to do
2 that. I thought I had sufficient identification
3 here, based upon what these people were
4 testifying about.
5 To Google, you know, who they were,
6 that doesn't mean that the GRAC people would have
7 known who they were.
8 Q. So, is it your testimony that Senate
9 President Miller, a member of the GRAC, would not
10 know who the Treasurer of the Maryland Democratic
11 Party was?
12 A. Of course he would know.
13 Q. Is it your testimony that --
14 A. No, it is not my testimony.
15 Q. -- that Speaker Bush, the Maryland
16 House of Delegates would not know who the
17 Treasurer of the Maryland Democratic Party was?
18 A. That is not my testimony. My
19 testimony was, I was not aware that he was
20 Treasurer of the Democratic Party. It was
21 nothing in his testimony that indicated that.
22 And, I was quite open about stating

Page 112

1 the Democratic affiliations of the vast majority
2 of those that I cite.
3 Q. And when you say that --
4 A. I'm not concealing anything here.
5 Q. Okay. That is fine. We will
6 mark -- the next person is Dan Rupli, correct?
7 R-U-P-L-I. Right?
8 A. Yes.
9 Q. That is the next person you cite
10 there?
11 A. Yes.
12 Q. Okay.
13 MR. MEDLOCK: I will mark the next
14 exhibit.
15 (Lichtman Exhibit Number 180
16 marked for identification.)
17 BY MR. MEDLOCK:
18 Q. I've marked Exhibit 180 to your
19 deposition. It is an article from the Frederick
20 News Post entitled State Senate District 4
21 Candidate, Dan Rupli. Do you see that?
22 A. I do.

Page 113

1 Q. All right. And it mentions below
2 that Dan Rupli is a candidate for State Senate in
3 a primary on June 24, 2014. Correct?
4 A. Yes, that is after his testimony.
5 Q. That's correct. And he ran as a
6 Democrat in that primary for State Senate,
7 correct?
8 A. I'm sure that is correct. I'm not
9 going to argue. I don't see it here.
10 Q. Okay. And in his testimony to the
11 GRAC, Mr. Rupli mentioned that he was a Democrat,
12 correct?
13 A. Oh, I have no doubt that all of
14 these people are Democrats.
15 Q. And in his testimony to the GRAC,
16 Mr. Rupli also said that he was affiliated with
17 the Democratic Party of Maryland, correct?
18 A. I don't recall that, but that is
19 certainly possible.
20 Q. Okay. And you don't cite that
21 portion of his testimony in your report, right?
22 A. No.

Page 114

1 Q. And you don't in your report state
2 that Mr. Rupli is affiliated with the Maryland
3 Democratic Party?
4 A. I didn't know in what way he is
5 affiliated. You would have to show me exactly
6 what he said.
7 Q. That he ran for State Senate as a
8 Democrat?
9 A. That is later. That is two years
10 later.
11 Q. Okay. You don't think that that is
12 at all relevant to his testimony as the GRAC?
13 A. Well, I don't see how the GRAC would
14 have known that at the time. And I'm not
15 denying -- I'm not denying that these folks were
16 Democrats. I'm not presenting it in any other
17 way here.
18 Q. Do you cite any of the testimony
19 from Republicans offered to the GRAC, regarding
20 the I-270 corridor, of Maryland's Congressional
21 redistricting?
22 A. My purpose was to simply show that

Page 115

1 there was a lot of testimony, because the
2 argument that I'm responding to here was the
3 argument made, I think it was by Dr. Morrison,
4 that, you know, this issue of the I-270 corridor
5 was not part of the redistricting process itself.
6 And my purpose here was not even to
7 say whether what they are saying was right or
8 not.
9 My purpose here was solely to show
10 that, in fact, they are wrong. That there was
11 considerable testimony at the hearings, a lot of
12 it by people that the decision makers would know
13 and take seriously, about the I-270 corridor.
14 My purpose was not to demonstrate
15 that there were others who might have different
16 points of view, of course.
17 But, this is a direct refutation of
18 the claim that somehow the I-270 corridor and the
19 community of interest it created, as well as
20 other elements of communities of interest, were
21 not taken into account in the redistricting
22 process.

Page 116

1 What I also find interesting is your
2 expert, Dr. Morrison, did attempt to show that
3 there was other testimony contradicting this,
4 which is fine. It is not really relevant to my
5 point.
6 But he was barely able to show
7 anything. I think there was one witness he
8 showed that was specific at all about a community
9 of interest in CD 6.
10 I have eight here. And, if my
11 recollection is correct, maybe I'm wrong, I would
12 have to see his report. I don't recall him
13 identifying the affiliations of those people he
14 cited.
15 Q. Sir, which of my questions were you
16 answering?
17 A. I don't remember anymore.
18 Q. Okay. Let's get a question and then
19 you can answer it.
20 A. I think you were asking me very
21 open-ended questions about these, why I did what
22 I did with respect to this testimony -- yes.

Page 117

1 You asked me about, you know,
2 contrary testimony. And my answer was directly
3 on point to that.
4 Q. Okay. Let me ask you another
5 question, then.
6 It -- did you review the deposition
7 of Jeanne Hitchcock, who was the Chairperson of
8 the GRAC in 2011?
9 A. I think I might have looked at it
10 because I think that was cited by one of your
11 experts.
12 Q. Did you actually look at the whole
13 deposition?
14 A. I think I might have quickly, yes.
15 Q. Okay. Did you, were you directed
16 to certain portions by counsel or did you
17 actually --
18 A. I think I looked at the whole thing.
19 Q. Okay. Do you -- and you don't cite
20 her deposition testimony at all?
21 A. No, and we've already been through
22 that.

Page 118

1 Q. Right. And you don't -- do you know
2 what she said regarding whether any of this
3 testimony resulted in any change to the 2011
4 Congressional map?
5 A. I don't recall that. But, I recall
6 she was saying that her role was procedural. And
7 I do know, because it is in the contemporary
8 record, that the GRAC was there and listening to
9 all of this testimony.
10 So, what she said six years later --
11 my recollection of her deposition is she didn't
12 remember much. She had very, very dim
13 recollections of what had happened six years ago.
14 If you want to direct me to
15 something specific in her deposition, I will
16 respond to it.
17 But, you know, this responds to what
18 I consider an incorrect claim that I-270 was not
19 considered in the process.
20 Clearly it was. There was lots of
21 testimony about it. Members of the GRAC were
22 there. They heard the testimony.

Page 119

1 Q. Uh-huh. So, besides GRAC members
2 being present in the room and hearing this
3 testimony, what evidence do you have that the
4 GRAC made changes to the 2011 Congressional map
5 based on this testimony?
6 A. I don't know if they made changes.
7 But, they were there, and their
8 report emphasizes that the plan they drew for
9 this area was based upon this community of
10 interest around I-270.
11 That is pretty strong evidence that
12 I-270 and the notion of the community of interest
13 there was very much part and parcel of the
14 redistricting process, contrary to what your
15 experts are claiming.
16 Q. What evidence do you have that the
17 Maryland map makers actually considered the I-270
18 corridor?
19 A. We have the evidence that they were
20 there when this was --
21 Q. I --
22 A. Let me finish.

Page 120

1 Q. Sure.
2 A. -- discussed and debated. We have
3 the evidence that they said this was a major
4 consideration. This was presented to the
5 legislature. It was discussed and debated in the
6 press.
7 Nobody knows, of course, you know,
8 you know, to psychoanalyze what is actually going
9 in the head of an individual map maker.
10 But, all of the evidence indicates
11 this is part and parcel of the discussion, the
12 debate, and the justification at the time for the
13 configuration of District 8.
14 That is about as good as you are
15 going to get.
16 Q. I'm not talking about whether it was
17 part and parcel of the things that were being
18 discussed at the time.
19 I'm talking about the person who
20 drew the map. What evidence do you have that
21 that person actually considered the I-270
22 corridor?

Page 121

1 A. Which person are we talking about?
2 I'm not sure.
3 Q. The map maker? Do you have any
4 evidence --
5 A. Who is the map maker?
6 Q. Do you know who that is?
7 A. I think, as we said, there is no
8 single map maker. There were lots of maps
9 submitted.
10 Q. Uh-huh.
11 A. And the final plan was developed in
12 consultation with the GRAC by the Department of
13 Planning.
14 And do I know -- I will leave it at
15 that.
16 Q. What evidence do you have that the
17 Department of Planning took into account the
18 I-270 corridor when drawing the map?
19 A. The evidence, you know, the evidence
20 has to be circumstantial. And the circumstantial
21 evidence is that this was presented at the
22 hearings, very strongly at the hearings, not as a

Page 122

1 minor matter.
2 Members of GRAC were there. That
3 GRAC emphasized, that, emphasized this in their
4 presentation to the legislature. And the
5 ledge -- it is the legislature by the way that is
6 the ultimate decision makers here.
7 Q. Right.
8 A. And members of the legislature were
9 present at these hearings when these views about
10 I-270 was presented.
11 So, the legislators knew about this,
12 they had it before them, both through the
13 testimony at the hearings and through the
14 presentation of GRAC.
15 Q. I understand that the legislators
16 knew about it. What evidence did you have that
17 the legislators actually considered it, beyond
18 knowing about it?
19 A. I would, you know, there was no
20 direct contemporary evidence, one way or the
21 other about this, and there can't be, really, in
22 a sense.

Page 123

1 But, certainly this was presented by
2 the GRAC to the legislature. It was a lively
3 issue in the press.
4 It was a justification for the
5 creation of the district. What went on in the
6 mind of an individual legislator is obviously
7 unknowable.
8 But, clearly your experts are wrong
9 when they say this was not something that was
10 part of the process.
11 Q. What evidence do you have that
12 former Maryland Governor Martin O'Malley's office
13 considered data regarding the I-270 corridor when
14 they were examining the draft Congressional map?
15 A. I think we have been down that road
16 already, that you don't need specific data like
17 the kind that I present in my report to know
18 about the I-270 corridor, to know about the
19 communities that it represented.
20 And you have all of this testimony
21 where GRAC was there, staff was there,
22 legislators were there. It was discussed in the

Page 124

1 press. It was a major element of the GRAC
2 presentation.
3 Q. Do you need actual commuting data in
4 order to determine whether there was enough
5 commuters on I-270 to justify redrawing the lines
6 of the 6th Congressional District?
7 A. I don't think so. I think --
8 Q. You can just --
9 A. Let me finish.
10 Q. Sure.
11 A. I don't think you can just willy-
12 nilly do things.
13 But, I think members of the state
14 legislature, who have been, you know, considering
15 issues about I-270, who are familiar with that
16 area, who have this testimony, do not necessarily
17 have to have the kind of data that I, that I
18 present here.
19 They have general knowledge of the
20 area and the district.
21 THE WITNESS: I need a break.
22 MR. MEDLOCK: Okay. Let's take a

Page 125

1 break.
2 THE WITNESS: Yes.
3 MR. MEDLOCK: Thanks.
4 THE VIDEOGRAPHER: Going off the
5 record at 11:48.
6 (Recess taken -- 11:48 a.m.)
7 (After recess -- 12:35 p.m.)
8 THE VIDEOGRAPHER: Going on the
9 record at 12:35.
10 BY MR. MEDLOCK:
11 Q. Welcome back, sir.
12 A. Thank you.
13 Q. You've testified in I think probably
14 over 90 redistricting cases, correct?
15 A. Well, they are not all redistricting
16 cases.
17 Redistricting and voting rights.
18 Something in that order of magnitude.
19 Q. Okay. In your experience as an
20 expert in those types of cases, do those
21 responsible for legislation sometimes provide a
22 pretext or a sham explanation to obscure or

Page 126

1 conceal the explanation for the legislation
2 they've adopted?
3 A. I've definitely found that in racial
4 discrimination cases, because as I think I've
5 told you previously, legislators are not going to
6 get up and say we intended to discriminate
7 against African Americans or Hispanics. That is
8 not going to happen.
9 Likely. Sometimes it slips out.
10 Q. And, okay. Let me ask you a
11 question on a different topic here.
12 Do you know of a redistricting
13 consulting firm, called NCEC Services?
14 A. I know of them as a consulting firm.
15 I don't know of them as limited to redistricting
16 consulting.
17 Q. But, you've heard of NCEC?
18 A. I've heard of NCEC. I'm somewhat
19 familiar with NCEC. I think I worked with them
20 many, many years ago, but I think all they did
21 was supplied me with some election data.
22 But I haven't had any contact with

Page 127

1 them in many years.
2 Q. You say many, many years ago. How
3 many years ago?
4 A. Oh, god, more than ten.
5 Q. Do you recall who you were working
6 with at NCEC Services?
7 A. I think it was a guy named Tom
8 Bonier, but I'm not sure. And I don't think it
9 was called NCEC Services. I just remember it
10 being NCEC.
11 That was a very long time ago.
12 Q. Okay. Have you ever had a chance in
13 litigation to look at data that came from NCEC
14 Services?
15 A. I think, yes. I think I just
16 mentioned that I had gotten some data from them.
17 I think it was nothing more than --
18 again, this is a long time ago, and I don't even
19 remember what case it was.
20 But, I think all I got from them was
21 election data. It was raw data.
22 Q. When you say raw data, was it broken

Page 128

1 down into particular measurements, such as, you
2 know, racial or socioeconomic measurements?
3 A. Not that I can recall. I think it
4 was just election returns and maybe a demography
5 by precinct to go with it, so you could do a
6 racial block type of analysis.
7 Q. Okay. Understood.
8 Do you know whether NCEC Services or
9 NCEC have any other types of measurements that
10 they do for their clients?
11 A. Oh, I'm sure they do. All
12 consulting services do.
13 Q. Okay.
14 A. I'm not, you know, as I said, I
15 haven't had any contact with them in many, many
16 years.
17 Q. Okay. Do you know a redistricting
18 consultant by the name of Eric Hawkins?
19 A. I don't.
20 Q. Okay. Have, in your report, am I
21 correct that you cite the Cook report PVI?
22 A. Yes.

Page 129

1 Q. What is PVI stand for?
2 A. It is, I'm trying to remember the
3 exact acronym. Partisan voter index, I think.
4 Q. Okay.
5 A. And it is just a compilation of
6 election returns to come up with the leaning of a
7 district, either neutral, which would be 0.
8 Plus-R, which would be leaning R. Plus-D, would
9 be leaning D.
10 And it actually has a metric
11 associated with it. So, it could be anywhere
12 from +1 to, you know, a much, a high number.
13 Q. I assume +100 would be the max?
14 A. Well, you don't see that.
15 Q. Not in this country, at least?
16 A. No.
17 Q. The, do you find that the Cook PVI
18 to be a reliable source of information regarding
19 the partisan leanings of a Congressional district?
20 A. You know, insofar as you can figure
21 that out. I think we have been through this
22 colloquy before.

Page 130

1 Q. Sure.
2 A. These are predictions, assessments.
3 And, you know, it is generally accurate, but it
4 also can be wrong.
5 Q. Okay.
6 A. Like every other compilation. But,
7 it is a -- look, Cook is well respected. His PVI
8 is well respected.
9 Q. Okay.
10 A. Nothing is perfect, but it is well
11 respected, well regarded, and his judgments are
12 well regarded.
13 Q. Do you personally, you know, put
14 stock in the Cook PVI?
15 A. Sure. Again, you know, it is not
16 the Holy Grail, nothing is. You know, because we
17 are dealing with predictions of, you know,
18 relatively small units of Congressional or state
19 legislative districts.
20 But, as those things go, I think as
21 I said, it is well respected.
22 Q. Okay.

Page 131

1 MR. MEDLOCK: Let's mark this next
2 exhibit, please. It should be 181.
3 (Lichtman Exhibit Number 181
4 marked for identification.)
5 BY MR. MEDLOCK:
6 Q. All right, sir. I've put in front
7 of you marked as Exhibit 181 to your deposition.
8 A. Okay.
9 Q. It is, if you look at the top of the
10 first page, it is on the Cook Political Reports,
11 for lack of a better word, header, is at the top.
12 Correct?
13 A. Yes.
14 Q. And it is drafted by a gentleman by
15 the name of David Wasserman, correct?
16 A. I don't know who he is, but yes.
17 Q. And it is dated October 11, 2012,
18 right?
19 A. Right.
20 Q. Okay. So this would have, this is a
21 report that came out after Maryland's
22 Congressional redistricting in 2011. Correct?

Page 132

1 A. That is correct.
2 Q. Okay. I would like to direct you,
3 if I may, to Page 8 of this report.
4 A. Okay.
5 Q. And, the top of that page is titled
6 25 Biggest Redistricting Swings Against the
7 Incumbent Party. Do you see that?
8 A. I do.
9 Q. And then there is a ranking. There
10 is a chart -- well, let me start.
11 There is a chart below that,
12 correct?
13 A. There is a chart? I don't see a
14 chart.
15 Q. There is a table.
16 A. Yes, I see a table.
17 Q. Okay. And if you look at that
18 table, on the most left-hand column, there is a
19 rank column. Correct?
20 A. Correct.
21 Q. And that is ranked all of the way
22 from 1 through 25, correct?

Page 133

1 A. Correct.
2 Q. Okay. And, then to the right of
3 that, there is a column for district, correct?
4 A. Yes.
5 Q. Column for incumbent, right?
6 A. Yes.
7 Q. There is a column for PVI before,
8 correct?
9 A. Yes.
10 Q. And there is a column for PVI after,
11 correct? To the right of that, there is a column
12 for PVI after?
13 A. Yes.
14 Q. And there is a column for swing,
15 correct?
16 A. Yes.
17 Q. And then there is a column for
18 current Cook rating?
19 A. Right.
20 Q. What is the Cook rating, in your
21 experience?
22 A. The Cook rating is an attempt to

Page 134

1 whether the districts are competitive or not.
2 And there are three kinds of competitive
3 districts. And there aren't a whole lot of them
4 in the country. And we can discuss that, but I
5 won't now.
6 Q. Okay.
7 A. Let me finish. And so those three
8 kinds of competitive districts are a pure
9 toss-up, lean Republican or Democrat, or likely
10 Republican or Democrat.
11 And the noncompetitive districts,
12 which are the majority, are called safe Democrat
13 or safe Republican.
14 Q. Okay. Do you see there is a
15 reference here to solid Republican, on the third
16 line. Is that the same as safe Republican?
17 If you look at the CA 31, and you go
18 all of the way over to the current Cook rating.
19 It says solid Republican.
20 A. I would presume, although normally I
21 would call it safe, but it's probably the same
22 thing.

Page 135

1 Q. So, toss-up is the Cook, current
2 Cook rating for an election that could
3 conceivably in their minds come out either way,
4 for the Democrat or the Republican, right?
5 A. It is not quite accurate because any
6 of the competitive districts could come out
7 either way.
8 Q. Sure.
9 A. But, what a toss-up means is to the
10 best of your ability, based on, of course, past
11 returns, you can't say whether it leans one way
12 or the other.
13 Q. What does lean Republican or lean
14 Democrat?
15 A. That means a very slight advantage
16 to one party or the other.
17 Q. And what does likely Democrat or
18 likely Republican mean?
19 A. Still competitive but more likely
20 than not to go in either partisan direction.
21 Q. Okay. And if you look at this
22 ranking on Page 8, the Number 1 ranked district

Page 136

1 for biggest redistricting swings against the
2 incumbent party is Maryland's 6th Congressional
3 District, correct?
4 A. That's correct. It does exactly
5 what I said it did. It took a district that you
6 probably would rate as safe Democratic, to a D+2,
7 which is even within Dr. McDonald's narrowest
8 competitive range.
9 She created a competitive district
10 that does tilt towards the democrats.
11 Q. I think you may have misspoke, so I
12 just want to give you a chance to correct
13 yourself?
14 A. Sorry.
15 Q. You said it started with a safe
16 Democratic?
17 A. I meant Republican, obviously.
18 Q. I just wanted to correct it, to make
19 sure we were on the same page there.
20 A. But, even a safe district, very
21 rarely, but could possibly turn. But, that is a
22 very black swan type of event.

Page 137

1 Q. You would need a wave election for
2 that to happen?
3 A. Yes, and that does happen.
4 Q. Yes. Do you know how the current
5 Cook rating of the Maryland's 6th Congressional
6 District has changed since 2012?
7 A. I haven't looked at it, but I
8 imagine it would become more Democratic, because
9 you now have a well seated Democratic incumbent
10 in the seat, and that would tend to tilt it more
11 Democratic.
12 Q. Do you know how the actual PVI has
13 changed over time, not just the rating?
14 A. There is a fair chance it has become
15 more Democratic over time, because of the very
16 heavy Maryland Democratic victories since this
17 rating was set up in 2012, to 2016.
18 But, let's remember the critical, in
19 terms of reevaluating redistricting, the critical
20 election is the first election under the
21 redistricting plan, which establishes incumbency
22 and most closely mirrors the politics of the

Page 138

1 situation at the time the plan was crafted.
2 When ratings changed later, that
3 could be a response to a whole host of things
4 that no one could be aware of at the time they
5 made the plan.
6 Q. So, I want to follow up on something
7 you said.
8 The ratings immediately after the
9 plan comes out, those are most indicative of what
10 the intent was here, correct?
11 A. I'm not talking about intent here.
12 I'm saying that that is most indicative --
13 Q. Of the politics, that is your word?
14 A. -- of the politics that existed at
15 the time of the redistricting.
16 Q. Okay. Got it.
17 A. Are we done with this?
18 Q. We are done with that.
19 MR. MEDLOCK: I will mark the next
20 exhibit.
21 (Lichtman Exhibit Number 182
22 marked for identification.)

Page 139

1 BY MR. MEDLOCK:
2 Q. I am showing you what has been
3 marked as Exhibit 182 to your deposition.
4 And, this is a report from the Cook
5 Political Report, entitled Partisan Voting Index,
6 Districts of the 113th Congress, Arranged by PVI
7 Rank, Most Republican to Most Democratic. Do you
8 see that?
9 A. Yes.
10 Q. Okay. And, this is a report that
11 the Cook Political Report generates on a regular
12 basis for each of, for each of the Congressional
13 districts in the United States. Correct?
14 A. Right. And I think this is post
15 2012; is that right?
16 Q. That would be correct, if it is
17 113th Congress.
18 A. Yes, that is what I thought, because
19 it has the Romney numbers.
20 Q. Yes, that is -- I was actually going
21 to get into that.
22 So, if we flip one page in, you see

Page 140

1 that there is a table on that page that continues
2 for several pages.
3 A. Yes.
4 Q. That lists on the far left, there is
5 a sequential numbering of each of the districts.
6 A. Yes.
7 Q. And then there is an entry for the
8 state in one, in one column, and then an entry
9 for the Congressional district, and then an entry
10 for the member elected, right?
11 A. Yes, that is all correct.
12 Q. And then if you move further to the
13 right, you see a PVI, which is the R plus number
14 or D plus a number ranking from the Cook
15 Political Report, correct?
16 A. Yes.
17 Q. And then they have information there
18 about who the 2012 winner was in the general
19 election, correct?
20 A. Correct.
21 Q. And then there is information,
22 further to the right, about who the 2008 winner

Page 141

1 was in the Presidential general election,
2 correct?
3 A. Yes. And I presume that is in that
4 district, not --
5 Q. In the -- exactly. Is that your
6 presumption?
7 A. That is my presumption. I haven't
8 studied this, but I presume that is what they are
9 doing.
10 Q. Okay. So, if you turn in to -- and
11 the pages are not numbered real well.
12 But, I want to focus --
13 A. If you can focus me to a sequence,
14 that will do it.
15 Q. Yes, I will point you to 2B.6, and
16 I'm looking at sequence Number 268.
17 A. Correct.
18 Q. Okay. And that is the Maryland 6th
19 Congressional District, correct?
20 A. Correct.
21 Q. And it lists John Delaney as a
22 winner, correct?

Page 142

1 A. Correct.
2 Q. And it says it is a D+4 district.
3 A. Correct.
4 Q. Okay. All right.
5 A. Which is what I predicted.
6 Q. That it would become more Democratic
7 over time.
8 A. Right. Now that could have changed
9 again after 2014. I don't know if it did. But,
10 these things do change over time. But, the
11 indicative one is the one immediately after,
12 immediately at the time of the redistricting.
13 Q. If you look down below the 6th
14 Congressional District, sequential Number 268,
15 can you find any Congressional district that has
16 a rating of D+4, or more, that is represented by
17 a Republican?
18 A. And these are post hoc, in other
19 words these are created after the election. So,
20 it doesn't make any sense that, you know, they
21 would be.
22 Q. Right. Well, I will cut to the

Page 143

1 chase then.
2 A. Because, they are based upon the
3 fact that, at least in part, that Democrats won
4 those districts.
5 Q. I will tell you the only one I can
6 find which is 286, Gary Miller in California's
7 31st. He is a Republican who is elected in a D+5
8 district. Do you see that?
9 A. I do. Let me see if there is. I
10 would be surprised, given the way this is done.
11 I don't see any others. And I
12 wouldn't expect it.
13 Q. Okay. That would be unusual,
14 correct?
15 A. Yes.
16 Q. Okay.
17 A. Because it is done based, at least
18 in part, on the fact that those Democrats won
19 those districts.
20 So, it is what it is.
21 MR. MEDLOCK: Okay. I will mark the
22 next exhibit.

Page 144

1 THE WITNESS: And it is worth noting
2 that in the next election, despite a D+4,
3 John Delaney performed well below D+4. He
4 almost lost the district.
5 BY MR. MEDLOCK:
6 Q. Right. But, he didn't, did he? He
7 beat --
8 A. Barely.
9 Q. -- his Republican challenger?
10 A. By very few thousand votes, by
11 1.5 percent in a D+4.
12 So, my point is that we've made this
13 point before, you know, these are imperfect.
14 Q. Sure. In every Congressional
15 election that has happened -- or every election
16 for the U.S. House of Representatives that has
17 happened in the 6th Congressional District since
18 the 2011 redistricting, a Democrat has always won
19 that election, correct?
20 A. Correct.
21 Q. Okay. And, in other statewide races
22 that happened in the 6th Congressional District,

Page 145

1 the only statewide race that a Republican has won
2 was Governor Larry Hogan, correct?
3 A. Incorrect.
4 Q. Incorrect. Who is the other one?
5 A. I think it was Frosh. It is in my
6 report. Got 49.3 percent of the two-party vote.
7 So, a Republican did win in that district, that
8 election as well.
9 Q. So, besides those two elections,
10 every other one of the ten elections that has
11 happened in that, in the Congressional District 6,
12 a Democrat has won, correct?
13 A. Correct.
14 Q. Okay.
15 MR. MEDLOCK: Mark the next exhibit
16 which is 183.
17 (Lichtman Exhibit Number 183
18 marked for identification.)
19 BY MR. MEDLOCK:
20 Q. So, I've put in front of you what
21 we've marked as Exhibit 183 to your deposition.
22 It is a, another Cook Political

Page 146

1 Report, Partisan Voter Index Report, for the
2 115th Congress, correct?
3 A. Yes.
4 Q. Okay. And it is, if you slip in,
5 the table is arranged in the same manner, only it
6 now includes data from the 2016 Presidential
7 election, and the 2012 Presidential election?
8 A. That's correct, right.
9 Q. Okay. And I would like to focus you
10 on sequential --
11 A. And it was also obviously
12 Congressional elections in 2016, obviously.
13 Q. Oh, sure, yes. I would like to
14 focus you in on sequence Number 272, which is on
15 Page 2B.6 --
16 A. I'm there.
17 Q. -- of the exhibit. That is the
18 listing for the 6th Congressional District in
19 Maryland, correct?
20 A. Correct.
21 Q. And it shows that John Delaney is
22 the member elected, correct?

Page 147

1 A. Correct.
2 Q. And it now shows a PVI of D+6?
3 A. Yes, that's exactly as I told you I
4 would have predicted.
5 Q. So, this is not unusual. You would
6 have expected this trend?
7 A. Yes, given the 2012 and 2016 results
8 in Maryland.
9 But, at the time of the
10 redistricting, these were not the numbers.
11 Q. Sure. I understand. I'm just
12 trying to get the trend down.
13 A. Yes.
14 Q. Okay.
15 A. And, you know, trends can go in
16 either direction, as we know. And you can't tell
17 back in 2011 which way the trend is going to go.
18 Q. Right. But since 2011 the trend is
19 clear. It is becoming a more Democratic
20 district, correct?
21 A. Yes.
22 Q. Okay.

Page 148

1 A. Simply because of the results of
2 these elections. Not because anything was
3 changed about the district.
4 Q. Sure, I understand that.
5 I would like to focus you back on
6 your expert report. Do you have that in front of
7 you?
8 A. Yes.
9 Q. Okay. I'm looking at Page 25 of
10 your report.
11 A. I'm there.
12 Q. Do you see the reference to a common
13 media market?
14 A. Yes.
15 Q. Am I correct that in your discussion
16 of the common media market, you cite a few
17 sources for your conclusion that there is a
18 common media market in Western Maryland, right?
19 A. It is not just in Western Maryland.
20 It is in Western Maryland, coming down into
21 Montgomery County.
22 Q. Have you ever opined in any case on

Page 149

1 what the existence of a common media market --
2 A. I may have. If I do, I don't
3 recall, to be honest with you. I have been in a
4 lot of cases.
5 Q. Do you consider yourself to be an
6 expert in defining media markets?
7 A. I don't think that is what I
8 purported myself here to do.
9 I say there are several witnesses
10 who pointed out that there is a common media
11 market.
12 And of course the GRAC people, the
13 staff people, members of the legislature were at
14 those hearings.
15 You know, your expert, Dr. Morrison,
16 didn't counter that at all with a single witness
17 suggesting something to the contrary.
18 And, I then cited some independent
19 sources. I don't think you need to be an expert
20 to cite these things, you know, particular expert
21 in, in media markets.
22 Q. So, you don't need to be an expert

Page 150

1 in the media markets to cite testimony regarding
2 whether there is --
3 A. Of course not.
4 Q. -- there is a media market. Anybody
5 could look at the market and determine whether
6 there was testimony being a media market and not
7 a media market, correct?
8 A. That's correct. And whether there
9 is contrary testimony contradicting that.
10 Q. Right.
11 A. And you could look at the
12 independent information from -- I don't track
13 this. So, if you are asking me if I'm an expert
14 in that sense, no.
15 But, I can certainly look at
16 organizations that do track media markets.
17 Q. Right. And what you are doing here
18 is you are looking at the evidence in a way in
19 whether it is consistent or inconsistent with
20 Dr. Morrison's conclusions; is that right?
21 A. In a sense, yes. Although,
22 Dr. Morrison doesn't really address, in any

Page 151

1 direct way, this common media market. And this
2 is, you know, indicative of a general problem,
3 where he just cites things and assumes they speak
4 for themselves, without a full analysis.
5 Q. Right. You state -- the people that
6 you cite in this section of your report you cite
7 Elizabeth Paul, she is the Chair of the
8 Washington County Democratic Central Committee,
9 correct?
10 A. Yes.
11 Q. And then you go down and you cite
12 Bob Kresslein, correct?
13 A. Correct.
14 Q. And you describe him as a resident
15 of Frederick County, correct?
16 A. Yes, he is also in the area.
17 Q. And you also learned today that he
18 is the Treasurer of the Maryland Democratic
19 Party?
20 A. Right, which would just strengthen
21 the impact of his testimony.
22 Q. Oh, okay.

Page 152

1 A. Again, we've gone through this.
2 Whenever I knew an affiliation, and in the vast
3 majority of cases, I did, I put it in.
4 Q. Okay. And, the other source you
5 cite in -- long day. I will start it again.
6 The other source you cite in support
7 of this, your testimony regarding there being a
8 common media market, is Truck Ads?
9 A. Yes.
10 Q. And that is from truckads.com.
11 A. Yes, they just track advertising.
12 Q. Am I correct that truckads.com, what
13 they do is they sell advertising on 18-wheelers?
14 A. That may be true. I'm not sure. I
15 wasn't looking at it for that purpose. Just for,
16 you know, where they see, because they are in
17 the, they are in the business where they see the
18 media market.
19 Q. Do you know where truckads.com gets
20 its data regarding media markets?
21 A. I don't recall. I would have to
22 look at it again.

Page 153

1 Q. You could have, if you wanted to,
2 gone out and gotten AC Nielsen data regarding
3 media markets, right?
4 A. I didn't see AC Nielsen data
5 directly on point on this.
6 But, if you got some, I would be
7 happy to look at it.
8 Q. Did you go and look for AC Nielsen
9 data?
10 A. I did, and I didn't see -- I did,
11 and I didn't see it organized precisely in this
12 way.
13 Q. Did you go and look for data on
14 other sources besides truckads.com to determine
15 whether there was a economy --
16 A. Yes, I start with EchoStar Knowledge
17 Base, which does TV marketing.
18 Q. When you say EchoStar Knowledge
19 Base, that is the website WWW dot dishuser.com?
20 A. Right. They, I guess, sell --
21 Q. That is the people who sell the
22 EchoStar dishes.

Page 154

1 A. The dishes. Yes, of course, and
2 these people are pretty good sources because this
3 is their business.
4 This is how they make their money in
5 terms of what the media markets are.
6 And I did a general search to see
7 what sources there were that would organize their
8 assessment of media markets in a way that would
9 be meaningful in terms of assessing this
10 district.
11 Q. So, do you find truckads.com to be a
12 reliable source of information regarding media
13 markets?
14 A. I think they both are. One, they
15 reinforce each other. Two, I didn't see any
16 contradiction. And these people are in the
17 business, so they need to know.
18 Q. Did you talk to anyone at
19 truckads.com to determine what line of business
20 they are in?
21 A. No, it was, you know, I just looked
22 at their website.

Page 155

1 Q. Did you, besides looking at the
2 website, did you do any other analysis of the, to
3 determine the veracity of the information on
4 truckads.com?
5 A. I just looked at their website, saw
6 it was consistent with testimony and other
7 sources, and saw no contradiction.
8 Q. Okay. And then, same answer would
9 be true for dishuser.com?
10 A. For EchoStar, yes. Yes, exactly.
11 Q. Okay. All right.
12 A. Oh, and again, if your experts,
13 based on their expertise, had a quarrel with any
14 of this, I didn't see it in any of their expert
15 reports.
16 Q. Okay.
17 A. I didn't even see them addressing
18 this issue.
19 Q. You mentioned the Maryland Symphony
20 Orchestra that is in Hagerstown in your report,
21 correct?
22 A. Yes.

Page 156

1 Q. And you fault --
2 A. Can we go to the page?
3 Q. Oh, sure. I thought I was on the
4 same page, but it is on Page 23. Sorry.
5 A. Okay, got it. I'm there. Thank
6 you.
7 Q. Okay. And you fault Dr. Morrison
8 for citing no evidence in support of his claims
9 that the audience at those performances comes
10 from Western Maryland. Correct?
11 A. Right. He doesn't cite any
12 information on any of these cultural or
13 educational institutions. Just says they happen
14 to be in Western Maryland. That is not enough.
15 Q. Did you look for, whether there was
16 any data that the Maryland Symphony Orchestra
17 collects on where its audience comes from?
18 A. I didn't. I just looked at the
19 Orchestra's website, which points to an audience
20 from the Baltimore/Washington metropolitan area.
21 And, again, that just shows this
22 so-called objective demographic information,

Page 157

1 contrary to what Dr. Morrison claims, does not
2 speak for itself. You can't just list these
3 things and presume they prove something.
4 Q. Besides looking at the website of
5 this Symphony Orchestra, did do you any
6 additional analysis regarding the Maryland
7 Symphony Orchestra?
8 A. No.
9 Q. If you saw data that contradicted
10 your interpretation of the evidence regarding the
11 Maryland Symphony Orchestra or common media
12 market, would you have considered that evidence,
13 or would you have disregarded it?
14 A. I would consider it. I, I carefully
15 looked at your expert reports -- the reply
16 reports which had all of this in front of them,
17 and I didn't see any of your experts present any
18 contrary data on this.
19 I didn't see anything on the common
20 media market. And, Dr. Morrison and all of these
21 educational and cultural institutions simply had
22 a footnote which supplied no new information and

Page 158

1 simply said, well, these are in Western Maryland.
2 Just repeated what he had done before.
3 My point is not to definitively
4 establish everything with regard to all of these,
5 but to show that Dr. Morrison's attempt to
6 utilize these as evidence of something
7 distinctive about Western Maryland does not
8 withstand scrutiny.
9 Q. So, let's talk about scrutiny for a
10 second.
11 After you looked at the Maryland
12 Symphony Orchestra's website, went to
13 truckads.com, looked at dishuser.com, did you
14 subject the statements on those websites to any
15 further scrutiny?
16 A. I looked and I didn't see any --
17 yes, I did. I did a lot of internet searching.
18 And I didn't see any contradiction
19 to that. And I saw that it was consistent with
20 the testimony that was being presented at the
21 public hearings.
22 Again, my point on this was these

Page 159

1 are issues that your experts don't address, don't
2 consider. And when you consider them, you see
3 some quite contrary information. And none of
4 their reply reports attempts, even attempts again
5 to address any of these issues.
6 They don't present any evidence
7 about media markets. They don't present any
8 evidence about the Symphony Orchestra. They
9 don't present any evidence about Frostburg State
10 University.
11 Q. Let's talk about local television
12 for a minute.
13 A. Yes.
14 Q. That is Point 3 on Page 23 of your
15 report.
16 Am I correct that the sole, you
17 cite -- sorry, let me back up.
18 Am I correct you cite two sources in
19 that in page, in Section 3 about local
20 television.
21 One is Dr. Morrison's report, and
22 the other is a website www.revolv.com?

Page 160

1 A. It is WWPX TV itself, yes.
2 Q. Yes. Right. That is the title of
3 the article, correct?
4 A. Yes. No, that is the source who
5 puts this out. Look, WWPX is even in the url.
6 Q. Right, right. Okay.
7 MR. MEDLOCK: So, let's mark the
8 next exhibit.
9 BY MR. MEDLOCK:
10 Q. And that is the source of this?
11 A. That is a source.
12 Q. Okay, got it.
13 MR. MEDLOCK: This will be 184.
14 (Lichtman Exhibit Number 184
15 marked for identification.)
16 BY MR. MEDLOCK:
17 Q. So, I've put in front of you
18 Exhibit 184. It is the article from Revolv,
19 titled WWPX. Do you see that?
20 A. Yes.
21 Q. All right. I'm focused on the
22 bottom of the first page.

Page 161

1 At the very bottom do you see a logo
2 for Wikipedia, where it says Content from
3 Wikipedia?
4 A. I don't -- oh, wow. In that tiny
5 little fine print there?
6 Q. Yes.
7 A. Yep, now I do.
8 Q. Did you know that you were basically
9 citing information that came from Wikipedia here?
10 A. I don't know if this is the exact
11 same thing that I looked at. But --
12 Q. Okay.
13 A. Let me finish.
14 Q. Sure.
15 A. You never let me finish. But -- I
16 had a but, that thing is so tiny, I don't know
17 how anyone could possibly see it.
18 Q. You looked at this information --
19 A. And again your expert has this in
20 front of him. If he thinks this was wrong, he
21 had an absolute opportunity to present contrary
22 information, because I'm directly refuting what

Page 162

1 he said in his initial report.
2 Q. In your academic experience, do you
3 advise students who are working on their
4 dissertations or their theses?
5 A. I'm sorry, is that a question?
6 Q. Yes. You have an academic position
7 at the American University, correct?
8 A. Yes, sir.
9 Q. And you are a Professor, you are a
10 full tenured Professor there, correct?
11 A. Distinguished Professor, actually,
12 please.
13 Q. I didn't mean to denigrate you.
14 A. No offense taken. I'm just joking.
15 Q. Okay. And in that position, do you,
16 from time to time, review dissertations or theses
17 that are put forward by graduate students?
18 A. Of course.
19 Q. Okay. And do you advise students,
20 graduate students on their dissertations?
21 A. Of course.
22 Q. If a graduate student came to you

Page 163

1 and wanted to rely on content that came from
2 Wikipedia, would you say that that was a good
3 source to include in their dissertation?
4 A. It is not the ideal source, but this
5 is a different context here.
6 Here, your experts, if there is
7 something wrong with it -- you know, just because
8 it is in Wikipedia, doesn't mean it is wrong.
9 And if this was wrong, you have two
10 experts who had this in front of them. And if
11 this was wrong, they certainly had an opportunity
12 to show where it is wrong. And they don't.
13 Q. So, it is your testimony, then, that
14 Wikipedia can sometimes be a accurate source for,
15 for an expert to rely upon in litigation?
16 A. That is not what I said.
17 Q. Okay.
18 A. What I said was just because
19 something is from Wikipedia, doesn't mean it is
20 wrong.
21 Q. Sure.
22 A. Let me finish.

Page 164

1 Q. Sorry, go ahead.
2 A. And this is a very different context
3 than the one you were questioning me about on a
4 Ph.D. dissertation, because you have two
5 experts --
6 Q. Uh-huh.
7 A. -- who, if the this was wrong, had
8 ample opportunity to point that out, and they
9 don't.
10 Q. So, simply because Dr. Morrison and
11 Professor McDonald don't discuss this in your
12 report, you believe it must be correct?
13 A. I never said that.
14 Q. Okay.
15 A. I said if this is incorrect, your
16 experts had ample opportunity to present evidence
17 and refute it, and we could have then waived that
18 evidence, but they didn't do it.
19 Q. Okay. You are aware of how
20 Wikipedia works, right?
21 A. Yes.
22 Q. It is an open-source encyclopedia,

Page 165

1 correct?
2 A. Correct.
3 Q. That means anyone who has an account
4 can go on and edit a Wikipedia entry, correct?
5 A. It can also be corrected.
6 Q. Yes, and in fact they do correct
7 them sometimes?
8 A. It is very often corrected, in fact.
9 I've looked at my -- I have a Wikipedia page. It
10 is pretty accurate.
11 Q. Right.
12 A. I have no quarrels with it. It is
13 quite reliable.
14 Q. In fact, some people sometimes go in
15 and they will update Wikipedia entries as a joke
16 at times --
17 A. That I can't speak to.
18 Q. For example, a Wikipedia article
19 about the Washington Capitals may say that the
20 owner of the Washington Capitals is Sidney
21 Crosby?
22 A. I can't comment on that. I don't

Page 166

1 know that one way or the other.
2 Q. Okay. Do you know whether, who
3 edited this Wikipedia article that is the source
4 of this information in the revolv.com?
5 A. I'm not certain that you've proven
6 to me that the source of this information is
7 Wikipedia.
8 But, beyond that, I didn't even see
9 that, to be honest with you, when I looked at
10 this, presuming this is the same thing I looked
11 at. And I don't know if that is the case at all.
12 Q. Okay. Let's make sure of that.
13 In your report, Footnote 50. Do you
14 see that?
15 A. Yes.
16 Q. The website there that is listed is
17 <https://www.revolv.com/topic/WWPX> and item_type
18 equals topic.
19 Did I read that correctly?
20 A. It looks like it is the same. I'm
21 not saying it isn't. I just haven't had much of
22 a chance to review it and see exactly what it

Page 167

1 says.
2 Q. Okay, understood.
3 A. I'm not disputing that's the same
4 thing I looked at. Although, I can't establish
5 that without comparing the two, but I'm not going
6 to argue.
7 Q. And when you looked at this article
8 on Revolv, it was on your computer, correct?
9 A. Correct.
10 Q. And, you can change the size of the
11 font as it appears in your web browser on your
12 computer, correct?
13 A. You probably can. I'm not sure I
14 know how to do that. I'm an old dinosaur.
15 Q. Okay. So, do you know whether, when
16 you first looked at this, whether you knew this
17 was, saw this content from Wikipedia logo at the
18 bottom of it?
19 A. I think I already said, I didn't
20 notice it.
21 Q. Okay.
22 A. If it was on the thing I looked at,

Page 168

1 I didn't notice it.
2 Q. Okay. And do you, does it affect
3 your opinion, in any way, that this information
4 came from Wikipedia?
5 A. I would have to review it. It is a
6 pretty minor point. It is one station that I'm
7 talking about, in one place.
8 Q. Right.
9 A. And, as I said, if this is wrong,
10 your experts had ample chance to correct it.
11 If you've got something for me to
12 look at, that corrects it, that is fine. I'm
13 open minded about it.
14 Q. Okay. I want to go back to Page 23,
15 Section 3. Do you see where your footnote, you
16 drop the Footnote 50 to this Revolv article?
17 A. Yes.
18 Q. The beginning, there is a sentence
19 before that, that has a quote, right? That says,
20 "The sale of benchmark communications."
21 Do you see that quote?
22 A. Right.

Page 169

1 Q. And you introduce that quote saying,
2 "The station's website notes that a sale of
3 Benchmark Communications which would have
4 converted the station to a CBS affiliate for
5 Winchester, Virginia and Hagerstown, Maryland
6 under the WUSQTV call sign fell through."
7 Correct?
8 A. Correct.
9 Q. You weren't actually citing the
10 station's website for that point, were you?
11 A. It says WWPX right on the top.
12 Q. Okay. But you didn't know that that
13 content came from Wikipedia?
14 A. A, I didn't see that. And, B, I'm
15 not sure that piece of the content came from
16 Wikipedia.
17 I'm not sure -- there is some kind
18 of funny logo next to it, and I'm not sure
19 exactly what that logo is referring to, whether
20 it is referring to everything in here or
21 something specific in here.
22 And as I said, I don't see this

Page 170

1 being refuted.
2 Q. Okay. And you said there is some
3 sort of funny logo on here. You are looking
4 at --
5 A. Next to Content from Wikipedia. I
6 don't know what it is.
7 Q. That is Wikipedia's logo, right?
8 A. I can't, I can't see it.
9 Q. Okay.
10 A. You might be right.
11 Q. Okay.
12 A. But again, I don't know what, I
13 don't know what piece came from Wikipedia, and
14 what piece came elsewhere. I can check it maybe
15 later by looking up Wikipedia and seeing if the
16 Wikipedia entry is the same thing WWW -- but,
17 this is their own WWPX. They are endorsing it by
18 putting their name right at the top of this.
19 So, I think the very people who know
20 the most about this don't doubt this information.
21 Q. Do you know how WWPX came to be at
22 the top of this exhibit?

Page 171

1 A. It is all over the exhibit.
2 Q. Is that the name of the website or
3 is that the name of the people who drafted it?
4 A. Oh, there is no way to know.
5 Q. You can't know that looking at it,
6 right?
7 A. No, but they are certainly putting
8 their name all over it.
9 Q. So, you can't tell me actually who
10 drafted this and what their knowledge was
11 regarding WWPX, right?
12 A. I wouldn't think that their name
13 would be all over it unless they were involved in
14 at least checking and verifying it. That, you
15 know --
16 Q. That is an assumption on your part,
17 right?
18 A. Well, that is a reasonable
19 assumption.
20 Q. Okay, got it. One of the things you
21 fault Dr. Morrison for in this Section 3 of your
22 report is his statement that there are local

Page 172

1 television stations in Hagerstown. You take
2 issue with that, right?
3 A. No, I don't take issue that there
4 are local stations in Hagerstown.
5 Q. So, you don't dispute that
6 Hagerstown has its own TV stations?
7 A. Of course not. I never said I
8 dispute it.
9 Q. You just note, your only really
10 refutation is that you think one of them may have
11 closed down, right?
12 A. I also said he fails to note that
13 there are other local radio stations -- excuse
14 me, TV stations in other parts of CD 6 as well,
15 which from the logic of his analysis would create
16 separation, not unity.
17 Again this is part of my broader
18 point. You can't just list these things. You've
19 got to provide an analysis.
20 Q. Right. You do. You have to
21 actually look and see what the data is, how good
22 the source you have is, and whether it actually

Page 173

1 supports what you are going to say. Right?
2 A. And he doesn't do that in any of
3 these instances. Exactly right.
4 Q. And so you think that citing
5 Wikipedia is better than the analysis that
6 Dr. Morrison provides on this point?
7 A. That is not what I said, and you
8 know that.
9 Q. Okay. All right.
10 MR. MEDLOCK: Let's mark the next
11 Exhibit 185.
12 (Lichtman Exhibit Number 185
13 marked for identification.)
14 BY MR. MEDLOCK:
15 Q. Let's mark what we have as Exhibit
16 185 to your deposition. So, it is one page with
17 one sentence.
18 Do you recognize this sentence on
19 Exhibit 185?
20 A. I have no idea what it is. It seems
21 to be sitting in isolation.
22 Q. Okay. It reads, "Establishes the

Page 174

1 boundaries of the state's eight United States
2 Congressional districts based on recent census
3 figures as required by the United States
4 Constitution."
5 Do you have an understanding of what
6 that means?
7 A. Yes. It means constitutionally when
8 you do a redistricting you base it on the most
9 recent census figures. It doesn't say anything
10 more than that.
11 Q. Okay. Got it. All right. You can
12 put that aside.
13 MR. MEDLOCK: Can I take five
14 minutes with my team, just I need to confer
15 with them to see if we have anything more.
16 THE WITNESS: Sure.
17 MR. MEDLOCK: Thanks.
18 THE VIDEOGRAPHER: Going off the
19 record at 13:17.
20 (Recess taken -- 1:17 p.m.)
21 (After recess -- 1:22 p.m.)
22 THE VIDEOGRAPHER: Going on the

Page 175

1 record at 13:22.
2 BY MR. MEDLOCK:
3 Q. As part of your work in this case,
4 did you review the District Court's opinion on
5 the Motion to Dismiss in this case?
6 A. I think I did, yes. Quickly.
7 Q. Okay. Was there anything that you
8 took from that opinion that was, had any bearing
9 on your report?
10 A. I don't think I gave any legal
11 opinions in my reports.
12 Q. Oh, I'm not asking if you had any
13 legal opinion, but whether it had any bearing on
14 the analysis you picked or how you structured
15 your report?
16 A. I don't think so. I think I
17 structured it, as I told you, as a response to
18 what plaintiff's experts were claiming and
19 presenting in their reports --
20 Q. Okay.
21 A. -- and as I saw the issues in the
22 case.

Page 176

1 Q. Okay. And did that Motion to
2 Dismiss opinion inform how you looked at the
3 issues in the case?
4 A. Maybe to some extent in that, you
5 know, it did focus me on something a little
6 different from what I had been accustomed to in
7 partisan gerrymandering case, and this is this
8 notion of retaliation. And we have discussed
9 that at some length in this deposition.
10 Q. Sure, okay.
11 MR. MEDLOCK: All right. I have no
12 further questions, sir. Thank you for your
13 time.
14 THE WITNESS: Thank you.
15 EXAMINATION
16 BY MS. RICE:
17 Q. I just have maybe one.
18 A. One.
19 Q. We will see, we will see, but one
20 issue.
21 Do you recall the ballot question
22 for the referendum on the 2011 Congressional

Page 177

1 race?
2 A. Yes.
3 MR. MEDLOCK: Objection, leading.
4 Go ahead.
5 THE WITNESS: I answered it.
6 BY MS. RICE:
7 Q. What do you recall about it?
8 A. It was very simple. It was vote yes
9 or no on the redistricting plan.
10 Q. And was it, did it contain any
11 pictures?
12 A. I don't think a ballot proposition
13 can contain pictures.
14 Q. And, did that, does that present any
15 problem to you?
16 A. No, just --
17 MR. MEDLOCK: Objection, leading.
18 THE WITNESS: No, this was all over
19 the press. It was a big issue. And,
20 certainly, if people believed that they were
21 being retaliated against for their political
22 views, this was quite a unique and clear

Page 178

1 forum to express that. That is why I think
2 it is so important.
3 MS. RICE: Okay. No further
4 questions, thank you.
5 MR. MEDLOCK: None from me, either.
6 THE VIDEOGRAPHER: Going off the
7 record at 13:25.
8 (Whereupon, signature not having been
9 waived, the deposition concluded at 13:25 p.m.)
10 * * *
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Page 179

1 CERTIFICATE OF COURT REPORTER
2 UNITED STATES OF AMERICA)
3 DISTRICT OF COLUMBIA)
4 I, LORI J. GOODIN, the reporter before
5 whom the foregoing deposition was taken, do
6 hereby certify that the witness whose testimony
7 appears in the foregoing deposition was sworn by
8 me; that the testimony of said witness was taken
9 by me in machine shorthand and thereafter
10 transcribed by computer-aided transcription; that
11 said deposition is a true record of the testimony
12 given by said witness; that I am neither counsel
13 for, related to, nor employed by any of the
14 parties to the action in which this deposition
15 was taken; and, further, that I am not a relative
16 or employee of any attorney or counsel employed by
17 the parties hereto, or financially or otherwise
18 interested in the outcome of this action.
19
20 _____
21 LORI J. GOODIN
22 Notary Public in and for the
District of Columbia
My Commission expires:
May 14, 2021

Page 180

1 Allan J. Lichtman c/o
2 OFFICE OF 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 25, 2017
8 Deponent: Allan J. Lichtman
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,
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5 SIGNATURE PAGE
6 Case: O. John Benisek, et al. v. Linda Lamone, et al.
7 Witness Name: Allan J. Lichtman
8 Deposition Date: May 25, 2017

9 I do hereby acknowledge that I have read
10 and examined the foregoing pages
11 of the transcript of my deposition and that:

12 (Check appropriate box):
13 () The same is a true, correct and
14 complete transcription of the answers given by
15 me to the questions therein recorded.
16 () Except for the changes noted in the
17 attached Errata Sheet, the same is a true,
18 correct and complete transcription of the
19 answers given by me to the questions therein
20 recorded.

21 _____
22 DATE WITNESS SIGNATURE

DATE NOTARY

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5 ERRATA SHEET

6 Case: O. John Benisek, et al. v. Linda Lamone, et al.
7 Witness Name: Allan J. Lichtman
8 Deposition Date: May 25, 2017
9 Page No. Line No. Change

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21 _____
22 Signature Date

Page 183