

Page 1

Page 1

1 UNITED STATES OF AMERICA  
2 IN THE UNITED STATES DISTRICT COURT FOR THE  
3 NORTHERN DISTRICT OF ALABAMA  
4  
5 KHADIDAH STONE, et al.,  
6 Plaintiff,  
7 vs. Case No. 2:21-cv-01531-AMM  
8 WES ALLEN, et. al.,  
9 Defendant.  
10  
11  
12  
13 The Video-Taped Deposition of  
14 ADAM M. CARRINGTON, Ph.D.,  
15 Taken at 400 Renaissance Center,  
16 Detroit, Michigan,  
17 Commencing at 9:14 a.m.,  
18 Wednesday, May 1, 2024,  
19 Before Mary F. Wisneski, CSR-231.  
20  
21  
22  
23  
24  
25

1 DORMAN WALKER  
2 P.O. Box 78  
3 Montgomery Alabama 36101  
4 (334) 269-3138  
5 dwalker@alabama.com  
6 Appearing on behalf of Senator Steve Livingston.  
7  
8 ALSO PRESENT:  
9 Phil Love - Videographer  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 2

Page 4

1 APPEARANCES:  
2  
3 JAMES ETTINGER  
4 MICHAEL TURRILL  
5 Hogan Lovells US LLP  
6 1999 Avenue of the Stars  
7 Suite 1400  
8 Los Angeles, California 90067  
9 (310) 785-4600  
10 jay.ettinger@hoganlovells.com  
11 michael.turrill@hoganlovells.com  
12 Appearing on behalf of the Plaintiff.  
13  
14 SOREN GEIGER  
15 BRENTON SMITH (Via Zoom)  
16 Assistant Solicitor General  
17 Alabama Attorney General's Office  
18 501 Washington Avenue  
19 Montgomery, Alabama 36104  
20 (334) 235-2590  
21 soren.geiger@alabamaag.gov  
22 brenton.smith@alabamaag.gov  
23 Appearing on behalf of the Defendants.  
24  
25

1 TABLE OF CONTENTS  
2  
3 WITNESS PAGE  
4 ADAM M. CARRINGTON, Ph.D.  
5  
6 Examination by Mr. Ettinger 6  
7  
8 EXHIBITS  
9 NUMBER IDENTIFICATION PAGE  
10 Exhibit 1 Carrington Expert Report 3/22/2024 11  
11 Exhibit 2 Notice of Deposition 16  
12 Exhibit 3 Carrington Curriculum Vitae 21  
13 Exhibit 4 Rebuttal Report/J. Bagley 65  
14 Exhibit 5 Article/A. Jewett 2001 68  
15 Exhibit 6 Report/A. Bagley 2/2/22 131  
16 Exhibit 7 Rebuttal Report/T. Burch 4/19/24 145  
17 Exhibit 8 Article 6/11/23 180  
18 Exhibit 9 Preliminary Injunction Order 190  
19 Exhibit 10 Article 8/10/15 196  
20 Exhibit 11 Article 4/22/16 197  
21  
22  
23  
24  
25

<p style="text-align: right;">Page 5</p> <p>1 Detroit, Michigan</p> <p>2 Wednesday, May 1, 2024</p> <p>3 9:14 a.m.</p> <p>4</p> <p>5 ADAM M. CARRINGTON, Ph.D.,</p> <p>6 was thereupon called as a witness herein, and</p> <p>7 after having first been duly sworn to testify</p> <p>8 to the truth, the whole truth and nothing but</p> <p>9 the truth, was examined and testified as follows:</p> <p>10 VDEOGRAPHER: Good morning.</p> <p>11 We are on the record on May 1st, 2024,</p> <p>12 at 9:14 a.m.</p> <p>13 My name is Phil Love and I'm the</p> <p>14 legal videographer and the court reporter</p> <p>15 is Mary Wisneski. We are both representing</p> <p>16 Esquire Deposition Solutions. This is the</p> <p>17 beginning of Media Unit 1, the deposition</p> <p>18 of Dr. Adam M. Carrington, in the matter of</p> <p>19 Khadidah Stone et al. versus Wes Allen et al.</p> <p>20 Today's deposition is being held</p> <p>21 at 400 Renaissance Center, Suite 2600,</p> <p>22 Detroit, Michigan 48243.</p> <p>23 Will counsel please identify</p> <p>24 yourself for the record?</p> <p>25 MR. ETTINGER: James Ettinger, on</p>	<p style="text-align: right;">Page 7</p> <p>1 A. No.</p> <p>2 Q. Have you ever been deposed before?</p> <p>3 A. I have not.</p> <p>4 Q. So I'm going to go over some kind of basic</p> <p>5 ground rules, just to make sure that it</p> <p>6 goes smooth and we can get a clean record.</p> <p>7 A. Uhm-hmm.</p> <p>8 Q. So I'll be asking you questions and it's your</p> <p>9 responsibility to answer those to the best of</p> <p>10 your recollection. And the court reporter will</p> <p>11 be transcribing my questions and your answers.</p> <p>12 And do you understand that your</p> <p>13 testimony here is provided under oath with</p> <p>14 penalties of perjury -- do you understand that?</p> <p>15 A. Yes.</p> <p>16 Q. And do you understand that you should give</p> <p>17 the same seriousness and truthfulness in</p> <p>18 this proceeding as you were -- if you were</p> <p>19 to be testifying in a court?</p> <p>20 A. Yes.</p> <p>21 Q. And if I ask you a question that you don't</p> <p>22 understand please tell me and I'm happy to</p> <p>23 repeat the question. But if you do answer</p> <p>24 the question I will assume that you understood</p> <p>25 the question and are giving me a full and</p>
<p style="text-align: right;">Page 6</p> <p>1 behalf of plaintiffs.</p> <p>2 MR. TURRILL: Michael Turrill,</p> <p>3 also on part of the plaintiffs.</p> <p>4 MR. GEIGER: Soren Geiger, on</p> <p>5 behalf of defendant.</p> <p>6 VDEOGRAPHER: Is there anybody there?</p> <p>7 MR. GEIGER: No. Just observing,</p> <p>8 not participating.</p> <p>9 VDEOGRAPHER: Will the court</p> <p>10 reporter please swear in the witness.</p> <p>11 ADAM M. CARRINGTON, Ph.D.,</p> <p>12 was thereupon called as a witness herein, and</p> <p>13 after having first been duly sworn to testify</p> <p>14 to the truth, the whole truth and nothing but</p> <p>15 the truth, was examined and testified as follows:</p> <p>16 EXAMINATION</p> <p>17 BY MR. ETTINGER:</p> <p>18 Q. Good morning, Dr. Carrington. Thanks for</p> <p>19 coming in today.</p> <p>20 A. Good morning.</p> <p>21 Q. Would you please state and spell your name</p> <p>22 for the record?</p> <p>23 A. Yes. Adam M. Carrington, A-d-a-m,</p> <p>24 C-a-r-r-i-n-g-t-o-n.</p> <p>25 Q. And have you been known by any other name?</p>	<p style="text-align: right;">Page 8</p> <p>1 complete answer.</p> <p>2 If you need to take a break please</p> <p>3 let me know, I will -- I'll just ask that we</p> <p>4 finish any pending questions before we take</p> <p>5 that break.</p> <p>6 A. Uhm-hmm.</p> <p>7 Q. Another thing is in everyday language it's</p> <p>8 common to respond with either nodding of a</p> <p>9 head or uhm-hmms, but with the transcription</p> <p>10 I ask that you answer in yes or no or however --</p> <p>11 in verbal answers.</p> <p>12 A. I understand.</p> <p>13 Q. And then, relatedly we should strive to not</p> <p>14 talk over each other, so I'll pause before</p> <p>15 asking my next question to insure that your</p> <p>16 answer is complete and I ask that you do</p> <p>17 the same for me.</p> <p>18 Finally, counsel may object to some</p> <p>19 of my questions, that's defendant's right to</p> <p>20 do so. It's part of the process of creating</p> <p>21 a record for the judge to review later in the</p> <p>22 case, but it's not meant to prevent you from</p> <p>23 answering any questions unless he specifically</p> <p>24 directs you not to answer the question.</p> <p>25 Does that make sense?</p>

<p style="text-align: right;">Page 9</p> <p>1 A. Yes. Could I ask a question of that?</p> <p>2 Q. Yes.</p> <p>3 A. So I should just wait for you both to stop</p> <p>4 talking to each other and then proceed?</p> <p>5 Q. Correct, yeah.</p> <p>6 A. Okay.</p> <p>7 Q. He may kind of mention an objection and then</p> <p>8 he'll -- I'll give you the space to answer the</p> <p>9 question as well.</p> <p>10 A. Thank you.</p> <p>11 Q. Is there any reason that you're unable to answer</p> <p>12 the questions fully and truthfully today?</p> <p>13 A. Not to my knowledge.</p> <p>14 Q. Are you on any medications that might</p> <p>15 impact your ability to testify in any way?</p> <p>16 A. No.</p> <p>17 Q. Do you understand that you're here today</p> <p>18 testifying as a proposed expert in the</p> <p>19 case Stone, et al. versus Allen, et al.?</p> <p>20 A. Yes.</p> <p>21 Q. When were you retained in this case?</p> <p>22 A. I was in March of this year.</p> <p>23 Q. And what was the scope of your attention?</p> <p>24 A. Are you asking what I was asked to discuss?</p> <p>25 Q. What were you hired to do?</p>	<p style="text-align: right;">Page 11</p> <p>1 the case.</p> <p>2 Q. Were you asked to provide opinions on any</p> <p>3 other subject matters?</p> <p>4 A. No.</p> <p>5 MR. ETINGER: I'll mark and</p> <p>6 publish Exhibit 1.</p> <p>7 MARKED FOR IDENTIFICATION:</p> <p>8 DEPOSITION EXHIBIT 1</p> <p>9 9:20 a.m.</p> <p>10 (Carrington Expert Report 3/22/2024)</p> <p>11 BY MR. ETINGER:</p> <p>12 Q. Which I'll represent is your expert report</p> <p>13 in this matter dated March 22nd, 2024.</p> <p>14 A. Uhm-hmm.</p> <p>15 Q. Do you recognize this as your report?</p> <p>16 A. Yes, this is.</p> <p>17 Q. In the qualifications section on the first</p> <p>18 page in the second paragraph it notes that</p> <p>19 you were compensated at a rate of \$300 per</p> <p>20 hour.</p> <p>21 Is that accurate?</p> <p>22 A. Yes.</p> <p>23 Q. And has that rate been consistent throughout</p> <p>24 your engagement on this matter?</p> <p>25 A. Yes, it has.</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes. I was hired to give expert -- expert</p> <p>2 testimony and write an expert report</p> <p>3 regarding this case.</p> <p>4 Q. Do you anticipate testifying at trial?</p> <p>5 A. I do.</p> <p>6 Q. Who contacted you to obtain your service as</p> <p>7 an expert?</p> <p>8 A. Soren Geiger of the Alabama Attorney General's</p> <p>9 Office.</p> <p>10 Q. Were you given any direction on what opinions</p> <p>11 were needed?</p> <p>12 A. I was -- we -- we did have a discussion and --</p> <p>13 about what my expertise might be, and then</p> <p>14 I offered, based on our discussions what I</p> <p>15 thought I could possibly speak to that might</p> <p>16 be relevant to the case.</p> <p>17 Q. And what did you offer to -- to speak to, as</p> <p>18 you mentioned?</p> <p>19 A. What I said I -- I could speak to was the</p> <p>20 history through the lens of political parties</p> <p>21 and the shift, more generally in the South,</p> <p>22 although there was some discussion of Alabama</p> <p>23 from being reliably Democratic to reliably</p> <p>24 Republic and what might be the causes of that</p> <p>25 and how that might be potentially pertinent to</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And that rate applies to any testimony</p> <p>2 you may give in a trial, for instance?</p> <p>3 A. No. This was the rate for composing and</p> <p>4 researching the expert report. I've not</p> <p>5 turned anything in for any subsequent,</p> <p>6 but I believe there are different rates</p> <p>7 for deposition and for witness testimony.</p> <p>8 I will admit I don't know those</p> <p>9 off the top of my head but it is in the</p> <p>10 contract that I signed. But, yes, this</p> <p>11 is the rate for just the report.</p> <p>12 Q. But you don't recall what the rate is for</p> <p>13 the deposition?</p> <p>14 A. I believe it is \$250 and I do not know what --</p> <p>15 what, if any of the rate -- I do not recall</p> <p>16 what, if any, of the rate would be if I were</p> <p>17 to testify.</p> <p>18 Q. Do you recall whether it was higher than the</p> <p>19 \$300 an hour rate?</p> <p>20 A. I don't recall that.</p> <p>21 Q. Is your compensation tied in any way into</p> <p>22 whether defendants win, lose or settle this</p> <p>23 lawsuit?</p> <p>24 A. No.</p> <p>25 Q. How many total hours have you worked on this</p>

<p>Page 13</p> <p>1 matter?</p> <p>2 A. I don't recall an exact number, but I know</p> <p>3 that both composing the report and working</p> <p>4 on preparing for this deposition it would</p> <p>5 be above 70 hours but I could not give you</p> <p>6 an exact number, no.</p> <p>7 Q. But you said between 70 and a hundred hours?</p> <p>8 A. Yes. I could say between 70 and 80, yeah, it</p> <p>9 would be in that range.</p> <p>10 Q. Have you had any in-person meetings with</p> <p>11 your -- with defense counsel?</p> <p>12 A. Yes, with -- with Mr. Geiger.</p> <p>13 Q. And how many in-person meetings have you had?</p> <p>14 A. Two.</p> <p>15 Q. And who was there?</p> <p>16 A. Just Mr. Geiger and myself.</p> <p>17 Q. When did those occur?</p> <p>18 A. One was April 24th and the other was yesterday,</p> <p>19 so April 30th.</p> <p>20 Q. Did you have any telephone calls about this</p> <p>21 matter?</p> <p>22 A. No.</p> <p>23 Q. Any Zoom calls?</p> <p>24 A. Yes.</p> <p>25 Q. And how many Zoom calls have you had about</p>	<p>Page 15</p> <p>1 of your deposition testimony?</p> <p>2 A. The meetings with Mr. Geiger did discuss the</p> <p>3 potential substance of -- of the deposition</p> <p>4 meetings, yes --</p> <p>5 Q. And what --</p> <p>6 A. -- but no new -- no additional ones to the</p> <p>7 ones I was asked.</p> <p>8 Q. And what did you discuss about your deposition</p> <p>9 testimony?</p> <p>10 MR. GEIGER: Objection, Counsel.</p> <p>11 It's going to be privileged.</p> <p>12 You may not answer that.</p> <p>13 MR. ETTINGER: Do you have</p> <p>14 an attorney -- is he a client of yours?</p> <p>15 MR. GEIGER: He's -- Dr. Carrington</p> <p>16 is a client of mine. He's a retained expert</p> <p>17 in this matter. He's a client. Dr. Carrington</p> <p>18 is not the client, Secretary Allen's the client.</p> <p>19 Dr. Carrington's been retained as expert by the</p> <p>20 State of Alabama and the discussions about this</p> <p>21 case with counsel is privileged.</p> <p>22 MR. ETTINGER: That expert</p> <p>23 communication -- communications with</p> <p>24 experts aren't privileged communications.</p> <p>25 MR. GEIGER: We can call the</p>
<p>Page 14</p> <p>1 this matter?</p> <p>2 A. One.</p> <p>3 Q. And when did that occur?</p> <p>4 A. It was in April but I'll admit that I don't</p> <p>5 remember -- prior to the two meetings I just</p> <p>6 mentioned, but it was earlier in April.</p> <p>7 Q. So you've had three total meetings about</p> <p>8 this matter, two in person and one on Zoom?</p> <p>9 A. About the deposition, yes.</p> <p>10 Q. Have there been other meetings about the --</p> <p>11 your report that you produced?</p> <p>12 A. Yes.</p> <p>13 Q. How many meetings have you had about your</p> <p>14 report?</p> <p>15 A. One was to discuss whether I would be able to</p> <p>16 do a report, so that was one meeting, and then</p> <p>17 I had a phone call with Mr. Geiger that lasted</p> <p>18 about fifteen minutes that had more to do with</p> <p>19 the -- I'm trying to remember -- had more to do</p> <p>20 with some of the logistics and time tables is --</p> <p>21 is what it mostly focused on.</p> <p>22 Q. Did you have any meetings about the substance</p> <p>23 of your expert report?</p> <p>24 A. I had some e-mail communications back and forth.</p> <p>25 Q. Did you have any meetings about the substance</p>	<p>Page 16</p> <p>1 judge if you need to.</p> <p>2 MR. ETTINGER: We can move on.</p> <p>3 MR. GEIGER: All right.</p> <p>4 MR. ETTINGER: I will mark</p> <p>5 and publish Exhibit No. 2.</p> <p>6 MARKED FOR IDENTIFICATION:</p> <p>7 DEPOSITION EXHIBIT 2</p> <p>8 9:27 a.m. (Notice of Deposition)</p> <p>9 BY MR. ETTINGER:</p> <p>10 Q. And I'll just ask that you keep Exhibit 1</p> <p>11 nearby because we'll come back to the report</p> <p>12 as well.</p> <p>13 A. Yes.</p> <p>14 Q. Have you seen Exhibit 2 before?</p> <p>15 A. I do not recall seeing this before, no.</p> <p>16 Q. I'll just represent that it's the --</p> <p>17 your -- the Notice of today's deposition.</p> <p>18 Besides meeting with your attorney,</p> <p>19 what did you do to prepare for your deposition</p> <p>20 today?</p> <p>21 A. I re-read my report and re-consulted some</p> <p>22 of the sources that I had used or that I</p> <p>23 knew of related to the subject matter.</p> <p>24 Q. And which sources did you re-visit?</p> <p>25 A. I looked at -- let's see, Black and Black's</p>

Page 17	Page 19
<p>1 Rise of Southern Republicanism, re-visited</p> <p>2 parts of it; I looked at Aistrup's book, The</p> <p>3 Southern Strategy Re-visited; I looked at --</p> <p>4 I'm trying to -- Lublin's 2004 book that I --</p> <p>5 that I had noted in my -- in my work. I mean,</p> <p>6 I could go on. There are other -- other sources</p> <p>7 that I -- I briefly looked at. I'm trying to think</p> <p>8 through -- you know, I also looked at V.O. Key's</p> <p>9 Original Book on Political Parties. I looked</p> <p>10 at the 1995 work, Why Parties Matter by</p> <p>11 Aldridge/Sunquist, 1983 book. And -- I will</p> <p>12 not say I read all of them in their entirety,</p> <p>13 but re-consulted some of the parts either I</p> <p>14 have looked at or that I thought might be</p> <p>15 pertinent.</p> <p>16 Q. Aside from reviewing your report and some of</p> <p>17 the source materials you just mentioned did</p> <p>18 you review any other documents in preparation</p> <p>19 for your deposition?</p> <p>20 A. I did look at -- thank you for asking.</p> <p>21 I did look at two of the</p> <p>22 Rebuttal Reports.</p> <p>23 Q. And which two Rebuttal Reports did you review?</p> <p>24 A. Dr. Burch's and Dr. Bagley's -- or Professor,</p> <p>25 I should say. I assume they have their --</p>	<p>1 Q. And was that in this matter, Stone --</p> <p>2 Stone v Allen?</p> <p>3 A. Yes.</p> <p>4 Q. Whose testimony did you review?</p> <p>5 A. I looked a little bit at -- I believe the</p> <p>6 expert witness's name was Liu -- Bagley's and</p> <p>7 those -- I think -- I think those -- those two</p> <p>8 are the two that I -- that I read the most of.</p> <p>9 And I -- I admit that I -- because</p> <p>10 I didn't engage that much with them, I did</p> <p>11 not -- I read parts of some of the others,</p> <p>12 but they did not factor enough into</p> <p>13 anything I was doing for me to -- I don't</p> <p>14 recall even who wrote them, to be -- to be</p> <p>15 honest so --</p> <p>16 Q. And when you said you reviewed the testimony</p> <p>17 are you referring to their initial expert</p> <p>18 reports?</p> <p>19 A. Yes.</p> <p>20 Q. Have you reviewed any deposition testimony</p> <p>21 in this matter?</p> <p>22 A. No.</p> <p>23 Q. What is your understanding of the facts in</p> <p>24 this case?</p> <p>25 A. I understand it to be a case regarding two</p>
Page 18	Page 20
<p>1 I think they both have their Ph.Ds.</p> <p>2 Q. Any other documents besides those you just</p> <p>3 mentioned?</p> <p>4 A. I'm sure I looked at other -- some other</p> <p>5 secondary resources related to my report.</p> <p>6 I mean, I looked again at, for example,</p> <p>7 my -- my own -- my own Justice System Journal,</p> <p>8 I re-visited that briefly because of the --</p> <p>9 well, we can talk about why if you want at some</p> <p>10 point; you know, I looked at a Morris article</p> <p>11 from 2021 related to migration patterns in the</p> <p>12 South; I re-looked at a -- a book from 2022</p> <p>13 that I cite in my report on the 1968 Democratic</p> <p>14 National Convention in Chicago in '68.</p> <p>15 So -- so, yes, I -- I looked -- I</p> <p>16 re-looked at a number of things that I had --</p> <p>17 that I had visited in the first -- in my</p> <p>18 first go-around for the report.</p> <p>19 Q. Have you seen any deposition transcripts</p> <p>20 from this matter?</p> <p>21 A. No.</p> <p>22 Q. Have you reviewed any trial court</p> <p>23 orders or filings in this matter?</p> <p>24 A. I looked briefly at some of the expert</p> <p>25 testimony for -- for the plaintiffs.</p>	<p>1 Senate, State Senate Districts in Alabama and</p> <p>2 a claim that they violate the Civil Rights --</p> <p>3 or the Voting Rights Act, pardon me, as an</p> <p>4 instance of vote dilution in the way that they</p> <p>5 were districting -- in the way that they relate</p> <p>6 to particularly African-American voters.</p> <p>7 Q. And what is the basis for your understanding?</p> <p>8 A. Both the expert reports that I -- that I looked</p> <p>9 at as well as online search of the case to try</p> <p>10 to get the basic ideas of what was -- of what</p> <p>11 was going on as well.</p> <p>12 Q. Did you review the complaint in this matter?</p> <p>13 A. I did not.</p> <p>14 Q. Did anyone tell you the -- the facts of the case?</p> <p>15 A. Yes. I -- when I had my initial discussion</p> <p>16 with the Attorney General's Office, a phone</p> <p>17 conversation, the -- and was being reached out</p> <p>18 to as a possible expert witness in this matter,</p> <p>19 I was -- the basic facts of it were relayed to</p> <p>20 me as well.</p> <p>21 And, really, that was the initial --</p> <p>22 my initial hearing of it, and everything after</p> <p>23 that was an attempt to further get a handle</p> <p>24 on -- on what I might need to know for the</p> <p>25 case.</p>



<p style="text-align: right;">Page 21</p> <p>1 Q. Have you ever served as an expert witness 2 in a lawsuit before? 3 A. No. 4 Q. You provided your -- your CV with your 5 expert report, correct? 6 A. I believe I did, yeah. 7 MR. ETTINGER: I will mark 8 and publish Exhibit 3. 9 A. But I -- yeah. 10 MARKED FOR IDENTIFICATION: 11 DEPOSITION EXHIBIT 3 12 9:35 a.m. (Carrington Curriculum Vitae) 13 MR. GEIGER: Thank you. 14 BY MR. ETTINGER: 15 Q. Dr. Carrington, do you recognize this as 16 your CV? 17 A. Yes. Yes, I do. 18 Q. Is this a current version of your CV? 19 A. Yes, it is. 20 Q. When was this document last updated? 21 A. This would have been updated -- I -- I am not 22 sure when was the last -- when the last time 23 that I -- that I updated this document. 24 Q. And under the Academic Articles Section, second 25 down, article beginning with, The Quality of</p>	<p style="text-align: right;">Page 23</p> <p>1 MR. GEIGER: Sure, yeah. 2 BY MR. ETTINGER: 3 Q. And turning to your -- the section titled, 4 Education -- 5 A. Uhm-hmm. 6 Q. -- you began, it looks like at Ashland College 7 for your BA -- 8 A. Yes. 9 Q. -- in the Department of Political Science 10 and Development of Religion. 11 Is that right? 12 A. Yes, two separate degrees, two separate 13 departments. 14 Q. And did you have a particular concentrate 15 in that program? 16 A. Not -- not in the Political Science Department. 17 They did not have concentrations. In the 18 Department of Religion I particularly focused 19 in on elements of American Religion and Ethics, 20 or some of the subdivisions that you could have 21 an emphasis on that I recall taking more classes 22 on. But political science, that wasn't the way 23 the degree was divided up. There was no 24 concentration. 25 Q. Then next, it looks like you attended Baylor</p>
<p style="text-align: right;">Page 22</p> <p>1 Prejudice and the Rule of Law -- 2 A. Uhm-hmm. 3 Q. -- at the end of that it says, Forthcoming 4 Fall of 2017. 5 Is that accurate? 6 A. That is when it was published, so, yes, I did 7 not -- I did not update it to reflect that that 8 or the article below it had -- or actually the 9 top three articles had been published. And they 10 all have been published in the -- in the journals 11 that they are -- they're purported to have been 12 published in. And I actually have the citations 13 of those in my report. 14 Q. Does this refresh your recollection as to 15 the -- the last date this was updated? 16 A. Yes. It -- it probably was not updated until 17 20 -- until sometime in 2017 then, so -- so, 18 yes -- or at least those parts of this, I 19 should say. 20 Q. Were you asked to prepare an up-to-date 21 version of your CV for this litigation? 22 A. I do not recall being asked to do so, no. 23 MR. ETTINGER: Counsel, we just 24 ask that you provide an updated version 25 of the CV.</p>	<p style="text-align: right;">Page 24</p> <p>1 University in the Department of Political 2 Science for a Master's Degree? 3 A. I did. 4 Q. And what was the title of your degree for 5 that program? 6 A. That was a Master of Arts in Political Science. 7 Q. And did you have a particular -- particular 8 area of focus in that program? 9 A. We declared our -- our -- our primary and 10 secondary fields within the Ph.D. and I -- 11 the program as I was admitted to it was 12 continuous, so I was let into the Ph.D. 13 Program. I received my Master's on the way. 14 So I'm happy to answer that but 15 it would be the same answer for Ph.D. 16 Q. Understood. 17 A. Yeah. 18 Q. That's helpful. 19 So they were kind of, essentially 20 one continuous program for you? 21 A. Yes, sir. 22 Q. Could you tell me what were the area of -- 23 I think you said there was a primary- and 24 secondary-area focus? 25 A. Yes. My primary was American politics and</p>

<p style="text-align: right;">Page 25</p> <p>1 my secondary field was political theory.</p> <p>2 And that related both to course load and</p> <p>3 to examination at the comprehensive-exam</p> <p>4 stage as far as how therefor was the division</p> <p>5 of -- of -- how that mattered in a particular</p> <p>6 light.</p> <p>7 Q. And your focus on American politics, did it</p> <p>8 have a particular focus on the American South?</p> <p>9 A. No.</p> <p>10 Q. Or on Alabama politics?</p> <p>11 A. No, it did not.</p> <p>12 Q. Did it have a particular time period that</p> <p>13 was a focus?</p> <p>14 A. As far as my studies, no.</p> <p>15 It's -- a lot of the focus of those</p> <p>16 were on institutions and how those institutions</p> <p>17 developed throughout American history,</p> <p>18 particularly political parties, the judiciary,</p> <p>19 the presidency. That was the -- the -- the</p> <p>20 number one focus of those -- of those studies</p> <p>21 and my examination sub-fields within American</p> <p>22 politics at the comprehensive-exam level.</p> <p>23 Q. So that it sounds like there wasn't one</p> <p>24 particular time period, it was kind of</p> <p>25 institutions across time.</p>	<p style="text-align: right;">Page 27</p> <p>1 historical focus, yes, I took a class on</p> <p>2 the American Founding; but those other</p> <p>3 courses that were institutional tended to</p> <p>4 span -- there might be points of emphasis</p> <p>5 that tended to span more than one era of</p> <p>6 American history, if you're going to do the</p> <p>7 traditional way that those are divided up in</p> <p>8 the field: Founding, Jacksonian Era, Civil War</p> <p>9 Era, Reconstruction, Gilded Age, Progressive</p> <p>10 Era. I mean, I could go on, but none of those</p> <p>11 courses are -- none of the institutional</p> <p>12 courses only focused on one era, that I</p> <p>13 recall at least.</p> <p>14 Q. And I think you started to mention but you --</p> <p>15 sounds like you did write a thesis for that</p> <p>16 program?</p> <p>17 A. I did not write a thesis for the master's.</p> <p>18 There was -- that was usually for terminal</p> <p>19 master students. I did a -- a comprehensive</p> <p>20 exam for it, but then, yes, to finish your</p> <p>21 Ph.D. I did a dissertation.</p> <p>22 Q. And can you tell me the subject of that</p> <p>23 dissertation?</p> <p>24 A. Yes. As I was starting to say before, it was</p> <p>25 on Stephen Field, who was a Lincoln appointee</p>
<p style="text-align: right;">Page 26</p> <p>1 Is that fair to say?</p> <p>2 A. Yes. The way the program went, some persons</p> <p>3 would focus on an era, others would focus on</p> <p>4 institutions; and my focus was more primarily</p> <p>5 on institutions and to, you know, one sub-field</p> <p>6 that -- at the time was called American Political</p> <p>7 Development. And the very nature of that</p> <p>8 course is to -- or of that sub-study, is to</p> <p>9 try to look at across time periods in order</p> <p>10 to understand how institutions develop across</p> <p>11 them.</p> <p>12 Q. And yours didn't have a particular era that</p> <p>13 it was -- there was a point of emphasis in</p> <p>14 your studies?</p> <p>15 A. My dissertation, which I would distinguish from</p> <p>16 my course-load studies, did have a particular</p> <p>17 focus on the Reconstruction, the Gilded Age.</p> <p>18 Because I looked at Justice Stephen Field, the</p> <p>19 first Lincoln appointee to the Supreme Court,</p> <p>20 and -- well, I -- you don't need to -- you</p> <p>21 can ask if you want to know more about that.</p> <p>22 But the actual course loads that</p> <p>23 I took on the presidency, courses I took</p> <p>24 on judicial politics, on constitutional</p> <p>25 interpretation, did some of them have a</p>	<p style="text-align: right;">Page 28</p> <p>1 to the Supreme Court.</p> <p>2 And I focused predominantly on his</p> <p>3 understanding of liberty, especially through</p> <p>4 the Fourteenth Amendment, since he was one</p> <p>5 of the early Justices to discuss it, both in</p> <p>6 economic terms in terms of Civil Rights in</p> <p>7 the South, and -- and -- and a number of</p> <p>8 other sub-sets of that.</p> <p>9 Q. Where did you work after you completed</p> <p>10 your Ph.D. program at Baylor?</p> <p>11 A. In 2014 I began my current position at</p> <p>12 Hillsdale College in Hillsdale, Michigan.</p> <p>13 Q. And why did you choose to go to Hillsdale?</p> <p>14 A. I chose Hillsdale -- secondary reasons, family;</p> <p>15 I'm from the Midwest originally, and it was the</p> <p>16 closest of the job offers I had to home. I knew</p> <p>17 of it a little bit because it was in the same</p> <p>18 athletic conference as my undergraduate. And</p> <p>19 academically I went to it because it was -- I --</p> <p>20 I wanted a smaller school with a liberal arts</p> <p>21 focus and that very much fit those -- those --</p> <p>22 those conditions.</p> <p>23 And also, they needed someone in that</p> <p>24 department that fulfilled my -- my desire to</p> <p>25 focus on American political institutions.</p>

Page 29	Page 31
<p>1 Q. And would you say your focus at Hillsdale has 2 been on American political institutions? 3 A. Yes. Being a small liberal arts college I've 4 taught, I believe, thirteen different classes. 5 I -- I wouldn't say that's exactly, but I 6 remember that's in the area of. But I very, 7 very regularly -- every semester almost, teach 8 U.S. Constitution. It has a heavy institutional 9 focus. I have taught political parties. 10 I teach -- I am the primary teacher of 11 constitutional law and the presidency both 12 at the undergraduate and our Ph.D. program. 13 And so, the only institution 14 I have not taught is Congress of what are 15 considered the major political institutions 16 in the American system. 17 Q. How long have you worked at Hillsdale? 18 A. Ten years. 19 Q. Are there any particular areas of scholarship 20 that Hillsdale College is known for? 21 A. Would -- can I ask a clarifying question? 22 Q. Sure. 23 A. Are you thinking of the political science or the 24 politics department, or are you thinking of the 25 school broader, since we obviously have lots of</p>	<p>1 Q. On page 4 of your CV I think you listed 2 some of the courses that you've taught. 3 A. Uhm-hmm. 4 Q. Have you taught any courses specifically focused 5 on the politics of the American South? 6 A. No. We have not had a course that is that 7 specific. Yeah. 8 Q. How about any on the political history 9 of the American South? 10 A. Not specifically to the American South. 11 Q. Have you taught any classes that -- that 12 specifically deal with Alabama's political 13 history? 14 A. No. No. It would be highly irregular to 15 have a class focused on -- in a Michigan 16 college focused on another state. 17 Q. And I believe earlier you mentioned that 18 American political institutions is generally 19 the focus of your academic work -- 20 A. Uhm-hmm. 21 Q. -- is that right? 22 A. Yes. 23 Q. Is there a particular period in which you -- 24 you focused your research? 25 A. The -- the largest amount of my research,</p>
Page 30	Page 32
<p>1 degrees and lots of programs? 2 Q. Let's say within -- within the political 3 science department. 4 A. Yes. I have colleagues -- so my -- my colleague, 5 Dr. Tom West, has written books on the American 6 Founding and translated Plato; my colleague, 7 Dr. Pestritto, has written one of what I think 8 is one of the foremost books on Woodrow Wilson 9 and the Progressives; my colleague, Joe Postell, 10 who was at -- taught in Colorado before coming 11 to our institution, has also written on the 12 bureaucracy and the development of the 13 bureaucracy -- is a cleverly titled Bureaucracy 14 in America book; and I have one other colleague 15 who -- Dr. Slack, who's written on the New Left 16 and the Development of Political Liberalism from 17 the 1960s and on. 18 So, you know, there's some diversity 19 within those -- I could -- I could mention 20 in political theory as well where we've had 21 some -- where some of my colleagues are just 22 in that department, or just in that sub-field. 23 Q. Thank you. No. I think that gives me a good 24 picture. 25 A. Yeah.</p>	<p>1 but not, certainly not the only, has been 2 Reconstruction in the Gilded Age as far as 3 what I have published on. 4 I do have works on the 20th Century 5 and a little bit on the early 19th Century, 6 but predominantly my scholarly work has been, 7 I would say from the 1860s through turn of 8 the Century. 9 Q. So roughly the 1860s to the early 1900s? 10 A. Uh-huh, yes. That's traditionally when -- 11 a little into when the Progressive Era is 12 considered to have begun, and I have done 13 some work but there's a bit of a gap there. 14 The other work I've done, for 15 example, my Justice System Journal article 16 that I co-wrote with some of my colleagues 17 at Baylor, that involved myself putting 18 together a database where -- of every time 19 a member of Congress attacked the Supreme 20 Court, which involved a lot of 20th, 21 later-20th Century history and pulling 22 that into the party system and how that 23 affected the party system. 24 Q. And is that a Justice System article 25 you mentioned in your CV?</p>



<p>Page 33</p> <p>1 A. Yes, it is. 2 Q. Can you point to which one that is? 3 A. I believe -- let me -- let me -- let me make 4 sure that that is -- that is, Court Curbing 5 Via Attempt to Amend the Constitution. 6 Q. Thank you. 7 A. Yeah. I might add one more thing with that. 8 Q. Sure. 9 A. That database which I was the primary compiler 10 of has also been the basis from my colleagues 11 of several other scholarly articles related to 12 the party system. 13 Q. And that was, as you mentioned, focused on 14 congressional commentary on the Supreme Court? 15 A. It -- less rhetorical because I believe that's 16 at times hard to be scholar -- rigorously 17 scholarly if that's your only basis. 18 It was, every time that a bill was 19 even proposed that was a reaction -- a negative 20 reaction to a Supreme Court opinion, either 21 trying to curb the jurisdiction of the Court, 22 or pass a constitutional amendment -- that 23 was what I actually -- that was our focus 24 because that was what I found that had been 25 underrepresented in the literature of where</p>	<p>Page 35</p> <p>1 A. No, no books. 2 Q. Aside from the preparations you undertook in 3 preparing your report in this case, what have 4 you done to research Post-construction -- 5 Post-Reconstruction politics in Alabama? 6 A. I have researched it as part of my book in 7 two ways: The work I have done and have 8 been doing on the development of political 9 parties, and that was the focus, or the 10 lens from which I was coming at this report. 11 When I have taught a number of my 12 classes as well; say my Civil Rights class, 13 my American Political Thought class; my 14 U.S. Constitution class; my Political Parties 15 class, all of those I have placed a specific -- 16 an emphasis on the southern element of these 17 questions. But it was not a focus just on 18 that, it was trying to integrate that question 19 with the broader development of the parties 20 themselves and how, to some degree, the 21 southern development was affected by and 22 affected -- say, New England or the West or -- 23 or other, other elements. 24 Something even in -- in a lot of my 25 writing, either academic or popular has been</p>
<p>Page 34</p> <p>1 a Supreme Court opinion would come out; say, 2 about school prayer, and there would be a raft 3 of amendments proposed to basically overturn 4 that Supreme Court opinion. 5 And what we did was less to focus 6 on what that meant for Congress and more what 7 it meant for the development and evolution of 8 political -- of the political parties from 9 which -- and regional and other differences 10 from which these congressmen -- what were 11 these congressmen trying to do as far as 12 party formation and re-formation. Yeah. 13 Q. Have you published any academic articles about 14 Post-Reconstruction politics in Alabama? 15 A. Not post-Reconstruction. 16 Q. Have you published any academic articles about 17 Post-Reconstruction politics in the American 18 South? 19 A. Not focused exclusively on the South, no. 20 Q. Have you reviewed any books about 21 Post-Reconstruction politics in Alabama? 22 A. No. 23 Q. Have you written any books about 24 Post-Reconstruction politics in 25 the American South?</p>	<p>Page 36</p> <p>1 the nature of coalitions, which is why I 2 emphasized Federalist 10 as a starting point 3 in my report. I know you'll probably want 4 to get into some of those things in the report 5 so I'll just say I have seen the South as 6 an important element but I have looked at it 7 as part of the broader institutional picture 8 and structure. 9 Q. But you haven't done any scholarly work 10 specifically looking at Post-Reconstruction 11 politics in the American South? 12 A. No. 13 Q. Now, you also list a number of published 14 popular articles in your CV. 15 A. Uhm-hmm. 16 Q. Do you consider these articles to be works 17 of academic scholarship? 18 A. I do not consider them on par as far as 19 rigor or detail with a peer-reviewed or 20 a book chapter, no. 21 Q. What would you consider as your area of expertise? 22 A. I would say that it, again, is on American 23 Political Institutions. 24 Particularly one reason that I 25 emphasize the plural in that is separation</p>

<p style="text-align: right;">Page 37</p> <p>1 of powers has been a background issue in a lot</p> <p>2 of what I've written, but that those include</p> <p>3 the interaction of the judiciary with --</p> <p>4 with the presidency, and obviously with that</p> <p>5 political parties always is an element of --</p> <p>6 of presidential politics and under -- I think</p> <p>7 an underrepresented part of judicial politics</p> <p>8 as well.</p> <p>9 Q. Are there any other areas that you would say</p> <p>10 you have an expertise in?</p> <p>11 A. I have done some work on the intersection of</p> <p>12 religion and politics and have some scholarly,</p> <p>13 but mostly popular publications with that.</p> <p>14 So I would not consider it at the</p> <p>15 level of my interaction with American Political</p> <p>16 Institutions, even though I have -- I have</p> <p>17 done some research and work, partly coming</p> <p>18 out of the fact that I was a religion major</p> <p>19 in undergraduate; but, yeah, that has not</p> <p>20 been a scholarly focus.</p> <p>21 Q. So my understanding is -- is that you have an</p> <p>22 expertise in American Political Institutions</p> <p>23 and have done some work on religion and politics?</p> <p>24 A. Yes.</p> <p>25 Q. Are there any others that I'm missing?</p>	<p style="text-align: right;">Page 39</p> <p>1 in political parties that, yes, I -- I have</p> <p>2 studied extensively the American South as</p> <p>3 part of that history.</p> <p>4 Q. But you've never done any academic work</p> <p>5 specifically related to the American South?</p> <p>6 MR. GEIGER: Objection, asked</p> <p>7 and answered.</p> <p>8 But you may answer.</p> <p>9 A. Yeah. The way you put that I would say</p> <p>10 that's not true.</p> <p>11 I have a -- you know, I have, as</p> <p>12 far as just the political history of the</p> <p>13 South, I have an article on The Reception</p> <p>14 of the Emancipation Proclamation in the --</p> <p>15 in the Post-Civil War South; I have an</p> <p>16 article on an Alabama Supreme Court Justice</p> <p>17 during Reconstruction, Thomas M. Peters.</p> <p>18 My dissertation did look at -- had</p> <p>19 an entire chapter on the Judicial Application</p> <p>20 of Civil Rights in Relation to Party, and it</p> <p>21 had a political-party element to it as well</p> <p>22 in the South, so -- and also the article I</p> <p>23 wrote in Justice Systems Journal made note of</p> <p>24 how the attacks on the Supreme Court were part</p> <p>25 of reformulating coalitions in the Democratic</p>
<p style="text-align: right;">Page 38</p> <p>1 A. No. I wouldn't -- again, teaching at a small</p> <p>2 liberal arts school I've taught a number of</p> <p>3 things but those -- that would be what I</p> <p>4 consider my -- my -- my research -- my</p> <p>5 research focus.</p> <p>6 Q. And how would you describe the expertise</p> <p>7 you're providing in this litigation?</p> <p>8 A. I am predominantly providing through the lens</p> <p>9 of political parties and the political party's</p> <p>10 literature a look at the move from bringing</p> <p>11 that to bear on the move of the -- of the</p> <p>12 South from being predominantly Democrat and</p> <p>13 its voting patterns to predominantly Republican.</p> <p>14 And so, coming at it as a political</p> <p>15 scientist, coming at it with a focus on the</p> <p>16 institutional element, and particularly the</p> <p>17 party elements, although, again, other --</p> <p>18 other institutions always come in because</p> <p>19 political parties, as I've tried to explain</p> <p>20 in my report, are a kind of cross-institutional</p> <p>21 institution.</p> <p>22 Q. And would -- would you say that you have an</p> <p>23 expertise in the political history of the</p> <p>24 American South?</p> <p>25 A. I would say that -- that as part of my expertise</p>	<p style="text-align: right;">Page 40</p> <p>1 and Republican parties toward the Republican</p> <p>2 party attracting and the Democratic Party</p> <p>3 losing certain demographics.</p> <p>4 BY MR. ETtingER:</p> <p>5 Q. And were those works focused on post --</p> <p>6 Post-Reconstruction politics in the</p> <p>7 American South?</p> <p>8 A. The Justice System Journal article was</p> <p>9 focused -- it was -- the focus was national,</p> <p>10 but the South as one of the prime movers</p> <p>11 was -- was part of that story.</p> <p>12 And that, even though I did my --</p> <p>13 my database going back to the 1870s, the</p> <p>14 focus of our work was Post-New Deal, up</p> <p>15 to late 20th Century -- later in the 20th</p> <p>16 Century.</p> <p>17 Q. Were there any other works that were focused</p> <p>18 on Post-Reconstruction politics in the American</p> <p>19 South?</p> <p>20 A. No. I think that would be -- as far as</p> <p>21 academic work, as far as scholarly work,</p> <p>22 that would -- I think that would be it.</p> <p>23 Q. You're not a trained historian, correct?</p> <p>24 A. No. I'm a trained political scientist.</p> <p>25 Q. And you're not a statistician?</p>

<p style="text-align: right;">Page 41</p> <p>1 A. No.</p> <p>2 Q. And you're not an expert in quantitative</p> <p>3 analysis of racial -- racial polarized voting?</p> <p>4 A. Correct. I take a very historical approach.</p> <p>5 My study of politics has always been</p> <p>6 focused in the political history, but, no --</p> <p>7 no, I am -- I am not a trained statistician.</p> <p>8 Q. Are you an expert on the politics of Alabama,</p> <p>9 in particular?</p> <p>10 A. No.</p> <p>11 Q. Or on the political history of Alabama?</p> <p>12 A. No. I am not.</p> <p>13 Q. Have you ever lived in Alabama?</p> <p>14 A. No, I have not lived in Alabama.</p> <p>15 Q. Have you ever worked in Alabama?</p> <p>16 A. No. I paused because I've never resided</p> <p>17 there or had a job there, yeah.</p> <p>18 Q. You're not an expert on the racial history</p> <p>19 of the American South in the late 20th and</p> <p>20 early 21st Century, are you?</p> <p>21 A. No.</p> <p>22 Q. You're not an expert on Black political</p> <p>23 participation in the American South?</p> <p>24 A. No, which is partly why it wasn't a focus</p> <p>25 of -- of my report.</p>	<p style="text-align: right;">Page 43</p> <p>1 Q. What types of materials did you review in</p> <p>2 preparing your report?</p> <p>3 A. I examined the literature related to political</p> <p>4 parties, including with a focus on the American</p> <p>5 South, but also political parties more generally;</p> <p>6 I re-visited certain primary documents that I</p> <p>7 found relevant, both presidential speeches,</p> <p>8 laws, executive orders, party platforms; some</p> <p>9 other documents, too, as well, along those lines.</p> <p>10 Those would be the two main categories, both</p> <p>11 secondary literature in those categories and</p> <p>12 these, what I thought were primary -- primary</p> <p>13 documents that were referred me.</p> <p>14 Q. And are all those materials listed in your</p> <p>15 report?</p> <p>16 A. Could -- could you clarify when you say --</p> <p>17 all the materials that I've read, or all</p> <p>18 the materials that I -- I mean, obviously</p> <p>19 all I cited is in there, but any research</p> <p>20 usually reads more than they actually cite</p> <p>21 or use. So if you're asking did I read more</p> <p>22 than I cited, yes, and I think that's pretty</p> <p>23 standard, but -- but, yes, I have my -- I</p> <p>24 have the resources that I thought were</p> <p>25 important to bring to bear in there.</p>
<p style="text-align: right;">Page 42</p> <p>1 MR. ETtingER: I think we're at</p> <p>2 a good point to pause for a little break.</p> <p>3 THE WITNESS: Sure.</p> <p>4 VDEOGRApHER: Off the record</p> <p>5 at 10:03 a.m.</p> <p>6 (Recess taken at 10:03 a.m.)</p> <p>7 (Back on the record at 10:14 a.m.)</p> <p>8 VDEOGRApHER: We're now on the</p> <p>9 record, 10:14 a.m.</p> <p>10 BY MR. ETtingER:</p> <p>11 Q. Dr. Carrington, turning back to your report,</p> <p>12 which is marked as Exhibit 1, does this report</p> <p>13 contain a complete statement of all the opinions</p> <p>14 you have formed in this case?</p> <p>15 A. Yes.</p> <p>16 Q. Have you formed any other opinions not disclosed</p> <p>17 in this report that you intend to provide in this</p> <p>18 case?</p> <p>19 A. No.</p> <p>20 Q. Does this report also include all of the facts or</p> <p>21 data that you considered in forming your opinion?</p> <p>22 A. Yes.</p> <p>23 Q. Did anyone assist you in the preparation of</p> <p>24 this report?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. And how did you go about obtaining the</p> <p>2 documents you reviewed for this report?</p> <p>3 A. I already had a number in my possession from</p> <p>4 classes and research that I've done before.</p> <p>5 I re-consulted those.</p> <p>6 There were times where those</p> <p>7 resources led me to other ones that maybe</p> <p>8 I have not looked at or had not looked at</p> <p>9 for a while, but, yes, a combination of</p> <p>10 prior research, prior teaching, and then</p> <p>11 in re-visiting those there were some new</p> <p>12 resources as well.</p> <p>13 Q. Did defense counsel provide you any documents</p> <p>14 to review and produce in your report?</p> <p>15 A. None other than what I've already mentioned,</p> <p>16 which were expert witness reports, but,</p> <p>17 no primary or second -- the primary and</p> <p>18 secondary literature was my own research.</p> <p>19 Q. So just to confirm: The -- the only materials</p> <p>20 you were provided were the Expert Reports and</p> <p>21 Rebuttal Reports?</p> <p>22 A. Yes.</p> <p>23 Q. What are your opinions in this case?</p> <p>24 A. Could you be a little more specific?</p> <p>25 Q. Did you reach any particular conclusions</p>

Page 45	Page 47
<p>1 through your research for this case?</p> <p>2 A. On the outcome of the case?</p> <p>3 Q. No. Just in -- in what you were hired to</p> <p>4 opine on as an expert.</p> <p>5 A. I did not reach a generally new conclusion.</p> <p>6 I articulated an opinion I had formulated</p> <p>7 regarding the -- the nature of the transition</p> <p>8 from Democrat to Republican as far as party</p> <p>9 dominance in the South.</p> <p>10 Q. And how would you describe that opinion?</p> <p>11 A. I believe that -- well, obviously it is</p> <p>12 a fact that that has happened.</p> <p>13 But why that is -- I believe,</p> <p>14 that while race was and is, continues to</p> <p>15 be a factor that -- and this is where my</p> <p>16 other research I think came to bear on</p> <p>17 this -- other elements and developments</p> <p>18 that I mentioned in the report are often</p> <p>19 underrepresented, underdiscussed, or</p> <p>20 their importance un -- their importance as</p> <p>21 independent factors is understated in the</p> <p>22 transition from Democrat to Republican in</p> <p>23 the South, as far as party identification,</p> <p>24 voting patterns.</p> <p>25 Q. And so you -- your scholarships -- or your</p>	<p>1 Act world and that there were competing</p> <p>2 approaches to what an integrated South and a</p> <p>3 South where African-Americans were actually</p> <p>4 afforded their constitutional rights, what</p> <p>5 that would look like.</p> <p>6 Q. So you identified kind of the immediate</p> <p>7 Post-Voting Rights and Civil Rights Act</p> <p>8 period.</p> <p>9 Did race continue to play a</p> <p>10 factor after that immediate aftermath?</p> <p>11 A. I believe it does play a factor, yes. Yes.</p> <p>12 Q. Did race continue to play a factor in the</p> <p>13 political realignment of white voters in</p> <p>14 Alabama after the Voting Rights Act?</p> <p>15 A. Yes. Yeah.</p> <p>16 Q. Did race play a factor in the political</p> <p>17 realignment of white voters in the 1970s?</p> <p>18 A. Yes.</p> <p>19 Q. Did race play a factor in a political</p> <p>20 realignment of white voters in Alabama</p> <p>21 in the 1980s?</p> <p>22 A. I'd say diminishing, but, yes.</p> <p>23 And part of my question actually</p> <p>24 would be, how do you -- how would you</p> <p>25 understand a factor -- or are you just</p>
Page 46	Page 48
<p>1 opinion is identifying these other factors</p> <p>2 that played a role but you still hold the</p> <p>3 view that race played a role?</p> <p>4 A. Absolutely, yeah.</p> <p>5 Q. Okay. Would you say it played a significant</p> <p>6 role?</p> <p>7 A. I -- could you -- are you asking for a specific</p> <p>8 era, in particular? Because I do think the</p> <p>9 answer varies based on when in my report</p> <p>10 I'm speaking as far as how significant.</p> <p>11 Q. Understood. We'll say Post-Voting or</p> <p>12 Civil Rights Act.</p> <p>13 Did race play a factor in the</p> <p>14 political realignment of the American South?</p> <p>15 A. Yes. And I say that in my report and I fully</p> <p>16 believe that.</p> <p>17 Q. How would you describe the factor it played?</p> <p>18 A. I believe that it was certainly important that</p> <p>19 there was an immediate reaction to the Civil</p> <p>20 Rights Legislation that certainly upset</p> <p>21 political partisanship.</p> <p>22 And I do believe that going forward</p> <p>23 there was an ongoing debate about what was the</p> <p>24 best way to act in the new Post-Civil Rights --</p> <p>25 or Post-Civil Rights Act, Post-Voting Rights</p>	<p>1 asking did it play a factor at all?</p> <p>2 Q. How -- sure.</p> <p>3 How would you define a factor?</p> <p>4 A. So you certainly have pre-1964, and certainly</p> <p>5 in 1968 naked segregationists, white supremacist</p> <p>6 appeals being made and garnering significant</p> <p>7 political support.</p> <p>8 In the Post-Civil Rights Era --</p> <p>9 and I mean by that the post immediate passage</p> <p>10 of those Acts, there continues -- race is</p> <p>11 certainly a factor in being a discussion for</p> <p>12 how to -- how to address continuing racial</p> <p>13 disparities, continuing questions of the legacy</p> <p>14 of it. But I would distinguish those debates</p> <p>15 as that being a factor as opposed to it being</p> <p>16 a segregationist and a non-segregationist</p> <p>17 juxtaposition.</p> <p>18 Q. Understood.</p> <p>19 But it did continue to play a</p> <p>20 factor, in your view?</p> <p>21 A. Yes.</p> <p>22 Q. Did race continue to play a factor in the</p> <p>23 political realignment of white voters in</p> <p>24 Alabama in the 1990s?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 49</p> <p>1 Q. Did race continue to play a factor in the 2 political realignment of white voters in 3 the 2000s? 4 A. Yes. 5 Q. Did race continue to play a factor in the 6 political realignment of white voters in 7 Alabama in the 2010s? 8 A. Yes. 9 Q. Is it fair to say that it's continuously played 10 a factor in the realignment of white voters in 11 Alabama Post-Voting Rights Act? 12 A. As one explanatory factor for voter preferences 13 the idea that you have eliminated race as any 14 consideration I think would be -- would be pretty 15 easily falsifiable. 16 Q. So that's a yes? 17 A. Yes. 18 Q. Turning to page 2 of your report. 19 On the -- looks like the third 20 paragraph down, it mentions that your analysis 21 relates to factors put forth by the Senate 22 Judiciary Committee in its 1982 -- 1982 23 Amendment of the second -- Section 2 of 24 the Voting Rights Act of 1965? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 51</p> <p>1 ones were nearly as directly pertinent. 2 Q. And I believe earlier you said that you had 3 not reviewed the complaint, is that correct? 4 A. I have not. 5 Q. On page 2 under your Methodology header -- 6 A. Uhm-hmm. 7 Q. -- you state you take an approach that's 8 both theoretical and historical? 9 A. Yes. 10 Q. Could you describe what you mean by that? 11 A. Yes. I begin -- I begin with the theory 12 of political parties itself because, again, 13 I was coming at this from my expertise on 14 political parties. 15 And in looking at the theory of 16 political parties as it's been articulated 17 in the scholarship and in broader American 18 political history, I then wanted to bring 19 it to bear on the history of a particular 20 question I was looking at. So not -- so 21 both the theory of parties and then trying 22 to see how it might help us understand the 23 particular historical eras. 24 Q. With respect to the Senate Factor Number 2, 25 which describes the extent to which voting</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Do you see that? 2 And if I refer to these as the 3 Senate Factors in this deposition do you 4 understand that I'm referring to -- to 5 those discussions? 6 A. Yes, sir. 7 Q. Which of the Senate Factors does your report 8 relate to? 9 A. I said that three of them, the First -- the 10 First Factor, the Second Factor and the Sixth 11 Factor. 12 Q. Do you reach an opinion on any of the other 13 Senate Factors in your report? 14 A. No. 15 Q. How did you form your conclusions in this case? 16 A. I was informed of the basic facts of it in my 17 initial meetings where I was reached out to 18 about potentially being an expert witness on 19 this matter; I read the reports, the expert 20 reports in the plaintiffs; and I continued to 21 consult for my own research and writings my 22 own opinion based on that political history 23 on, more generally speaking, I believe -- 24 generally speaking how it would relate to 25 those factors and did not believe the other</p>	<p style="text-align: right;">Page 52</p> <p>1 in elections of the state or political subdivision 2 is racially polarized, what is your understanding 3 of the term racially polarized voting? 4 A. I understand it to involve both a -- a 5 bare statistical question first: Is voting 6 predominantly -- is there -- is there a 7 predominant split in African-American versus 8 white voting preferences for parties; I also 9 understand depending -- depending on where it 10 is in the analysis a question of whether race 11 is the determining factor for those distinctions. 12 And I believe both are often used in -- in -- 13 in these discussions in the literature and -- 14 although I know less about it, the legal side. 15 Q. And where did you derive this understanding 16 of racially polarized voting? 17 A. Some of it was from the scholarship that 18 I've -- that I've read, also from a -- 19 a brief review of judicial, some of the 20 judicial history on this, although I don't 21 claim to be an expert on the judicial history 22 of redistricting beyond my own general interest 23 in the Supreme Court. 24 Q. And what methodology did you employ to analyze 25 whether there's racially polarized voting in</p>



<p style="text-align: right;">Page 53</p> <p>1 Alabama?</p> <p>2 A. I looked -- well, I -- I would say that I looked</p> <p>3 at basic vote breakdowns between the two parties,</p> <p>4 although that wasn't a focus of my research.</p> <p>5 And I also -- in many ways what I was looking</p> <p>6 at was trying to understand the totality of the</p> <p>7 circumstances in more understanding the second</p> <p>8 potential way of looking at racially polarized</p> <p>9 voting, which was: Are there explanatory factors</p> <p>10 independent of rights for why people vote the</p> <p>11 way they do.</p> <p>12 Q. Did you conduct any statistical analysis</p> <p>13 on the voting polls that you've mentioned?</p> <p>14 A. No. My -- my analysis was historical</p> <p>15 primarily as opposed to statistical,</p> <p>16 and so --</p> <p>17 MR. ETTINGER: Thank you.</p> <p>18 MR. GEIGER: Sorry.</p> <p>19 BY MR. ETTINGER:</p> <p>20 Q. And apologies, Mr. Carrington, I missed your</p> <p>21 answer.</p> <p>22 Could you state that once more?</p> <p>23 A. Could you say the question one more time --</p> <p>24 Q. Yeah.</p> <p>25 A. -- just to make sure?</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Okay. And your report generally attempts</p> <p>2 to analyze voting patterns among white</p> <p>3 voters across the entire South.</p> <p>4 Is that -- is that accurate?</p> <p>5 A. Yes.</p> <p>6 Q. You do not offer any opinions specifically</p> <p>7 on the voting patterns in Alabama?</p> <p>8 A. There are times where I apply generally the</p> <p>9 general patterns to Alabama, yes.</p> <p>10 The focus of it would be the South</p> <p>11 as a whole, but I will then at times also</p> <p>12 note where Alabama is either consistent or</p> <p>13 were not with those patterns.</p> <p>14 Q. And you do not offer any opinions about</p> <p>15 Black voters' voting patterns, correct?</p> <p>16 A. That is not the focus of my report, no.</p> <p>17 Q. Did you review any academic work that</p> <p>18 specifically focused on changes in Black</p> <p>19 voting patterns in the American South in</p> <p>20 the late 20th and early 21st Century?</p> <p>21 A. A number of the works I looked at had</p> <p>22 specific chapters that vote that looked</p> <p>23 at Black mobilization or other factors.</p> <p>24 So I don't recall reading an article</p> <p>25 that was only on that, but I do recall reading</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Did you conduct any statistical analysis on</p> <p>2 the voting totals that you've mentioned that</p> <p>3 you looked at?</p> <p>4 A. No. My approach was historical and therefore</p> <p>5 was not -- not doing statistics, not doing a</p> <p>6 statistical analysis.</p> <p>7 Q. Are you familiar with the concept of racially</p> <p>8 polarized voting analysis, or RPV analysis?</p> <p>9 A. I am aware of it.</p> <p>10 Q. Did you conduct any RPV analysis on Alabama</p> <p>11 as part of your report?</p> <p>12 A. No. I was not asked to do that as part of</p> <p>13 what I was looking at.</p> <p>14 Q. And have you ever conducted any RPV analysis</p> <p>15 in your -- in your work?</p> <p>16 A. No.</p> <p>17 Q. Did you form any opinions as to whether</p> <p>18 there is racially polarized voting in Alabama?</p> <p>19 A. Yes.</p> <p>20 Q. And what is your opinion?</p> <p>21 A. Statistically, yes. Relying on other research,</p> <p>22 yes.</p> <p>23 Q. There is racially polarized voting in Alabama,</p> <p>24 that's what you're saying?</p> <p>25 A. Statistically.</p>	<p style="text-align: right;">Page 56</p> <p>1 works more generally on the South where that</p> <p>2 was the focus of a dedicated chapter or even</p> <p>3 a dedicated section.</p> <p>4 Q. And you did not include any analysis about</p> <p>5 those kind of sections focused on Black</p> <p>6 voter patterns --</p> <p>7 A. No.</p> <p>8 Q. -- in your report?</p> <p>9 A. No.</p> <p>10 Q. In your Methodology section you also state</p> <p>11 that you draw heavily on historic scholarship --</p> <p>12 historical scholarship and on primary documents</p> <p>13 such as speeches at national conventions and</p> <p>14 party platforms.</p> <p>15 Is that accurate?</p> <p>16 A. Yes.</p> <p>17 Q. What types of primary documents do you draw</p> <p>18 heavily upon?</p> <p>19 A. Well, as my report says, the -- the -- what I</p> <p>20 cite the most consistently are political party</p> <p>21 platforms and speeches at conventions; however,</p> <p>22 I also cite presidential speeches: Several</p> <p>23 from FDR; I believe one from, at least one</p> <p>24 from Ronald Reagan; I cite New Left theorists</p> <p>25 in documents; C. Wright Mills; the Port Huron</p>

Page 57

1 statement; I cite National Review and  
2 William F. Buckley; I cite ballot language  
3 from Alabama in particular in the 21st Century;  
4 I also look at executive orders and laws from  
5 the Nixon Era.  
6 So those would -- I'm not claiming  
7 off the top of my head to rumor exhaustively  
8 but those would be -- in addition to the  
9 convention documents and speeches, those  
10 would be some of the other that I bring --  
11 other primary sources that I bring in.  
12 Q. And I believe you also mentioned that you --  
13 your report bears on the Sixth Senate Factor,  
14 which is whether political campaigns have  
15 been characterized by overt or subtle race --  
16 racial appeals.  
17 Is that correct?  
18 A. Yes.  
19 Q. What methodology did you employ to analyze  
20 the Sixth Senate Factor?  
21 A. I employed, especially research that has looked  
22 at whether economic or social issue or other  
23 appeals were independent factors as opposed to  
24 coded language or other -- or other things as  
25 far as determining voter preferences and voter

Page 58

1 identification.  
2 Q. So just help me make sure I understand that.  
3 You're saying that you looked at  
4 whether, kind of if they were explicit  
5 racial appeals versus overt racial appeals?  
6 A. I looked -- it was part of my analysis of  
7 discerning other issue appeals that are not  
8 directly racial and questions of economics,  
9 questions of social issues, questions of  
10 international policy. And whether a part of  
11 the question of racial appeals that I wanted  
12 to get at was: Are those independent and  
13 important factors for why voters voted the  
14 way they did that I think bears on that  
15 question of how to understand rhetoric --  
16 rhetorical appeals in -- in the  
17 Post-Civil Rights Era.  
18 Q. And in your report did you reach any  
19 conclusions about whether there are  
20 political campaigns characterized by  
21 overt or subtle racial appeals in Alabama?  
22 A. My conclusions focused more on the South  
23 generally and I cannot -- similar to your  
24 questions earlier, I cannot say that  
25 there's never been one or that there

Page 59

1 aren't ones. But I did not believe that in  
2 general they are the sole or even dominant  
3 factor in -- in -- in southern politics in  
4 the generality of the Post-Civil Rights Era.  
5 I mean, we can get into some specifics of  
6 time period.  
7 Q. Certainly.  
8 A. Part of my research is to not try to completely  
9 paint with the same -- broad strokes every single  
10 era, so --  
11 Q. Did you reach any conclusions about kind of in  
12 the modern day whether political campaigns in  
13 Alabama are characterized by overt or subtle  
14 racial appeals?  
15 A. Not Alabama specifically.  
16 Q. Did you reach any conclusions about Alabama  
17 specifically with -- with respect to Senate --  
18 Senate Factor 6 at any time period?  
19 A. I did not focus on that question on Alabama  
20 specifically. I focused more on the South  
21 generally with some distinction between the  
22 peripheral and the Deep South.  
23 Q. So is it fair to say you did not reach  
24 any conclusion specific to Alabama about  
25 racially pol -- sorry, about overt or

Page 60

1 subtle racial appeals throughout the whole  
2 time period?  
3 A. I -- I would believe that my general conclusions  
4 apply to Alabama but I did not focus specifically  
5 and was not asked to focus specifically on reaching  
6 a conclusion about Alabama in particular.  
7 Q. And in analyzing the 6th Senate Factor did  
8 you review any contemporary statements made  
9 by Alabama politicians?  
10 A. I -- I did not do a -- any sort of rigorous  
11 analysis of contemporary statements -- yes.  
12 Q. Did you review any statements by contemporary  
13 Alabama politicians?  
14 A. I did review, as it came up in other reports;  
15 one, a couple of the statements that -- that  
16 were brought up in those reports.  
17 Q. Aside from the statements raised in the --  
18 the reports that you reviewed, did you review  
19 any other contemporary statements made by  
20 Alabama politicians?  
21 A. Not contemporary. I focused more on questions  
22 earlier in, and more broader in southern history.  
23 Q. And did you review any specific statements made  
24 by Alabama politicians in those other time periods?  
25 A. Review, yes. Yes.

Page 61

1 Q. And did you analyze whether they made any  
2 overt or subtle racial appeals?  
3 A. I did not focus as much in what I did write  
4 on specific statements, thinking that it was  
5 wiser to look at the broader -- the broader  
6 patterns and not -- not to possibly cherry-pick.  
7 Q. And could you say why you chose to focus  
8 on the -- the broader patterns rather than  
9 evaluating specific statements?  
10 A. Because I believed that that held up, as far  
11 as -- methodologically stronger to ask -- to  
12 ask specifically what -- what might be in a  
13 broader way driving the voting patterns, yeah.  
14 Q. I'll have you turn to the third page of your  
15 report, which is with the header, The Nature  
16 of American Political Parties.  
17 A. Yes.  
18 Q. And in this section my understanding is you  
19 provided a history of the founder's concern  
20 with faction, at least on pages 3 and 4, I  
21 guess.  
22 How does this historical  
23 background inform your report's analysis?  
24 A. I said before that I was going to take  
25 theoretical approach that would then

Page 62

1 become historical, and this is the  
2 beginning of theoretical.  
3 I understand that to set up that --  
4 the American Founders believed that party  
5 systems, once they arose, would be coalitions,  
6 and the coalitional element; and what were  
7 the norms of coalitions, how the South might  
8 become an aberration -- was an aberration at  
9 times from that norm and how it might be  
10 important that it stopped to be an aberration  
11 from the norm was what I was wanting to set up.  
12 And particularly the idea that factions that  
13 the -- the American Founders believed could  
14 be mitigated by the coalitional nature and the  
15 fluidity of that coalitional nature within the  
16 political parties.  
17 Q. And on -- on page 5 you state that:  
18 Sometimes, though rarely, one issue  
19 or identity can overwhelm the others.  
20 Is that correct?  
21 A. Yes.  
22 Q. And you go on to acknowledge that -- that race  
23 has played that type of overwhelming factoring  
24 at certain points in time?  
25 A. Yes.

Page 63

1 Q. Did race stop playing the type of overwhelming  
2 factor in the American South that you describe?  
3 A. The -- that -- that is the conclusion I reached  
4 for my report, yes.  
5 Q. And when would you say that occurred?  
6 A. I would say that no later, although I think  
7 it's debatable before then, the -- the early  
8 1980s, although -- well, we can get into more  
9 later.  
10 Q. Please continue.  
11 A. I would say the paradigm shifts as far as  
12 how race is discussed Post-Civil Rights Act.  
13 And as I said before, it becomes  
14 more of a question among the parties how  
15 to address -- what is the best way to  
16 address integration and historical legacy  
17 of segregation as opposed to having an  
18 openly pro-segregation party.  
19 Q. And you cite to Glen Feldman, Progressive  
20 History as Observing a Long-Standing Tendency  
21 to Put Race Regularity and White Supremacy  
22 Above All Compelling -- Competing Factors?  
23 A. Yes.  
24 Q. And just for identification purpose, that's in  
25 the middle of your second paragraph on page 5.

Page 64

1 Let me know when you have a  
2 chance to see that.  
3 A. Yes, I see it.  
4 Q. Do you believe that Professor Feldman is a  
5 reputable historian of the American South?  
6 A. Yes.  
7 Q. What time period are you citing  
8 Professor Feldman's work for in this  
9 statement?  
10 A. It is his work on -- that is focused from  
11 1865 to 1944.  
12 Q. Are you aware of Professor Feldman's more recent  
13 book published in 2014 titled Painting Dixie Red,  
14 When, Where and Why the South Became Republican?  
15 A. Yes, I'm aware of it.  
16 Q. And did you review that book as part of your  
17 research in this case?  
18 A. I did not re-read the entire work, but,  
19 yes, there were parts of it I did look at.  
20 Q. And did you cite to that -- that book in  
21 this report?  
22 A. I did not. I believe that I cite --  
23 well, yeah -- no, I did not.  
24 MR. ETTINGER: And I'll mark and  
25 publish Exhibit, I think we're on 4 now.

<p>Page 65</p> <p>1 MARKED FOR IDENTIFICATION: 2 DEPOSITION EXHIBIT 4 3 10:44 a.m. (Rebuttal Report/J. Bagley) 4 BY MR. ETtinger: 5 Q. Do you recognize this report? 6 A. Yes. 7 Q. Have you reviewed -- I'll represent this is the 8 Rebuttal Report submitted by Mr. Joseph Bagley 9 in this matter. 10 Have you reviewed this report? 11 A. Yes. 12 Q. I'll have you turn to page 3 of this report. 13 And at the bottom paragraph on that page 14 Dr. Bagley notes that: In the Painting Dixie Red 15 book Professor Feldman writes: It is about race, 16 there can be no questioning or minimizing of that 17 basic premise. The South's partisan realignment 18 from Democrat to Republican is about race. 19 Do you see that? 20 A. I do. 21 Q. Do you disagree with Professor Feldman's 22 conclusion in his book, the Painting Dixie Red? 23 A. Yes, I do. 24 As -- as to the degree that he makes 25 it the primary explained -- explained yes.</p>	<p>Page 67</p> <p>1 A. Yes. 2 Q. Is it your interpretation of their scholarship 3 that they concluded that race did not play 4 a substantial factor in southern politic 5 realignment? 6 A. No. Hence as you mentioned, even if grudgingly 7 in my report. 8 Q. Next you cite the scholarship from Aubrey Jewett 9 with a quote: The Evidence Supporting Many Other 10 Explanations of Republican Legislative Growth 11 Suggests that Scholars Who Emphasize Only Race 12 to the Exclusion of Other Casual Factors -- 13 Causal Factors, are being Overly Simplistic? 14 A. Yes. 15 Q. And when was this article written? 16 A. It was written in 2001. 17 Q. You view Professor Jewett as a well-respected 18 scholar of American South politics? 19 A. I believe, yes, and in particular I 20 thought that article was well -- was 21 well argued. 22 Q. And what was the name of that article? 23 A. The name of the article was, Partisan Changes 24 in Southern Legislatures, 1946 to 1995. 25 Q. And I think you said you found that one</p>
<p>Page 66</p> <p>1 Q. Flipping back to your report and if you 2 could keep that one nearby as well. 3 A. Yes. 4 Q. On page 6 of your report you state that: Other 5 scholars also admit, even if grudgingly, that 6 the partisanship in the South involved much 7 more than race. 8 Is that correct? 9 A. Yes. 10 Q. Is it your view that contemporary scholars 11 describe race as the only factor in influencing 12 the political realignment of the South? 13 A. No. I say either only or predominant. 14 Q. In this section do you cite any scholarship 15 later than the 20th Century to support your 16 arguments? 17 A. In this segment? 18 Q. Uhm-hmm. 19 A. No, I do not. 20 Q. You do cite that scholarship from Merle and 21 Earl Black for the quote, Modern Southern 22 Politics Involves More Than Its Obvious 23 Racial Divisions, correct? 24 A. Yes. 25 Q. And this book was written in 2002?</p>	<p>Page 68</p> <p>1 particularly persuasive? 2 A. I did -- I did find it -- I did find it 3 persuasive. 4 MR. ETtinger: I'll mark and 5 publish Exhibit 5. 6 MARKED FOR IDENTIFICATION: 7 DEPOSITION EXHIBIT 5 8 10:49 a.m. (Article/A. Jewett 2001) 9 BY MR. ETtinger: 10 Q. And is this the article we were just referencing? 11 A. Yes. 12 Q. I'll have you turn to page 479 in the article. 13 And on the very last paragraph, the 14 start of that beginning with: However the 15 Evidence Supporting -- is that the section 16 that you quoted in your report? 17 A. Yes. 18 Q. And then the next sentence says: While race is 19 clearly a dominant issue in southern politics 20 it is certainly not the sole driving force in 21 southern legislative party change. 22 A. Uhm-hmm. Yes. 23 Q. Is that a -- is that quoted language consistent 24 with your opinion in this case? 25 A. I would want to know exactly how Jewett</p>

<p style="text-align: right;">Page 69</p> <p>1 understood dominant, but if -- if the argument</p> <p>2 is that it is the force that overwhelms all the</p> <p>3 others, I would disagree -- disagree with that.</p> <p>4 Q. If it -- if it is understood as more a significant</p> <p>5 factor would that -- would that statement align</p> <p>6 with your opinion in this case?</p> <p>7 A. I would -- I would say that it is -- I guess</p> <p>8 the question would be how would you understand --</p> <p>9 how would you understand significant, just so</p> <p>10 I'm making sure I'm answering accurate.</p> <p>11 Q. How would you define a significant factor?</p> <p>12 A. I mean, as a factor that at least some voters</p> <p>13 take into account I can't deny -- I wouldn't</p> <p>14 deny that, but the idea that it is a conscious</p> <p>15 and dominant factor compared to others, that's</p> <p>16 when I believe that Jewett's argument makes</p> <p>17 clear -- I think what it's pointing toward is</p> <p>18 that those other factors are more important</p> <p>19 than the literature typically -- typically</p> <p>20 says, yeah.</p> <p>21 Q. So as you understand dominant you would disagree</p> <p>22 with Jewett's statement that I just read?</p> <p>23 A. That particular conclusion, yes.</p> <p>24 I found some of the data more</p> <p>25 persuasive than necessarily the conclusion.</p>	<p style="text-align: right;">Page 71</p> <p>1 new issues arose that caused conflict within</p> <p>2 the Democratic Party.</p> <p>3 A. Yes.</p> <p>4 Q. What were the main issues that caused conflict,</p> <p>5 in your view?</p> <p>6 A. One was race with the increasing split between</p> <p>7 northern and southern Democrats on the issue of</p> <p>8 segregation and then as time went on differing</p> <p>9 approaches to the other issues I take up in my</p> <p>10 report; communism, social issues, economic</p> <p>11 issues, although I argue that even there that</p> <p>12 division existed early, even earlier than the</p> <p>13 other ones.</p> <p>14 Q. Say more.</p> <p>15 A. I mention in my report that there was a southern</p> <p>16 anti-New Deal coalition element that -- that was</p> <p>17 there at least as early as the late 1930s, and</p> <p>18 I do talk about that in my report. And I believe</p> <p>19 the other issues manifested themselves later.</p> <p>20 Q. And was that anti-New Deal element within</p> <p>21 the Democratic Party in the South?</p> <p>22 A. Yes. There was little of the Republican</p> <p>23 party to speak of.</p> <p>24 Q. And I believe you contend that -- that what you</p> <p>25 define as the mergence of the New Left caused</p>
<p style="text-align: right;">Page 70</p> <p>1 Q. Turning back to your report under the header --</p> <p>2 header Party Change, the Rise of the</p> <p>3 New Left in Modern Conservatism.</p> <p>4 A. Yes.</p> <p>5 Q. In your section titled, the Rise of the</p> <p>6 New Left, you generally start by describing</p> <p>7 that the -- the Great Depression opened up</p> <p>8 a potential opportunity for a new majority</p> <p>9 coalition, which was filled by the Democrats</p> <p>10 building on the New Deal politics.</p> <p>11 Is that a fair assessment of that?</p> <p>12 A. Yes.</p> <p>13 Q. And this coalition was defined predominantly</p> <p>14 on economic terms?</p> <p>15 A. That was the primary point of unity, yes.</p> <p>16 Q. With the -- I think as you described a</p> <p>17 strong focus on blue-collar Americans?</p> <p>18 A. Yes.</p> <p>19 Q. And this included both white and Black</p> <p>20 blue-collar workers?</p> <p>21 A. Among those who could vote, yes.</p> <p>22 That statistically is when</p> <p>23 African-Americans that could vote began</p> <p>24 voting a majority for the Democratic Party.</p> <p>25 Q. And then you go on, I believe, to contend that</p>	<p style="text-align: right;">Page 72</p> <p>1 Democrats to lose favor with the working class.</p> <p>2 Is that true?</p> <p>3 A. I believe that was the long-term resolve, yes.</p> <p>4 Q. And does the -- your conception of the working</p> <p>5 class as used in your report include Black</p> <p>6 working-class voters?</p> <p>7 A. My focus was predominantly on the shift in</p> <p>8 white voters' allegiances, especially since</p> <p>9 they were able to vote consistently across</p> <p>10 this time period.</p> <p>11 Q. And during this -- this time period you</p> <p>12 identify did Black working-class voters'</p> <p>13 political affiliation shift from Democrats</p> <p>14 to Republicans?</p> <p>15 A. Which particular era are you speaking to?</p> <p>16 Q. I guess the rising of the -- the New Left.</p> <p>17 A. No, it did not substantially shift during</p> <p>18 that time.</p> <p>19 Q. And has the Black working class or voting</p> <p>20 base political affiliation shifted at any</p> <p>21 time since that time period?</p> <p>22 A. Not in the time period that I focused on.</p> <p>23 Q. In your view, did the New Left at some</p> <p>24 point take over the Democratic Party?</p> <p>25 A. Yes.</p>



<p>Page 73</p> <p>1 Q. And when would you say that occurred?</p> <p>2 A. It -- I would say that it fully occurred in --</p> <p>3 in the late 2000s is when it took -- if your</p> <p>4 question is when did it fully occur as opposed</p> <p>5 to it being a major contender politically</p> <p>6 speaking.</p> <p>7 Q. And when would you say it became a major</p> <p>8 contender?</p> <p>9 A. The late 1960s.</p> <p>10 Q. And would you say that President Jimmie Carter</p> <p>11 was an example of the New Left becoming dominant</p> <p>12 in the Democratic Party?</p> <p>13 A. No --</p> <p>14 Q. How about --</p> <p>15 A. -- I would say he was a reaction to George McGovern</p> <p>16 having been the 1972 -- he was -- McGovern was</p> <p>17 accused of being for amnesty, acid and abortion,</p> <p>18 which seems pretty consistent with, I would say</p> <p>19 pejorative caricatures of the New Left.</p> <p>20 Q. Would you say that Bill Clinton is an example of</p> <p>21 the New Left becoming dominant in the Democratic</p> <p>22 Party?</p> <p>23 A. No, although he, I believe, was a temporary</p> <p>24 and highly criticized reaction to running a</p> <p>25 string of New Left candidates: Walter Mondale</p>	<p>Page 75</p> <p>1 Q. And apologies, I don't mean to misconstrue your</p> <p>2 testimony.</p> <p>3 A. Sure.</p> <p>4 Q. So I think now what you said was it</p> <p>5 became a major contender around 1972.</p> <p>6 Is that fair?</p> <p>7 A. I would say major contender late 1960s.</p> <p>8 But my point was: They were powerful</p> <p>9 enough to get their own candidate nominated to</p> <p>10 national ticket as early as '72, although I --</p> <p>11 I -- I, you know, I think by 1968 they were</p> <p>12 already a major force within the party.</p> <p>13 Q. And was the New Left a major contender within</p> <p>14 the Democratic Party in Alabama in the 1960s?</p> <p>15 A. No.</p> <p>16 Q. Did the New Left become a major contender</p> <p>17 within the Democratic party in Alabama at</p> <p>18 any subsequent time?</p> <p>19 A. And you're saying just within the Democratic</p> <p>20 Party?</p> <p>21 Q. Uhm-hmm.</p> <p>22 A. I -- I did not focus as -- as closely on Alabama,</p> <p>23 but -- so I -- I would say certainly not for</p> <p>24 Alabama in general.</p> <p>25 Q. I'm sorry? Certainly not what?</p>
<p>Page 74</p> <p>1 in '84, Michael Dukakis in '88, and there was</p> <p>2 a -- a desperation for the White House that</p> <p>3 later New Leftists found to be a failed era</p> <p>4 of -- of -- of Democrat, Democrats winning.</p> <p>5 Q. And I believe earlier you mentioned that the --</p> <p>6 the New Left became a dominant force in the</p> <p>7 Democratic Party around the 1960s.</p> <p>8 Is that correct?</p> <p>9 A. Well, I didn't say -- you asked dominant and</p> <p>10 I said it came to be the dominant force much</p> <p>11 later. It was a major party contender that</p> <p>12 was able to consistently get its own candidates</p> <p>13 for president as late as -- as early as 1972.</p> <p>14 And I don't -- I don't get into</p> <p>15 this in detail, but there -- it was possible</p> <p>16 it could have happened in 1968 if -- if the</p> <p>17 party-selection process had been what it later</p> <p>18 became.</p> <p>19 I noted I mentioned Fraser -- the</p> <p>20 Governor Fraser Commission. I think it would</p> <p>21 have happened even earlier and the unrest of</p> <p>22 the 1968 DNC Convention, I think, is a show</p> <p>23 that there was a major battle between the old</p> <p>24 and the New Left elements of the party even</p> <p>25 at that stage.</p>	<p>Page 76</p> <p>1 A. For the State of Alabama, in general.</p> <p>2 Q. The New Left did not become a major contender</p> <p>3 within Alabama?</p> <p>4 A. Correct.</p> <p>5 Part of my explanation is that the</p> <p>6 rise of it nationally influenced the exodus</p> <p>7 of priorly, generically Democratic voters</p> <p>8 from the party.</p> <p>9 Q. Did you analyze the influence of the New Left</p> <p>10 within state politics of Alabama?</p> <p>11 A. I did not focus on that, no.</p> <p>12 Q. Was your analysis with respect to the impact</p> <p>13 of the New Left confined to Democratic Party</p> <p>14 at a national level?</p> <p>15 A. It was my focus, although I did argue that</p> <p>16 there were manifestations of it in Alabama.</p> <p>17 I point to the passage of the</p> <p>18 constitutional amendments defining marriage</p> <p>19 heterosexually, banning -- or defining the</p> <p>20 2018 amendment on abortion, among other things,</p> <p>21 as manifesting a large majority of Alabamians</p> <p>22 disagreeing with what had become dominant</p> <p>23 views within the Democratic Party because of</p> <p>24 the New Left. And I focused specifically on</p> <p>25 those Alabama outcomes at that point.</p>

Page 77	Page 79
<p>1 Q. Is it your view that the rise of the New Left 2 contributed to the political realignment 3 of Alabama state politics from Democrat 4 to Republican?</p> <p>5 A. I believe it was as part of the broader shift 6 in the South, yes.</p> <p>7 Q. Even though the Alabama State Democrats 8 didn't adopt the New Left policies?</p> <p>9 A. I would -- I would argue, and I think similar 10 literature shows they did eventually later on. 11 But, yes, I believe that there was an 12 influence of how the national party was painted 13 that had an effect, even on the state party 14 itself when there was not perfect alignment.</p> <p>15 Q. And I believe you said that at some point 16 they may have adopted the New Left policies. 17 Do you know when that would have 18 occurred within Alabama?</p> <p>19 A. That was not a focus of my report, so --</p> <p>20 Q. In the next section you describe the Rise of 21 Modern Conservatism, which I believe starts 22 on page 10.</p> <p>23 A. Yes.</p> <p>24 Q. And my understanding from reading this was: 25 There's kind of four primary factors:</p>	<p>1 my focus was on the intellectual development 2 and I think those are the ways they define 3 themselves.</p> <p>4 Q. Understood.</p> <p>5 A. Yes.</p> <p>6 Q. Did Racial Conservatism play any role in the 7 rise of Modern Conservatism between the 1960s 8 and '70s?</p> <p>9 A. How would you define Racial Conservatism?</p> <p>10 Q. Resistance to racial integration or voting 11 rights for Black Americans.</p> <p>12 A. I would -- part of my report that I did discuss 13 is, I think that that move by -- the Civil Rights 14 move certainly caused a rift within the Democratic 15 Party.</p> <p>16 So did race have any -- any 17 contribution to the development of -- of 18 the realignment of political parties; I've 19 already said, yes, I believe that that was 20 part of the story.</p> <p>21 Q. Was it -- strike that. As part of this you 22 discussed an emphasis on federalism. 23 Were there particular issues in which 24 Modern Conservatism sought greater protections 25 for state rights?</p>
Page 78	Page 80
<p>1 The Renewal of the pre-New Deal Economics; 2 Hard Line Against Global Communism; and 3 Emphasis on Federalism; and an Emphasis 4 on Traditional Views on Issues of Religion 5 and Morality.</p> <p>6 Is that a fair summary of the 7 Rise of the Modern Conservatism?</p> <p>8 A. I believe so, yes.</p> <p>9 Q. Were there any other factors that were kind of 10 essential to the Rise of Modern Conservatism?</p> <p>11 A. I believe those were the primary ways that 12 Modern Conservatism defined itself, and so 13 I was going off itself definition. Yeah.</p> <p>14 Q. From your review of the history were there any 15 other factors that contributed to the Rise of 16 the Modern Conservatism Movement?</p> <p>17 A. Are there other factors you have in mind? 18 Because, again, I was -- I was focusing on 19 as with the New Left, how did the New Left 20 define itself, how did the Modern Conservatism 21 define itself. And I would say those are the 22 points of emphasis that they had.</p> <p>23 We can -- we can talk about other 24 factors if you would like to get into other 25 things that may have been -- been going on, but</p>	<p>1 A. Yes. Yes.</p> <p>2 Q. Did any of those issues involve racial integration?</p> <p>3 A. There were, as far as especially the -- the -- the 4 voluntariness and the pace of integration, yes.</p> <p>5 Q. And how did those play into the emphasis on 6 federalism?</p> <p>7 A. I think that post the pas -- especially post 8 the passage of the 1964 and 1965 Civil Rights 9 and Voting Rights Act there was a difference 10 in how aggressively to implement integration, 11 and that that would be a difference between 12 the parties at that point.</p> <p>13 I think Richard Nixon would be 14 a good example of that.</p> <p>15 Q. And what was the Republican's position on 16 that issue at that time?</p> <p>17 A. Under the Nixon administration it was to have 18 a more -- it was both a difference in pace 19 and emphasis.</p> <p>20 Q. And what was that difference?</p> <p>21 A. So as far as emphasis, the Nixon administration 22 emphasized lawsuits to desegregate schools 23 rather than executive time tables.</p> <p>24 I will add, by the way, that there 25 is -- I didn't include this in the report</p>

Page 81	Page 83
<p>1 but there was outrage among southern 2 segregationists that the Nixon administration 3 was no, I would say, quote/unquote, better 4 than the Democrats on desegregation. 5 He wanted affirmative action for 6 private employment as opposed to what maybe 7 some other Civil Rights leaders wanted. He 8 pushed -- he signed the 1970 Civil Rights Act 9 and there was some debate as far as -- as 10 whether that was enough or not, that it 11 continued things that were going to sunset 12 from the '65 Act. And so -- and he was 13 very much in favor of African-American 14 entrepreneurship as a way to fight segregation. 15 So, I mean -- so that's where I think 16 the debate was not -- and Black and Black in a 17 Rise of Southern Republicanism -- this is where 18 they might not agree with my final conclusion 19 but they admit: Who was Nixon appealing to, 20 moderate to conservative, pro-integrationists 21 in the South. 22 And so I think where race was a 23 factor was: How do we deal with the legacy of 24 segregation and the Republican -- the official 25 Republican Party position from their president</p>	<p>1 Q. And I believe you state that the -- the Rise 2 of Modern Conservatism in the Republican Party 3 allowed them to make gains within working-class 4 vote -- white voters, including the South? 5 A. Yes. 6 Q. Did a renewal of pre-New Deal economics appeal 7 to white working-class voters in the American 8 South? 9 A. I believe that was not as much as urban and 10 suburban voters. 11 And that's where my research says 12 that the original, consistent gains in the 13 Republican coalition were predominantly 14 urban and suburban. And I believe that is 15 attributable, and other scholarship I think 16 supports this, to economic factors in the -- 17 in the emphasis of the Republican Party in 18 that era. 19 Q. And just to make sure I understand: So the 20 kind of emphasis on economics was -- appealed 21 more to the urban and suburban white voters 22 whereas it kind of left an impact on 23 working-class white voters in Alabama? 24 A. They were the last to move into the 25 Republican camp.</p>
Page 82	Page 84
<p>1 was not so much whether that was a good or 2 noble goal, but what was the best way 3 forward to do it. 4 Q. And were these integration policies popular 5 among white voters in Alabama? 6 A. I did not examine particular polling on Alabama. 7 I do -- I did look at some national polling 8 regarding some other issues. 9 Q. And were these kind of integration policies 10 popular more generally within white voters 11 in the South? 12 A. I did not look at polling as to when those -- 13 those changes in -- in view -- in view came. 14 Q. Do you have any understanding from your study 15 of the history about whether those policies 16 were popular among white voters in the South? 17 A. I am not recalling one of the polls from, 18 at least the 1970s. But I remember one of 19 the polls saying that, at least by that 20 time some of the polling in the South said 21 the majority of voters were supportive of 22 integration. 23 Q. A majority of all voters or just white voters? 24 A. I do not recall the particular -- the particular 25 breakdown.</p>	<p>1 Q. Did the renewal of pre-New Deal economics 2 appeal to Black working-class voters? 3 A. That was not a focus of my report, their 4 reaction to that. 5 Q. And I think you discussed in your report that 6 Senator Berry Goldwater turned the Republican 7 Party's focus on encouraging a free and 8 competitive economy while also upholding -- 9 upholding law and order. 10 Isn't that correct? 11 A. Yes. 12 Q. Did discussions of upholding law and order 13 ever involve racially coded language? 14 A. I can't say what every voter understood at 15 the time, but I do know that there were very 16 high-crime rates nationally at the time, and 17 that an emphasis on law and order does not 18 necessarily involve racially coded language. 19 Q. Are you aware of whether politicians ever 20 intended to send a racially implicit message 21 through discussions of law and order? 22 A. I certainly can't deny that no politician 23 ever did it for those reasons. 24 Q. So would you agree that discussions of law 25 and order can be racially coded at times?</p>

<p style="text-align: right;">Page 85</p> <p>1 A. It is possible.</p> <p>2 Q. And did you understand Senator Goldwater's</p> <p>3 discussion of law and order to involve</p> <p>4 implicit racial appeals?</p> <p>5 A. I believe that Goldwater's statement was meant</p> <p>6 as a national message, but could -- could, and</p> <p>7 did some southerners believe that that was</p> <p>8 related to -- related to race, I certainly</p> <p>9 can't deny that. In fact, I believe some --</p> <p>10 some did.</p> <p>11 Q. And are you aware of whether any contemporary</p> <p>12 discussions of law and order in Alabama involved</p> <p>13 racially coded language?</p> <p>14 A. I, again, can't say I know what particular</p> <p>15 Alabamians believed in their answers, but</p> <p>16 whether it's a factor for anyone's vote I</p> <p>17 couldn't say.</p> <p>18 Q. How about from the intent of the politician,</p> <p>19 do politicians in contemporary Alabama ever</p> <p>20 use language involving law and order to make</p> <p>21 a racially implicit political message?</p> <p>22 A. I did not focus on Alabama so I don't --</p> <p>23 I don't know that I want to speak beyond</p> <p>24 what my focus was on that.</p> <p>25 Q. How about with kind of the American South in</p>	<p style="text-align: right;">Page 87</p> <p>1 would be the most accurate, yeah.</p> <p>2 MR. ETTINGER: I think we're</p> <p>3 at a good pausing point for another break.</p> <p>4 VDEOGRAPHER: Off the record 11:17 a.m.</p> <p>5 (Recess taken at 11:17 a.m.)</p> <p>6 (Back on the record at 11:28 a.m.)</p> <p>7 MR. ETTINGER: Thank you.</p> <p>8 BY MR. ETTINGER:</p> <p>9 Q. Dr. Carrington, we'll next turn to the section</p> <p>10 of your report titled Civil Rights and Voting</p> <p>11 Patterns Within the South --</p> <p>12 A. Okay.</p> <p>13 Q. -- starting on page 12.</p> <p>14 You state that: There is a narrative</p> <p>15 that the Southern Democrats became frustrated</p> <p>16 with the Democratic Party's embrace of</p> <p>17 African-Americans' Civil Rights, in</p> <p>18 particular after the 1964 Civil Rights Act.</p> <p>19 Is that accurate?</p> <p>20 A. Yes.</p> <p>21 Q. And is it accurate that President Lyndon B. Johnson</p> <p>22 was in office for the passing of the 1964 Civil</p> <p>23 Rights Act?</p> <p>24 A. Yes.</p> <p>25 Q. And the 1964 Civil Rights Act was not popular</p>
<p style="text-align: right;">Page 86</p> <p>1 general: Are there contemporary statements</p> <p>2 that politicians make with the intent --</p> <p>3 contemporary statements about law and order</p> <p>4 that they make with the intent of being</p> <p>5 racially coded?</p> <p>6 A. I did not focus on that or do a particular</p> <p>7 study on those -- that term, but I believed</p> <p>8 consistent with the other factors I've looked</p> <p>9 at that that would not be a predominant --</p> <p>10 that would not be a predominant point that</p> <p>11 was being made.</p> <p>12 Q. But it is in some circumstances used as a</p> <p>13 racially coded political message?</p> <p>14 A. Having not done an exhaustive study on that</p> <p>15 particular term I would not want to discount</p> <p>16 that it could ever be -- be that.</p> <p>17 Q. Is that a yes?</p> <p>18 A. If you'd ask the question one more time</p> <p>19 just to make sure?</p> <p>20 Q. Sure.</p> <p>21 Is law and order used as a racially</p> <p>22 implicit terminology in modern-day American</p> <p>23 politics in the South ever?</p> <p>24 A. Yes. I think it -- I wouldn't -- I would not --</p> <p>25 I could -- I would not deny it's possible. That</p>	<p style="text-align: right;">Page 88</p> <p>1 among white voters in Alabama, correct?</p> <p>2 A. Correct.</p> <p>3 Q. And in 1964, in the presidential election</p> <p>4 nearly 71 percent of the vote in Alabama</p> <p>5 went to Republican Senator Goldwater?</p> <p>6 A. Yes, I note that in my report.</p> <p>7 Q. And Senator Goldwater voted against</p> <p>8 the 1964 Civil Rights Act, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Are you aware that Martin Luther King, Junior,</p> <p>11 said of Senator Goldwater's voting record on</p> <p>12 Civil Rights, while not himself a racist,</p> <p>13 Mr. Goldwater articulates a philosophy which</p> <p>14 gives aid and comfort to the racists?</p> <p>15 A. Yes. And I appreciate that he understood that</p> <p>16 actually Goldwater himself desegregated, was</p> <p>17 an advocate for desegregation in his home state</p> <p>18 of Arizona.</p> <p>19 Q. Do you disagree with Martin Luther King, Junior's</p> <p>20 characterization of Senator Goldwater?</p> <p>21 A. While I think it is outside of what I -- what</p> <p>22 I need to -- what I was trying to find out</p> <p>23 for the report, I -- I personally support the</p> <p>24 1964/1965 Acts. And while I do not believe that</p> <p>25 Goldwater had, as King agrees, racist intentions</p>

<p style="text-align: right;">Page 89</p> <p>1 in his vote, I believe it was a general principle 2 of federalism that he was appealing to. I do 3 believe that those acts were beneficial for 4 dealing with the problem of segregation and 5 voting rights violations themselves. 6 Q. Understood. 7 And I'm not asking about your 8 personal opinion. 9 A. Okay. Okay. I might have misunderstood 10 your question. 11 Q. No. I guess more the statement that Mr. Goldwater 12 articulates a philosophy, which gives aid and 13 comfort to the racists. 14 Do you disagree with that 15 characterization of Senator Goldwater? 16 A. I believe Senator Goldwater was -- I don't know 17 if I would use those exact words but his response 18 was inadequate to the situation of Civil Rights 19 in the South and the Jim Crow Era. 20 Q. And 1964 was the first time Alabama voted for 21 Republican presidential candidate since 1828? 22 A. 1872. 23 Q. 1872. 24 Is that -- 25 A. There was no Republican party in 1828.</p>	<p style="text-align: right;">Page 91</p> <p>1 Q. And this revolt was primarily due to the 2 Democrats' position -- stance on 3 African-American Civil Rights? 4 A. The national party's position, yes. 5 Q. Was this revolt primarily due to Democrats -- 6 Democrats' foreign policy under Truman? 7 A. I believe it -- I believe it was more focused 8 on the issue of Civil Rights and the -- the 9 parties that walked out of the convention, 10 I believed were -- that that was the -- that 11 was the dominant factor. 12 Q. And then on page 14 you note that Democratic 13 Senator Strom Thurmond still won Alabama in 14 1948. 15 A. Yes. In fact, he was the official Democrat 16 nominee for the State of Alabama that year 17 as opposed to Truman. 18 Q. And Senator Thurmond was -- was not a supporter 19 of African-American Civil Rights, correct? 20 A. Not at all. 21 Q. In fact, he led a filibuster against the 22 1964 Civil Rights Act? 23 A. I don't recall if he did one for 1964. But he 24 is on record with the longest ever filibuster 25 in senate history for the 1957 Act -- the 1957</p>
<p style="text-align: right;">Page 90</p> <p>1 Q. Apologies. 2 Is that the first time they 3 voted for Republican candidate since 1872? 4 A. Yes. 5 Q. Has a Democratic presidential candidate 6 ever won the State of Alabama since the 7 1964 election? 8 A. I believe Carter did in '76. 9 I would have to -- I'm now blanking 10 on that, but they have not consistently won 11 the Republican -- the Democratic Party has 12 not consistently won since. 13 Q. And beside the election you identified with 14 Jimmy Carter, has a Democratic candidate won a 15 presidential election in the State of Alabama? 16 A. No. Yes. I mean, George Wallace was a 17 Democrat -- was a Democrat but was running 18 third party in '68. 19 Q. What role did the 1964 Civil Rights Act play 20 in the political realignment of Alabama? 21 A. I think it was very significant. Yeah. 22 Q. And you've identified that in 1948 there was a 23 temporary revolt against the Democratic Party. 24 Is that accurate? 25 A. Yes, the so-called Dixiecrats.</p>	<p style="text-align: right;">Page 92</p> <p>1 Civil Rights Act, I should be specific. 2 Q. And after the passing of the 1964 Voting Rights 3 Act Senator Thurmond switched to the Republican 4 party? 5 A. Yes, he did. 6 Q. That same year? 7 A. Yes. 8 Q. You identified the Democrats continued to 9 win elections in Alabama even after 1964 in 10 congressional races and in state elections, 11 correct? 12 A. Yes. 13 Q. Did the Alabama Democratic Party embrace the 14 National Democratic Party's support of Civil 15 Rights? 16 A. No, they did not. 17 Q. In fact, Governor George Wallace was a strong 18 advocate for segregation in Alabama, correct? 19 A. Until the 1970s, yes. 20 Q. On page -- 21 A. And remained in the Democratic Party throughout. 22 Q. On page 14 of your report on the last paragraph 23 you state: Rural areas were considered the most 24 committed to maintaining the old ways and most 25 resistant to reform especially on matters of race.</p>



Page 93	Page 95
<p>1 Is that accurate?</p> <p>2 A. I believe the data bears that out, yes.</p> <p>3 Q. And what are the old ways that you refer</p> <p>4 to here?</p> <p>5 A. Let me make sure -- if you wouldn't mind --</p> <p>6 Q. Yeah, take your time.</p> <p>7 A. -- me re-reading that.</p> <p>8 I believe those areas were most</p> <p>9 resistant, first to integration generally,</p> <p>10 but then afterward to different methods of</p> <p>11 realizing integration. They were more</p> <p>12 resistant than, say, urban and suburban</p> <p>13 areas of -- of the South.</p> <p>14 Q. By the old ways in this statement do you mean</p> <p>15 the status of white supremacy that previously</p> <p>16 existed?</p> <p>17 A. Particular policies related to it, yes.</p> <p>18 Q. And so rural areas were more committed to</p> <p>19 maintaining the policies of white supremacy</p> <p>20 in Alabama?</p> <p>21 MR. GEIGER: Object to form.</p> <p>22 A. Yes. I would say that that -- that they</p> <p>23 were the -- the more centerpiece of that.</p> <p>24 And part of my research is to say</p> <p>25 that the Republican party itself, except for</p>	<p>1 A. Yeah. Comparatively to rural areas.</p> <p>2 And some of that I would say -- and</p> <p>3 this is a little hard to disaggregate -- some</p> <p>4 of -- I'm not even claiming that they were</p> <p>5 progressive reformers. But it was less of a</p> <p>6 commitment and defining issue as opposed to --</p> <p>7 as all the way back to Key. V.O. Key argued,</p> <p>8 economics, political economic class, economic</p> <p>9 issues and others were able to be appealed</p> <p>10 to those voters more so than rural voters.</p> <p>11 Q. And is this analysis specific to the white</p> <p>12 Alabamians living in metropolitan areas?</p> <p>13 A. I apply it at least partially.</p> <p>14 So I look at some of the research</p> <p>15 that was done, especially in the 1950s up</p> <p>16 through 1960 where metropolitan areas were</p> <p>17 showing -- consistently shown across the</p> <p>18 South but included in those elections in</p> <p>19 Alabama higher levels of voting in</p> <p>20 metropolitan or rural urban areas.</p> <p>21 At that point it was just saying</p> <p>22 metropolitan in the literature, for Republican</p> <p>23 candidates, Dwight Eisenhower, Richard Nixon</p> <p>24 outperformed. And then I focused more on the</p> <p>25 South in 1960 -- post-1968. But for most</p>
Page 94	Page 96
<p>1 1964, its growth was consistently in urban</p> <p>2 and suburban areas. I use the word</p> <p>3 metropolitan because the political science</p> <p>4 literature shifted at one point from</p> <p>5 metropolitan to distinguishing urban</p> <p>6 and suburban.</p> <p>7 BY MR. ETTINGER:</p> <p>8 Q. Were white voters in the Post-Civil Rights</p> <p>9 Act period in metropolitan areas committed</p> <p>10 to maintaining segregation policies?</p> <p>11 A. I believe they were.</p> <p>12 Less -- much less so than -- and</p> <p>13 distinct -- yeah, they were -- they were less</p> <p>14 so than the other areas, than the rural areas.</p> <p>15 Q. Would you say that there was -- there was still</p> <p>16 a contingent that was supportive of segregation</p> <p>17 policies within the metropolitan white-voting</p> <p>18 class in Alabama?</p> <p>19 A. I would believe so.</p> <p>20 I think it's hard to claim unanimity</p> <p>21 in such broad swaths of the population.</p> <p>22 Q. And I believe on page 14 you write that:</p> <p>23 Metropolitan areas tended to be more diverse</p> <p>24 in population and open to reform including</p> <p>25 on matters related to race.</p>	<p>1 of that period urban and suburban voters</p> <p>2 identified as Republican at higher levels</p> <p>3 than rural voters. That actually did not</p> <p>4 change in the South until the 2010s, if</p> <p>5 I'm remembering the literature correctly.</p> <p>6 Q. And just to confirm: Did any of the literature</p> <p>7 you reviewed specifically analyze this kind of</p> <p>8 metropolitan versus rural divide within Alabama?</p> <p>9 A. Yes. Yes.</p> <p>10 I cited some of the articles,</p> <p>11 especially the Eisenhower and Nixon years</p> <p>12 that did a -- an analysis of -- I'm forgetting</p> <p>13 the towns now -- but did an analysis</p> <p>14 comparing -- yeah, metropolitan/rural areas.</p> <p>15 And those were consistent with other literature</p> <p>16 that discussed the South more generally.</p> <p>17 Q. Could you identify which of the academic articles</p> <p>18 you're referring to that specifically analyze</p> <p>19 Alabama?</p> <p>20 A. Well, two would be Strong and Cosman on 13.</p> <p>21 It was showing what the trend was up to --</p> <p>22 up to the 1960s.</p> <p>23 Q. So these were analyses of the South in general</p> <p>24 but included some elements that were specifically</p> <p>25 focused on Alabama?</p>

Page 97	Page 99
<p>1 A. They did a data analysis that -- that focused 2 in on town versus country in Alabama and that 3 was part of their analysis. I shouldn't say 4 town versus country, metropolitan versus -- 5 Q. And what time period would you say that the 6 metropolitan areas became more diverse and 7 open to reform, including on matters of race? 8 A. I would say particular in the '40s and '50s, 9 although the idea of metropolitan Republicanism 10 dates back to at least as early as 1920 to 1928. 11 And the openness I would say is 12 more the idea that race was not an overwhelming 13 factor that could not be broken through with 14 other appeals and other arguments. Key 15 mentions this when he's doing that analysis of 16 the '48 election and the -- in 1928 as well. 17 Q. And when you say, open to reform including on 18 matters related to race, does that mean that 19 the metropolitan voters were more open to 20 advancing civil rights for Black Americans? 21 A. I think they were more open to policies that 22 were not dominated by race is what I mean by 23 being more progressive than openness. 24 I'm comparing them to, I believe, 25 the other voters of appeals to white supremacy</p>	<p>1 were open at all to other issues I think makes 2 them more progressive than their rural 3 alternatives. 4 Q. Is it your testimony that in the -- I think 5 you said 1940s and '50s that metropolitan 6 white voters were supportive of civil rights? 7 A. I think that would be -- that would be going -- 8 going too far to say that they were necessarily 9 supportive. 10 My -- again, I've tried to explain -- 11 my idea of them being more progressive was 12 the idea that they would let other issue sets 13 influence their vote and that they would be 14 willing to vote for the party of Lincoln, the 15 party of Reconstruction, the party of Civil 16 Rights at that point. That I would take to 17 be a -- a major distinction compared to other 18 elements, other parts of the South at that 19 point. 20 Q. Understood. 21 A. Yeah. 22 Q. But metropolitan voters in the '40s and 23 '50s didn't advocate for civil rights? 24 MR. GEIGER: Object to form. 25 A. Yeah.</p>
Page 98	Page 100
<p>1 could overcome all other issues, and I don't 2 believe that was as much the case within the 3 metropolitan areas partly because they are 4 voting for candidates in the '20s, 30s, '40s 5 and '50s who themselves are still advocating 6 to some degree for civil rights for 7 African-Americans in the South. 8 Q. I think I'm following but just to make sure: 9 So is your opinion that they -- other issues 10 took greater prominence than race or that they 11 were open to racial progress or civil rights? 12 A. Again, I wouldn't want to paint with unanimous 13 strokes. My -- my point is that they were more 14 progressive in allowing other issues to influence 15 their vote; in other words, there were elements 16 of the South where it didn't matter what else 17 or time was being argued. 18 I think a good example of this would 19 be 1928, the fact that the Democrat nominee 20 that year who was a Roman Catholic didn't do 21 as well, I mentioned that. But the fact that 22 he did as poorly as he did I think still shows 23 that -- the fact that he was still able to win 24 might be an example of how dominant race could 25 be in other places. So the very fact that they</p>	<p>1 BY MR. ETTINGER: 2 Q. And I'll specify white voters in metropolitan 3 areas in Alabama didn't advocate for civil rights? 4 A. Correct. 5 Q. Are you familiar with the series of racially 6 motivated bombings in Birmingham, often called 7 Bombingham? 8 A. Yes. 9 Q. And those occurred roughly between the time 10 period 1947 and 1965? 11 A. Yes. 12 Q. Did you review the history of violence and 13 unrest in schools as they were desegregated 14 in Alabama? 15 A. I did look at the broader trend in the South 16 on that. 17 Q. Did you review the desegregation of Phillips 18 in Birmingham? 19 A. I did not look particularly at that one 20 instance either for this, no. 21 Q. How about Vigor and Murphy in Mobile? 22 A. No. 23 Q. Jefferson Davis in Montgomery? 24 A. No. I did not in those particular ones, no. 25 Q. Baker in Huntsville?</p>

<p style="text-align: right;">Page 101</p> <p>1 A. No.</p> <p>2 Q. Did you analyze how the enfranchisements</p> <p>3 of Black voters in cities like Birmingham,</p> <p>4 Montgomery, Huntsville and Mobile impacted</p> <p>5 metro-voting patterns?</p> <p>6 A. I did not -- I did not focus on the</p> <p>7 issue of Black mobilization, no.</p> <p>8 Q. On page 16 of your report on the second</p> <p>9 paragraph you noted that some have argued</p> <p>10 that Republicans --</p> <p>11 A. Can I ask, when you say -- is it the second</p> <p>12 full paragraph of the page, not the page</p> <p>13 that goes on to the -- from the previous,</p> <p>14 or --</p> <p>15 Q. Thank you.</p> <p>16 The full -- the first full paragraph.</p> <p>17 A. Okay. Thank you.</p> <p>18 Q. And I believe the third sentence you said:</p> <p>19 Some have argued that Republicans have made</p> <p>20 sustained racial appeals but in more subdued</p> <p>21 or cloaked terms.</p> <p>22 Is that correct?</p> <p>23 A. Yes.</p> <p>24 Q. When you say that some have argued who's</p> <p>25 the some you're referencing?</p>	<p style="text-align: right;">Page 103</p> <p>1 the literature but, no, you would be correct</p> <p>2 to say that it was the majority position, yes.</p> <p>3 Q. And I think -- you noted in your report the</p> <p>4 Black and Black analysis in their 2002 book</p> <p>5 about the continued use of racial appeals in</p> <p>6 subdued or cloaked terms -- is that --</p> <p>7 A. Yes.</p> <p>8 Q. Do you disagree with their arguments that</p> <p>9 Republicans have made -- continued to make</p> <p>10 racial appeals in subdued or cloaked terms</p> <p>11 Post-Civil Rights Act?</p> <p>12 A. I would -- while I can't discount any one</p> <p>13 particular comment or statement, I believe</p> <p>14 it is overstated and I have some methodological</p> <p>15 differences with how they code and categorize</p> <p>16 those questions that I think might be the --</p> <p>17 one of the core sources in my disagreement.</p> <p>18 Q. So is it fair to say that your disagreement is</p> <p>19 more about the degree to which they remained at</p> <p>20 play, not necessarily that they still existed?</p> <p>21 A. When I say coding -- for example, a number of</p> <p>22 these scholars say opposition to affirmative</p> <p>23 action is racially motivated, and I believe</p> <p>24 that's a bit begging the question, especially</p> <p>25 since those who make the argument say that it</p>
<p style="text-align: right;">Page 102</p> <p>1 A. Black and Black is the for instance I give.</p> <p>2 There are certainly others. So Aistrup that</p> <p>3 I mentioned before, the Southern Strategy</p> <p>4 Re-visited would be another example.</p> <p>5 I know there have been a number of --</p> <p>6 it is not a small amount of literature that</p> <p>7 makes that claim.</p> <p>8 Q. And are these historians that you've described?</p> <p>9 A. Some are historians, some are political scientists,</p> <p>10 some are even sociologists if I understand their --</p> <p>11 their specialty, but I would have to double-check</p> <p>12 some of them.</p> <p>13 Q. Would you say the position that Republicans have</p> <p>14 made sustained racial appeals in more subdued or</p> <p>15 cloaked terms is a view that's held by many</p> <p>16 historians?</p> <p>17 A. By many? Yes.</p> <p>18 Q. Most?</p> <p>19 A. I would say a majority.</p> <p>20 I note -- I quote Feldman before.</p> <p>21 Feldman notes that the other alternative</p> <p>22 explanations has been a growing. He -- I</p> <p>23 forget when he wrote this, it was written</p> <p>24 last -- well, Feldman said that the other</p> <p>25 explanations have been a growing part of</p>	<p style="text-align: right;">Page 104</p> <p>1 is an argument for race neutrality.</p> <p>2 Now, I'm not saying whether that's</p> <p>3 right or wrong, affirmative action, it is, but</p> <p>4 when you're coding that in a certain -- in</p> <p>5 a certain way I believe that is -- that is</p> <p>6 the difference -- that is different than</p> <p>7 what I think everyone would agree on, which</p> <p>8 is approval of segregation or -- or something</p> <p>9 along those lines.</p> <p>10 Nixon is said to be sometimes</p> <p>11 anti-Civil Rights, not because he was</p> <p>12 pro-segregation but because of certain</p> <p>13 policies that he implemented, not being</p> <p>14 seen as sufficiently in favor of integration.</p> <p>15 So some of my disagreements with that would</p> <p>16 be that I think at times they -- they --</p> <p>17 these scholars are coding things that are</p> <p>18 disagreements about how to integrate or</p> <p>19 how to have -- deal with racial -- the</p> <p>20 history of racial segregation rather than</p> <p>21 actually a clear objective standard for it.</p> <p>22 Q. Is it your view that opposition to affirmative</p> <p>23 action is not racially coded language?</p> <p>24 A. I would say that it is -- it is not necessarily.</p> <p>25 Q. Apologies.</p>

<p style="text-align: right;">Page 105</p> <p>1 Please continue.</p> <p>2 A. Yeah. If your question is: Would anyone</p> <p>3 anywhere ever oppose affirmative action for</p> <p>4 racial reasons I can't deny that, but I would --</p> <p>5 I would argue that it is -- it is -- I think</p> <p>6 fairly sloppy methodology to code that as the</p> <p>7 obvious dominant explanation for opposition</p> <p>8 to affirmative action.</p> <p>9 If that's the case, then, you</p> <p>10 know, the one dissenter in Plessy v Ferguson,</p> <p>11 John Marshall Harlan, s using racially coded</p> <p>12 language in opposed racial segregation --</p> <p>13 legalized racial segregation.</p> <p>14 Q. In your view does racially coded language</p> <p>15 necessitate negatively discriminatory language?</p> <p>16 A. No, not necessarily.</p> <p>17 Q. So there could be racially coded language</p> <p>18 that -- that speaks of the benefits of</p> <p>19 affirmative action, or something along</p> <p>20 those lines?</p> <p>21 A. Can you -- you mean that is critical of</p> <p>22 the benefits of affirmative action or --</p> <p>23 Q. I guess my question is: Is racially coded</p> <p>24 a -- a stance against racial progress in</p> <p>25 your view?</p>	<p style="text-align: right;">Page 107</p> <p>1 purposes.</p> <p>2 Q. Okay. Thank you. That's helpful to understand.</p> <p>3 In your report you mention that</p> <p>4 the argument becomes hard to prove as it</p> <p>5 involved issues not directly related to</p> <p>6 race or rhetoric, not employing overt</p> <p>7 racial language.</p> <p>8 A. Uhm-hmm.</p> <p>9 Q. Is it your opinion that it is impossible to</p> <p>10 determine whether a politician is engaging</p> <p>11 in subtle or cloaked racial appeals?</p> <p>12 A. Impossible, no.</p> <p>13 Q. And how would one go about doing that?</p> <p>14 A. I believe what you would need is to, to --</p> <p>15 you say to be certain or --</p> <p>16 Q. Just to be able to identify something as</p> <p>17 a cloaked or subtle racial appeal.</p> <p>18 A. I think there is -- the context of their</p> <p>19 statements overall or other statements as</p> <p>20 well would have to create the context in</p> <p>21 which they were clearly saying what we</p> <p>22 meant by that was; X and what was understood</p> <p>23 by people was -- was the same.</p> <p>24 Q. Are there certain cloaked terms that are</p> <p>25 commonly used to make subtle racial appeals?</p>
<p style="text-align: right;">Page 106</p> <p>1 A. I think that would speak to just what my personal</p> <p>2 opinion about what affirmative action is, which</p> <p>3 I think is, I would want to be irrelevant to my</p> <p>4 conclusions here because I believe that would be</p> <p>5 trying to put my own policy preferences into play.</p> <p>6 My mere argument is: I believe</p> <p>7 there are substantial number of people that</p> <p>8 independently believe they are actually</p> <p>9 furthering racial progress by being against</p> <p>10 affirmative action. And whether they're right</p> <p>11 or wrong I think is -- is not relevant to what</p> <p>12 I'm trying to discuss.</p> <p>13 Q. I agree. I'm just more trying to get an</p> <p>14 understanding of racially coded.</p> <p>15 Is that -- I guess, is it fair to</p> <p>16 say that racially coded language means any</p> <p>17 language that implicitly involves race?</p> <p>18 Is that how you understand it?</p> <p>19 A. I would understand racially coded language if,</p> <p>20 to the degree it exists, as making a statement</p> <p>21 that seems facially neutral but is intended to</p> <p>22 be understood as -- as declaring pernicious</p> <p>23 racial differences --</p> <p>24 Q. Okay.</p> <p>25 A. -- or I should say racially discriminatory</p>	<p style="text-align: right;">Page 108</p> <p>1 A. I can't deny that there -- there could be,</p> <p>2 so, yes, I think that's -- that's possible --</p> <p>3 Q. Are you --</p> <p>4 A. -- I mean, back to -- I believe you can't</p> <p>5 discount race as a continuing factor, I</p> <p>6 mean, that was not the purpose of my report.</p> <p>7 Q. Are you aware of any cloaked terms that are</p> <p>8 commonly used to make subtle racial appeals?</p> <p>9 A. I mean, I would -- I would have to look at</p> <p>10 particular accusations of instances as far</p> <p>11 as -- as far as now as opposed to I looked</p> <p>12 a little more at that question historically.</p> <p>13 Q. And were there any historic examples of</p> <p>14 cloaked terms that were used to make</p> <p>15 subtle racial appeals?</p> <p>16 A. Yes. I could give as the example of --</p> <p>17 I'll use James Martin, who was a Republican</p> <p>18 nominee in Alabama in 1962 and going forward.</p> <p>19 I guess the question is: What's</p> <p>20 exactly the cloaked appeal that he mentions</p> <p>21 the South shall rise, again, or something along</p> <p>22 those lines. And I would say did he literally</p> <p>23 say anything racially, no, but it's hard to</p> <p>24 speak of the South rising again without it</p> <p>25 being a fairly clear reference to the Civil</p>

<p style="text-align: right;">Page 109</p> <p>1 War and the causes of the Civil War. So that 2 might be one that I could -- I could point to. 3 Q. And so, you would identify the South shall rise 4 or statements like that as a cloaked racial 5 appeal? 6 A. I would say that at least the standard of -- 7 the standard of proof would be in favor of that, 8 that there would have to be some serious contextual 9 variants to not presume that that would be the 10 case, especially in that context of it being 11 1962 Alabama. It would be entirely consistent 12 with the rest of my report, if that would be 13 the case. 14 Q. Do you view the Confederate flag as a symbol 15 of cloaked racial appeal? 16 A. I believe that it would depend upon the 17 context in which it was -- in which it was 18 offered because I believe it is a symbol 19 that has evolved. 20 I think, and I note that, based on 21 how many -- how it has expanded beyond the 22 South, so I believe absolutely it can be a 23 symbol -- and if it was restricted to its 24 original meaning and intent would be. But 25 I -- I think that to some degree it -- and</p>	<p style="text-align: right;">Page 111</p> <p>1 that, but that would be beyond what -- what 2 I researched and looked at. 3 Q. And you mentioned kind of, in more recent 4 times that the Confederate flag, in your 5 view, has been re-appropriated in certain 6 ways. 7 When did that occur? 8 A. That would -- that would be beyond any sort 9 of research I did, so I would not want to 10 speculate on -- on that. To be honest, most -- 11 my observation's anecdotal, so I would want to 12 be careful about trying to come to any conclusion 13 on that question. I have not done any sort of 14 particular study of that -- that evolution. 15 Q. Is it fair to say that the Confederate flag 16 involved a symbol of subtle racial appeal in 17 the time period between the Voting Rights Act 18 and 2000? 19 MR. GEIGER: Object to form. 20 A. I -- I can't deny that there were people 21 that had that view. 22 BY MR. ETINGER: 23 Q. Would you agree that there have been campaigns 24 in the South between 1964 and today that have 25 featured racially coded appeals?</p>
<p style="text-align: right;">Page 110</p> <p>1 I guess I find this -- well -- forgive my 2 personal opinion. 3 It has -- as I understand it, even 4 if it's beyond my expertise, it has evolved 5 to some degree to be a proxy for -- I was 6 about to use the word accomplishment, rural 7 living, more broadly, or a certain type 8 of person that lives in a rural community. 9 So I do believe it's possible, 10 but I believe, but I believe, to some 11 degree, people have re-appropriated it. 12 Q. Does the use of the Confederate flag outside 13 of the South to you indicate that it is, in 14 fact, a racial appeal? 15 A. I would have to see particular instances and 16 places, and it's not necessarily something I 17 focused in on -- on my reports, so -- yeah, 18 I, that's more my personal observation, but I 19 wouldn't -- I wouldn't tie it to the research 20 I've done. 21 Q. Is the Confederate flag viewed among Black 22 Southern citizens as a subtle racial appeal 23 or overt racial appeal? 24 A. I did not look at -- I did not look at that 25 specific question. I could -- I could see</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Yeah, I can't deny that that -- that that 2 could have been involved. 3 Q. Would you agree that there have been campaigns 4 in Alabama between 1964 and today that have 5 featured racially coded appeals? 6 A. I think an easy one would be George Wallace's 7 campaign, overt and covert. 8 Q. And do -- have coded racial appeals continued 9 to be used in politics in Alabama today? 10 A. I don't -- I'm not convinced of -- of a 11 particular instance, but I can't deny that 12 it couldn't have been done, and, again, 13 I didn't focus on that -- that particular 14 question in my -- in my report. 15 Q. But your report does draw conclusion on the 16 presence of subtle or overt racial appeals, 17 correct? 18 A. Yes. So I'm not saying that it's not possible, 19 but my entire burden of proof was -- is race a 20 dominant factor, predominant factor even; and 21 I do not believe based on the evidence I've 22 seen that that -- it would be a predominant 23 factor. But if you're asking, has any candidate 24 ever or any voter ever said or understood, that 25 would be denying my own -- my own point that I</p>



<p style="text-align: right;">Page 113</p> <p>1 believe race continues to be a factor.</p> <p>2 Q. Did you evaluate whether coded racial appeals</p> <p>3 are commonly made in Alabama campaigns in the</p> <p>4 last ten years?</p> <p>5 A. In the last ten years, never, I did not focus</p> <p>6 on that particular question.</p> <p>7 A lot of my focus was especially on</p> <p>8 the historical related to especially '70s and</p> <p>9 '80s, and, and -- in those eras.</p> <p>10 Q. And why did you not focus on the more recent</p> <p>11 time period?</p> <p>12 A. Partly because that was often the greater focus</p> <p>13 of the literature itself and response to the</p> <p>14 idea of a Southern Strategy among the GOP as</p> <p>15 being the era when race was the most predominant</p> <p>16 mode of appeal according to certain scholars,</p> <p>17 so that's why -- that's why I thought that was</p> <p>18 the -- the most likely era for that -- for those</p> <p>19 appeals to matter, so that's why I focused on it.</p> <p>20 Q. So is it fair to say that your opinion about</p> <p>21 the presence of subtle or overt racial appeals</p> <p>22 is limited to the -- that time period in which</p> <p>23 the Southern Strategy was employed, so roughly</p> <p>24 1960 to, we'll say 1985?</p> <p>25 A. That was -- that was -- well, that was the</p>	<p style="text-align: right;">Page 115</p> <p>1 issues speaks to whether racial appeals were</p> <p>2 an important factor to the generality of</p> <p>3 voters.</p> <p>4 Q. Did you analyze -- I know you analyzed the</p> <p>5 use -- the focus on these other issues, but</p> <p>6 did you specifically analyze the use of</p> <p>7 subtle or explicit racial appeals in the</p> <p>8 1990s, for instance?</p> <p>9 A. I did not -- I did not focus on that, although</p> <p>10 I know some of the literature speaks to it.</p> <p>11 And I do believe my speaking of the other</p> <p>12 issues -- some of the other issues I speak</p> <p>13 to I argue as independent factors when some</p> <p>14 of the other scholars claim they are coded</p> <p>15 likewise, so I think it would speak to that.</p> <p>16 Q. And do you draw any conclusions about whether</p> <p>17 there was or wasn't racially coded language</p> <p>18 used in political campaigns in Alabama in</p> <p>19 the 1990s?</p> <p>20 A. In the 1990s Alabama I -- that was not a</p> <p>21 focus of my research, so I -- I certainly</p> <p>22 couldn't deny it, but it was not a focus.</p> <p>23 Q. Do you deny that racially coded language was</p> <p>24 used in campaigns in Alabama in the 1980s?</p> <p>25 A. My focus was more on the national campaign and</p>
<p style="text-align: right;">Page 114</p> <p>1 focus on that particular question of racial</p> <p>2 appeals.</p> <p>3 And then for certain reasons of</p> <p>4 what the research itself said I believed</p> <p>5 that a focus on other issues was more</p> <p>6 appropriate for those later times, given</p> <p>7 what I've concluded about the '70s and '80s.</p> <p>8 Q. And did you reach any conclusion between --</p> <p>9 about the use of overt or subtle racial</p> <p>10 appeals from 1985 to today in Alabama?</p> <p>11 A. I believe that the -- I think this would</p> <p>12 be -- and at least partially answered in</p> <p>13 my description of what issues in the '90s,</p> <p>14 2000s and 2010s were driving, I believe,</p> <p>15 the continued realignment.</p> <p>16 And so, in other words, I do not</p> <p>17 believe that appeals on questions of abortion</p> <p>18 or same-sex marriage or other things like</p> <p>19 that or whatever you think of them, could have</p> <p>20 racial appeals, for example, and I believe they</p> <p>21 were very important, and I'm sure we'll get to</p> <p>22 this later, for Alabama voting.</p> <p>23 So that -- so while I did not do</p> <p>24 a systematic look at rhetoric in those times</p> <p>25 I believe the importance and relevance of those</p>	<p style="text-align: right;">Page 116</p> <p>1 the National Republican and Democratic Parties</p> <p>2 at that point, and how those national changes,</p> <p>3 I believe, were affecting voting patterns, so</p> <p>4 that was not, again, not a focus of what I was</p> <p>5 looking at.</p> <p>6 Q. And I believe earlier you mentioned something</p> <p>7 called the Southern Strategy?</p> <p>8 A. Yes.</p> <p>9 Q. Can you describe what the Southern Strategy is?</p> <p>10 A. In the literature the Southern Strategy is the</p> <p>11 claim that the -- the Republican party after</p> <p>12 ignoring the South for most of its Post-Civil</p> <p>13 War history -- pardon me, history, attempted to</p> <p>14 gain a foothold and then eventually dominance</p> <p>15 in the -- in the South. And I think everyone,</p> <p>16 mostly, agrees that that was the case.</p> <p>17 And then, there are particular</p> <p>18 discussions about what they did and why they</p> <p>19 did it to -- to -- to make that happen, but,</p> <p>20 yes, it's the Republican Party's attempt to</p> <p>21 re-engage and try to be competitive in the</p> <p>22 South.</p> <p>23 Q. And did part of that Southern Strategy involve</p> <p>24 using subtle or cloaked racial appeals?</p> <p>25 A. I can't deny that there were people that --</p>

Page 117	Page 119
<p>1 that did that, although I do believe the</p> <p>2 Southern Strategy going back to Black and</p> <p>3 Black's analysis -- and this I agree with,</p> <p>4 even though I've said I don't agree with</p> <p>5 everything they say, the -- the paradigm</p> <p>6 went from a pro- and anti-segregation party</p> <p>7 to two different understandings of how to</p> <p>8 achieve integration. So -- so whatever</p> <p>9 Southern Strategy there was it was on pretty</p> <p>10 weak terms for any segregationist to be able</p> <p>11 to accept.</p> <p>12 Q. From your review of -- and the relevant</p> <p>13 historical evidence, is there evidence</p> <p>14 that Richard Nixon did, in fact, engage</p> <p>15 in a political strategy to appeal to white</p> <p>16 Southern voters by using racially cloaked</p> <p>17 language?</p> <p>18 A. I think that at least is overstated and</p> <p>19 I would say that he wanted to appeal to</p> <p>20 Southern voters in not pushing -- not</p> <p>21 pushing the same methods of integration</p> <p>22 or the same ways of integration as the</p> <p>23 rest, but I would agree with Black and</p> <p>24 Black again that his appeal was to</p> <p>25 pro-integration forces in the South that</p>	<p>1 A. Having not reviewed everything he said on</p> <p>2 race, I would lean very heavily on Kotlowski's --</p> <p>3 Kotlowski's book off Harvard University Press</p> <p>4 from 2001 on Nixon and Civil Rights if I was</p> <p>5 going to elaborate on this. I know I didn't</p> <p>6 as much on -- in my report but it's relevant,</p> <p>7 that -- did -- did Nixon understand that his</p> <p>8 position on Civil Rights would make him more</p> <p>9 popular in the South, yes, I think so but --</p> <p>10 Q. And did he use language that was coded in racial</p> <p>11 terms to appeal to white Southern voters?</p> <p>12 A. I'm not convinced of a particular instance where</p> <p>13 that's what he was consciously doing in the sense</p> <p>14 of how I have defined it earlier that he was --</p> <p>15 now, could Southern voters -- could there have</p> <p>16 been Southern voters at the time that took that</p> <p>17 as the case, yes, there probably were. And</p> <p>18 that's where I think some of them were outraged</p> <p>19 at his actual policies of forcing integration,</p> <p>20 having affirmative action and going to policies,</p> <p>21 passing the Civil Rights in 1970.</p> <p>22 Nixon himself actually says in the</p> <p>23 1966 Congressional elections that going after</p> <p>24 the segregationist's vote is -- he calls --</p> <p>25 called it, quote, fool's gold. So it seems</p>
Page 118	Page 120
<p>1 were not onboard with going the same route</p> <p>2 as other elements of the Civil Rights Movement,</p> <p>3 that it was a debate within an acceptance of</p> <p>4 integration.</p> <p>5 So did that mean that segregationists</p> <p>6 may have found him the lesser of two evils,</p> <p>7 yes, but clearly they found -- they did not</p> <p>8 have, I would say, a -- the kind of friend</p> <p>9 they had in, say, George Wallace or others</p> <p>10 that they haven't had.</p> <p>11 This is where Kevin Phillip's book</p> <p>12 is helpful, The Merging Republican Majority,</p> <p>13 where he basically says out loud: We are not</p> <p>14 going to go to the segregationists, they're</p> <p>15 going to have to come to us.</p> <p>16 Q. And then, so is it your view that Richard Nixon</p> <p>17 did not engage in any cloaked racial appeals?</p> <p>18 A. I can't say he never did but it was not -- I</p> <p>19 can say from what I did look at that it was</p> <p>20 not -- he and his campaign, it was not a --</p> <p>21 it was not a dominant -- it was not a dominant</p> <p>22 rhetorical appeal and his own policies would</p> <p>23 contradict that.</p> <p>24 Q. And when you say it was not a dominant --</p> <p>25 what was the language you used? Sorry.</p>	<p>1 that -- it's hard to say that racial appeals</p> <p>2 would at least have been a dominant conscious</p> <p>3 element of his campaign, given the rest of</p> <p>4 that record.</p> <p>5 Q. But you don't -- you don't contend that certain</p> <p>6 white -- or that white voters could have perceived</p> <p>7 his communications as being supportive of their</p> <p>8 views on racial issues?</p> <p>9 A. Supportive in what way? I think this matters</p> <p>10 for his own -- his own -- his own rhetoric.</p> <p>11 Q. Yeah. Let me state it slightly differently.</p> <p>12 A. Yeah.</p> <p>13 Q. That the white voters could have interpreted</p> <p>14 Nixon's messaging as coded racial appeals?</p> <p>15 A. In the sense of being lesser than two evils,</p> <p>16 because he himself says publicly, segregation</p> <p>17 is -- his 1969 first inaugural, he says our</p> <p>18 laws have caught up with our conscience,</p> <p>19 meaning segregation. Now the laws need</p> <p>20 to be implemented, and elsewhere saying</p> <p>21 that in 1972 that integration is right,</p> <p>22 segregation was wrong and we need to</p> <p>23 implement it.</p> <p>24 So it would have to be a pretty</p> <p>25 refined subtlety assumed on the part of the</p>

<p style="text-align: right;">Page 121</p> <p>1 suffering voter to argue that he meant one</p> <p>2 and didn't mean the other, if other things</p> <p>3 were meant to be racially coded appeals.</p> <p>4 Q. And, but you mentioned that he may have tried</p> <p>5 to appeal as the lesser of two evils on issues</p> <p>6 of segregation.</p> <p>7 Is that accurate?</p> <p>8 A. On issues of Civil Rights.</p> <p>9 Q. On Civil Rights.</p> <p>10 A. Yeah. I say that specifically because he -- even</p> <p>11 more than Goldwater, supported every Civil Rights</p> <p>12 effort that both the Republican and Democratic</p> <p>13 parties passed up through 1968.</p> <p>14 Q. And so he likely would have included appeals</p> <p>15 to indicate to white voters that he was the</p> <p>16 lesser of two evils with respect to Civil</p> <p>17 Rights?</p> <p>18 MR. GEIGER: Object to form.</p> <p>19 A. Yeah, yes. I think he -- he understood himself</p> <p>20 as being the one who was taking a more moderate</p> <p>21 route to the implementation of integration and</p> <p>22 the implementation of desegregation, so, you</p> <p>23 know, he is -- he is criticized for his opposition</p> <p>24 to school busing when de facto segregation was</p> <p>25 occurring, even though, if I remember correctly,</p>	<p style="text-align: right;">Page 123</p> <p>1 implicitly or explicitly involved issues</p> <p>2 of race?</p> <p>3 A. Oh, of course.</p> <p>4 I mean, it was a reaction, it was</p> <p>5 one of the available options to deal with</p> <p>6 the legacy of segregation, either de jure</p> <p>7 or de facto.</p> <p>8 Q. Did President Reagan utilize any strategy of</p> <p>9 cloaked racial appeals to pursue Southern</p> <p>10 white voters?</p> <p>11 A. I don't -- I don't see evidence of him</p> <p>12 consciously doing so.</p> <p>13 Q. Did he engage in appeals that may have been</p> <p>14 perceived by white southern voters as subtle</p> <p>15 racial appeals?</p> <p>16 A. That's -- that's possible, although I would --</p> <p>17 I would not -- I -- I would tend to think that</p> <p>18 it's -- that that was certainly -- that was not</p> <p>19 a majority opinion; although, again, I think part</p> <p>20 of the problem with this whole literature is the</p> <p>21 difficulty of having good, objective standards.</p> <p>22 That's part of my criticism of -- of this</p> <p>23 entire -- of this literature, so --</p> <p>24 Q. And I believe earlier you mentioned that you</p> <p>25 reviewed Dr. Bagley's Rebuttal Report in this</p>
<p style="text-align: right;">Page 122</p> <p>1 he was all right with busing even for de jure</p> <p>2 discrimination.</p> <p>3 BY MR. ETINGER:</p> <p>4 Q. So, for instance, taking the example of busing --</p> <p>5 A. Uhm-hmm.</p> <p>6 Q. -- his language opposing the use of busing,</p> <p>7 would you consider that a racial appeal?</p> <p>8 A. Not -- I wouldn't say necessarily, and if I</p> <p>9 could point out: A 1972 Harris Poll, down --</p> <p>10 I believe it was either 72 percent, so high</p> <p>11 70 percentages of people opposed busing.</p> <p>12 In that sample 47 percent of those</p> <p>13 polled were African-Americans that opposed</p> <p>14 busing. There's a 1973 Gallop Poll where</p> <p>15 voters were given options for how to achieve</p> <p>16 integration, and among African-American voters</p> <p>17 the -- one of the lowest polling, think the</p> <p>18 lowest polling, if I remember correctly, in</p> <p>19 the single digits, was school busing.</p> <p>20 So if that is a coded racial</p> <p>21 appeal it was one with significant support</p> <p>22 by African-Americans themselves were to</p> <p>23 believe some of that polling.</p> <p>24 Q. Understood.</p> <p>25 But the language about busing</p>	<p style="text-align: right;">Page 124</p> <p>1 action?</p> <p>2 A. I did, yes.</p> <p>3 Q. Could I have you bring that back out?</p> <p>4 A. Yes.</p> <p>5 Q. Sorry. Which exhibit was that one?</p> <p>6 Can you check the first page of that?</p> <p>7 A. Four.</p> <p>8 Q. Four. Thank you. Okay. I'll have you turn to</p> <p>9 page 9. On the second full paragraph, I guess</p> <p>10 just before that.</p> <p>11 Are you familiar with Lee Atwater?</p> <p>12 A. Yes.</p> <p>13 Q. And who is he?</p> <p>14 A. He was a prominent Republican campaign</p> <p>15 strategist, part of the -- the Reagan</p> <p>16 Administration, the campaign manager for</p> <p>17 George H.W. Bush's presidential campaign</p> <p>18 and a blues guitarist.</p> <p>19 Q. I didn't know that.</p> <p>20 A. Yeah. He recorded an album with B.B. King,</p> <p>21 a blues album.</p> <p>22 Q. What -- is it fair to say that he would</p> <p>23 be familiar with the Republican Political</p> <p>24 Strategies in the 1980s?</p> <p>25 A. Yes.</p>

Page 125	Page 127
<p>1 Q. And the messaging employed by the Republicans 2 in the 1980s? 3 A. Yes. 4 Q. Are you familiar with his characterization of 5 the Republican campaign strategy with respect 6 to racial appeals? 7 A. Yes. 8 Q. And he said: You will start out in 1959 by 9 saying, N-word, N-word, N-word, by 1968 you 10 can't say N-word, that hurts you, backfires, 11 so you say stuff like ahh, forced busing, 12 state's rights, all that kind of stuff -- 13 or all that stuff, correct? 14 And you're getting so abstract, 15 now you're talking about cutting taxes and all 16 these things you're talking about are totally 17 economic things and a by-product of them is 18 Blacks get hurt worse than whites, we'll cut 19 this is much more abstract than even the busing 20 things, ha, and hell of a lot more extract than 21 N-word, N-word. 22 Have you heard this quote before? 23 A. Yes. 24 Q. All right. Do you understand this quote to be 25 explicitly discussing the use of subtle racial</p>	<p>1 And his argument, one thing that 2 gets cut in this quote is -- it says, you're 3 talking about are totally economic things and 4 a by-product of them is Blacks get hurt worse 5 than whites. He said, if that's happening at 6 all -- and he doesn't say I'm not sure if 7 that's happening at all, it's at this point 8 subconscious, not even conscious or intentional 9 and that therefore he believes the end of this 10 quote is to say, regardless, I believe by now 11 we are actually -- by the level of abstraction 12 that you would have to go to even possibly make 13 a racial appeal we are getting past it and 14 there was nothing that the Reagan 15 Administration and the Reagan Campaign 16 had to actually push for. 17 So I don't believe that in context 18 it's -- it's quite the smoking gun about -- 19 especially Republicans in the '80s when Atwater 20 would have an idea of what was going on with 21 direct knowledge than Dr. Bagley's quote. 22 I believe that fuller context significantly 23 mitigates what he says was a Reagan policy 24 by the 1980s. 25 Q. Do you believe that the subconscious racial</p>
Page 126	Page 128
<p>1 appeals as a political tactic? 2 A. I believe it was saying that there were explicit 3 racial appeals in the 1950s and that now -- and 4 that even some of the claims of states' rights 5 and forced busing he thought could have been a 6 racial appeal. 7 Now, he was 17 years old in 1968, so 8 I would say he was more familiar with the 1980s 9 policy than -- it would be very secondhand I 10 think that he would have an idea of what the 11 1960s policy was. 12 And I would -- I do believe that, 13 you know, Atwater was a hard character, but I 14 also believe this quote is pretty selectively 15 edited, and I'd be happy to elaborate if you 16 would -- if you'd like. 17 Atwater says Reagan didn't have 18 to make any racial appeals. And part of the 19 reason he didn't was he says, by no later than 20 1981 when he had this interview white voters 21 don't care about the Civil Rights or Voting 22 Rights Acts anymore. And what he meant in 23 context by that is: They were no longer 24 angry, no longer trying to fight it, no 25 longer trying to push against it.</p>	<p>1 appeals (sic)? 2 A. This is where I feel like the political science 3 and history literature is delving into the realm 4 of what psychologists might be able to note. 5 So that's part of my criticism 6 of this, is I believe that we are getting 7 into the realm that is beyond what historians 8 or political scientists are very good, if 9 you're getting all the way down to what are 10 people subconsciously not even thinking but 11 intuiting, so I -- I wouldn't feel very 12 trained to make that kind of analysis, and 13 I'm a little -- I'm not entirely satisfied 14 that my -- my colleagues in the field who 15 have tried to do it are -- are either. 16 Q. And going back to -- to Mr. Atwater's quote: 17 Do you interpret this as ascribing a strategy 18 of communication to involve coded racial appeals 19 during that time period? 20 A. He is saying that -- well, in the 1950s it 21 wasn't coded -- 22 Q. Correct. 23 A. -- just to build. 24 Although, but in the 1950s, there is 25 no effective -- almost no effective Republican</p>

Page 129

1 party in the South.  
2 In the 1960s he is saying that he  
3 understood that there were -- there were people  
4 who made -- that made and were understood to be  
5 saying that forced busing and states' rights  
6 had a coded racial appeal.  
7 Q. And specifically, politicians that used the  
8 language of forced busing and states' rights  
9 were making -- and specifically politicians  
10 were using the language of forced busing and  
11 states' rights to make coded racial appeals?  
12 A. Yes.  
13 Q. Or -- was he referring to Republican politicians?  
14 A. I believe he was, yes.  
15 Q. Do you understand Republican -- political  
16 messaging in the '70s, '80s about forced  
17 busing to be a racial appeal?  
18 A. I do -- I do not believe that was generally  
19 true. Again, given what I've said about --  
20 especially Nixon and Reagan.  
21 Q. Do you disagree with Mr. Atwater's conclusion  
22 that Republicans use language like forced busing  
23 and states' rights as coded racial appeals?  
24 A. I can't say that no Republican politician said  
25 or thought that, but if -- if Atwater is saying

Page 130

1 that he thinks that was the -- that was the --  
2 the coded racial appeals in the way I've  
3 defined it earlier was the intent.  
4 Because I've said, did Nixon think  
5 that his position would be politically  
6 beneficial, yes, within the context of what  
7 I've said. But if it was the idea that Nixon  
8 was consciously trying to make statements about  
9 racial inferiority and superiority I would  
10 say no. Again, I would trust Atwater more  
11 of what he thinks of the situation in 1981,  
12 as you said.  
13 You asked me particularly: Do you  
14 think he would be aware of what the state of  
15 the party was in 1981. Yes. He's not the  
16 only source but he would be a very influential  
17 source.  
18 Q. When presented with a specific example of a  
19 political statement are you able to evaluate  
20 whether or not the statement involves racially  
21 coded language?  
22 A. I think it's -- it's possible if -- if --  
23 if you have context, but, again, I think  
24 that there's a limitation and a bit at  
25 times a begging of the question there.

Page 131

1 MR. ETtinger: Okay. I think  
2 we're at a good point for take lunch break.  
3 We can go off the record.  
4 VDEOGAPHER: Off the record 12:30 p.m.  
5 (Recess taken at 12:30 p.m.)  
6 (Back on the record at 1:23 p.m.)  
7 VDEOGAPHER: We're now on the  
8 record, 1:23 p.m.  
9 BY MR. ETtinger:  
10 Q. Dr. Carrington, just before the break we  
11 were discussing the use of racial language  
12 in political campaigns.  
13 And did you have a chance to review  
14 Dr. Bagley's initial report in this case?  
15 A. I did look at his report but I did not examine  
16 it very -- real closely. It has been -- I have  
17 not looked at it since March.  
18 MR. ETtinger: Okay. I will mark  
19 and publish Exhibit 6, which is Dr. Bagley's  
20 initial report.  
21 MARKED FOR IDENTIFICATION:  
22 DEPOSITION EXHIBIT 6  
23 1:23 p.m. (Report/A. Bagley 2/2/22)  
24 BY MR. ETtinger:  
25 Q. And do you recognize this as the -- as

Page 132

1 Dr. Bagley's report, initial expert report  
2 submitted in this case?  
3 A. Yes, it looks to be his.  
4 Q. I'll have you turn to page 30 in the report.  
5 Just let me know when you get there.  
6 A. All right. I'm there.  
7 Q. Under the header, Factor 6, Racial Appeals, did  
8 you review this particular section of the report?  
9 A. I did -- I did read it, but since I wasn't  
10 directly responding to him I did not look at  
11 it particularly closely, but, yes, I did read  
12 that.  
13 Q. And I believe before the break you mentioned  
14 that when presented with specific political  
15 statements within a given context one can  
16 evaluate whether there's an explicit or  
17 implicit racial appeal.  
18 Is that correct?  
19 A. I believe it's possible.  
20 Q. Okay. Taking a look at the second paragraph  
21 under the Factor 6 title, Dr. Bagley noted:  
22 That Senator Tommy Tuberville of Alabama has  
23 repeatedly stated his belief that white  
24 nationalists are not racists.  
25 Do you see that?



<p style="text-align: right;">Page 133</p> <p>1 A. Could you point that -- could you point that 2 out to me, which paragraph again? 3 Q. Sure. Second paragraph under the Factor 6. 4 A. Okay. 5 Q. And do you see that statement? 6 A. I do. I do. 7 Q. Is that statement an example of an explicit 8 racial appeal? 9 A. I would want to see how Tuberville defended it. 10 I was actually a little surprised that there 11 was no citation with it from Bagley and why 12 he would think that -- 13 Q. Is there -- 14 A. -- because, again, I said context would 15 matter, so, does -- does he have a -- well, 16 what kind of interpretation does he have -- 17 what one -- what a white nationalist is. 18 Q. What is your interpretation of what a white 19 nationalist is? 20 MR. GEIGER: Objection to form. 21 A. I would say -- I would say two things: I tend 22 to believe that, yes, white nationalist tends 23 to be arguing that race would be -- that there 24 would be a superiority among white persons and 25 the necessity of having white persons as a</p>	<p style="text-align: right;">Page 135</p> <p>1 start with the belief that it -- it was more 2 likely to be than not. Again, it would have 3 been nice for Bagley to have cited something 4 to look up to find out what the -- what the 5 appeal is. 6 BY MR. ETTINGER: 7 Q. And then starting in the next line it says, 8 Tuberville stated in 2023 that COVID really 9 brought -- brought it out how bad our schools 10 are and how bad our teachers are in the inner 11 city. Most of them in the inner city, I don't 12 know how they got degrees, to be honest with 13 you, I don't know whether they can read and write. 14 They want a raise, they want less time to work, 15 less time in school, we've ruined work ethic in 16 this country. 17 Do you see that statement? 18 A. I do. 19 Q. In your view is this statement an example 20 of an explicit racial appeal? 21 A. Not -- not necessarily, no. 22 Q. Is it an example of a coded racial appeal? 23 A. Again, I don't know what Tuberville's intention 24 would particularly be on this, but a criticism 25 of teachers for -- on inner city schools doesn't</p>
<p style="text-align: right;">Page 134</p> <p>1 cohesive political block. 2 In the end, though, I would want to 3 know, what does Tuberville think; does he agree 4 with that assessment or not, or is he giving a 5 different view of what it means than what I 6 think. 7 BY MR. ETTINGER: 8 Q. And can you -- are there contexts in which the 9 statement that white nationalists are not racist 10 would -- would not be a racially coded or explicit 11 racial appeal? 12 MR. GEIGER: Object to form. 13 A. I would say the burden of proof would be to 14 prove that it's not. 15 I just know that being a politician 16 doesn't necessarily mean you have a great 17 handle on academic definitions of terms, but 18 it absolutely -- I think in its normal phrase 19 often has -- is a racial appeal. 20 BY MR. ETTINGER: 21 Q. And setting aside Tommy Tuberville's 22 understanding or not, would you understand 23 the statement to be a racial appeal? 24 MR. GEIGER: Objection to form. 25 A. Again, that would be -- I would -- I would</p>	<p style="text-align: right;">Page 136</p> <p>1 necessarily state what he thinks the race of the 2 teachers are or that he might not even -- and 3 again, I don't -- I did not look at the context 4 of this, whether he could even be advocating that 5 students are being done a disservice in that 6 context. 7 Q. Would you agree that the term inner city is 8 often a coded phrase used to invoke urban 9 and predominantly Black communities? 10 A. There certainly would be a parallel in 11 demographics in inner city as mentioned, 12 so I can't deny that it could never be 13 a reference to -- to -- or it would -- 14 that it could not have an understanding 15 that included race. 16 Q. And do you agree that politicians use the 17 term inner city in a coded fashion to refer 18 to urban and predominantly Black communities? 19 A. I believe when they -- to the best I can 20 understand, when they talk about inner cities 21 they do understand that there's a very high 22 percentage of African-Americans included. 23 I would say, and this is my -- I 24 don't necessarily know what the percentage 25 of African-American or other racial minority</p>

<p style="text-align: right;">Page 137</p> <p>1 teachers are in these school districts, which</p> <p>2 I think, is -- might be less clear than how</p> <p>3 many the composition of the students.</p> <p>4 Q. Turning to page 31 in the second full paragraph,</p> <p>5 it starts: Former Congressman Mo Brooks</p> <p>6 who represented Huntsville in Madison County</p> <p>7 routinely complained about what he called</p> <p>8 a war on whites and used the phrase, Black vote.</p> <p>9 Do you see that section?</p> <p>10 A. I do.</p> <p>11 Q. Would you interpret Congressman Mo Brook's use</p> <p>12 of the phrase war on whites as a racial appeal?</p> <p>13 A. Now, he says he routinely does.</p> <p>14 I am anecdotally aware of at least</p> <p>15 one time where it came up. And his -- his</p> <p>16 argument there, because I was wondering about</p> <p>17 the context, was that the war on whites, the</p> <p>18 specific thing he mentioned, at least in this</p> <p>19 report that I saw was that -- that -- that the</p> <p>20 war, so to speak, is actually the accusation</p> <p>21 that the whites are predominantly racist.</p> <p>22 So I don't know about the other</p> <p>23 instances because Bagley's claiming he says</p> <p>24 it regularly, but at least that one time</p> <p>25 where I -- I saw a news report about it, his</p>	<p style="text-align: right;">Page 139</p> <p>1 the idea that they are using race for how</p> <p>2 they vote, so it's a racial appeal to argue</p> <p>3 that there is -- are not greater racial</p> <p>4 appeals going on, whether he's -- you know,</p> <p>5 at least that was the context that I saw.</p> <p>6 BY MR. ETTINGER:</p> <p>7 Q. On page 32, in the last paragraph of that page</p> <p>8 there's a discussion of Roy Moore in his 2017</p> <p>9 campaign for the U.S. Senate where he described</p> <p>10 that: The U.S. would be better off without the</p> <p>11 reconstruction amendments and observed that in</p> <p>12 his opinion, the antebellum period, quote, was</p> <p>13 great at the time when families were United,</p> <p>14 even though we had slavery they cared for one</p> <p>15 another, people were strong in the families,</p> <p>16 our families were strong, our country had a</p> <p>17 direction.</p> <p>18 Do you see that portion?</p> <p>19 A. I do.</p> <p>20 Q. Is that a statement and example of an explicit</p> <p>21 racial appeal?</p> <p>22 A. Well, I -- again, Roy Moore was not someone I</p> <p>23 looked at particularly, but it doesn't seem,</p> <p>24 even though he certainly could have used</p> <p>25 stronger language he says, even though we</p>
<p style="text-align: right;">Page 138</p> <p>1 frustration was the accusation against whites</p> <p>2 of being racist predominantly.</p> <p>3 So, in other words, the war was</p> <p>4 not -- his answer was not based in an idea</p> <p>5 of racial superiority or inferiority but</p> <p>6 a claim of -- of not wanting to be accused</p> <p>7 of being racist. And it's not clear to me</p> <p>8 that if that's the context that that would</p> <p>9 necessarily be a -- a coded racial appeal.</p> <p>10 Q. And in the example with Congressman Mo Brooks</p> <p>11 that you reviewed in which he used the phrase,</p> <p>12 a war on whites, was it your interpretation that</p> <p>13 he was attempting to appeal to white voters?</p> <p>14 MR. GEIGER: Objection to form.</p> <p>15 A. Yes. I -- I would say that that was an attempt</p> <p>16 to appeal to, to -- appeal to white voters, yeah.</p> <p>17 BY MR. ETTINGER:</p> <p>18 Q. And so it's language that was specifically</p> <p>19 targeted to appeal to a particular race of</p> <p>20 voters?</p> <p>21 MR. GEIGER: Objection to form.</p> <p>22 A. Yes. By trying to actually defend whether --</p> <p>23 by trying to object to the idea that they --</p> <p>24 that they are racist.</p> <p>25 In other words, he's objecting to</p>	<p style="text-align: right;">Page 140</p> <p>1 had slavery.</p> <p>2 Even though seems to be a -- a caveat</p> <p>3 if we're going to take him at his word. In</p> <p>4 other words, was great despite slavery. Now</p> <p>5 may that be a bad way of reading the past --</p> <p>6 but your question is whether it's a racial --</p> <p>7 certainly not -- doesn't seem to be endorsing</p> <p>8 slavery either.</p> <p>9 Q. Does he use the language despite having</p> <p>10 slavery in this statement?</p> <p>11 A. No. Even though.</p> <p>12 Q. So he --</p> <p>13 A. I would -- I would argue even though would</p> <p>14 be an equivalent term to despite --</p> <p>15 Q. How so?</p> <p>16 MR. GEIGER: Object to form.</p> <p>17 A. He starts off by saying something was great,</p> <p>18 a time period was great, and then qualifies</p> <p>19 that greatness and slavery is the qualification</p> <p>20 of that greatness, so the assumption is good.</p> <p>21 The exception to that assumption of greatness</p> <p>22 is slavery. I think the natural understanding</p> <p>23 of that context would be therefore slavery is</p> <p>24 not good, according to his definition.</p> <p>25 Otherwise, wouldn't he say was</p>

<p style="text-align: right;">Page 141</p> <p>1 great at the time when families were united, 2 including slavery or with slavery in addition? 3 I mean, again, I'm not going to 4 claim to divine Roy Moore's mind, and it is 5 notable that he lost that campaign. But, 6 yes -- but yes he doesn't seem to be endorsing 7 slavery unless I -- unless there is some other 8 part of his quote that is not being shared. 9 BY MR. ETTINGER: 10 Q. Do you -- do you disagree that he's stating 11 that, even though there was slavery the period 12 was still great? 13 A. Yes. Yeah, despite -- despite slavery. 14 And that can be a question of 15 whether, I think it would be legitimate to 16 criticize him as underplaying the importance 17 of slavery and the evil and destructiveness 18 of slavery but it's one thing to underplay, 19 it's another thing to endorse. 20 Q. Do you believe he's underplaying the destructive 21 nature of slavery in his statement? 22 A. I would personally say yes. Whether that -- 23 whether that matters for my own analysis 24 I'm not entirely clear about, but yes, 25 I would absolutely say he underplays.</p>	<p style="text-align: right;">Page 143</p> <p>1 white voters in particular? 2 A. As far as a conscious strategy, as opposed 3 to, again, ignorance or insensitivity. 4 Q. But you don't disagree that it would have 5 the effects of appealing to -- to white 6 voters more so than voters of other races? 7 A. Absolutely. I think it would -- it would 8 clearly be one that -- whether it positively 9 appealed to white voters, it would absolutely 10 negatively appeal or repel, one could say, 11 African-American voters. 12 Q. Turning back to your report, on page 16. 13 A. I'm there. 14 Q. Okay. On the second-to-last paragraph you 15 state that: Studies from at least as early 16 as the 1980s found that the claim, the 17 centrality of race in explaining partisan 18 behavior was quite limited -- 19 A. Uhm-hmm. 20 Q. -- is that accurate? 21 A. Yes. 22 Q. You would agree that Professor Abramowitz 23 is a well-respected political scientist? 24 A. I would. 25 Q. And when was this study of Professor Abramowitz</p>
<p style="text-align: right;">Page 142</p> <p>1 Q. Would you -- do you interpret this statement 2 as attempting to appeal to white Alabamian voters? 3 A. I would say in its -- I don't know what he 4 was consciously doing, but I would say in 5 its effect any argument that would underplay 6 the role and position of slavery would be 7 more appealing -- would be less appealing 8 to African-American voters, and I think 9 that's -- would be what -- it would be a 10 pretty easy argument to make, yes. 11 Q. So then, is it fair to say that it's 12 an implicit racially coded language? 13 A. If -- again, this is where, I think, 14 the psychology of it is a weak point. 15 Is this saying that Moore 16 consciously was trying to appeal to 17 white voters over African-American 18 voters rather than being, you could say, 19 ignorant or insensitive? I -- I don't 20 feel qualified as a -- as a political 21 scientist to be able to clearly say 22 that one way or another. 23 Q. So based on the reading of this statement 24 you can't say one way or another whether 25 this statement was aimed at appealing to</p>	<p style="text-align: right;">Page 144</p> <p>1 noted? 2 A. It was released in 1994. 3 Q. Have you reviewed any more recent research into 4 the impact of racial attitudes on partisanship? 5 A. I have looked at -- at some of the literature, 6 yes. It's voluminous, and, but, yes, I have 7 looked at some of the other literature. 8 Q. I'm sorry, I didn't catch what you said. 9 A. Yes. I have looked at some -- more -- yeah, 10 and cite works past 1994 that we've already 11 discussed. 12 Q. Did you -- have you conducted any research -- 13 well, strike that. 14 Have you reviewed any research 15 post-2010 that evaluates how racial attitudes 16 impact partisanship? 17 A. I -- yes, there are -- there is research that 18 I have looked at on that, yes. 19 Q. Okay. And did you include any of that research 20 in your report? 21 A. I don't recall if I put -- if I cited something 22 post-2010 on -- well, yes. I looked at -- I 23 look a little bit at Eric Schickler on racial 24 realignment in 2016. That's on page 18 of my 25 report. I did at one point reference Hood and</p>

Page 145	Page 147
<p>1 McKee's 2022 book that is on the rural realignment 2 in the South which includes a discussion of race. 3 So, yes, there were resources that I looked at, 4 especially as they related to -- to pardons. 5 Q. And I believe earlier you mentioned that you 6 had reviewed Dr. Burch's Rebuttal Report in 7 this case? 8 A. Yes. 9 MR. ETTINGER: I will mark and 10 publish Exhibit 7 which is the Rebuttal 11 Report of Dr. Traci Burch. 12 MARKED FOR IDENTIFICATION: 13 DEPOSITION EXHIBIT 7 14 1:40 p.m. 15 (Rebuttal Report/T. Burch 4/19/2024) 16 BY MR. ETTINGER: 17 Q. Do you recognize this report? 18 A. I do. 19 Q. I direct you to page 15 of her report. 20 And -- sorry, are you there? 21 A. Yes, yes, I am. 22 Q. Okay. And in the first full paragraph about 23 halfway through there's a sentence reading: 24 With respect to partisan sorting of the masses 25 research shows that the exodus of southern white</p>	<p>1 Q. Dr. Burch goes on to cite Valentino and Sears 2 who find that in the South racial attitudes, 3 more than ideological shifts or other policy 4 preferences, explained an increasingly large 5 part of candidate choice and partisanship 6 among white voters, which means between 7 1972 and 2000. 8 Do you see that? 9 A. Yes. 10 Q. Have you reviewed the article Dr. Burch cited 11 and supported in support of that statement by 12 Valentino and Sears? 13 A. No. That is not an article I've read, or that 14 I read for this -- for the -- preparing my report. 15 Q. And did you review that article in reviewing 16 Dr. Burch's Rebuttal Report? 17 A. No, I did not. 18 Q. Just above that Dr. Burch writes that: In the 19 1990s some observers argued that the importance 20 of race to mass partisanship has faded; however, 21 more recent research in some cases by the same 22 authors show that the relationship of race and 23 racial attitudes to partisanship is strong. 24 Do you see that? 25 A. Yes.</p>
Page 146	Page 148
<p>1 voters from the Democratic Party from 1958 to 2 1980 was a reflection of racial attitudes 3 rather than income or other non-racial 4 related policy preferences. 5 Do you see that? 6 A. Yes. 7 Q. And she cites to an article titled, Why Did 8 the Democrats Lose the South bringing new 9 data to an old debate? 10 A. Uhm-hmm. 11 Q. Have you reviewed that research? 12 A. I have not reviewed that particular article, 13 but I have reviewed other -- other resources, 14 including some of the ones that she cites 15 either here or in the other footnotes. 16 Q. Are you familiar with this research? 17 A. I'm familiar with at least a slice of it. 18 I won't claim to have read every article 19 on it, but, yes, I have read -- I have 20 read some particular pieces in the 21 literature. 22 Q. And did you -- just to clarify: Did you 23 review this particular article preparing 24 your report for this litigation? 25 A. No, I did not.</p>	<p>1 Q. In that section Dr. Burch cites to 2019 research 2 conducted by Professor Allen Abramowicz and 3 Jennifer McCoy, titled United States Racial 4 Resentment, the Negative Partisanship and 5 Polarization in Trump's America. 6 Correct? 7 A. Yes. 8 Q. Have you reviewed that scholarship as -- 9 as part of your research in this matter? 10 A. I have read that article, yes. 11 Q. And following along on page 17 of 12 Dr. Burch's report, at the bottom of the 13 first paragraph on the top, it says: 14 By 2016 racial resentment was strongly 15 associated with how voters evaluated a 16 candidates, even after controlling for 17 other factors. 18 Do you see that? 19 A. I do. 20 Q. Do you disagree with that -- this finding? 21 A. I -- I believe that part of that research -- 22 and this would be true of some of the others 23 as well, like the Bartells article that -- 24 that she cites on Clinton in '92 with -- 25 similar to my arguments about coded language</p>

<p style="text-align: right;">Page 149</p> <p>1 with how it is, how does one control for those 2 questions. 3 And I believe some of the factors 4 beg the question on what constitutes a racial 5 appeal or what constitutes a racial focus. 6 Q. So your -- your issue is more on the -- the 7 methodological side of it -- 8 A. Yeah. 9 Q. -- other than critiques of their analysis 10 of the data samples they reviewed? 11 A. According to how they code the language I -- 12 I was not doing the research alongside them, 13 so I can't speak to their particular data set, 14 but in how this and some of the others discuss 15 what constitutes a declaration of racial 16 resentment I think at times begs the question 17 again and gets a bit into the psychological 18 to the degree that I'm -- I'm not always 19 convinced that -- as good of a scholar as 20 Abramowicz is he can necessarily divine. 21 So Bartells, for example, argues 22 that, saying that: I often feel like a 23 stranger in my own country as an example of 24 racial language. Seems to me to be a pretty 25 difficult thing to prove as an abstract</p>	<p style="text-align: right;">Page 151</p> <p>1 A. Some of the sources that I have -- that I have 2 looked at -- pardon me, what was the -- the 3 year again? 4 Q. After 2008. 5 A. I certainly interact with McKee's and Hood's 6 book. I do cite Schickler's racial realignment, 7 again. I look at Matthew Lassiter and Kevin 8 Kruse's book from 2009 in Journal of Southern 9 History. 10 So, so, yes, I do -- while the 11 scholarship is, again, voluminous I do -- 12 there are sources after 2008 that I interact 13 with. 14 Q. And just to specify, I was looking more at 15 scholarship that looks at the post-2008 period 16 rather than being published after 2008. 17 A. I see. I see. 18 I -- I do not recall if there's -- 19 if there's scholarship that I looked at that 20 focuses on that era. 21 Q. Does your kind of general analysis focus in 22 the 2000, the post-2008 time period in your 23 report? 24 A. My focus, or my -- my what I look 25 at does include the post-2008 era.</p>
<p style="text-align: right;">Page 150</p> <p>1 question posed to a -- a Respondent. 2 Q. Do you view Dr. Abramowicz's research as 3 invalid? 4 A. My methodological problems with that later 5 research, I think, would say that it is -- 6 his thesis is unproven. 7 Q. Continuing on it states: The correlation 8 between the gap and valuations of the two 9 major party presidential candidate and racial 10 resentment was .636 among white respondents. 11 Do you see that? 12 A. Yes. 13 Q. How would you characterize the correlation 14 rate of .636? 15 A. I would say that that would be statistically 16 significant. 17 Q. Have you conducted any research yourself 18 looking into the correlation between racial 19 resentment and candidate support among 20 white voters post-2008? 21 A. No. As I said before, I -- my -- my scholarly 22 training has not been in statistical research. 23 Q. Do you cite any peer-reviewed articles examining 24 the causes of partisan polarization or candidate 25 choice post-2008?</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Turning back to your report once more, move 2 on to page 17, the section Economics and the 3 Role of Government. There you noted that the 4 New Deal was quite popular within the Democratic 5 Party and across the country. 6 Is that accurate? 7 A. Yes. 8 Q. Were the New Deal's economic policies popular 9 among southern white working-class voters? 10 A. Yes, they were, generally speaking. 11 Q. And I believe earlier you said that the -- 12 in your report that the New Deal appealed to 13 working class or blue-collar work -- Americans 14 causing them to identify significantly with 15 Democrats? 16 Is that accurate? 17 A. In the 1930s, yes. 18 Q. Did the Democrats' New-Deal style economic 19 policies stop being popular among southern 20 working-class voters? 21 A. I believe that they maintained their popularity 22 longer than it did with urban and suburban voters, 23 yes. 24 Q. But at some point you -- you contend that those 25 policies fell out of favor among white-working</p>



<p>Page 153</p> <p>1 class?</p> <p>2 A. I would say in less, less favor.</p> <p>3 If you want to get into specifics</p> <p>4 I am sure that Social Security, Medicare,</p> <p>5 continue to be popular among the working,</p> <p>6 the white-working class, but the -- the</p> <p>7 critique of the -- of the -- of the New Deal</p> <p>8 as being too economically intrusive generally,</p> <p>9 I believe, gained greater credibility as time</p> <p>10 went on. And partly it was that the rural</p> <p>11 working class, there was an increase in the</p> <p>12 number of middle-class voters in the South</p> <p>13 during this period.</p> <p>14 In 1940 30 percent of the South</p> <p>15 was middle class. By 1980 it was 60 percent,</p> <p>16 and that would track with -- with the more</p> <p>17 class -- economic class-based analysis that</p> <p>18 I -- I found convincing in some of the</p> <p>19 literature.</p> <p>20 Q. I guess just for clarification: Would you</p> <p>21 consider a middle-class income and working</p> <p>22 class -- can there be overlap between the two?</p> <p>23 A. Yes. I understand working class generally to</p> <p>24 be more a question of white- versus blue-collar</p> <p>25 jobs as opposed to the level of income one, there</p>	<p>Page 155</p> <p>1 mobile and middle and upper class in the</p> <p>2 cities and suburbs.</p> <p>3 And in the 1980s urban and suburban</p> <p>4 voters identified more as Republican than rural</p> <p>5 voters did, and that didn't change until the</p> <p>6 2010s.</p> <p>7 Q. And just to clarify: When you talk about</p> <p>8 urban and suburban voters in this context</p> <p>9 you're referring to the white urban and</p> <p>10 suburban voters?</p> <p>11 A. Yes, yeah. That was the focus of my research</p> <p>12 since they -- they were the group that was most</p> <p>13 moving into the Republican column to make the</p> <p>14 Republican party a competitive party in the</p> <p>15 South long term and there was not a similar</p> <p>16 movement among African-Americans, and not nearly</p> <p>17 as much of the same kind of movement among rural</p> <p>18 voters either as far as party identification and</p> <p>19 such.</p> <p>20 Q. And in this section do you cite any research that</p> <p>21 specifically analyzes the impacted economic policy</p> <p>22 in the political realignment of white working-class</p> <p>23 voters in Alabama?</p> <p>24 A. No. No, not Alabama in particular.</p> <p>25 Q. And do you cite any specific -- research that</p>
<p>Page 154</p> <p>1 is obviously some correlation between white and</p> <p>2 blue collar and place on the economic scale but</p> <p>3 I don't believe in most of the research that</p> <p>4 that's one to one.</p> <p>5 Q. And at the very end of this section on page 19</p> <p>6 you were, I think -- increasingly numbers of</p> <p>7 Southerners began to see the National Democratic</p> <p>8 Party as a party of high taxes, irresponsible</p> <p>9 spending, and therefore a party whose policies</p> <p>10 stifled individual economic liberty and the</p> <p>11 economic pursuit of the American dream.</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. When you state that increasingly numbers of</p> <p>15 southerners are there particular southern voters</p> <p>16 that you're identifying in this statement?</p> <p>17 A. Yes, because I think the research clearly shows</p> <p>18 urban and suburban voters went to the GOP first</p> <p>19 and that I think that this certainly had</p> <p>20 increasing play among working-class voters but</p> <p>21 the base of the Republican party for a very long</p> <p>22 time was especially suburban voters, the urban</p> <p>23 and suburban. So I would argue this certainly</p> <p>24 had fairly widespread appeal, but much broader</p> <p>25 and more effective appeal among the upperly</p>	<p>Page 156</p> <p>1 specifically analyzes political realignment</p> <p>2 of white voters more generally in Alabama</p> <p>3 with respect to economic policy?</p> <p>4 A. Not where Alabama is -- is the sole focus.</p> <p>5 Again, I was looking at the broader trends</p> <p>6 in the South.</p> <p>7 But does that mean that in the</p> <p>8 research; one, was Alabama included; two,</p> <p>9 could Alabama have been a specific focus, I</p> <p>10 would need to take a second look at some of</p> <p>11 the things I cited, but -- but not one that</p> <p>12 focused in on just Alabama. Alabama was</p> <p>13 considered to not be an outlier, generally</p> <p>14 speaking, on that question. In the literature</p> <p>15 I saw it was seen as part of the Deep South.</p> <p>16 Really the only difference I saw potentially</p> <p>17 was between peripheral and Deep South.</p> <p>18 Q. And then in your research do you have any</p> <p>19 recollection of analysis specifically looking</p> <p>20 at Alabama as opposed to the Deep South more</p> <p>21 generally?</p> <p>22 A. Not that I -- not that I recall off the top</p> <p>23 of my head, no.</p> <p>24 Q. Turning to the next section titled Foreign</p> <p>25 Policy Communism and the Cold War.</p>

<p style="text-align: right;">Page 157</p> <p>1 You argue that southern voters, 2 white southern voters were particularly -- 3 had particularly strong anti-communist 4 views, is that correct? 5 A. Yes. 6 Q. And was it their strong anti-communist sentiment 7 that led previously Democratic voting white 8 Southerners to vote for the Republican party? 9 A. I believe that was one conscious and independent 10 factor, yes. 11 Q. Did anti-communism play a substantial role in 12 the political realignment of white working-class 13 voters in Alabama? 14 A. I think that it had, again, greater, yet -- 15 let me rephrase. 16 I believe that it was helpful, 17 especially once you got into the 1980s with 18 the working class to move voters into the -- 19 into the Republican column, including some 20 white working-class voters. 21 Q. Did it play a stronger causal factor in 22 shifting white working-class voters to the 23 Republican party asking for their race? 24 A. I would think long, long term, yes, 25 especially in the 1980s.</p>	<p style="text-align: right;">Page 159</p> <p>1 I believe, at least by the time 2 you get to the 1980s that it is a -- it is a 3 greater factor which is -- which is -- by the 4 way, when they're still -- when Democrats are 5 still actually doing very well in the South. 6 I think it would be -- it could be a harder 7 call in the 1960s given that we're in the 8 middle of the Civil Rights Era on that, but 9 I believe by the 1980s there would be a 10 greater explanatory factor. 11 Q. How about the time period between 1960 and 1980, 12 which is a stronger factor for the political 13 realignment of the white voter in the South? 14 A. In the 1960s I would still say that race is a 15 greater consideration. 1970's would be a little 16 harder to -- to say I think as definitively for 17 some of the reasons I get into in my report for 18 other factors like migration from other parts 19 of the country, replacement from that generation 20 to the next generation. 21 I think it's very revealing that 22 in the 1980s the -- in some of the polling 23 and research of that area the average 24 Republican is ten years younger than the 25 average Democrat in the 1980s, meaning the --</p>
<p style="text-align: right;">Page 158</p> <p>1 I would look to -- again, we don't 2 agree on every part, but Black and Black's 3 analysis -- I forget if this was their 1987 4 work or their -- or one of their other works, 5 where they mention that one of the defining 6 elements of the Reagan Administration was his 7 anti-communism, and I pair that with the work 8 that was done -- I'm trying to find the 9 gentleman's name now, that looks -- 10 Joseph Fry's work about the South and U.S. 11 foreign relations that also points to even 12 before that anti-communism being, and other 13 manifestation in other ways being a way that -- 14 that -- that white working-class voters at 15 least began to start to see the possibility 16 of voting to something other than Democrat. 17 Q. Is it your testimony that -- let's say 18 between the time period of 1960 to today 19 that anti-communism sentiment played at a 20 larger factor or more -- was more impactful 21 factor than race in the political realignment 22 of white voters in the South? 23 A. Between what period again? 24 Q. 1960 and today. 25 A. And today.</p>	<p style="text-align: right;">Page 160</p> <p>1 their perspective is more recent just by 2 their lived experience compared to the others, 3 meaning communism is still an open issue at 4 that point in a way that, at least as far as 5 an open issue, the issue of racial 6 segregationist is not. 7 Q. Did white southern voters support strong 8 military action to fight against the 9 expansion of communism? 10 A. Fry and others' books point to, generally 11 speaking, Southerners getting more patriotic 12 and more anti-communist, including -- well, 13 including battling communism, generally 14 speaking. So, I think that would be 15 accurate to say. 16 And what was the 1968 riots in 17 Chicago around the DNC about? It was, back 18 to my earlier discussion, New Left activists 19 protesting. The fact that Lyndon Johnson 20 had ramped up the involvement in Vietnam and 21 a number -- and in general it seems that the 22 Southern Democratic Party was -- was not 23 very open to that protest. 24 Q. And did white southern voters support the 25 war in Vietnam?</p>

Page 161

1 A. I believe from the research obviously there  
2 are many exceptions on that, but I believe  
3 in general that region of the country seemed  
4 to be more supportive than other parts.  
5 Q. And you note that two Democratic presidents,  
6 JFK and LBJ, were responsible in your view  
7 for largely escalating America's conflict  
8 in Vietnam.  
9 Is that accurate?  
10 A. Yes. Yes.  
11 Q. Were southern Democrats out of step with JFK  
12 and LBJ's decisions to escalate the war in  
13 Vietnam?  
14 A. No, I don't believe -- I don't believe so.  
15 They were out of step with the  
16 growing protest movement against it, which  
17 culminates in McGovern running only four  
18 years later in '72.  
19 Q. And I believe earlier in your report you  
20 described kind of the shift from Democrats  
21 to Republicans among white voters as a  
22 slow-motion process.  
23 Is that accurate?  
24 A. Yes.  
25 Q. And that it wasn't until 1994 that Republicans

Page 162

1 won a majority of the house districts in the  
2 South?  
3 A. Correct.  
4 Q. Are you aware when Alabama's congressional  
5 delegation flips to a majority Republican?  
6 A. It temporarily did in 1964 but then I don't  
7 believe -- if I remember correctly I don't  
8 believe it became majority Republican again  
9 until 1996, if I -- if I -- if I recall.  
10 Q. And did you analyze that development  
11 specifically in your report, the flipping  
12 of Alabama's congressional district?  
13 A. At what point? In other words, at what point --  
14 are you talking about the flip in '96?  
15 Q. Yes, in 1996, '97.  
16 A. No. No. I looked at the broader -- I was  
17 wanting to see what the broader trend was in  
18 the South rather than looking at one particular  
19 state's data, because, again, as -- there were  
20 all sorts of articles in the '70s and '80s,  
21 and Lublin notes this in his 2004 book that it  
22 seemed to be Waiting For Godot that below the  
23 presidential level Republicans could command  
24 anything approaching the majority.  
25 So, no, I looked at the fact that

Page 163

1 1994 was a significant transition point in  
2 the South as a whole, and that is -- and even  
3 then Republicans didn't have the majority in  
4 Alabama, as you note, or at least as we were  
5 talking -- I believe it was only two years  
6 later that that -- that happened if I'm  
7 remembering statistics well -- right.  
8 Q. And are you aware of when Alabama State  
9 Senate flipped to majority Republican?  
10 A. I know the legislature as a whole flipped  
11 in 2010. I would have to double-check as  
12 to when -- if Alabama Senate did at another  
13 point, but I know the legislature as a  
14 whole was 2010.  
15 Q. But the Soviet Union dissolved in 1991.  
16 Is that accurate?  
17 A. Yeah.  
18 Q. Did this anti-communism sentiment impact  
19 the partisan shift in Alabama state-Level  
20 elections?  
21 A. I did not look at the state level.  
22 It would seem that if it did it would  
23 be more indirect because voters, at least to  
24 some degree, understand the difference between  
25 who -- who has a play in foreign policy. And

Page 164

1 presidents have an outsized role in the --  
2 conducting foreign policies so the question  
3 of communism, I would think, would have an  
4 outsized power in presidential elections as  
5 opposed to even congressional, and certainly  
6 state elections. I think that would at least  
7 be a reasonable inference.  
8 Q. For the number of different elements that  
9 you identified in your report did you analyze  
10 any of those specifically with respect to the  
11 partisan shift in Alabama's state-level  
12 elections?  
13 A. State-level elections, no.  
14 MR. ETtinger: We'll take a break.  
15 VDEographer: Off the record 2:00 p.m.  
16 (Recess taken at 2:00 p.m.)  
17 (Back on the record at 2:19 p.m.)  
18 VDEographer: We're now the record,  
19 2:20 p.m.  
20 MR. ETtinger: Thank you.  
21 BY MR. ETtinger:  
22 Q. Dr. Carrington, I'll next turn to, on page 21  
23 under the header, Social Issues -- the following  
24 page on 22 then.  
25 A. Okay. I'm there.

Page 165

1 Q. And with -- with respect to religious identity  
2 you state that: For most of American history  
3 higher religiosity did not matter for  
4 partisan alignment.  
5 Is that accurate?  
6 A. Yes.  
7 Q. When did religion begin to make a meaningful  
8 impact on partisan alignment?  
9 A. Well, how do you mean for partisan alignment?  
10 I actually go back and ask  
11 because I do say in the report that there  
12 has consistently been a -- tendencies of  
13 one denomination or one sub-set of religion  
14 to align with one party or another. That  
15 has consistently been the case across  
16 American -- American history.  
17 Q. I guess, so what did you mean by the statement:  
18 For most of American history this higher  
19 religiosity did not matter for partisan  
20 alignment?  
21 A. That I'm pointing forward to the rise of the  
22 NONES, N-O-N-E-S, and the idea that -- and  
23 also the rise of a more theological, you could  
24 say liberalism within Christianity, but the  
25 bigger focus is on the idea that, for most of

Page 166

1 American history non-religious adherence were  
2 not a significant voting block and that their  
3 rise was significant and precursors to their  
4 rise as well was -- was significant.  
5 Q. So the -- for the -- partisan alignment had more  
6 to do with the non-religious folks aligning than  
7 the religious community aligning in politics?  
8 A. I think that is more determined today.  
9 I believe -- when I say precursors,  
10 that there were moves politically to either --  
11 to secularize the public sphere, so to speak,  
12 and these perceptions of that, so the taking  
13 out of school school prayer; a certain view  
14 of the separation of church and state.  
15 And I would say that preceded the  
16 rise of the NONES, but I believe that that  
17 perception combined with the later reality  
18 of the rise of people who religiously did  
19 not have an adherence, both -- both mattered  
20 for partisan politics.  
21 Q. And just so we're clear: Can you define  
22 NONES?  
23 A. Those who have no particular religious  
24 affiliation.  
25 Now, that can include people who

Page 167

1 are evolved in the secular, agnostic, atheist,  
2 or they're merely spiritual but they are not  
3 attached to any of the traditional organized  
4 religions that have been the de facto  
5 affiliation for a lot of American history.  
6 Q. And I guess when, in time, would you say  
7 that religiosity began to have a meaningful  
8 impact on partisan alignment?  
9 A. For the -- for the -- for the movement of  
10 Republicans and Democrats, in general in  
11 the South, I think it starts to have a more  
12 meaningful impact starting in the '60s but  
13 it really comes into its own in the 1980s.  
14 Again, I believe the precursors are  
15 Supreme Court decisions that moved prayer out  
16 of schools.  
17 And even my own research when --  
18 when prayer -- when the school-prayer  
19 decisions were -- were put out there  
20 was a raft of amendment -- proposed  
21 amendments to the U.S. Constitution and  
22 Congress attempting to overturn the decision.  
23 And one thing the research I did  
24 with my colleagues was pointing out how some  
25 of the areas and regions and demographics of

Page 168

1 those districts portended a mood of religious  
2 voters into the -- into the Republican camp.  
3 Now, especially when the Catholic  
4 voters -- but I didn't focus as much on them  
5 because they've never been a large part of the  
6 Alabama electorate; but others, evangelicals,  
7 other -- other voters along these lines as  
8 well.  
9 Q. Are you aware of whether Black Alabamans  
10 have comparable levels of religious  
11 observance as their right counterpart?  
12 A. I -- I did not focus on that, but if I'm  
13 remembering some of the research that I  
14 did use, even though I was focusing on --  
15 on white voters, I believe theirs would be  
16 at least comparable, if not potentially  
17 higher.  
18 Q. Was there a comparable -- comparable shift  
19 in partisan alignment among southern Black  
20 Christians as among southern white Christians?  
21 A. In -- in those same periods that I looked at,  
22 no.  
23 Q. And do you have an explanation for that  
24 dichotomy?  
25 A. I have, at least what I think is going on

<p style="text-align: right;">Page 169</p> <p>1 there and that is the particular -- not</p> <p>2 always a difference in issue positions, which</p> <p>3 I think we might get to a little bit later, but</p> <p>4 issue preference, or issue priority might be the</p> <p>5 case. So even if they held similar degrees of</p> <p>6 religiosity that doesn't mean that there's always</p> <p>7 the same determinative factors. Two people can</p> <p>8 agree on one issue and the issue they disagree</p> <p>9 on ends up being the actual partisan divide.</p> <p>10 Q. And were you, through your study of the history,</p> <p>11 able to identify what issues there was differing</p> <p>12 degrees of importance on between Black Christians</p> <p>13 and white Christians?</p> <p>14 A. Yes. And this would get into some of the things</p> <p>15 I spoke of before.</p> <p>16 There -- there were actually moments</p> <p>17 where -- and I think this has shifted a bit,</p> <p>18 but where African-Americans were more pro-life</p> <p>19 than white voters, I'm not -- I don't know if</p> <p>20 that's still the case. But abortion as -- and</p> <p>21 Adam's 1997 article I think is -- has been very</p> <p>22 formative on the literature on this.</p> <p>23 Abortion becomes a defining issue,</p> <p>24 a top-priority issue for many white evangelical</p> <p>25 voters, whereas other -- other questions</p>	<p style="text-align: right;">Page 171</p> <p>1 Democratic Party's commitment to a more</p> <p>2 robust involvement economically in society</p> <p>3 and how some of those played out I think</p> <p>4 would align with what African-American voters'</p> <p>5 economic preferences have been since the '30s</p> <p>6 or before. So that would be -- that would be</p> <p>7 at least a, I think a reasonable inference from</p> <p>8 the data, even though that wasn't a focus of --</p> <p>9 of mine.</p> <p>10 Q. Was the Rise of the Moral Majority a significant</p> <p>11 turning point for the impact of religiosity in</p> <p>12 partisan alignment?</p> <p>13 A. Yes.</p> <p>14 Q. And the Moral Majority was founded by</p> <p>15 Jerry Falwell, correct?</p> <p>16 A. It was.</p> <p>17 Q. Are you familiar with the 1970's Supreme Court</p> <p>18 decision Green versus Kennedy, which stripped</p> <p>19 tax-exempt status from schools that sought to</p> <p>20 maintain segregation policies based on arguments</p> <p>21 of religious freedom?</p> <p>22 A. Yes.</p> <p>23 Q. Are you familiar with Bob Jones University?</p> <p>24 A. Yes.</p> <p>25 Q. Are you aware that Bob Jones University resisted</p>
<p style="text-align: right;">Page 170</p> <p>1 seem to have been more the -- the focus of --</p> <p>2 of African-American voters, even if there</p> <p>3 might have -- even if a number of them might</p> <p>4 have been pro-life, they were not -- did not</p> <p>5 seem to be voting on that. Similar with social</p> <p>6 issues that we'll probably get into, like LGBTQ</p> <p>7 issues. Alabama 81 to 19 passes an amendment</p> <p>8 defining marriage heterosexually. It's -- that</p> <p>9 seemed to be driving the partisan preferences</p> <p>10 of white voters more than African-American</p> <p>11 voters.</p> <p>12 Q. And I believe you said that there were other</p> <p>13 issues or questions that were more important</p> <p>14 to African-American voters.</p> <p>15 Do you have a sense of what those</p> <p>16 issues were?</p> <p>17 A. I didn't, again, focus as much on their</p> <p>18 preferences, because I was looking at the</p> <p>19 move among white voters. But I imagine</p> <p>20 issues related to economics; again, they</p> <p>21 started voting for Democrats during the</p> <p>22 New Deal, Elements of A Great Society, I</p> <p>23 would say certainly the legacy of LBJ and</p> <p>24 the Civil Rights Movement would be part of</p> <p>25 that story, but I would say also the -- the</p>	<p style="text-align: right;">Page 172</p> <p>1 admitting Black students after the Green versus</p> <p>2 Kennedy decision, which caused the IRS</p> <p>3 to revoke its tax exempt status in 1976?</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware that it was this event, the</p> <p>6 revoking of Bob Jones University's tax-exempt</p> <p>7 status that inspired Jerry Falwell and</p> <p>8 Paul Weyrich to create the Moral Majority?</p> <p>9 MR. GEIGER: Object to form.</p> <p>10 A. I know that there's the claim that that</p> <p>11 is part of -- of what was inspiring them,</p> <p>12 although I think that that understates</p> <p>13 some of the reasons, and also especially</p> <p>14 the reason that it was -- it was as</p> <p>15 effective as it was, but, yes, I know</p> <p>16 that there was opposition to those</p> <p>17 policies in -- in -- in the South.</p> <p>18 BY MR. ETtinger:</p> <p>19 Q. Do you dispute the claim that the revoking of</p> <p>20 Bob Jones Universities' tax-exempt status in</p> <p>21 part inspired Jerry Falwell and Paul Weyrich</p> <p>22 to create the Moral Majority?</p> <p>23 A. No. I would not deny -- no, the way you phrase</p> <p>24 that in part, no, I would not deny that.</p> <p>25 Thank you for clarifying that.</p>



<p style="text-align: right;">Page 173</p> <p>1 Q. Next you identify abortion in particular</p> <p>2 on page 24 as a factor, driving partisan</p> <p>3 alignment among southern white voters?</p> <p>4 A. Yes.</p> <p>5 Q. But I believe you note that the Republicans</p> <p>6 did not adopt an explicitly anti-Roe v Wade</p> <p>7 platform position until 1980.</p> <p>8 Is that accurate?</p> <p>9 A. I do note on -- may I point out something?</p> <p>10 Q. Sure.</p> <p>11 A. On 24 -- on the bottom of 24, the platform</p> <p>12 in 1976, I believe is more ambivalent than</p> <p>13 later ones, but it's -- in some ways I believe</p> <p>14 it's a little internally incoherent because it</p> <p>15 says -- it favors a continued public dialogue</p> <p>16 on abortion. That seems more ambivalent. It</p> <p>17 then says, it supports the effort of those who</p> <p>18 seek a constitutional amendment basically to</p> <p>19 ban abortion.</p> <p>20 I never said that, you know, every</p> <p>21 public document was coherent with itself. It</p> <p>22 seems to be saying, let's talk more about it</p> <p>23 and this -- but the outcome they wanted already</p> <p>24 was decidedly pro-life.</p> <p>25 Q. Would you agree that that -- the 1976 platform</p>	<p style="text-align: right;">Page 175</p> <p>1 Adams' work on this is really helpful.</p> <p>2 It took time for the perception of</p> <p>3 Republicans as a pro-life and Democrats as a</p> <p>4 pro-choice party to cement. And Reagan was</p> <p>5 central to that and. Other literature besides</p> <p>6 Adams notes that, but he is very good to point</p> <p>7 out what was the perception of the parties</p> <p>8 and -- and to discuss that on the issue of</p> <p>9 abortion.</p> <p>10 Q. So is it fair to say that Reagan kind of</p> <p>11 cemented the Republican party's perception</p> <p>12 as the pro-life party -- his presidency?</p> <p>13 A. Yes. Because I don't get into this, but</p> <p>14 you have early on pro-life statements</p> <p>15 from Democrats. And I'm using the monikers</p> <p>16 that both sides prefer to designate for</p> <p>17 themselves as.</p> <p>18 So it takes some time in the '70s</p> <p>19 for the two sides to sort out where they are</p> <p>20 on abortion. It was -- so I would not say it</p> <p>21 was a partisan-defining issue in the '70s at</p> <p>22 all. I think it takes until the '80s for that</p> <p>23 to really start to be a juxtaposition, and,</p> <p>24 yes, I would agree Reagan is central to that</p> <p>25 story.</p>
<p style="text-align: right;">Page 174</p> <p>1 position that you just mentioned did not strongly</p> <p>2 come out against abortion?</p> <p>3 A. It did not come out as unequivocally as later.</p> <p>4 It's pretty strong to say you want</p> <p>5 to amend the Constitution. At the same time</p> <p>6 I think that is tempered by a certain</p> <p>7 ambivalence because of the earlier statement</p> <p>8 that was -- that was removed by 19 -- by --</p> <p>9 by later provoked -- later platforms.</p> <p>10 Q. I'll slightly rephrase it, then.</p> <p>11 Would you say that it's not</p> <p>12 unequivocal in its denouncement of abortion?</p> <p>13 A. It could be -- it could be read to have some</p> <p>14 equivocation, yes.</p> <p>15 Q. Is it your position that abortion played a</p> <p>16 significant role in the partisan realignment</p> <p>17 of southern white voters between 1964 and 1980?</p> <p>18 A. I would not think that it was a dominant issue</p> <p>19 at that point.</p> <p>20 In fact, since a lot of that history</p> <p>21 predates Roe v Wade I would say it was not a</p> <p>22 factor at all --</p> <p>23 Q. And then --</p> <p>24 A. -- or I shouldn't say at all, it was a</p> <p>25 very minor factor. And I think the --</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. Turning to page 26 in the first full paragraph.</p> <p>2 About halfway through you cite</p> <p>3 a 2014 Pew Research survey that Alabama</p> <p>4 has the lowest support for legalized</p> <p>5 abortion in the nation.</p> <p>6 A. Yes. That -- that research helpfully</p> <p>7 distinguish by state.</p> <p>8 Q. And then by 2018 the voters had passed</p> <p>9 an amendment to the state constitution</p> <p>10 by 59 to 41 margin enshrining</p> <p>11 same-sex marriage?</p> <p>12 A. I believe there, no, no, no. That's a</p> <p>13 reference to the abortion.</p> <p>14 Q. Apologies. Correct.</p> <p>15 A. Yeah. I have the text of it afterwards</p> <p>16 that -- that saying that as far as the</p> <p>17 courts of national policy allow the state</p> <p>18 will take an anti-abortion or pro-life stance.</p> <p>19 Q. And within the -- these kind of areas</p> <p>20 of research did you compare the policy</p> <p>21 preferences between white Christians and</p> <p>22 Black Christians on the issue of abortion?</p> <p>23 A. I did not focus on that distinction, you know.</p> <p>24 Q. Turning to page 27, under the header, LGBTQ</p> <p>25 Rights and flipping ahead to 29.</p>

<p>Page 177</p> <p>1 The first full paragraph on that</p> <p>2 page you note that in a 2007 survey 60</p> <p>3 percent of Alabama respondents agreed</p> <p>4 with the statement that homosexuality --</p> <p>5 homosexuality should be discouraged.</p> <p>6 A. Yes.</p> <p>7 Q. Is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And that in 2014 the number had -- had dipped</p> <p>10 to 52 percent of respondents who agreed with</p> <p>11 statements that homosexuality should be</p> <p>12 discouraged.</p> <p>13 Is that accurate?</p> <p>14 A. Yes.</p> <p>15 Q. Have you reviewed any more recent survey data</p> <p>16 as to whether the trend of greater acceptance of</p> <p>17 homosexuality among Alabamians has continued?</p> <p>18 A. I -- I have not looked at later. I didn't</p> <p>19 necessarily know whether that would be pertinent</p> <p>20 to -- to the report, but, yes, I've -- I've not</p> <p>21 looked at Alabama specific.</p> <p>22 I can tell you the national trend</p> <p>23 has been decidedly for greater and greater</p> <p>24 acceptance.</p> <p>25 Q. Is it fair to say that most Alabamians'</p>	<p>Page 179</p> <p>1 in 2006 the Constitution was amended -- again I</p> <p>2 did not do a statistical breakdown by race but</p> <p>3 it seems very hard not to believe that included</p> <p>4 a very substantial number of African-Americans</p> <p>5 given just the demographics of Alabama.</p> <p>6 So, again, I think that this was --</p> <p>7 this issue identified the Democratic Party for</p> <p>8 white evangelicals especially more than it was</p> <p>9 an identifying marker for African-Americans,</p> <p>10 as best I can tell. I can -- I certainly</p> <p>11 believe the research I saw and -- and some</p> <p>12 of the people I looked at that are looking at</p> <p>13 the history of the development of the religious</p> <p>14 right and such, definitely saw that there was</p> <p>15 a conscious argument being made to white</p> <p>16 evangelicals regarding this issue.</p> <p>17 I did not look to see if similar</p> <p>18 record was being used there in African-American</p> <p>19 communities, not so much as the right -- as</p> <p>20 whether you should vote for these issues,</p> <p>21 but whether it should be a party marker or</p> <p>22 identifier.</p> <p>23 MR. ETTINGER: I'll mark and</p> <p>24 publish Exhibit 8.</p> <p>25 MARKED FOR IDENTIFICATION:</p>
<p>Page 178</p> <p>1 opposition to LGBTQ rights is influenced</p> <p>2 by their religious views?</p> <p>3 A. I believe that that is a -- a very important</p> <p>4 factor, both in the nature of the campaign</p> <p>5 made for it and the overlap of the religiosity --</p> <p>6 the kind of religiosity in Alabama, the high</p> <p>7 number of Southern Baptists, the high number</p> <p>8 of evangelicals and the -- I think fairly well</p> <p>9 documented overlap in -- in -- in those subsets</p> <p>10 of Christianity's views about homosexuality and</p> <p>11 same-sex marriage.</p> <p>12 Q. And within Alabama do Black Christians' views</p> <p>13 LGBTQ rights differ substantially from white</p> <p>14 Christians?</p> <p>15 A. I did not -- I did not focus in on -- on that</p> <p>16 question.</p> <p>17 Q. Did you observe any shift in partisan alignment</p> <p>18 among Black Christians in Alabama with -- based</p> <p>19 on view relating to LGBTQ rights?</p> <p>20 A. No, I did not. I did not observe such a trend.</p> <p>21 Q. And how do you explain the divergence between</p> <p>22 Black Christians and white Christians?</p> <p>23 A. I would say that it, again, comes to probably --</p> <p>24 as best I can tell to issue priorities because</p> <p>25 the 81 to 19 margin in which the -- the -- the --</p>	<p>Page 180</p> <p>1 DEPOSITION EXHIBIT 8</p> <p>2 2:42 p.m. (Article 6/11/23)</p> <p>3 BY MR. ETTINGER:</p> <p>4 Q. Do you recognize this article dated</p> <p>5 June 11th, 2023?</p> <p>6 A. Yes.</p> <p>7 Q. And the title of this, Supreme Court Voting</p> <p>8 Rights Decision was a Missed Opportunity in</p> <p>9 the Washington Examiner?</p> <p>10 A. Yes.</p> <p>11 Q. And were you the author of this article?</p> <p>12 A. Yes, I was.</p> <p>13 Q. This article refers to the case Allen v Milligan,</p> <p>14 correct?</p> <p>15 A. Yes, it does.</p> <p>16 Q. Which involved Alabama's Congressional</p> <p>17 Redistricting Plan?</p> <p>18 A. Yes.</p> <p>19 Q. And in this -- in the decision you</p> <p>20 referenced the Supreme Court found that</p> <p>21 Alabama's Congressional District --</p> <p>22 Redistricting Plan Likely Violated</p> <p>23 Section 2 of the Voting Rights Act.</p> <p>24 Is that accurate?</p> <p>25 A. That was the Court's finding, yes.</p>

<p style="text-align: right;">Page 181</p> <p>1 Q. And you write: It did so because the map 2 created only one majority Black district 3 where two were reasonably possible thereby 4 diluting Black political power. 5 A. Yes. 6 Q. What do you mean in the title that a decision 7 was a missed opportunity? 8 A. I believed that ultimately the Justice Thomas' 9 opinion was the better reading of the broader 10 constitutional question. 11 Q. And what opportunity was -- was missed in the 12 way that it was reached? 13 A. I think to re-understand the Voting Rights Act 14 more toward precedent that had occurred prior 15 to the 1982 Amendment for particular -- conscious 16 discrimination being. 17 Q. So the missed opportunity was to interpret the 18 Voting Rights Act more aligned with the pre-1982 19 interpretation? 20 A. Or to create a more race-neutral benchmark for 21 it might be the more accurate way to -- from what 22 I remember from those. I would want to re-read 23 the article since it was over a year ago. 24 So actually I would say I don't 25 remember if I spoke to the 1982 Amendment,</p>	<p style="text-align: right;">Page 183</p> <p>1 enacted as a race-neutral policy provision? 2 A. Do you mean the original or the 1982 Amendment? 3 Q. We'll start with just the original Voting 4 Rights Act. 5 A. I believe the original Voting Rights Act was 6 an attempt to demand a more colorblind result 7 from particular jurisdictions. 8 Q. Was it enacted to protect the voting -- 9 voting rights of Black Americans? 10 A. Yes. 11 Q. And do you view the Supreme Court's decision 12 in the Allen versus Milligan case as furthering 13 that cause of protecting Black voters' ability 14 to participate in the political process? 15 A. I, again, said that I thought that Justice Thomas' 16 view was a -- a better reading long-term trying 17 to accomplish that. 18 Q. Is it your view that Justice Thomas' approach 19 better protected the -- the voting rights of 20 Black Americans? 21 A. My opinion was that his -- his view would 22 ultimately not -- not -- not hurt the ultimate 23 purposes of -- of the Voting Rights Act. 24 Q. Would not hurt. 25 Could you say what you mean by that?</p>
<p style="text-align: right;">Page 182</p> <p>1 just to be clear, but that I thought -- I do 2 remember Justice Thomas' argument that whatever 3 standards come with interpreting the 1982 4 revisions, I see that I did mention those, that 5 there needed to be some more neutral benchmark 6 and that I thought the -- the precedent to the 7 degree I understood it reading this case was 8 unclear and could be convoluted at certain 9 points. 10 Q. And please feel free to take the time -- your 11 time to review the article if you would like to. 12 A. Uhm-hmm. 13 Q. Would you like me to continue or would you like 14 to read through that? 15 A. No, I'm happy to talk about it, and if I feel 16 I need to look a little more in particular I'd 17 be -- I'll let you know. 18 Q. And so I believe I understood what you were 19 saying is that the missed opportunity was to 20 set a more race-neutral benchmark. Is that -- 21 A. That would be the more -- that would be the more 22 accurate, in line with some of the arguments, 23 as I recall them, that Justice Thomas made in 24 his -- his opinion. 25 Q. Is it your view that the Voting Rights Act was</p>	<p style="text-align: right;">Page 184</p> <p>1 A. I think similar to the Shelby County decision 2 that the -- I think there was at least a decent 3 argument made in the case for what should be -- 4 what is required per response in 2023 versus 5 the 1960s. 6 I mean, I would add, I certainly had 7 my opinion written in an op/ed the day after 8 or so it came out. That is not the -- I would 9 same the same as a scholarly opinion. And I 10 would also say the -- the opinion I wrote as an 11 expert opinion was not trying to determine what 12 should or shouldn't be done about the dilution 13 so -- 14 Q. Is it fair to say that you felt strongly 15 about the Supreme Court decision? 16 MR. GEIGER: Objection to form. 17 A. Strongly, no. 18 And the reason I say no is, I am a 19 regular public commentator on Supreme Court 20 opinions in the Examiner and other places, and 21 I am expected to give, at least a position on 22 various major Supreme Court opinions, so would 23 this be one I have a deeply strong opinion; if 24 you say strong opinion, no. This is something 25 I certainly could see myself being argued out</p>

Page 185

1 of, but that was my take after it came out.  
2 BY MR. ETtinger:  
3 Q. And you wrote this the day after it came out?  
4 A. It was either -- I wrote it either the day of  
5 or the day after. I don't remember the exact  
6 date this did come out, but this was meant  
7 to be an immediate response to it.  
8 Q. And did the Washington -- did someone at the  
9 Washington Examiner ask you to write an opinion  
10 about this case?  
11 A. Not this case in particular.  
12 Q. So you chose to write about it after reading  
13 the decision?  
14 A. Yes, with the understanding that major Supreme  
15 Court opinions I was expected to write opinions  
16 on.  
17 Q. And you mentioned the Shelby County decision,  
18 which is a decision that curtailed the -- the  
19 requirement for pre-clearance in Section 5  
20 of the Voting Rights Act?  
21 A. Uhm-hmm. Yes.  
22 Q. And you viewed this case as -- as a potential  
23 opportunity to do similar as what was --  
24 what was done in Shelby County?  
25 MR. GEIGER: Objection to form.

Page 186

1 BY MR. ETtinger:  
2 Q. In terms of limiting the scope of Section 2  
3 of the Voting Rights Act?  
4 A. I -- I saw that there was a -- a -- comparable  
5 kinds of questions being asked, although of  
6 interest the -- not all the justices saw it  
7 that way, Justice Roberts being one difference,  
8 I believe, if I'm remembering the vote lineup.  
9 Q. When you -- earlier you were mentioning that  
10 you saw this in similar ways as Shelby County,  
11 what was the result that you were anticipating  
12 from the Court or hoping for?  
13 MR. GEIGER: Object to the form.  
14 A. I do not spend too much time guessing what the  
15 Supreme Court's going to do, but, again, when  
16 the -- I will say I did not have a hard opinion  
17 about how this case should come out until I read  
18 the opinion. And even then I found in the end  
19 Justice Thomas', if I remember correctly, more  
20 convincing; but, again, this is an article  
21 from over a year ago that I did not spend a  
22 lot of subsequent time on or focused about.  
23 BY MR. ETtinger:  
24 Q. Understood.  
25 Is it fair to characterize Shelby

Page 187

1 County -- the Shelby County decision has  
2 limiting scope of Section 5 of the Voting  
3 Rights Act from your understanding of the  
4 case?  
5 A. I would want to go back and read the specifics,  
6 but I think that is -- that was generally the  
7 case.  
8 Q. And when you write that there was a missed  
9 opportunity did you view that the opportunity  
10 missed was to limit the voting -- Section 2  
11 of the Voting Rights Act in a similar way as  
12 was accomplished in Shelby County?  
13 MR. GEIGER: Objection to form.  
14 A. I -- I saw it as a chance to -- from what I  
15 recall, to re-interpret the Voting Rights Act  
16 in a way that made more sense of the judicial  
17 office of trying to find more objective standards,  
18 I believe. The biggest question for me was --  
19 wasn't so much how it affected the issue of race;  
20 it was -- I do a lot with institutions again, and  
21 I believe that objective standards are the best  
22 things for, as much as possible, objective  
23 standards are the best things for the judiciary  
24 to be -- to be doing, or to be making its decision  
25 in the interest of being understood to be fair.

Page 188

1 BY MR. ETtinger:  
2 Q. And did you read the majority's opinion in this  
3 case?  
4 A. Yes. Yes.  
5 Q. Which aspects of the majority's opinion did  
6 you take issue with?  
7 A. I would need to go back and re-visit to be  
8 able to give a full analysis of that case.  
9 Q. Is there --  
10 A. I have read many in between and have not  
11 written anything about this since this article.  
12 It was an immediate reaction, so  
13 I'm not -- I'm not disclaiming it but I'm  
14 also saying to get into the particulars of  
15 a very long opinion in a way that would be  
16 accurate and beneficial, I don't feel I'm  
17 in a position to -- to do that.  
18 Q. Understood.  
19 Do you recall any of your concerns  
20 with the majority opinion at a high level?  
21 A. I do remember -- again, I would want to look  
22 more generally.  
23 But I remember agreeing with  
24 some of the other cases related to  
25 gerrymandering that the Court had said

<p style="text-align: right;">Page 189</p> <p>1 and thought that the Court here could move</p> <p>2 in that direction, but, again, I would need to</p> <p>3 look at the -- the particulars of it to have a</p> <p>4 sort of analysis -- an analysis of that case.</p> <p>5 Q. Do you view this as a work of academic</p> <p>6 scholarship?</p> <p>7 A. No. No, I do not.</p> <p>8 I -- I think there is a notable</p> <p>9 difference between an op/ed less than 700</p> <p>10 words written as an immediate response and</p> <p>11 a work that has been -- that is much longer</p> <p>12 that is vetted that engages with scholarship,</p> <p>13 all -- none of which this -- this did. So</p> <p>14 I saw -- I see this as distinct from my role</p> <p>15 as an academic. I see this more as a role</p> <p>16 of being a teacher in relation to public</p> <p>17 education.</p> <p>18 Q. And you don't have a specific expertise</p> <p>19 in the history of the Voting Rights Act?</p> <p>20 A. No. No. And I, therefore, would not venture</p> <p>21 to submitted a peer-reviewed article on this</p> <p>22 topic.</p> <p>23 I am a frequent observer of the</p> <p>24 contemporary Supreme Court for a public</p> <p>25 audience; I did not intend to claim more</p>	<p style="text-align: right;">Page 191</p> <p>1 congressional districts?</p> <p>2 A. Yes.</p> <p>3 Q. And on page 178 there's a header, set in</p> <p>4 Factor 2: The Extent to which Voting in</p> <p>5 the Elections of the State or Political</p> <p>6 Subdivision is Racially Polarized.</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. And there the Court wrote: We have little</p> <p>10 difficulty finding that this factor weighs</p> <p>11 heavily in favor of the Milligan plaintiffs</p> <p>12 and Caster plaintiffs. And it goes on to</p> <p>13 say just below that: This -- this finding</p> <p>14 is based on both substantial evidence adduced</p> <p>15 by both the Milligan plaintiffs and Caster</p> <p>16 plaintiffs and the agreements of defendant's</p> <p>17 expert witness.</p> <p>18 A. Uhm-hmm. I see that.</p> <p>19 Q. Do you have any reason to disagree with the</p> <p>20 Court's findings with respect to Sector 2 in</p> <p>21 Alabama?</p> <p>22 A. I would have to look -- I would have to be much</p> <p>23 more familiar with this particular argument and</p> <p>24 the particular findings.</p> <p>25 In the end, that's why I focused</p>
<p style="text-align: right;">Page 190</p> <p>1 than that when discussing this case.</p> <p>2 MR. ETTINGER: I will mark</p> <p>3 and publish Exhibit 9.</p> <p>4 MARKED FOR IDENTIFICATION:</p> <p>5 DEPOSITION EXHIBIT 9</p> <p>6 2:56 p.m. (Preliminary Junction Order)</p> <p>7 MR. GEIGER: Thank you.</p> <p>8 MR. ETTINGER: And I'll represent</p> <p>9 to you that this is the Order from the</p> <p>10 trial level three-panel judge in the matter</p> <p>11 Milligan v Merrill at the time, and later</p> <p>12 re-captioned as Milligan v Allen. This is</p> <p>13 the Order Granting a Preliminary Injunction.</p> <p>14 BY MR. ETTINGER:</p> <p>15 Q. Have you seen this document before?</p> <p>16 A. No, I have not.</p> <p>17 Q. I'll have you turn to page 178.</p> <p>18 A. 178?</p> <p>19 Q. Correct. Just let me know when you've</p> <p>20 arrived there.</p> <p>21 A. Yes, I'm there.</p> <p>22 Q. And as background just to confirm: You</p> <p>23 understood that the Milligan versus Merrill,</p> <p>24 later captioned Milligan versus Allen, case</p> <p>25 involved the redistricting of Alabama's</p>	<p style="text-align: right;">Page 192</p> <p>1 on what I did. I think ultimately, for my</p> <p>2 participation the Court, the Court is going</p> <p>3 to have to make determinations on that</p> <p>4 question. I think this is asking me to make</p> <p>5 a legal judgment on something that I have</p> <p>6 not -- these lower court opinions that I have</p> <p>7 not read and not looked at in detail, and that</p> <p>8 could be -- have distinct facts or distinct</p> <p>9 elements than the case here.</p> <p>10 Q. Fair enough.</p> <p>11 A. Yeah.</p> <p>12 Q. I'll have you turn to page 188.</p> <p>13 A. I am there.</p> <p>14 Q. And there's a header for Senate Factor 6.</p> <p>15 Turning to 189.</p> <p>16 A. I'm on 189.</p> <p>17 Q. At the bottom of the first full paragraph</p> <p>18 there's a quote from then candidate Roy Moore</p> <p>19 for his 2017 campaign, which we have reviewed</p> <p>20 earlier, discussing the -- I guess if I can</p> <p>21 just read it for you: I think it was a great</p> <p>22 at the time when families were united -- even</p> <p>23 though we had slavery. They cared for one</p> <p>24 another. People were strong in the families.</p> <p>25 Our families were strong. Our country had</p>



<p style="text-align: right;">Page 193</p> <p>1 direction.</p> <p>2 And this was in reference</p> <p>3 to the antebellum period in the South.</p> <p>4 A. Yes, I see -- I see that quote.</p> <p>5 Q. And the Court here found that this was an</p> <p>6 example of overt or subtle racial appeals.</p> <p>7 Do you disagree with that?</p> <p>8 A. I'd refer back to what I said before and say</p> <p>9 that it -- obviously in the end that's going</p> <p>10 to be the Court's decision whether they agree</p> <p>11 or don't. But I would refer back to what I'd</p> <p>12 said before about the quote and the context</p> <p>13 of it and that my report was not focused on</p> <p>14 those -- on that particular quote or that</p> <p>15 question.</p> <p>16 Q. And the very bottom paragraph, it goes on</p> <p>17 to discuss the statement made by Congressman</p> <p>18 Mo Brooks that we previously referenced</p> <p>19 discussing a waging of war on whites.</p> <p>20 The following page on 190,</p> <p>21 the Court found that this example was an</p> <p>22 obvious example of overt appeals to race.</p> <p>23 Do you find that to be an</p> <p>24 obvious appeal to race?</p> <p>25 MR. GEIGER: Object to form.</p>	<p style="text-align: right;">Page 195</p> <p>1 before I determine for sure of what it --</p> <p>2 what it would mean. So I'm not denying it</p> <p>3 couldn't be. But, again, yeah, I have not</p> <p>4 been -- been -- had the -- been allowed to</p> <p>5 do that.</p> <p>6 Q. And what do you mean by you're not allowed</p> <p>7 to make a statement?</p> <p>8 A. I am seeing this for the first time here so</p> <p>9 I have not had the -- the time to look at</p> <p>10 the repeated elements when this was supposed</p> <p>11 to have happened.</p> <p>12 Q. Understood.</p> <p>13 A. Yeah. I do not believe -- I do not mean</p> <p>14 I have been restricted in some other way.</p> <p>15 Q. No, but you did receive Dr. Bagley's initial</p> <p>16 report --</p> <p>17 A. Yes.</p> <p>18 Q. -- before writing your report?</p> <p>19 A. Yes. And I would say two things: One, I did</p> <p>20 not focus on particular instances of racialized</p> <p>21 rhetoric in that era; and, two, or potentially</p> <p>22 at least, accused racialized rhetoric -- and,</p> <p>23 two, he did not provide particular instances</p> <p>24 of when and where he was talking about that.</p> <p>25 So, yes, I perhaps could have looked up more</p>
<p style="text-align: right;">Page 194</p> <p>1 A. I would again point out what we had discussed</p> <p>2 with Dr. Bagley's report, which is, I would</p> <p>3 want to see Bagley -- Dr. Bagley, and I believe</p> <p>4 him when he says that this statement was made</p> <p>5 more than once, that this has been a regular</p> <p>6 one, so I would want to see the context on it</p> <p>7 to -- to clarify because I knew of one instance</p> <p>8 and I don't know if it -- this is that instance</p> <p>9 or not having been presented with this for the</p> <p>10 first time. So I'm not denying it couldn't</p> <p>11 be, as I said before, but --</p> <p>12 BY MR. ETtinger:</p> <p>13 Q. And does the -- the quantity of times and</p> <p>14 statements made impact whether it's an</p> <p>15 overt or subtle racial appeal?</p> <p>16 A. No. But repeated use known by their context</p> <p>17 could clarify because one statement might be</p> <p>18 harder to contextualize than others.</p> <p>19 So I think it is worth looking at</p> <p>20 and making the determination, and I trust</p> <p>21 that the Court was looking at more context</p> <p>22 with this, but, again, I'm being presented</p> <p>23 with this and with Dr. Bagley saying -- it</p> <p>24 was said more than once, I would like to</p> <p>25 know -- I would want to know the context</p>	<p style="text-align: right;">Page 196</p> <p>1 of them, but -- yeah.</p> <p>2 Q. Do you think that researching contemporary</p> <p>3 statements alleged to have been overt or</p> <p>4 subtle racist -- racial -- racially coded</p> <p>5 language is relevant to evaluating</p> <p>6 Senate Factor 6?</p> <p>7 A. Yes. I think that can be part of the story.</p> <p>8 The -- I think the challenge with</p> <p>9 that is, again, the question of how one --</p> <p>10 how -- how determinative can one politician's</p> <p>11 statement be who doesn't even represent the</p> <p>12 entire State of Alabama, so that's where I</p> <p>13 didn't find that -- that level of analysis</p> <p>14 as helpful as looking at the partisan moves</p> <p>15 and broader partisan trends.</p> <p>16 MR. ETtinger: I'll mark and</p> <p>17 publish Exhibit 10.</p> <p>18 MARKED FOR IDENTIFICATION:</p> <p>19 DEPOSITION EXHIBIT 10</p> <p>20 3:05 p.m. (Article 8/10/15)</p> <p>21 BY MR. ETtinger:</p> <p>22 Q. Do you recognize this article?</p> <p>23 A. Yes.</p> <p>24 Q. Is this an article offered by you on</p> <p>25 August 10th, 2015?</p>

Page 197

1 A. Yes, it is.  
2 Q. Is this a work of academic scholarship?  
3 A. No. This is for another popular outlet, The  
4 Federalist, and it is, I think similar to the  
5 kind of cultural commentary that I offered  
6 in -- I've offered elsewhere.  
7 It was not peer-reviewed, it was  
8 not edited by an academic, it was not submitted  
9 to a press or a public journal, so --  
10 Q. Understood.  
11 Is this an area that falls  
12 within your expertise?  
13 A. Not my -- not my academic expertise, no.  
14 MR. ETTINGER: I will mark  
15 and publish Exhibit 11.  
16 MARKED FOR IDENTIFICATION:  
17 DEPOSITION EXHIBIT 11  
18 3:07 p.m. (Article 4/22/16)  
19 BY MR. ETTINGER:  
20 Q. Do you recognize this article?  
21 A. Yes.  
22 Q. And it's titled the Bard, the Bathroom and the  
23 Common Good, Shakespeare's Timeless and Timely  
24 Political Thought.  
25 A. Yes.

Page 198

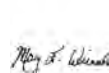
1 Q. And it was written by you on April 22nd, 2016?  
2 A. Yes. Or published, yes.  
3 Q. Okay. And I assume similarly that this was --  
4 was not a work of academic scholarship?  
5 A. No. I will add I have regularly taught on  
6 abortion litigation in my -- in my classes,  
7 and I do teach a class called Politics and  
8 Literature, which is exclusively Shakespeare  
9 focused; but, no, I do not consider this --  
10 I do not consider anything written for any  
11 of these publications, whether they're mine  
12 or others, to be a work of academic scholarship.  
13 I believe these are different categories of  
14 communication.  
15 MR. ETTINGER: Okay. I think  
16 now is a good time to take a break.  
17 VDEOGRAPHER: Off the record 3:09 p.m.  
18 (Recess taken at 3:09 p.m.)  
19 (Back on the record at 3:16 p.m.)  
20 VDEOGRAPHER: We are now on the  
21 record, 3:16 p.m.  
22 MR. ETTINGER: Thank you very much,  
23 Dr. Carrington. Just a couple of last questions.  
24 BY MR. ETTINGER:  
25 Q. When did you first meet your attorney, Mr. Geiger?

Page 199

1 A. Regarding this litigation?  
2 Q. In general.  
3 A. I knew him as an employee of the same institution  
4 of which I work. I -- I would say it was 2014 or  
5 2015.  
6 Q. And which institution is that?  
7 A. Hillsdale College. He was also a member of  
8 my church.  
9 Q. And have you ever been to Alabama?  
10 A. I have not, that I recall. I have been to  
11 Mississippi. I lived in Texas. Not that  
12 I'm recalling off the top of my head.  
13 MR. ETTINGER: Good. No further --  
14 further questions for plaintiffs.  
15 THE WITNESS: Okay.  
16 MR. GEIGER: I have no follow-up  
17 questions.  
18 MR. ETTINGER: Thank you very  
19 much for your time.  
20 THE WITNESS: Thank you.  
21 VDEOGRAPHER: Off the record 3:17 p.m.  
22 (The deposition was concluded at 3:17 p.m.  
23 Signature of the witness was not requested by  
24 counsel for the respective parties hereto.)  
25 Transcript Completed: May 7, 2024

Page 200

1 CERTIFICATE OF NOTARY  
2  
3 STATE OF MICHIGAN )  
4 ) SS  
5 COUNTY OF MACOMB )  
6  
7 I, MARY F. WISNESKI, certify that  
8 this deposition was taken before me on the date  
9 hereinafter set forth; that the foregoing questions  
10 and answers were recorded by me stenographically  
11 and reduced to computer transcription; that this  
12 is a true, full and correct transcript of my  
13 stenographic notes so taken; and that I am not  
14 related to, nor of counsel to, either party nor  
15 interested in the event of this cause.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

  
MARY F. WISNESKI, CSR-231  
Notary Public,  
Macomb County, Michigan.  
My Commission expires: August 24, 2028