

**WILFRED REILLY, PH.D.**  
**Khadijah Stone, et al. vs Wes Allen, et al.**

**May 02, 2024**  
 DISTRICT COURT  
 N.D. OF ALABAMA

Page 1		Page 3	
1	IN THE UNITED STATES DISTRICT COURT	1	
2	NORTHERN DISTRICT OF ALABAMA	2	APPEARANCES (CONTINUED):
3	SOUTHERN DIVISION	3	
4		4	On behalf of Secretary of State Wes Allen:
5	-----	5	James W. Davis, Esq.
6	KHADIDAH STONE, et al.,	6	and
7	Plaintiffs,	7	Ben Seiss, Esq. (via Zoom)
8	vs.	8	Misty Messick, Esq. (via Zoom)
9	WES ALLEN, in his official	9	Brenton Smith, Esq. (via Zoom)
10	capacity as Alabama Secretary	10	Charles McKay, Esq.
11	of State, et al.,	11	Office of the Attorney General
12	Defendants.	12	State of Alabama
13	-----	13	501 Washington Avenue
14	Deposition of: WILFRED REILLY, Ph.D.	14	Montgomery, Alabama 36130
15	Taken: By the Plaintiffs	15	Email: Jim.davis @AlabamaAG.gov
16	Pursuant to Agreement	16	
17	Date: May 2, 2024	17	
18	Time: Commencing at 9:15 a.m.	18	
19	Place: Regus	19	
20	300 East Business Way	20	
21	Suite 200	21	
22	Cincinnati, Ohio 45241	22	
23	Before: S. Diane Farrell, RDR, CRR	23	
24	Notary Public - State of Ohio	24	
25		25	
Page 2		Page 4	
1	APPEARANCES:	1	I N D E X
2		2	
3	On behalf of the Plaintiffs:	3	
4	Dayton Campbell-Harris, Esq.	4	WILFRED REILLY, Ph.D. PAGE
5	and	5	Cross-Examination by Mr. Campbell-Harris 5
6	Davin Rosborough, Esq.	6	
7	of	7	EXHIBITS MARKED REF.
8	American Civil Liberties Union	8	Plaintiffs' Exhibit 1 13 13
9	125 Broad Street	9	Plaintiffs' Exhibit 2 82 82
10	New York, New York 10004	10	Plaintiffs' Exhibit 3 83 83
11	Email: Drosborough@aclu.org	11	Plaintiffs' Exhibit 4 84 84
12	Email: Dcampbell-harris@aclu.org	12	Plaintiffs' Exhibit 5 85 85
13	and	13	Plaintiffs' Exhibit 6 85 85
14	Brittany Carter, Esq.	14	Plaintiffs' Exhibit 7 85 85
15	of	15	Plaintiffs' Exhibit 8 108 108
16	NAACP Legal Defense & Educational	16	Plaintiffs' Exhibit 9 171 171
17	Fund, Inc.	17	Plaintiffs' Exhibit 10 215 215
18	40 Rector Street, 5th Floor	18	Plaintiffs' Exhibit 11 226 226
19	New York, New York 10006	19	Plaintiffs' Exhibit 12 233 233
20	Email: bcarter@naacpldf.org	20	Plaintiffs' Exhibit 13 257 257
21	On behalf of Senator Livingston and	21	Plaintiffs' Exhibit 14 274 274
22	Representative Pringle:	22	Plaintiffs' Exhibit 15 290 290
23	Dorman Walker, Esq. (via Zoom)	23	Plaintiffs' Exhibit 16 304 304
24	of	24	Plaintiffs' Exhibit 17 305 305
25	Balch & Bingham LLP	25	Plaintiffs' Exhibit 18 312 312
	105 Tallapoosa Street, Suite 200		Plaintiffs' Exhibit 19 312 312
	Montgomery, Alabama 36104		
	Email: Dwalker@balch.com		



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<p style="text-align: right;">Page 5</p> <p>1 WILFRED REILLY, Ph.D. 2 of lawful age, a witness herein, being first duly sworn 3 as hereinafter certified, was examined and deposed as 4 follows: 5 CROSS-EXAMINATION 6 BY MR. CAMPBELL-HARRIS: 7 Q. Good morning, Dr. Reilly. We are now on the 8 record. Today is May 2nd, 2024. And the time is -- 9 MR. ROSBOROUGH: 9:15 a.m. 10 BY MR. CAMPBELL-HARRIS: 11 Q. 9:15 a.m. Eastern. Thank you for being here 12 today. 13 MR. ROSBOROUGH: Can we pause? Is somebody 14 un-muted on the Zoom? 15 (Discussion off the record.) 16 MR. DAVIS: We're using the usual 17 stipulations? 18 MR. CAMPBELL-HARRIS: Correct. He'll read and 19 sign. 20 MR. DAVIS: Except he will read and sign. 21 MR. CAMPBELL-HARRIS: Yes. Excellent. 22 MR. DAVIS: I'll explain all that later. 23 THE WITNESS: Fair enough. 24 BY MR. CAMPBELL-HARRIS: 25 Q. Can you please state and spell your name for</p>	<p style="text-align: right;">Page 7</p> <p>1 transcribe all your responses. 2 A. Sure. 3 Q. Okay. There are other attorneys in attendance 4 over Zoom, including for, I believe, the state party 5 legislative intervenors. Your counsel has the right to 6 object to my questions as we go. So if defense counsel 7 or anyone else on the Zoom call starts to speak when I 8 complete a question, please give them a moment to state 9 their objection. 10 A. Okay. 11 Q. Once the objections are stated, you should 12 typically answer the question posed unless I withdraw it 13 or unless your counsel specifically instructs you not to 14 answer. 15 A. Sure. 16 Q. Okay. And if you don't understand a question 17 I ask, please just say so, and I'll try to explain or 18 rephrase the question. 19 A. All right. 20 Q. Okay. If you need a break at all, please just 21 say so. We'll try to be as accommodating as possible as 22 long as there's no question pending. If there's a 23 question pending, you'll need to answer. Otherwise feel 24 welcome to let me know when you need a break. 25 A. Sure.</p>
<p style="text-align: right;">Page 6</p> <p>1 the record? 2 A. Sure. It's Wilfred Reilly, W-i-l-f-r-e-d, 3 R-e-i-l-l-y. 4 Q. Thank you. My name is Dayton Campbell-Harris 5 again, and I'm an attorney for the ACLU, representing 6 the plaintiffs in this matter, Stone v Allen, Case 7 Number 21 CV 01531- AMM, in the Northern District of 8 Alabama. Dr. Reilly, have you ever been deposed? 9 A. No. Actually, this is my first formal 10 deposition. 11 Q. Awesome. So we're going to start off with a 12 few logistical matters concerning depositions before we 13 jump into the substance of what we're going to discuss 14 today. Sound good? 15 A. Sounds fine to me. 16 Q. Awesome. So everything is being transcribed 17 by the court reporter here today. So we will need to 18 speak clearly and accurately to avoid -- and also avoid 19 speaking over one another so we have a clean record. Is 20 that okay? 21 A. That's fine with me. 22 Q. Okay. Please make sure, again, that all the 23 responses are verbal. So no grunting or like uh-uhs. 24 A. Okay. All right. 25 Q. Just so the court reporter can, again,</p>	<p style="text-align: right;">Page 8</p> <p>1 Q. Okay. Can you think of any reason why you 2 might not be able to testify truthfully or honestly 3 today? 4 A. No, I cannot. 5 Q. Okay. Did you -- let's start talking about 6 how you prepared for today's deposition. Did you do 7 anything to prepare for today's deposition? 8 A. I mean, I read through my own report. I 9 talked briefly with Jim here. I mean, that's about it, 10 really. 11 Q. Okay. 12 A. As I assume with all the other experts. I 13 mean, we've all researched this stuff for years, so it's 14 not -- nothing too shocking is going to be found. 15 Q. Okay. Did you -- so you spoke with defense 16 counsel in preparation for this deposition? 17 A. We had a brief conversation. 18 Q. Okay. When was that conversation? 19 A. I believe that was April the 25th. 20 Q. Okay. And was it just the one meeting or were 21 there others? 22 A. No, that -- there's one meeting. 23 Q. Okay. And about how long was that meeting? 24 A. Maybe an hour. 25 Q. Okay. Was anyone else present?</p>



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<p style="text-align: right;">Page 9</p> <p>1 THE WITNESS: I think one guy, right?</p> <p>2 MR. DAVIS: I can't help you answer the</p> <p>3 question. You can tell them what you remember.</p> <p>4 A. Okay. As I remember, there was one other</p> <p>5 individual present in the meeting.</p> <p>6 Q. Okay. Do you know -- so the meeting was an</p> <p>7 hour?</p> <p>8 A. Roughly.</p> <p>9 Q. Okay.</p> <p>10 A. In that range. I generally book and budget</p> <p>11 time in the hour, hour and 15s, as I imagine you guys</p> <p>12 do, but something along those lines.</p> <p>13 Q. Okay. And you reviewed your report. Did you</p> <p>14 review anything else?</p> <p>15 A. Not -- not that I recall.</p> <p>16 Q. Okay. In addition to preparing with counsel,</p> <p>17 did you review any other documents besides your report?</p> <p>18 A. Not that I recall, not -- not going over other</p> <p>19 documents in detail no.</p> <p>20 Q. Okay. Did you bring any documents with you</p> <p>21 today?</p> <p>22 A. Other than personal documents, no.</p> <p>23 Q. And what personal documents are you referring</p> <p>24 to?</p> <p>25 A. I have a backpack full of articles I'm working</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I mean in terms of --</p> <p>2 MR. DAVIS: Objection to form.</p> <p>3 Go ahead and answer.</p> <p>4 A. Well, I've looked into some of the history of</p> <p>5 Alabama. I -- the short form, yes, some.</p> <p>6 Q. Okay. Did you do any research -- independent</p> <p>7 research about this case specifically before counsel</p> <p>8 reached out to you?</p> <p>9 A. No.</p> <p>10 Q. Okay. How many hours have you spent working</p> <p>11 on this case?</p> <p>12 A. Perhaps 30.</p> <p>13 Q. Okay. Your compensation in this case, it was</p> <p>14 about \$500 an hour?</p> <p>15 A. It's my consulting fee, yes.</p> <p>16 Q. So that's your typical consulting fee?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Do you ever charge more?</p> <p>19 A. If I strongly dislike the client, maybe. I</p> <p>20 mean, \$500 is fairly typical.</p> <p>21 Q. Okay. And do you know what your total</p> <p>22 compensation is to date?</p> <p>23 A. Couldn't say.</p> <p>24 Q. Okay.</p> <p>25 A. And honestly couldn't say. Reasonable income.</p>
<p style="text-align: right;">Page 10</p> <p>1 on, that kind of thing.</p> <p>2 Q. Okay. Are any of those articles mentioned in</p> <p>3 your CV?</p> <p>4 A. No. Well, in my CV? No, none of them are</p> <p>5 prepared articles in my CV.</p> <p>6 Q. Okay. The CV that you added to your report?</p> <p>7 A. Yes.</p> <p>8 Q. Okay.</p> <p>9 A. Yeah, no, I don't have any case relevant</p> <p>10 documents or anything. Like I have a computer, that</p> <p>11 type of thing.</p> <p>12 Q. Okay.</p> <p>13 A. I don't actually have a copy of my own report</p> <p>14 due to a printing issue at the hotel. So I assumed you</p> <p>15 gentlemen probably would.</p> <p>16 Q. Okay. Other than the people we already</p> <p>17 discussed, your counsel, have you spoken with anyone</p> <p>18 else about today's deposition?</p> <p>19 A. About the deposition, no.</p> <p>20 Q. Okay.</p> <p>21 A. I assume my fiancée knows I'm here. I</p> <p>22 don't -- we didn't discuss pending legal issues. She's</p> <p>23 a, you know, sort of feminist writer.</p> <p>24 Q. Okay. Did you do any independent research</p> <p>25 about this case before today's deposition?</p>	<p style="text-align: right;">Page 12</p> <p>1 I haven't added up all of the side projects and so on,</p> <p>2 so no.</p> <p>3 Q. Okay. Have you submitted any bills to</p> <p>4 counsel?</p> <p>5 A. I believe four.</p> <p>6 Q. Okay. You don't know roughly how -- what you</p> <p>7 charged on those bills?</p> <p>8 A. I couldn't -- no, not offhand. I mean, it</p> <p>9 would be \$500 times some amount. I mean, more than 10</p> <p>10 hours.</p> <p>11 Q. Less than 20 hours?</p> <p>12 A. It could be 20 hours. I mean, it's very --</p> <p>13 it's very likely in that range or a bit above it.</p> <p>14 Q. Okay.</p> <p>15 A. So, I mean, obviously as I am getting paid as</p> <p>16 an expert.</p> <p>17 Q. Thank you. How did you learn about this case?</p> <p>18 A. Well, I learned about this case in part</p> <p>19 because in my professional role I'm an associate</p> <p>20 professor of politics. I was contacted by the great</p> <p>21 State of Alabama and asked if I had any interest in it.</p> <p>22 Q. Okay. And when you were first contacted by</p> <p>23 defendants' legal team -- well, when were you first</p> <p>24 contacted by counsel to be a part of this case?</p> <p>25 A. I mean, I'd have to check my records. Midyear</p>



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<p style="text-align: right;">Page 13</p> <p>1 last year, early fall last year, perhaps.</p> <p>2 Q. Okay. So after September 2023?</p> <p>3 A. Would seem -- that'd seem like a reasonable</p> <p>4 time frame.</p> <p>5 Q. Have you had contact with any of defendants'</p> <p>6 legal team in this litigation before September 2023?</p> <p>7 A. Not -- no. I think that's more than a not</p> <p>8 that I can recall.</p> <p>9 Q. Okay. Have you ever served as an expert</p> <p>10 witness before?</p> <p>11 A. No, actually.</p> <p>12 Q. Okay. What about an expert consultant in</p> <p>13 litigation?</p> <p>14 A. In litigation, no. I've done a range of</p> <p>15 different things as a professor, working on -- I mean, I</p> <p>16 published three books. I've been approached by media</p> <p>17 companies about accuracies in projects. This is -- this</p> <p>18 is my first legal case, so...</p> <p>19 Q. Okay. All right. I'm going to pull what I'm</p> <p>20 going to label as Exhibit 1.</p> <p>21 A. Okay.</p> <p>22 (Plaintiffs' Exhibit 1 was marked for</p> <p>23 identification.)</p> <p>24 A. Thank you.</p> <p>25 Q. And this is a copy of your expert report,</p>	<p style="text-align: right;">Page 15</p> <p>1 A. All right. Right here?</p> <p>2 Q. Yes.</p> <p>3 A. Okay.</p> <p>4 Q. Is there anything that you need to change or</p> <p>5 update in your CV or to your CV since you submitted it?</p> <p>6 A. Let's see. Publications. The penis article</p> <p>7 is in here. I mean, I'm one of about 20 authors on</p> <p>8 that. Nothing I can think of offhand.</p> <p>9 Q. Okay. So this CV accurately summarizes your</p> <p>10 education, work experience, and qualifications?</p> <p>11 A. Yes, I would say that's correct.</p> <p>12 Q. Okay. And you prepared the CV?</p> <p>13 A. At some point, yeah. I've had my -- I've had</p> <p>14 my CV for a good -- yeah, yes, I am the preparer.</p> <p>15 Q. Okay. I was going to ask. When did you last</p> <p>16 update and prepare the CV?</p> <p>17 A. Well, I update my CV every time a significant</p> <p>18 article comes out, so every two months or something like</p> <p>19 that. But I don't go into the core CV, what courses I</p> <p>20 taught as a law school student or something like that</p> <p>21 and update those. So I -- there may or may not be some</p> <p>22 minor inaccuracies in there. But that is indeed my CV.</p> <p>23 Q. Okay.</p> <p>24 A. Classic Gaelic name at the top of it and all</p> <p>25 that, so...</p>
<p style="text-align: right;">Page 14</p> <p>1 right?</p> <p>2 A. Yes, that is. That certainly appears to be</p> <p>3 the case, yes.</p> <p>4 Q. Okay. Perfect. Did you work with anyone else</p> <p>5 on drafting this report?</p> <p>6 A. No.</p> <p>7 Q. Okay. And you have confidence in this report?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Is there anything that you would like</p> <p>10 to change in the report before we get started with more</p> <p>11 specific questions about it?</p> <p>12 MR. DAVIS: Objection to form.</p> <p>13 A. No, no.</p> <p>14 Q. Okay. Let's start by --</p> <p>15 THE COURT REPORTER: Just a second. I believe</p> <p>16 Mr. -- oh, he's back. Never mind. Or he's coming</p> <p>17 back. He's back. Sorry.</p> <p>18 A. Yeah, I will note very briefly, I would assume</p> <p>19 the other experts, some of whom I'll see -- I mean, I</p> <p>20 assume I'll see Birch and Liu at conferences this year.</p> <p>21 I mean, I assume they disagree. But no, I wouldn't</p> <p>22 radically change any of my opinions all of a sudden, no.</p> <p>23 Q. Okay. Okay. Let's turn to page 27, which</p> <p>24 should be the appendix of your report. Let me know when</p> <p>25 you get there.</p>	<p style="text-align: right;">Page 16</p> <p>1 Q. And it is, as you said, an up-to-date copy of</p> <p>2 your CV?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Have you ever been a witness or a party</p> <p>5 to a lawsuit?</p> <p>6 A. To a lawsuit? No, I don't think so.</p> <p>7 Q. Okay. In your professional or even personal</p> <p>8 capacity?</p> <p>9 A. Professional capacity, no, other than maybe a</p> <p>10 creditor years ago or something like that. No, no major</p> <p>11 lawsuits that I can recall.</p> <p>12 Q. Okay. Let's start with your educational</p> <p>13 background. Can you walk me through your education</p> <p>14 background starting with undergrad.</p> <p>15 A. All right.</p> <p>16 Q. Should be on page 27.</p> <p>17 A. Yeah, so starting with what's here, I</p> <p>18 graduated from Southern Illinois University in</p> <p>19 Carbondale in 2002, and following my graduation from</p> <p>20 SIU, which is an enjoyable school to go to, I attended</p> <p>21 the University of Illinois College of Law to pursue the</p> <p>22 JD, which I did successfully in 2005. I wasn't really</p> <p>23 that interested in legal practice at the time.</p> <p>24 Now, also at this time I was about 22. I went</p> <p>25 through the Chicago public schools, did so pretty</p>



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<p style="text-align: right;">Page 17</p> <p>1 quickly. I was literate. Also, I wasn't that focused 2 on school at the time. I was promoted a grade or two. 3 Anyway, I got through law school, went into a Ph.D. 4 program, and ended up getting out with that degree in 5 2015. And, again, I went back to Southern Illinois 6 Carbondale to do that, to complete that degree. 7 Q. Okay. 8 A. So those are the educational institutions that 9 I attended. 10 Q. Okay. And have you done any nonacademic work 11 since undergrad? 12 A. Since undergrad, I mean, I've done a fair 13 amount of nonacademic employment, I would say, yes. 14 Q. Okay. Can you tell me a little bit more about 15 your nonacademic employment? 16 A. Sure. I mean, I've had jobs of various kinds, 17 many, many times over the years. So some of the more 18 notable ones, I worked for the Human Rights Campaign 19 while I was in graduate school. 20 Q. Uh-huh. 21 A. That's a gay and at the time gender rights 22 organization. I worked on the international sales floor 23 for Marcus Evans in Chicago. That's a large bullpen 24 style corporate outreach company, very want-to-be Wall 25 Street environment. I went back to Chicago for a period</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. What other consulting firms did you 2 work for? 3 A. Well, a lot of this is independent. I mean, 4 I've been approached in a private capacity by a range of 5 people from book publishers to The Daily Wire, the 6 conservative brand, to more left-leaning companies as a 7 counterweight in terms of opinion. I mean, in general, 8 I don't provide like a client list, but I have -- there 9 are a number of things that I would do from, you know, 10 opinions on the political accuracy of something to 11 providing material content. I've been approached about 12 doing movie serials. I don't really know if I have the 13 face for that, but just like a number of different 14 things, so... 15 Q. Uh-huh. Have you done any legal work, too, 16 since graduating law school? 17 A. No. I've been pretty precise about that 18 distinction. I'm not a practicing lawyer. 19 Q. Okay. So you're not a member of any state 20 bar? 21 A. Well, actually, let's see here. For many 22 years I was, actually. Oh, no, I'm not a member of any 23 state. No, I'm not like -- 24 Q. Okay. 25 A. -- at bar in Illinois. I was a member of the</p>
<p style="text-align: right;">Page 18</p> <p>1 of years in graduate school. My mom got very sick. So, 2 you know, I mean, during that period I worked. I taught 3 in the city colleges in Chicago for most of that time. 4 So, I mean, I was still in the academic world to a 5 pretty significant extent, taught at Harry Truman, as I 6 recall, primarily. You know, I'm -- do private 7 consulting. 8 Yeah, I've had a -- had a range of jobs other 9 than teaching, although I was glad to go back into, you 10 know, full-on tenure track academia at K State. 11 Q. Okay. What private consulting work did you 12 do? 13 A. What private? I actually used to run a small 14 social media company called Event Collective Marketing 15 with my good buddy Ozzy Trejo. Yeah, I think that's the 16 primary thing. I don't feel like providing a list of 17 clients, but we did -- we were one of the earlier 18 Midwest social media companies. I think it was an 19 innovative brand. 20 Q. When was that? 21 A. 2007 to '12 maybe. 22 Q. Okay. Any other consulting work that you did? 23 A. In my life? 24 Q. Yes. Since undergrad, yeah. 25 A. Yes, a fair amount of it.</p>	<p style="text-align: right;">Page 20</p> <p>1 bar association for several years, but no, I am not a 2 lawyer. 3 Q. Okay. And it also looks like there's a gap 4 from 2013 to 2015. What did you do for work then? 5 A. 2013 to 2015? 6 Q. Yes. 7 A. I have to think back. That was probably the 8 city colleges period. 9 Q. Okay. So you were teaching? 10 A. Yeah, I was teaching a little bit. Probably 11 that was the end of the -- so, again, my CV is different 12 from my resume, but I would say tail end of my work with 13 Marcus Evans. 14 Q. Okay. 15 A. I closed some deals there, and I mean, as you 16 guys probably know, the base rate on one of those floors 17 is a thousand dollars a month or something like that. 18 But each deal is 10 percent of 170,000 or whatever that 19 might be. 20 Q. Okay. 21 A. So I had some money. I was also -- I enjoyed 22 teaching in the city colleges. It was a very urban 23 collegiate system in Chicago, so we had a chance to help 24 some kids. 25 Q. And then you list some books and book chapters</p>



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<p style="text-align: right;">Page 21</p> <p>1 on your CV, right?</p> <p>2 A. Yes.</p> <p>3 Q. Are these separate from your academic research</p> <p>4 publications?</p> <p>5 A. Well, I don't list them all together. I mean,</p> <p>6 not all these are peer-reviewed in my opinion. How you</p> <p>7 structure your CV, I think, depends on individual</p> <p>8 ethics. It depends on your college's rules.</p> <p>9 Q. Okay.</p> <p>10 A. So I mean, like "The Wages of Immigration" and</p> <p>11 "The Black Boom" by Jason Riley, I could have listed</p> <p>12 that as an academic publication. I mean, that's from</p> <p>13 Templeton. Jason Riley is the Wall Street Journal guy.</p> <p>14 He's published in academic pieces. I just list that as</p> <p>15 a book chapter.</p> <p>16 Q. Okay.</p> <p>17 A. "A Positive Vision: The Agenda of 1776," I'm</p> <p>18 not sure I'd call that academic. "Red, White and Black"</p> <p>19 is Bob Woodson's book listing a sort of black</p> <p>20 conservative perspective.</p> <p>21 Q. Okay.</p> <p>22 A. "Slavery Does Not Define the Black</p> <p>23 American Experience," same on that, writing over a</p> <p>24 narrative. That's a UK. I don't know their standards.</p> <p>25 Probably not. That's my take on how the Left and</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Can you walk me through what those standards</p> <p>2 are?</p> <p>3 A. Not offhand. I mean, I don't mean to be rude,</p> <p>4 but like, I -- again, I wrote this when I -- 2016 is</p> <p>5 when I put together the KSU version of this.</p> <p>6 Q. Okay. Okay.</p> <p>7 A. And again, just very briefly. I mean, some of</p> <p>8 these were considered for tenure. "Hate Crime Hoax"</p> <p>9 was -- I mean, "Hate Crime Hoax" is a social science</p> <p>10 text despite the glib title. I mean, I look at the</p> <p>11 phenomenon of fake hate crimes.</p> <p>12 You know, "Lies your Liberal Teacher Tells</p> <p>13 You" might not be. But there's a -- there's a format</p> <p>14 that I'm following here. I don't -- I don't have the</p> <p>15 guidelines in front of me right now.</p> <p>16 Q. Okay. Can you tell me a little bit more about</p> <p>17 the Hate Crime Hoax book? What's the subject matter of</p> <p>18 it?</p> <p>19 A. Hate crime hoaxes.</p> <p>20 Q. Okay.</p> <p>21 A. No, but just like, badger aside, like the</p> <p>22 subject matter of the book, years ago as a grad student</p> <p>23 there were three very high profile hate crime incidents</p> <p>24 in Chicago. These, actually, really bothered me. I was</p> <p>25 more a man of the Left at the time.</p>
<p style="text-align: right;">Page 22</p> <p>1 Right should stop fighting each other in the street; a</p> <p>2 lot of -- forgive me -- shit talking in it.</p> <p>3 Those are listed specifically separate from</p> <p>4 peer-reviewed academic publications for a reason, but</p> <p>5 each of those is a fairly prominent book chapter.</p> <p>6 Q. Okay.</p> <p>7 MR. DAVIS: Dr. Reilly, if you could just slow</p> <p>8 down a little bit, I think it would help the court</p> <p>9 reporter. It's hard to remember. Because we talk</p> <p>10 like that in --</p> <p>11 THE WITNESS: I'll try to say less overall</p> <p>12 ambiguous answers, maybe.</p> <p>13 BY MR. CAMPBELL-HARRIS:</p> <p>14 Q. So do you distinguish between books,</p> <p>15 book chapters, and academic research publications</p> <p>16 based on peer review for the academic research</p> <p>17 publications?</p> <p>18 A. Well, I distinguish based on -- as I recall,</p> <p>19 on KSU standards.</p> <p>20 Q. Okay.</p> <p>21 A. I mean, so there will often be an outline for</p> <p>22 these sort of things.</p> <p>23 Q. Okay. Are those standards public or --</p> <p>24 A. I would imagine you might be able to find</p> <p>25 them.</p>	<p style="text-align: right;">Page 24</p> <p>1 Velvet Ultra Lounge, which is a bar that</p> <p>2 catered very heavily to bisexual college kids, including</p> <p>3 some of my friends, was burned to the ground. All these</p> <p>4 antigay slurs were written in the bar.</p> <p>5 Around this same time a University of Chicago</p> <p>6 student, Derek Caquelin, claimed that he was being</p> <p>7 attacked by a hacker group that he called the UChicago</p> <p>8 Electronic Army. They were sending him death and anal</p> <p>9 rape threats via his computer.</p> <p>10 There was another incident at Michigan Tech</p> <p>11 where an engineering student claimed that someone said</p> <p>12 he was going to shoot everyone on campus tomorrow.</p> <p>13 And long story short, it turned out that all</p> <p>14 of these were hoaxes, like even the horrific shoot</p> <p>15 everyone on campus tomorrow, some kid actually said, I'm</p> <p>16 going to shoot everyone on campus a smile tomorrow. A</p> <p>17 campus rival clipped a tweet of his and literally sent</p> <p>18 it to the feds.</p> <p>19 So I started getting interested in why people</p> <p>20 are doing this absolutely crazy thing, and I started</p> <p>21 looking at these cases. No one claims it's a majority</p> <p>22 of cases. But I found about 400 over about five years.</p> <p>23 And I wrote a book looking at this, like where</p> <p>24 this happens. It's about 60 percent on the modern</p> <p>25 collegiate campus. Why it happens? Are we granting</p>

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<p style="text-align: right;">Page 25</p> <p>1 some kind of power to victimization?</p> <p>2 I find that that's kind of an overhyped</p> <p>3 narrative, but it is a real one, you know, so on down</p> <p>4 the line. So I wrote the book. Generally pretty good</p> <p>5 reception. And that's it. But yeah, the topic of the</p> <p>6 book is these crazy hoaxes.</p> <p>7 Q. Okay.</p> <p>8 A. And I find -- like, not to get into my, like,</p> <p>9 pompous author pitch, but of the ten highest profile</p> <p>10 hate crime incidents -- or let's say hate incidents.</p> <p>11 Not all of these were chargeable crimes. But of the</p> <p>12 past ten years, like in terms of number of Google hits,</p> <p>13 whatever; Jesse Smollett, Covington Catholic -- you can</p> <p>14 go down the list, Air Force Academy, Yasmin Seweid, none</p> <p>15 of them, except for two mass shootings, turned out to be</p> <p>16 real.</p> <p>17 It's a pretty notable phenomenon. I</p> <p>18 mean, we've seen this a couple of times in the past few</p> <p>19 weeks. So I started looking at why this was. And I</p> <p>20 mean, I think you'd get answers like political</p> <p>21 partisanship, social media. I mean, these videos go</p> <p>22 very viral.</p> <p>23 I mean, we're now seeing the trend of white</p> <p>24 guys claiming people being attacked by black people</p> <p>25 constantly. It's not happening. You can just pull up</p>	<p style="text-align: right;">Page 27</p> <p>1 with me, actually. But there were two stages of</p> <p>2 research for the book, actually.</p> <p>3 The first was looking at a set of high</p> <p>4 profile hate crime claims and seeing how many of them</p> <p>5 several years later actually occurred. But that's not</p> <p>6 what made the data set for the book. The data set for</p> <p>7 the book actually was just pursuing phraseology like</p> <p>8 "hate crime hoax" and seeing how many hate crime hoaxes</p> <p>9 there were.</p> <p>10 I don't really want to go into more -- like,</p> <p>11 this sounds kind of silly, but I don't want to go into</p> <p>12 more depth about that without actually having the</p> <p>13 research templar in front of me. Because right now it</p> <p>14 sounded kind of dumb. There was actually a framework</p> <p>15 that we had, and I'd like to kind of look at that and</p> <p>16 break that down.</p> <p>17 Q. Okay. I have one follow-up clarifying</p> <p>18 question.</p> <p>19 A. Okay.</p> <p>20 Q. So you -- the first part of the research, it</p> <p>21 sounds like, was looking at high profile cases that you</p> <p>22 were aware about, correct?</p> <p>23 A. Yeah.</p> <p>24 Q. Okay. And the second part of your research,</p> <p>25 there was -- was it Googling hate crime hoaxes; is that</p>
<p style="text-align: right;">Page 26</p> <p>1 all this data and look at it. It's the same with hate</p> <p>2 crimes, same with police shootings of unarmed</p> <p>3 African-Americans.</p> <p>4 In all these cases you're talking about actual</p> <p>5 data sets where the numbers are in, in many cases, the</p> <p>6 teens. There were 12 unarmed black men shot by police</p> <p>7 officers last year, unarmed.</p> <p>8 So I mean, the culture of fear in the upper</p> <p>9 middle classes when you talk about serious research,</p> <p>10 that's something I'm generally interested in, along with</p> <p>11 sometime co-authors like Cory Clark, so on down the</p> <p>12 line. Why are people so afraid? So that's where the</p> <p>13 book really comes from.</p> <p>14 Q. Okay. How did you go about researching for</p> <p>15 that book?</p> <p>16 A. There's a pretty lengthy research process,</p> <p>17 actually. I mean, so "Hate Crime Hoax," the basic</p> <p>18 process is -- I'd have to go back to the research</p> <p>19 practice for the book, because I don't want to be at all</p> <p>20 awkward about what that was.</p> <p>21 But essentially, you looked for -- I mean, you</p> <p>22 would search "hate crime," "hate crime hoax" so on down</p> <p>23 the -- one of the core elements of research for "Hate</p> <p>24 Crime Hoax" was just looking up -- let's see how to</p> <p>25 phrase this. I might have a copy of "Hate Crime Hoax"</p>	<p style="text-align: right;">Page 28</p> <p>1 correct?</p> <p>2 A. Well, the second part of the research was</p> <p>3 using all available research tools, which did include</p> <p>4 Google, to find out how many high profile hate -- or not</p> <p>5 even just high profile. There's a four-part methodology</p> <p>6 for the book.</p> <p>7 Q. Okay.</p> <p>8 A. So for a hate crime hoax to exist, there had</p> <p>9 to be a story that was widely reported as an incident of</p> <p>10 hate, which in more than 90 percent of cases also</p> <p>11 included a police report. And that had to be reported</p> <p>12 in a national or major regional media outlet. The third</p> <p>13 point is that that had to collapse. The incident had to</p> <p>14 turn out to be caused by either a direct hoax by the</p> <p>15 person who originally claimed to be the victim, a hoax</p> <p>16 by someone else -- I mean, there was an incident where a</p> <p>17 teenage Israeli hacker called in several hundred bomb</p> <p>18 threats to Jewish community centers, pretending to be</p> <p>19 the worst of anti-Semite.</p> <p>20 Or the final option there, I guess, would be</p> <p>21 that it just never happened at all. That was the case</p> <p>22 with almost all nooses on college campuses.</p> <p>23 So yeah, I mean, at some level you're using</p> <p>24 search tools to pull up these incidents. You'd look</p> <p>25 up -- you'd look up hate crime, and then you see what</p>

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<p style="text-align: right;">Page 29</p> <p>1 happened to the case. Once you started doing that, 2 you'd look up hate crime hoax. You'd see how many of 3 these cases there were. And you can then compare 4 that. And there's a much more structured methodology 5 there. 6 But at some level, yeah, you look up hate 7 crime. There are a list of hate crimes. And you see 8 what happened to the cases, one. And you look up hate 9 crime hoax, and you see how many you get, too, on 10 Google or a better platform like Google Scholar or 11 JSTOR. 12 I mean, I think that's a pretty good 13 structural methodology. The one thing I will say there 14 is that there actually is more of the just sort of half 15 ass, like, hey, there are a lot of them here. We know 16 how many hate crimes there are in a year. I mean, the 17 FBI publishes that data. And we all know rape, battery 18 are underreported. But you can come up with a pretty 19 good estimate. 20 And we all know how many of those cases are 21 nationally reported. I mean, that's something I was 22 able to find, going hundreds of pages into Google and 23 these other platforms. So I mean, out of these 24 nationally reported case -- about 8 percent of cases are 25 nationally reported, right?</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. Okay. 2 A. Yandex. I mean, you would -- what you would 3 probably do is yourself, a research assistant, someone 4 like that would scan across all of these. There also 5 are lists of hate crime incidents. There are a few 6 small lists of hate crime hoaxes. I mean, there are -- 7 there's other material, which is sourced in the book. 8 But again, I mean, it's -- an easy way to look 9 like a fool would be for me to try to think up what all 10 those were. And so I'm sure I already have. But it's 11 just that -- all of those sort of platforms were 12 employed. 13 Q. Okay. Can you walk me through what the 14 first -- one of the most recent publications you have is 15 about? Is it "NEW Lies Your Teacher Tells You" or is it 16 "Lies Your Teacher Tells You"? 17 A. It's actually now called "Lies Your Liberal 18 Teacher Tells You." 19 Q. Okay. What is the subject matter of that 20 book? 21 A. A couple of things. First I will note, books, 22 generally if you want them to sell have intentionally 23 provocative titles, so one of my -- 24 THE COURT REPORTER: I'm sorry, Doctor. 25 You're really -- you've got to slow it. There's no</p>
<p style="text-align: right;">Page 30</p> <p>1 Q. Uh-huh. 2 A. Out of those, how many are hoaxes? I mean, 3 the data set is now a thousand hoaxes as part of 400, I 4 think, 57 case studies over this roughly five-, six-year 5 period. No one says it's all of them. But why are 6 people doing this is the question. 7 Q. Okay. 8 A. You actually redirected me back to the methods 9 there, so I mean, yeah, it's just -- one, you look up 10 the cases and see if they're real, and two, you see how 11 many cases aren't real. Yeah. 12 Q. Okay. Two follow-ups. One, you consider the 13 FBI's database on crime reporting a good database to 14 refer to for your research? 15 A. I think it's a reasonable database. There are 16 limitations to all crime data. I'll add a note there, 17 when I'm looking at anything about hate crime, I would 18 check that against the BJS. 19 Q. Okay. 20 A. BJS and CJS. 21 Q. And then second, you mentioned some search 22 platforms that you used for the book. You mentioned 23 Google, Google Scholar, JSTR. Are there any others that 24 you can recall at this time? 25 A. Not of -- Bing.</p>	<p style="text-align: right;">Page 32</p> <p>1 way I can keep up with you. If you could slow it 2 down maybe 25 words a minute. 3 A. Yeah, the books in general have intentionally 4 provocative titles. So my second book is called Taboo. 5 The topic is actually fairly serious. It's the idea of 6 censorship of speech in modern middle class culture. 7 Maybe the front of the book has a bondage mask on it. 8 I mean, so, again, this book is a fairly 9 serious book. The titles "Lies Your Teacher Tells" is a 10 riff on a famous book that's just called "Lies Your 11 Teacher Told You," or "Lies my Teacher Told Me." The 12 topic of the book is sort of twofold. One, the average 13 American or modern Westerner is often told that their 14 society is a rather bad one. 15 Nicole Hannah-Jones, for example, says that 16 the United States has been shaped primarily by slavery, 17 slavery here took on forms it never has anywhere else in 18 the world, so on down the line, the primary thing that 19 made us wealthy is the enslavement of black people. 20 And, again, a fun person to debate at a conference. But 21 I don't think that's true. So that's part one. 22 And part two, I think, of the narrative that 23 I'm responding to here is the idea that nobody knows 24 this. So there are all of these books, mostly on the 25 left, that have sort of this idea that some dark</p>



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<p style="text-align: right;">Page 33</p> <p>1 wizardry is being shown to you, right, like, "What Lies 2 Your Teacher Told You," "Bury My Heart at Wounded Knee," 3 "An Indian History of the United States," "A People's 4 History of the United States," "1619;" "An 5 African-American History of the United States." 6 So the idea is, one, we're a bad place and, 7 two, no one knows this, but I will tell you. And I'm 8 almost making fun of this. I'm saying, one, obviously 9 we did bad things, everybody did bad things, and 10 everybody knows this because the economy has been 11 running higher education for 40 years. And I'm 12 bantering with all this. But that is the thrust of the 13 book. 14 So I go through some basic things like the Red 15 scare was not baseless. I mean, as a political 16 scientist and a solid one, I've read the Venona cables. 17 We know who the Russian spies were in the U.S. in the 18 1950s. There were about 600 of them, you know, so that's 19 the topic of the book. 20 First of all, I don't mean to both sides a lot 21 of things, but a core theme here is miseducation on all 22 sides should stop. I'm specifically calling out the 23 idea that we are a uniquely bad, negative country, 24 Western society is uniquely bad and negative. This 25 simply isn't true if you look at any of the 20 core</p>	<p style="text-align: right;">Page 35</p> <p>1 to be frank about this. Like, I'm not responding to 2 people that are at the margins of the debate, any more 3 than an opponent on you guys' side responding to me is. 4 These are -- these are serious debates. 5 Ibram Kendi, who is the best selling author in 6 the social sciences right now, thinks that the only two 7 possible explanations for a gap between ethnic groups in 8 any capacity are racism and genetic inferiority. It's 9 page 12, how to be an anti-racist. I think that's 10 insane, although, again, all these are likable people in 11 person, as I am and you guys are. 12 So, I mean, it's just that is -- the 13 description I don't think is correct. But, you know, am 14 I responding to specific things? Yeah. I mean, I'd be 15 glad to send a review copy of the book. But in 16 terms -- for example, the U.S. Government's native 17 American fact sheet, there is a -- there is a listing of 18 these things, like Native Americans lived largely at 19 peace with one another and at peace with the world. 20 They never wasted anything. I mean, these are -- these 21 are all cited in the text and of course that's not true. 22 Native Americans were no more or less human than anyone 23 else. 24 MR. DAVIS: I'm sorry to ask so soon. Can we 25 take a restroom break before too long?</p>
<p style="text-align: right;">Page 34</p> <p>1 stats, as they're called, for Soviet Russia or 2 precolonial Africa or something like that, both highly 3 civilized areas as well. And two, the idea that no one 4 has ever heard the critique is ridiculous. The critique 5 is 70 percent of academia. So that's the book. 6 And the ten things your teacher told you -- I 7 mean, there were a whole bunch of native Americans who 8 were peaceful I think is the funniest chapter in the 9 book. But I mean in terms of the most serious chapter 10 in the book it's probably the Red Scare was -- you know, 11 the Red Scare was real, was provoked. 12 Q. Okay. One follow-up about that book. Are 13 there -- you mentioned a couple novels. Are there 14 specific facts that you disagree with that -- are you 15 referring as lies in the book, and what are those facts? 16 A. You're talking about novels. I mean, like 17 most of these things, like "Lies My Teacher Told Me" or 18 "The 1619 Project Handbook," those are given out as 19 curricular texts in many schools. I mean, Howard Zinn 20 is the most assigned author in American high school. 21 So when I think of a novel, I think of 22 something like a Harlequin Romance called "Take Me 23 Outside." 24 You know, I -- these are social science 25 textbooks, and I do think that both Left and Right need</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. CAPPBELL-HARRIS: Do you need a break 2 right now? 3 THE WITNESS: No, I don't need one right now, 4 but 10, 15 minutes. 5 MR. DAVIS: I do. 6 MR. ROSBOROUGH: Are you at a good stopping 7 point? 8 MR. CAMPBELL-HARRIS: Yeah. Yeah, we can stop 9 right now. 10 (A recess was taken from 9:48 to 10:00.) 11 BY MR. CAMPBELL-HARRIS: 12 Q. Okay. Dr. Reilly, let's turn to page 42 of 13 your CV. 14 A. Okay. 15 Q. So in your academic work, can you tell me what 16 your core areas of research are? 17 A. Sure. There are -- well, I have three 18 graduate school primary fields, which are international 19 relations, public law, and political theory. 20 Q. Okay. 21 A. And at K State, in addition to courses and 22 those things, I mean, so I would teach a course about 23 classical politics, for example. I also teach 24 statistics because I do a fair amount of research work. 25 Q. Okay.</p>

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<p style="text-align: right;">Page 37</p> <p>1 A. And I teach con law because of the legal 2 background. 3 Q. Okay. Do you consider yourself a 4 statistician? 5 A. In the technical sense. I mean, I'm a stats 6 professor at a state university. 7 Q. You teach statistics at your school? 8 A. Yes. 9 Q. Okay. How much of your research time would 10 you say that you spend on issues of public law? 11 A. Issues of public law, perhaps 5 to 10 percent. 12 Q. Okay. And what about for international 13 relations? 14 A. That varies depending on the year. Both of my 15 KPSA are -- state political science event presentations 16 this year were international relations presentations. I 17 think both of those will make it to the national 18 conference, probably be national level publications as 19 well. 20 It would be -- the percentage breakdown would 21 vary by year. All papers in all the subfields briefly 22 would include the same sort of statistics, multivariate 23 regression analysis, time series analysis, so on. 24 Q. Okay. What about for political theory? 25 A. Little. Little.</p>	<p style="text-align: right;">Page 39</p> <p>1 BY MR. CAMPBELL-HARRIS: 2 Q. Okay. The first -- well, the last partial 3 paragraph on page 1, you write, "A focus of my research 4 as a statistician is examining the effect of 5 multi-variant regression analyses, which incorporate 6 large-N datasets on the outcome gaps between 7 American racial groups which are often used to argue for 8 the continuing or unchanged existence of 'systemic 9 racism' -- or even for the genetic inferiority of 10 certain races by the bizarre alt-right." 11 What do you mean here when you refer to the 12 "continuing or unchanged existence of 'systemic 13 racism'"? 14 A. Well, the primary paradigm in -- so there are 15 essentially three paradigms about why racial group 16 differences exist. One, you could call hereditarianism, 17 which is the idea that this is genetic. In the U.S.A. 18 this is presented as fairly fringed. The dominant 19 paradigm in China. I'm not a hereditarian, but a 20 Charles Murray, Arthur Jensen. 21 Another is called culturalism or systems 22 theory, which would argue that there are a bunch of 23 different reasons, keeping it brief. 24 And the third is what I would jokingly call 25 Kendiangelism, which argues that basically the entire</p>
<p style="text-align: right;">Page 38</p> <p>1 Q. Okay. 2 A. Pure theory, little. 3 Q. About 5 percent as well? 4 A. Sure. 5 Q. Okay. What -- what are your areas of focus on 6 your research on public law? 7 A. Well, when I look at public -- public law is 8 not a primary thing in and of itself that I research. 9 And, I mean, my role in this case wouldn't be primarily 10 from a public law perspective. One of the things I do 11 research a fair amount that ties into international 12 relations in group relations is race relations. 13 So, I mean, when I -- when I look at 14 consulting or professional work like this, it would be 15 multivariate analysis in the context of race relations. 16 In the area of public law, I mean, I've looked at some 17 papers, reviewer role, for example, that would -- 18 comparative legal systems, that sort of thing. But, 19 again, that's a small percentage. 20 Q. Okay. Let's turn now to page -- let's see -- 21 the start of your report. 22 THE COURT REPORTER: Brittany Carter just 23 joined? 24 MR. ROSBOROUGH: With plaintiffs. 25 THE COURT REPORTER: Thank you.</p>	<p style="text-align: right;">Page 40</p> <p>1 reason is oppression. This is crit theory, originally 2 comes out of Marxism, that's not -- theoretical claim, 3 incorrect. 4 But so Dr. Kendi, for example, who I mentioned 5 earlier, says that the only possible explanations for 6 gaps in group performance are racism and genetic 7 inferiority. I don't think that's true. 8 Q. Is there any overlap between those three 9 categories? 10 A. I would imagine that there are a small amount. 11 I would imagine there's some hereditarians that also 12 think 30 percent of the gap could be caused by immigrant 13 culture or something like that. 14 Q. Okay. Can you define what -- culturalism, is 15 that what you said? 16 A. Yes. 17 Q. Can you define that again, please? 18 A. A culturist or a systems theorist believes 19 that a number of variables that differ between groups 20 explain gaps. So past history of racism would certainly 21 be one of those. Regional differences in overall 22 performance for all groups would be another one. 23 So one difference that explains a substantial 24 amount of the overall gap range between Blacks and 25 whites -- this isn't contested, by the way, everyone</p>

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<p style="text-align: right;">Page 41</p> <p>1 from Tom Sowell to William Julius Wilson agrees on 2 this -- is that 55 percent of Blacks but only 15 percent 3 of whites live in the South. More working class, more 4 traditionally agrarian region, it's poorer. So if 5 you're looking at income gaps, you would simply compare, 6 say, Blacks and whites in the North to look for a 7 residual effect of northern racism. 8 So a culturist would look at age, region, 9 study time, which impacts test scoring, a bunch of 10 different things. And one of those certainly is racism, 11 by the way. It's a -- we can get into that. That's 12 fairly easy to measure. 13 Q. Okay. Do you identify then as like a 14 culturist? 15 A. Yes, rather prominently. 16 Q. Okay. You also refer to the "bizarre 17 alt-right" here. Who are you referring to when you say 18 "bizarre alt-right"? 19 A. Well, I would say the alt-right is the racism 20 wing of hereditarian social science. So I mean there -- 21 there's quite a prominent alt-right. I don't know if I 22 would throw Steve Sailer, the writer, in here -- he 23 might come close -- Jared Taylor, John Derbyshire. I 24 mean, there are -- if you spend any time on the 25 internet, much less the pages of academic journals,</p>	<p style="text-align: right;">Page 43</p> <p>1 L's, that has 200,000 followers. So there are a very 2 large number of people that happen to be racist. This 3 is true on all sides of the aisle, by the way. There's 4 also a page called Whites Taking L's that has 130,000 5 followers, as I recall. 6 MR. DAVIS: Slow down. 7 THE WITNESS: Okay. 8 A. But yeah, the alt-right is a distinctive 9 racist block of the hereditarian movement. 10 Q. Okay. Are there publications of yours that 11 employ this type of analysis discussing hereditarianism, 12 culturalism, and what you said was Kendi -- Kendism? 13 A. All of my publications discuss that in some 14 depth. 15 Q. Okay. And are these analyses based on like a 16 national level or are they regional analyses at all? 17 A. Well, it depends on the analysis. So each of 18 my books, "Hate Crime Hoax" and "Taboo," both include a 19 chapter, which is generally the chapter of the book that 20 serious people have reviewed and commented on discussing 21 the three paradigms. 22 Q. Uh-huh. 23 A. I have written probably 30 high-end public 24 intellectual articles for places like "Commentary" and 25 "Tablet" where I've thrown in a statistical model that</p>
<p style="text-align: right;">Page 42</p> <p>1 you'll see there are a large number of people that are 2 probably prejudiced in their personal beliefs, that -- 3 who also adhere to hereditarian theory. 4 There are entire websites, with names like 5 American Renaissance that advance the idea that not only 6 are group gaps genetic but they are permanent and 7 unexchangeable -- 8 Q. Okay. 9 A. -- which no racialists, for all their flaws, 10 and no culturalists would say. So this is a long, 11 ongoing debate. Not all hereditarians, by the way, are 12 racists. I mean, it's -- things like immigration could 13 easily change baselines even for genetically different 14 groups, blah, blah, blah. 15 Q. Okay. Are there any organizations that you 16 consider a part of this bizarre alt-right? 17 A. I mean, I would say American Renaissance would 18 be one of them. I mean, there are large organized hate 19 groups in the U.S.A. I would assume you would know that 20 as well as I do. 21 What's the other one? VDARE. There is a 22 substantial percentage -- again, I want to keep these 23 answers under 15 minutes. 24 But, I mean, if you -- if you log online, I 25 mean, there's a page on Twitter called Blacks Taking</p>	<p style="text-align: right;">Page 44</p> <p>1 discussed this. My dissertation, which is published as 2 a short academic book, discusses this. 3 Q. Okay. 4 A. So, I mean, this is -- this is one of the main 5 things that I look at pretty extensively. And the level 6 of the analysis varies. An example might be something 7 that's drawn up in my dissertation that I expect to -- I 8 mean, I've been busy with books, but I expect to finish 9 and publish the next year, which is looking at the 10 impact on a metric of privilege. 11 This was originally designed by, I believe, 12 Ivy League graduate students or, actually, the website 13 BuzzFeed, but was -- I mean, has been taken something 14 like 700,000 times online. I had a group of social 15 scientists look through it, improve on some of the 16 questions. So you have 100 questions from, you know, 17 have you ever lost a fight to have you ever gone to bed 18 hungry, that measure kind of the ease of life. I think 19 most people would agree with the scale. 20 You give it to a thousand people and you look 21 at a series of variables; race, class, measured as 22 family income, region, and are you female. You know, in 23 the few trial runs, that's had a surprisingly large 24 impact, well ahead of race, you know. And you see, 25 well, what actually is a predictor of privilege.</p>

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<p style="text-align: right;">Page 45</p> <p>1 My offhand, not really guess at this point,          2 but is that privilege, as we define it, is more than          3 50 percent social class. But I mean, that would be an          4 example of this.          5 And you could do that in any scale. You could          6 do that regionally, nationally. I mean, of course any          7 sample would be, you know, whatever has been approved at          8 that level or whatever you could do prior to large-scale          9 approval, with 500 people or something, but you can do          10 that nationally pretty easily.          11 Q. Okay. You said a little bit earlier that the          12 effects of past racism is fairly easy to measure. What          13 did you mean by that exactly?          14 A. Well, there are a number of ways to -- to          15 compartmentalize racism as a variable. If you're          16 looking at states, you could look at former slave state,          17 former segregated state, former Jim Crow state, which          18 isn't exactly the same thing, probably would include          19 Oklahoma, I would say. You could look at level of          20 measured racism now according to Black residents, you          21 could look at level of measured racism from white          22 residents, how do you feel about interracial marriage,          23 any of those.          24 Q. Okay. Do you consider -- I want to pivot a          25 little bit here. Do you consider yourself an expert on</p>	<p style="text-align: right;">Page 47</p> <p>1 often, time series, that type of thing.          2 And I mean there are courses beyond that. I          3 mean, what is it? The dissertation and one other          4 project used predicted probabilities. In practice          5 that's about where I would stop, but, I mean, there are          6 other people that are using, you know, new Bayesian          7 concepts and models and so on. But yes, that's the          8 statistical course of training.          9 Q. Okay. Thank you, Dr. Reilly. Were there          10 other courses you took as either a law student or during          11 your Ph.D. about statistics?          12 A. Well, I mean, other than the full methods          13 course I've also taken qualitative methods. I've taken          14 one additional quantitative methods course. I've taken          15 legal research and method. So I have a fairly good          16 statistical background. Again, not the best in the          17 world but quite good.          18 Q. Okay. And do you teach any statistics          19 classes?          20 A. Yes. I teach statistics annually at a state          21 university. I also teach research methods, which is a          22 bit different.          23 Q. Okay. What level of statistics and research          24 methods do you teach?          25 A. Generally up through advanced multivariate</p>
<p style="text-align: right;">Page 46</p> <p>1 statistics?          2 A. I think that knowing you know nothing is the          3 beginning of wisdom. I'm sure that there are people          4 that could embarrasses me with a Stata model. But in          5 practice, yes, I'm a stats professor at a state U. I          6 can do regression and the like through the time series          7 level. By normal standards, yes. I have a Black Belt.          8 Q. In statistics you have a Black Belt?          9 A. Yes, I would be at the first or second dan.          10 There are people that are much better. But yes, I          11 clearly know what I'm doing, yeah.          12 Q. Okay. What coursework have you done in          13 statistics?          14 A. Well, Statistics 1 through -- I mean, the way          15 this is taught at Southern Illinois and most other what          16 are called Research One universities is that you have          17 methods, 500 A, B, C, D. I took that coursework series.          18 So A would be means, medians, modes, and the like. B is          19 key tests, univariate regression.          20 THE COURT REPORTER: I'm sorry, Doctor, can          21 you slow down?          22 A. C is multivariate regression of the kind that          23 you think of as professional academic or business work.          24 That's when you got into logistic regression, which is a          25 binary coded dependent variable, which I do fairly</p>	<p style="text-align: right;">Page 48</p> <p>1 regression, which I think surprised the school a bit,          2 but it's a useful technique to have. So it's -- it's,          3 again the same sort of thing. You start drawing the          4 mean on the -- you start with the data set on the board.          5 You know, what's the range, and then you go from there          6 to the consonance interval, the standard error, what's          7 the z-score of a number like this. And from there we          8 just break out computers.          9 Q. Okay. Your report, it -- let's turn to page 3          10 of your report. You also -- you refer to "racially          11 polarized voting" here in the second line, correct?          12 A. Yes.          13 Q. What do you mean by "racially polarized          14 voting"?          15 A. Well, that's an interesting question. I mean,          16 so racially polarized voting has been, as I understand,          17 defined variously in a couple different legal cases.          18 Racially polarized voting is essentially just people of          19 different races voting differently. But I think that an          20 underlying question is why they're doing that.          21 Q. Okay. Have you ever published any          22 peer-reviewed articles about racially polarized voting?          23 A. No, it's not my focus.          24 Q. Okay. And no books either?          25 A. No.</p>



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<p style="text-align: right;">Page 49</p> <p>1 Q. Okay.</p> <p>2 A. That doesn't affect my analysis here, which</p> <p>3 has two variables in it.</p> <p>4 Q. Do you -- okay. Do you know what the</p> <p>5 ecological inference method is?</p> <p>6 A. Not offhand.</p> <p>7 Q. Okay. Are you familiar with Gary King?</p> <p>8 A. I've heard the name, seen him on conference</p> <p>9 rosters, I believe.</p> <p>10 Q. Okay. Okay. So you offer no criticisms of</p> <p>11 Dr. Reilly's ecological inference analysis?</p> <p>12 A. Dr. King's.</p> <p>13 Q. Pardon me?</p> <p>14 MR. ROSBOROUGH: You said Dr. Reilly.</p> <p>15 BY MR. CAMPBELL-HARRIS:</p> <p>16 Q. Oh. I'm sorry, Dr. Liu's ecological inference</p> <p>17 analysis?</p> <p>18 A. So those are -- I mean, we all make -- those</p> <p>19 are -- there are a couple of different guys. I am very</p> <p>20 familiar with Dr. Liu.</p> <p>21 Q. Okay.</p> <p>22 A. Took a brief look at his report, as I recall.</p> <p>23 Dr. King has a different technique. I don't have a</p> <p>24 strong criticism of Dr. Liu as a methodologist, but just</p> <p>25 in one sentence, my comment about racially polarized</p>	<p style="text-align: right;">Page 51</p> <p>1 A. I've seen some of them in passing. I haven't</p> <p>2 looked through -- so I haven't looked through the</p> <p>3 methodology section of each of the other expert reports.</p> <p>4 So I don't really feel qualified to say this one took</p> <p>5 down Liu's report or something like that.</p> <p>6 Q. Okay. I'm not asking if you saw that one took</p> <p>7 another report down. Whose reports did you review or</p> <p>8 look at?</p> <p>9 A. I don't know offhand. I'd have to go back</p> <p>10 through my computer and check.</p> <p>11 Q. Okay. You -- you're not a historian, correct?</p> <p>12 A. No, I am not professionally a historian by</p> <p>13 training.</p> <p>14 Q. Okay. And you're not an expert on the history</p> <p>15 of the American South?</p> <p>16 A. Well, again, I mean, I have a Ph.D. in</p> <p>17 political science with many of the courses focused on</p> <p>18 ethnic group interactions. The American South obviously</p> <p>19 is one of the core areas that we look at. But no, I'm</p> <p>20 not a historian of the American South.</p> <p>21 Q. Okay.</p> <p>22 A. I am aware that there was ethnic conflict of</p> <p>23 races in the American South, of course.</p> <p>24 Q. Okay. And you are not an expert on Southern</p> <p>25 politics?</p>
<p style="text-align: right;">Page 50</p> <p>1 voting here is simply that if you do a basic bivariate</p> <p>2 analysis -- Liu and I don't really need to get the Stata</p> <p>3 programs for this one -- you find that Alabama's pattern</p> <p>4 of Black v white voting tracks that everywhere else in</p> <p>5 the county at about .93. And I think that probably more</p> <p>6 experts than I made that point. I haven't reviewed all</p> <p>7 of the reports.</p> <p>8 Q. But you have no criticisms of the data that</p> <p>9 Dr. Liu relied on in his report?</p> <p>10 A. I'm not familiar with every data item that he</p> <p>11 relied on.</p> <p>12 Q. Okay. But the data items that you are</p> <p>13 familiar with, you have no criticisms of those?</p> <p>14 A. No strong criticisms of the core items, no.</p> <p>15 Q. Okay. Any criticisms?</p> <p>16 A. Not offhand. I don't -- I think that there</p> <p>17 were responses made by others that strike me as fairly</p> <p>18 valid, but no, I don't -- I don't think that's my focus</p> <p>19 here.</p> <p>20 Q. Okay. And when you say "others," who are you</p> <p>21 referring to?</p> <p>22 A. The other experts for the State of Alabama, as</p> <p>23 I understand, have replied to Dr. Liu.</p> <p>24 Q. Okay. Did you review any other expert</p> <p>25 reports?</p>	<p style="text-align: right;">Page 52</p> <p>1 A. I'm pretty -- I mean, there's a Southern --</p> <p>2 no, I'm -- I don't know about that. I am not a</p> <p>3 professional expert on Southern politics.</p> <p>4 Q. Okay. You would not call yourself an expert</p> <p>5 on Southern politics?</p> <p>6 A. It's not the primary thing I write about.</p> <p>7 Q. Okay. And would you say you're an expert on</p> <p>8 racial politics of the American South?</p> <p>9 A. I would say I'm an expert on racial politics</p> <p>10 in the U.S.A. overall and that would include the</p> <p>11 American South.</p> <p>12 Q. Okay. What about specifically Alabama?</p> <p>13 A. I would not say my focus is Alabama.</p> <p>14 Q. Okay. Have you -- okay. Scratch that. Have</p> <p>15 you ever conducted research on the Southern realignment</p> <p>16 in politics?</p> <p>17 A. Actually, yes. Not professional yet published</p> <p>18 research but I considered the Southern strategy chapter</p> <p>19 for my next book and took a pretty long glance at it.</p> <p>20 Q. Can you tell me a little bit more about that?</p> <p>21 A. Sure. I mean, so my understanding of the</p> <p>22 debate in the literature is that there actually is</p> <p>23 considerable question about whether there, A, was a</p> <p>24 Southern strategy -- the majority position there is</p> <p>25 yes -- and B, whether it worked. And the majority</p>

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<p style="text-align: right;">Page 53</p> <p>1 position there is very complex, actually. 2 I forget the title of the book. It's -- I 3 don't know. There's -- there's a pretty well-known 4 piece called "How Willis Carrier Flipped The South" 5 talking about how technological change like the 6 invention of the air conditioner and the subsequent 7 migration south of a lot of northern business 8 executives, actually tracks almost exactly with voting 9 change -- patterns of voting change in the south. 10 There's also some writing about the slow pace 11 of voting change in the South, where you didn't see 12 Republicans start winning many legislatures, so on, till 13 the '90s. It's an interesting debate. I think the idea 14 that GOP appeals to racism flipped the South is at very 15 least simplistic. I mean, when you actually look at the 16 appeals made by say Nixon, who was to a large extent the 17 innovator of affirmative action in the U.S.A., Reagan, 18 and so on. 19 No, I'm not an expert on Southern politics. I 20 don't have a book about that hidden somewhere. 21 Q. Okay. Okay. Do you have any degrees in 22 statistics? 23 A. Well, I have a Ph.D. that contains the 24 statistical field. I mean, the A, B, C, D was a 25 manda -- was a mandate for graduation.</p>	<p style="text-align: right;">Page 55</p> <p>1 asking at all. 2 MR. CAMPBELL-HARRIS: That's not at all. 3 Thank you. 4 A. Yeah, no. I think these are the questions of 5 some of what I was asked to do. 6 Q. Okay. Okay. Thank you. Let's start with the 7 first question -- 8 A. Okay. 9 Q. -- here. So it states, "Is there anything 10 unique to Alabama about the alleged existence of 11 racially polarized voting, or...any patterns of racially 12 polarized voting in Alabama mirrored across the nation"? 13 Did I read that right? 14 A. Yes, that looks like a direct read. 15 Q. What was your conclusion to that question? 16 A. My conclusion was that the patterns of 17 racially polarized voting in Alabama -- and again, we 18 can debate what racially polarized voting, RPV, is, but 19 look exactly like those in most of the rest of the 20 country. Not the primary thrust of this report, but if 21 you look at the Montgomery and Huntsville data in the 22 original Liu report, those voting patterns look almost 23 exactly like those for African-Americans everywhere else 24 in the U.S.A. 25 Q. Okay. Can you walk me through your</p>
<p style="text-align: right;">Page 54</p> <p>1 Q. Okay. Let's turn to -- let's see here -- the 2 bottom of page 3. 3 A. Okay. 4 Q. Titled -- under the section "Scope and Outline 5 of Report." 6 A. Okay. 7 Q. You write that, "I was asked to examine and 8 respond to the following questions." The sentence 9 followed is four questions. And I'm wondering, are 10 these exact word-for-word questions that defendants 11 asked you to answer? 12 A. I mean, I would assume I obviously had some 13 independent role in writing these, like framing out how 14 I felt about the ask for the consulting job and so on. 15 Q. Okay. 16 A. These -- I would say these are what the 17 defendants asked me to focus on. 18 Q. Okay. Did they ask you to answer any other 19 questions besides the four questions listed on pages 3 20 and 4 of your report? 21 A. Let me check these. 22 MR. DAVIS: And, Dr. Reilly, you can answer 23 that question and tell them what you were asked to 24 do. Don't go into details about our conversations 25 with you. And I don't think that's what they're</p>	<p style="text-align: right;">Page 56</p> <p>1 methodology to reach that conclusion? 2 A. Well, sure. I looked at -- now, again, this 3 is not -- this isn't what I would do as a master stats 4 project for one of my students. But I looked at what 5 the vote percentage was in Montgomery for black 6 candidates, Huntsville for black candidates. I added 7 those together, divided. I later did a version of this 8 where I adjusted for population. 9 But you're talking about black voting averages 10 for Democrats of 92 percent, 88 percent, 90 percent, 11 91 percent, 91 percent, 93 percent, 93 percent, 12 95 percent, and 87 percent, so on down the line. Those 13 are pretty much the voting percentages that you see for 14 African-Americans for the Democrats -- I'm correlating 15 at 0.9 -- everywhere in the country. 16 And I actually pulled up some Pew data that I 17 have on my office comp. I mean, that's Figure 1. And I 18 don't claim this is conclusive. This point wasn't the 19 focus of my report. But, I mean, Alabama, you've got a 20 lean Republican at 11 percent, which is almost exactly 21 what you see in the black GOP voting data and lean 22 Democrat at 80 plus percent, and that's exactly mirrored 23 around the country. California lean GOP is 8 percent. 24 D.C. lean GOP is 6 percent. 25 I mean, what's the highest Black lean GOP on</p>

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<p style="text-align: right;">Page 57</p> <p>1 here? This is the latest Pew. Ohio, 13 percent. So</p> <p>2 one sentence here because I think I'm going to be</p> <p>3 repeating this later. To argue that there's an</p> <p>4 Alabama-specific factor variable that causes these gaps,</p> <p>5 let's call it residual racism, legacy racism, something</p> <p>6 like that, it would seem just logically obvious that you</p> <p>7 would have to show these gaps don't exist everywhere</p> <p>8 else.</p> <p>9 Q. Okay. So it looks like -- and correct me if</p> <p>10 I'm wrong. But you reviewed Dr. Liu's report, his data,</p> <p>11 and then this Pew research survey, is that correct, in</p> <p>12 reaching your conclusion for Question 1?</p> <p>13 A. Yeah, I probably looked at 10 or 15 breakdowns</p> <p>14 of Black vote around the country. I just -- I like Pew</p> <p>15 data. But, yeah, I mean, there are -- the idea that --</p> <p>16 right now there's a big fracas about the fact that Trump</p> <p>17 might get 20 percent of the Black vote. I mean, the</p> <p>18 basic idea that African-Americans vote for Democrats in</p> <p>19 every state, the correlation is -- in political science</p> <p>20 we normally say nine, two across the states. None of</p> <p>21 that's really disputed.</p> <p>22 Q. Did you -- you did not conduct any independent</p> <p>23 racially polarized voting analysis to reach your</p> <p>24 conclusion for Question 1; is that right?</p> <p>25 A. No, I did not.</p>	<p style="text-align: right;">Page 59</p> <p>1 Q. You didn't analyze the white voting patterns</p> <p>2 in any state in this report, correct?</p> <p>3 A. Well, they're just the other table in Pew, but</p> <p>4 no, they're -- they are not presented in this report.</p> <p>5 Q. Okay. Thank you. Let's go to the next</p> <p>6 question. It reads, "Are any alleged disparities in</p> <p>7 voting registration rates and voter turnout between</p> <p>8 black and white Alabamians best explained as a result of</p> <p>9 past or present racial discrimination, or do other</p> <p>10 factors and variables better explain such disparities?"</p> <p>11 And I'm wondering, what was your conclusion</p> <p>12 to that answer -- or that question?</p> <p>13 A. Well, my conclusion is that other factors</p> <p>14 better explain these disparities. And again, like two</p> <p>15 quick sentences. No one denies that racism exists. I</p> <p>16 mean, I think that people responding to me might try to</p> <p>17 make that point; Reilly claims there's no police</p> <p>18 discrimination or something like that. No one denies</p> <p>19 you can measure racism as a variable.</p> <p>20 The basic point is if you see Alabama do</p> <p>21 better on incarceration rates than Connecticut, that's</p> <p>22 not due to racism in Alabama. I mean, there are plenty</p> <p>23 of things that predict voter turnout. One of them would</p> <p>24 be past felony incarceration. Should we re-enfranchise</p> <p>25 those guys? I might agree with you on that.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Okay. And you did not analyze white voting</p> <p>2 patterns to reach your answer to Question 1, right?</p> <p>3 A. There's a longer answer than yes or no there.</p> <p>4 The white voting patterns, in both the Liu data and the</p> <p>5 Pew data, are, to a large extent, the flip of the Black</p> <p>6 voting patterns. So, I mean, that's -- that's why you</p> <p>7 have the argument for racially polarized voting. I</p> <p>8 mean, if you wanted to say these are the voting patterns</p> <p>9 for white males or something like that, certainly in</p> <p>10 Alabama and in most of these states, I mean, it would be</p> <p>11 fairly easy to draw that up. But no, I didn't.</p> <p>12 Q. Okay. But you don't have --</p> <p>13 A. I don't have that data in there, no.</p> <p>14 Q. Okay. Why is that?</p> <p>15 A. I didn't think it was necessary. I mean, the</p> <p>16 question is -- the question is, is this unusual. So, I</p> <p>17 mean, just taking the African-American voting patterns,</p> <p>18 that's the primary issue to some extent, like is the</p> <p>19 residual variable of oppression causing unusual Black</p> <p>20 behavior, I would say. No, the Black voting patterns</p> <p>21 look just like they do everywhere.</p> <p>22 Now, the white voting patterns don't look</p> <p>23 particularly atypical either. I mean, I should review</p> <p>24 those when I get home, but you're not going to see</p> <p>25 anything strikingly bizarre there.</p>	<p style="text-align: right;">Page 60</p> <p>1 But that's just a variable. I mean, in</p> <p>2 Alabama that's 15 percent of the black electorate. So</p> <p>3 if you're talking about current racism with no tertiary</p> <p>4 variables, no, that's not the reason.</p> <p>5 Q. Okay. Where do you discuss racism as a</p> <p>6 variable in your report?</p> <p>7 A. Well, I mean, I mentioned several times that</p> <p>8 are a number of -- in virtually every point where I say</p> <p>9 this is complex multiple variables, I say one of those</p> <p>10 could be racism, is racism. But that is -- if there are</p> <p>11 12 variables in a model, you can't just isolate out</p> <p>12 racism.</p> <p>13 Q. Okay. How do you define racism?</p> <p>14 A. That's one of the most interesting questions</p> <p>15 in social sciences, but I mean, I -- I have the classic</p> <p>16 definition still quite common in political science,</p> <p>17 dislike of the out group. Racism is you dislike Blacks</p> <p>18 or whites or you discriminate against Blacks or whites.</p> <p>19 There are multiple ways to measure this, however.</p> <p>20 Q. Okay. Is this the only methodology you used</p> <p>21 to answer Question 2?</p> <p>22 A. Well, what do you mean "the only methodology,"</p> <p>23 like comparing Blacks and whites in different states and</p> <p>24 adjusting for -- I mean, yes.</p> <p>25 Q. Okay.</p>

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<p style="text-align: right;">Page 61</p> <p>1 A. Yeah. The comparison in adjustment would be a 2 very common methodology used to do this, whether you're 3 doing original work or citing others, yes. 4 Q. Okay. Let's turn to Question 3. You were 5 asked, "Relatedly, what effect might disparities in 6 educational performance, family structure, incarceration 7 rates, and other variables have upon voter registration 8 and turnout"? 9 A. Yes. 10 Q. What was your conclusion to Question 3? 11 A. Well, all of those have a pretty significant 12 impact. I mean -- so I think pretty much everyone, 13 probably including the other experts, would concede that 14 educational performance is almost a causal variable for 15 voter turnout. You know, family structure is one of the 16 biggest predictors of what you could call civic 17 participation. You know, incarceration rates, you can't 18 vote if you're a felon, I mean in most states. I'm not 19 a practicing lawyer, but I would assume in Alabama. 20 That's not the most liberal state in the Union. 21 So, I mean, those all have a massive impact. 22 Generally the response in liberal political science is 23 just to say that all those things are themselves racism. 24 Q. Okay. Did you -- did you choose to look at 25 educational performance, family structure, and</p>	<p style="text-align: right;">Page 63</p> <p>1 mean, yes. 2 Q. Okay. 3 A. This -- this, for a long time, was the 4 dominant paradigm in the social sciences. I think that 5 now it's -- the idea of anything that could even 6 theoretically blame the, quote/unquote, victim has 7 fallen out of fashion. 8 Q. Okay. Going back to Question 3 here, what was 9 your methodology to reach your conclusion? 10 A. Well, you just adjust for the thing. I mean, 11 now, a lot of this has already been done, so I was able 12 to cite prior research from myself and others. So, I 13 mean, for example, incarceration rates, you would simply 14 look at what the percentage of convicted felons or 15 long-term incarcerated individuals in Alabama was and 16 subtract that from the potential black voter voting 17 percentage or turnout percentage. 18 I will say, from the little I've seen, the 19 methodology in expert reports is generally not at the 20 same level as the methodology in social science journal 21 articles. Perhaps given time. But I mean, it's just -- 22 that's a basic and valid point; you got 80 minus 20, you 23 have 60. 24 Q. Okay. Let's go to Question 4, the final one. 25 You say -- or you were asked, "In turn, are these</p>
<p style="text-align: right;">Page 62</p> <p>1 incarceration rates, and the other variables mentioned 2 in your report or was that from an outside source? 3 A. No, that's -- that's a -- my choice. Those 4 are variables that are very often influential. 5 Q. Okay. 6 A. I mean, there's almost a culturalist cliché 7 that if you want to close group gaps, you would look at 8 age, region, and education or test scores. 9 Q. Okay. 10 A. And that's -- that's generally the case. Now, 11 the question is whether the last one still incorporates 12 residual racism, and there's a real debate. 13 Q. Okay. Are there other culturists -- prominent 14 culturists that you would recommend someone read about 15 if they wanted to learn more about culturalism? 16 A. Well, I mean, there are thousands of 17 culture -- I mean, culturalism -- yes, Tom Sowell, the 18 legendary black social -- but I add William Julius 19 Wilson on the left side of the fence, I would say is a 20 culturalist; I mean, a fair number of the think tank 21 people from Ralph Mangual to Heather McDonald. But I 22 mean, many people that are right in the center of the 23 political spectrum. 24 I would be glad to provide a list. But you 25 could -- you could go on for -- for some time, but I</p>	<p style="text-align: right;">Page 64</p> <p>1 tertiary variables best explained as caused by past or 2 present racism?" 3 What do you mean by tertiary variables here? 4 A. Just what we're talking about; age. 5 Q. Okay. So age, educational performance, family 6 structure? 7 A. Yes, that's quite right. 8 Q. Okay. What was your conclusion or how did you 9 reach your conclusion here? 10 A. No. So I concluded that -- well, in this 11 case, I mean it's actually very possible to do a 12 comparison adjusting for racism. I've done this 13 multiple times before. I have the data at home. 14 I mean, so what you would -- so a couple of 15 things. First, no. I find that racism is always a 16 variable you should look at. But no, the differences in 17 performance against a lot of these metrics are not due 18 to racism. A simple example would be crime and 19 incarceration. Between 1963 and 1993, as racism 20 declined by every measure that anyone uses, crime 21 increased about 500 percent. Crime in the black 22 community increased, if I recall correctly, 820 percent. 23 So you obviously have to look at other variables from 24 job outsourcing mostly engaged by the, quote/unquote, 25 left to welfare policy on the right.</p>



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<p style="text-align: right;">Page 65</p> <p>1 Similarly, last line, but in this report, I</p> <p>2 mean, we're looking at incarceration for a couple of</p> <p>3 pages, right? I mean, so I'm looking across the</p> <p>4 different states. If you look at whether a state was a</p> <p>5 slave state, that is a negative predictor of the</p> <p>6 incarceration gap between Blacks and whites, i.e.,</p> <p>7 smaller in the Southern states with a lot of working</p> <p>8 class Blacks and whites.</p> <p>9 The highest incarceration gap states are</p> <p>10 places like Connecticut. There's almost a joke there</p> <p>11 about well-intentioned people with Black Lives Matter</p> <p>12 signs on their lawn and lots of people in jail.</p> <p>13 But yeah, so I mean, that's how you adjust for</p> <p>14 that. You literally just take the states and you put a</p> <p>15 couple of variables in the model.</p> <p>16 Q. Okay. So did you deploy then the same</p> <p>17 methodology that you used to answer Question 3 as well?</p> <p>18 A. Simple adjustments. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. I think that's very fair to say, but those</p> <p>21 might vary.</p> <p>22 Q. And do you agree that racial discrimination is</p> <p>23 a factor in racial disparities?</p> <p>24 A. Sure. I mean, yes. So if there were no</p> <p>25 racial discrimination would disparities be smaller? I</p>	<p style="text-align: right;">Page 67</p> <p>1 Q. Okay. Following "Introduction," you say, "the</p> <p>2 key argument being made against the State of Alabama is</p> <p>3 that the Yellowhammer state is experiencing racially</p> <p>4 polarized voting (and sizable differences in voter turn</p> <p>5 out and behavior) and that these patterns are due to</p> <p>6 Alabama-specific past or contemporary racism, and that"</p> <p>7 the "more minority-friendly districting patterns are</p> <p>8 needed to remedy this situation."</p> <p>9 How did you come to that understanding?</p> <p>10 A. I mean, I think it's versus -- the sentence in</p> <p>11 full, probably just doing some background on the case.</p> <p>12 The core or first two parts of it, I think that that's a</p> <p>13 claim that's logically necessary. I mean, if you're</p> <p>14 saying that there is a massive problem in Alabama and</p> <p>15 that this necessitates a remedy of some kind, the</p> <p>16 argument almost has to be that the cause of the problem</p> <p>17 is bias or another harm and that that is significant in</p> <p>18 and probably unique to Alabama. And I think both of</p> <p>19 those are challengeable, one, that the cause is bias or</p> <p>20 another harm and, two, that that's unique.</p> <p>21 Q. Okay. Which of the questions we just went</p> <p>22 over a couple of minutes ago is this claim at the top of</p> <p>23 page 3 related to?</p> <p>24 A. Well, I mean, it's pretty directly related to</p> <p>25 most of them. I mean, so -- and obviously I would</p>
<p style="text-align: right;">Page 66</p> <p>1 think any honest academic would say yeah.</p> <p>2 Q. Uh-huh. And regarding Question 2, do you</p> <p>3 agree that racial discrimination is a factor in the</p> <p>4 alleged disparities between Blacks and whites in voter</p> <p>5 registration rates and voter turnout?</p> <p>6 A. To some unknown extent, probably.</p> <p>7 Q. Okay.</p> <p>8 A. If I can speak on that for one brief line, the</p> <p>9 real question is following a lengthy history of brutal</p> <p>10 racism and ethnic conflict, but also 60 years of</p> <p>11 minority focused get-out-the-vote drives, affirmative</p> <p>12 action, those sort of thing, what impact does racism</p> <p>13 have once you adjust for everything else like</p> <p>14 incarceration differences on voter turnout. And that</p> <p>15 might very well be there. It might be 2 percent or</p> <p>16 something like that. But we don't know without</p> <p>17 conducting a better analysis than, I mean, certainly</p> <p>18 anyone I've looked at claiming that that is the causal</p> <p>19 variable has done.</p> <p>20 Q. Okay. Let's return to page 3 for a second.</p> <p>21 A. All right.</p> <p>22 MR. ROSBOROUGH: It's maybe at the bottom.</p> <p>23 MR. CAPPBELL-HARRIS: Might be.</p> <p>24 MR. ROSBOROUGH: You can just borrow mine.</p> <p>25 MR. CAPPBELL-HARRIS: Thank you.</p>	<p style="text-align: right;">Page 68</p> <p>1 phrase things differently as I write a different</p> <p>2 section. But, I mean, so Question 1 is, is there</p> <p>3 anything unique to Alabama about the alleged existence</p> <p>4 of racially polarized voting. And the top of the page</p> <p>5 says, you know, is the Yellowhammer state experiencing</p> <p>6 racially polarized voting due to Alabama-specific past</p> <p>7 or contemporary racism. I mean, I think there's a</p> <p>8 pretty -- a pretty obvious logical link there.</p> <p>9 Q. Okay. Any other questions or primarily the</p> <p>10 first question?</p> <p>11 A. Well, I think -- I mean, all of the stuff,</p> <p>12 like -- I also say sizable differences in voter turnout</p> <p>13 and behavior which is Question 2. I think the language</p> <p>14 is quite defensible.</p> <p>15 Q. Okay. You then say, "However, the 1st and 2nd</p> <p>16 claims just outlined empirically seem to be incorrect."</p> <p>17 So, first, regarding the first claim, are you</p> <p>18 talking about whether or not Alabama experiences</p> <p>19 racially polarized voting?</p> <p>20 A. Let's see. I mean, you could argue the</p> <p>21 language there is a bit clumsy. I might say unique</p> <p>22 racially polarized voting or unusual racially polarized</p> <p>23 voting.</p> <p>24 I mean, I -- I think the point is -- is fairly</p> <p>25 clear overall, and I'm glad to help clarify. But the</p>

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<p style="text-align: right;">Page 69</p> <p>1 idea, it seems to me, to be that there are performance 2 gaps in Alabama or that there are patterns in Alabama 3 that are due to historical real problems in Alabama, 4 which we all acknowledge. And the problem with that is 5 that that doesn't seem to be true because the same 6 patterns exist everywhere else. And I think that's the 7 theme of my report. 8 And we can look at why they exist everywhere 9 else. I may well do more complex multi-variate models 10 to test everything I'm saying in even greater depth. I 11 assume this might go on for a while. 12 But I mean, like if you -- if you're arguing 13 that racism is the reason for racially polarized voting 14 or whatever, historical racism, bias, ethnic conflict is 15 the reason for racially polarized voting, for RPV, it's 16 a serious barrier to that argument that the same level 17 of racially polarized voting exists in something like 22 18 other states. 19 You know, if you're arguing that test score 20 gaps, which I mention in the report, are due to racism 21 or ethnic conflict, it's a serious problem that the same 22 gaps exist everywhere in the country and are actually 23 smaller in Alabama than in most places and so on down 24 the line. 25 Q. Okay. And then -- we'll discuss racially</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. Okay. And you agree that Alabama does 2 experience racially polarized voting? 3 A. I think that -- I think Black and white people 4 vote differently in Alabama. Now, I've actually read -- 5 I think Black and white vote differently in Alabama. 6 Q. Okay. Let's go -- well, I guess what is 7 empirically incorrect about Alabama experiencing 8 racially polarized voting? 9 A. If Alabama experiences racially polarized 10 voting, so does maybe 80 percent of the country. This 11 gets down to a matter of semantic definition. 12 Q. Okay. And how you analyze that is basically 13 how you answer Question 1, the methodology you used for 14 Question 1 here? 15 A. Well, the methodologies are similar across 16 questions. But in terms of an answer here, racially 17 polarized voting, as you probably know, in political 18 science is -- the concept is that it's bad for ethnic 19 groups to vote differently for purely racist reasons. 20 And there's been RPV analysis done in Somalia. 21 The problem in the U.S.A. is that we have only two 22 political parties and all kinds of groups. Mormons 23 break in different directions for those parties. So if 24 you have a state where African-Americans vote 85 percent 25 for the Democratic party and whites vote 65 percent for</p>
<p style="text-align: right;">Page 70</p> <p>1 polarized voting later. 2 A. Okay. 3 Q. But for the second claim, you're talking about 4 whether or not racially polarized voting then in Alabama 5 is unrelated to, as you put it, Alabama-specific past or 6 contemporary racism; is that right? 7 A. Well, I don't know the -- whether -- how 8 relevant the distinction between the first and the 9 second claims are. So, okay, the key argument being 10 made against the State of Alabama is that -- I guess it 11 would be, one, the Yellowhammer state is experiencing 12 racially polarized voting and sizable differences in 13 behavior, and two, these patterns are due to 14 Alabama-specific past or contemporary racism. 15 So 2 seems to be relevant to all of the claims 16 that I have made. Like in the broadest sense, writing 17 in social science rather than legal terms, these 18 patterns are due to Alabama's past or something like 19 that, that's relevant to all of the questions. 20 And that's a good reminder to bone up the 21 writing a little bit, but -- so 1, the Yellowhammer 22 state is experiencing racially polarized voting and 23 sizable differences in turnout and behavior. Yeah, I 24 mean, I think all of those are defensible in light of 25 the questions that we have.</p>	<p style="text-align: right;">Page 72</p> <p>1 the Republican party, it doesn't make a ton of sense to 2 say that's racially polarized voting caused by mutual 3 racism because that's every state. I mean, that -- so 4 that's the problem. 5 The question is what does it mean. Does it 6 just mean ethnic differences in voting or does it mean 7 what it means in political science, which is ethnic 8 differences in voting caused by actual racial hostility. 9 Q. Okay. I guess I'm wondering what is 10 empirically incorrect about Alabama experiencing racial 11 polarized voting? 12 A. Well, in the -- it's a semantic definition -- 13 semantic question. So in the second case is Alabama 14 experiencing race -- RPV due to ethnic hostility? 15 Probably not. If you just adjust for the party of the 16 candidates -- and I didn't review this in depth, but I 17 see Liu did try to respond to this. 18 But if you just adjust for the party of the 19 candidates, and I do this -- it's really easy to do -- 20 you find that race falls completely out of significance. 21 I mean, this is just, again, three variables in here. 22 This is page 5. All of the candidates that 23 were Black preferred were Democrats. In fact, some -- 24 10 of them were Black Democrats. So, I mean, you can't 25 say Black people are voting for Black people because of</p>

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<p style="text-align: right;">Page 73</p> <p>1 racial hostility when 85 percent of Black people vote          2 for the Democrats largely regardless of race in most          3 states.          4 I mean, Bill Clinton, 85 percent of the Black          5 vote; Barak Obama, 93 percent of the Black vote; you          6 know, Joe Biden, who's been dead for several years,          7 88 percent of the Black vote, and so on down the line.          8 I mean, so that's -- I mean, you do see a 5 point jump          9 from Mr. Biden to Mr. Obama, but this is just a pattern          10 that we see nationally.          11 Q. Okay. I'm wondering what is empirically          12 incorrect about racially polarized voting in Alabama          13 being due to past or contemporary racism?          14 MR. DAVIS: Object to the form.          15 You're free to answer the question.          16 A. Yeah. So I mean, the -- an unfalsifiable          17 premise isn't scientific. And I mean, this one is not          18 unique to you or flawed from you, but it's just sort          19 of -- if everyone in the country behaves in a certain          20 manner regardless of level of racism -- you see this          21 same pattern among African-Americans versus rustic          22 whites in Vermont -- then you can't attribute it to past          23 or current racism.          24 I mean, at the very least -- you know, yeah,          25 you -- that's -- I actually would have some method</p>	<p style="text-align: right;">Page 75</p> <p>1 mean, there are massive ethnic splits in voting that          2 don't really have anything to do with expressed racism.          3 So if you just showed me that Alabama whites voted, I          4 would guess 64 to 65 percent for the Republican and          5 Alabama Blacks voted 82 to 86 percent for the Democrats,          6 I would not be surprised because those are the national          7 figures that I read this morning in the journal.          8 Q. What if those patterns differed between white          9 voters in different states; for example, 60 percent for          10 the Black candidate in Connecticut, 30 percent for the          11 Black candidate in Louisiana, 10 percent in Alabama?          12 Would that alter your opinion at all?          13 A. In one context, which would be where they          14 differ to a statistically significant degree, one, in a          15 way that tracked with past racism. Two, I'm by no means          16 sure that's the case. I don't think that North Dakota          17 is a less Republican state for whites than Alabama is.          18 I mean -- and again, this gets back to the          19 Southern strategy debate. Was it just racism that drove          20 Caucasians to the GOP, which as a Black academic, I          21 became pretty sympathetic toward, or was it a bunch of          22 other things.          23 Q. How would you track past racism?          24 A. I mean, there are a number of -- so this,          25 again, is something that's been done very often in</p>
<p style="text-align: right;">Page 74</p> <p>1 suggestions for your expert. But I mean, like, you          2 can't do that. It doesn't make sense.          3 The same voting pattern for African-Americans          4 is observed everywhere in the country regardless of past          5 racism. And when I say that, I'm not just sort of          6 making it up, which I think is one potential response to          7 me. Like, well, what do you mean racism? I mean, you          8 can look again at former Jim Crow, former slave state,          9 former segregated state, level of current racism          10 experienced by whites, level of current racism          11 experienced by Blacks, so on. There's just very little          12 connection. In Chicago you see these same kind of votes          13 in what's often a Black-led city.          14 Q. Okay. If white voting patterns differed          15 significantly in Alabama from Black voting patterns,          16 would that alter your analysis at all?          17 A. Well, no, because they do everywhere. I mean,          18 so in the United States and per -- in the United States,          19 for whatever reason -- and one of the 20 predictor          20 variables could include past ethnic conflict -- we see          21 Black/white voting differences everywhere in the          22 country.          23 Like, you know, any -- any minority feminist          24 on a date will note to you that 54 percent of white          25 women voted for Donald Trump. That was white women. I</p>	<p style="text-align: right;">Page 76</p> <p>1 social science. Like something that I would suggest          2 would be, for example, looking by state at the          3 percentage of people who said -- it's called the work          4 for, vote for question. The percentage of people that          5 said they would vote for a qualified Black candidate for          6 president or work for a Black boss by year. That'd be a          7 simple way to do it. That data is kept at the state          8 level.          9 A simple proxy is former South. A simple          10 proxy is former Jim Crow, former Confederate. Like, we          11 really do know how to do this. And again, I've noticed          12 that -- I've noticed that a lot of things in social          13 science are falling out of fashion during the current          14 kind of racial combative moment. I think they'll come          15 back in a couple of years.          16 Q. Okay. You also mention here that "more          17 minority-friendly districting patterns are needed to          18 remedy the situation." What do you mean by "minority          19 friendly district patterns"?          20 A. I mean, I would consider that something of a          21 throw-away line. My understanding is that Alabama is          22 currently looking at potential state Senate and federal          23 redistricting structures, but that -- that, honestly, is          24 not my focus here.          25 Q. Okay. Okay. All right. And I know we asked</p>

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<p style="text-align: right;">Page 77</p> <p>1 a similar question before, but besides the opinions we</p> <p>2 just went over, do you anticipate forming any additional</p> <p>3 opinions about this case?</p> <p>4 A. This -- no.</p> <p>5 Q. Okay.</p> <p>6 A. I don't anticipate further opinions about this</p> <p>7 matter.</p> <p>8 Q. Okay. Thank you.</p> <p>9 A. If they pay me more and change the brief,</p> <p>10 who's to say? But I mean -- but no, I do not, as a</p> <p>11 fairly ethical person, as a consultant, and so on.</p> <p>12 Q. Yeah. And you stand by your opinions in this</p> <p>13 report?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Okay. And when did you begin to prepare your</p> <p>16 initial report in this case?</p> <p>17 A. Again, these figures are approximate, but if I</p> <p>18 started early last fall, I mean, perhaps by last October</p> <p>19 or something like that. I mean, you would -- November,</p> <p>20 you would have -- within a month or two of being hired,</p> <p>21 you would have had all the articles printed out and</p> <p>22 started -- started reading and writing.</p> <p>23 Q. Okay. Did you print out any articles after</p> <p>24 October of 2023 for this report?</p> <p>25 A. I don't -- I would imagine, but I don't know</p>	<p style="text-align: right;">Page 79</p> <p>1 A. If you are looking at incarceration</p> <p>2 statistics, I mean, there's a widely used 2004, 2005</p> <p>3 chart. Obviously you'd update that because that's now</p> <p>4 classic, so on. So just things I'm familiar with from</p> <p>5 teaching in these fields.</p> <p>6 Q. Okay.</p> <p>7 A. Writing in these fields.</p> <p>8 Q. Did you work with anyone to identify sources</p> <p>9 for this report?</p> <p>10 A. No.</p> <p>11 Q. Okay. It was just you?</p> <p>12 A. No, my fiancée may have suggesting an article.</p> <p>13 She herself is a writer but -- no, I mean --</p> <p>14 Q. Okay.</p> <p>15 A. And she is not aware of my task duties with</p> <p>16 Alabama. No, I prepared the report.</p> <p>17 THE COURT REPORTER: Ms. Messick joined.</p> <p>18 MR. DAVIS: That's us.</p> <p>19 THE COURT REPORTER: Okay.</p> <p>20 BY MR. CAMPBELL-HARRIS:</p> <p>21 Q. Was there any documents or otherwise</p> <p>22 information that you were asked to look at that you did</p> <p>23 not get to see?</p> <p>24 A. No, not to the best of my knowledge.</p> <p>25 Q. Okay. And did you conduct any interviews to</p>
<p style="text-align: right;">Page 78</p> <p>1 the exact printout dates. I don't know when every piece</p> <p>2 was released from JSTR or whatever.</p> <p>3 Q. Okay. Can you identify any articles that you</p> <p>4 looked at or reviewed after October 2023?</p> <p>5 A. I can't identify -- well, I mean, there are</p> <p>6 probably articles in this -- I can't identify the dates</p> <p>7 of specific articles that I looked at for this report.</p> <p>8 I would imagine that during the course of the report,</p> <p>9 which is probably time stamped in the report -- I mean,</p> <p>10 there are dates on the things in the report. But I</p> <p>11 mean, I would imagine during the course I looked at</p> <p>12 literature coming out, that sort of thing.</p> <p>13 Q. Okay. I think you kind of answered this</p> <p>14 already, but when did you perform the work for this</p> <p>15 report?</p> <p>16 A. Well, I mean, from the --</p> <p>17 MR. DAVIS: Object to the form.</p> <p>18 A. From the period of hiring until now.</p> <p>19 Q. Okay. Okay. How did you identify the sources</p> <p>20 that you relied on for this report?</p> <p>21 A. Professional expertise for a great many.</p> <p>22 Q. Okay.</p> <p>23 A. I mean, if -- yeah.</p> <p>24 Q. Hold on. I was just going -- you can</p> <p>25 continue.</p>	<p style="text-align: right;">Page 80</p> <p>1 help form your opinions in this report?</p> <p>2 A. I conducted no personal interviews.</p> <p>3 Q. Okay. Are there any other documents or</p> <p>4 information that you would have wanted to look at to</p> <p>5 help inform your opinions in this report?</p> <p>6 A. You always want to look at more information.</p> <p>7 I mean, I think I look -- by this point in my career, I</p> <p>8 think I knew many of the best documents supporting my</p> <p>9 case. I mean, I think I know where you'd find the SAT</p> <p>10 data, the incarceration data. I think I would have been</p> <p>11 fully honest about it had Alabama, in fact, lagged the</p> <p>12 rest of the country, which was a possibility.</p> <p>13 And I mean, I think the state of Alabama was</p> <p>14 aware of that. So no, I -- sure, you always want more,</p> <p>15 but I was comfortable with what I was able to access.</p> <p>16 Q. Okay. And you said Alabama lagged --</p> <p>17 A. No.</p> <p>18 Q. -- the rest of the country. In what exactly</p> <p>19 did Alabama lag --</p> <p>20 A. I'm saying they didn't.</p> <p>21 Q. Oh, it did not.</p> <p>22 A. Yeah.</p> <p>23 Q. Okay.</p> <p>24 A. Had they -- that's one of the risks of hiring,</p> <p>25 I assume, all these professors. Like had the client, in</p>





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<p style="text-align: right;">Page 81</p> <p>1 fact, been the worst in the country in terms of</p> <p>2 incarceration gaps, I mean, you're compelled to say</p> <p>3 that. So I did not find that to be the case. In fact,</p> <p>4 in terms of incarceration rate gap, Alabama was -- and</p> <p>5 this I found shocking -- was the second best performer</p> <p>6 in the country.</p> <p>7 Q. Okay. Just in regards to incarceration rates?</p> <p>8 A. Gaps between Blacks and -- African-Americans</p> <p>9 and Caucasians, yes.</p> <p>10 Q. Okay. We spoke briefly earlier about this,</p> <p>11 but you are aware that there are other defense experts</p> <p>12 in this case, right?</p> <p>13 A. Of course.</p> <p>14 Q. Do you know who they are?</p> <p>15 A. I've been cc'd on an email or two. I couldn't</p> <p>16 recall the list of names.</p> <p>17 Q. Okay. Did you review any of their work in</p> <p>18 preparation for your report or today's deposition?</p> <p>19 A. The defense experts?</p> <p>20 Q. (Nodding head.)</p> <p>21 A. No.</p> <p>22 Q. Okay. You didn't review any defense expert</p> <p>23 reports?</p> <p>24 A. That -- that would be on my side of the aisle.</p> <p>25 Q. Correct.</p>	<p style="text-align: right;">Page 83</p> <p>1 Q. And I will represent this is a copy of</p> <p>2 Dr. Liu's initial report.</p> <p>3 A. All right. Thank you.</p> <p>4 MR. ROSBOROUGH: No, it's --</p> <p>5 THE COURT REPORTER: I'll take the exhibits at</p> <p>6 the end --</p> <p>7 MR. CAMPBELL-HARRIS: Okay.</p> <p>8 THE COURT REPORTER: -- if that works.</p> <p>9 MR. CAMPBELL-HARRIS: Yes.</p> <p>10 THE COURT REPORTER: Great. Thanks.</p> <p>11 MR. DAVIS: Do we need to go off the record?</p> <p>12 MR. CAMPBELL-HARRIS: No.</p> <p>13 BY MR. CAMPBELL-HARRIS:</p> <p>14 Q. And, Dr. Reilly, you're familiar with this</p> <p>15 report?</p> <p>16 A. Yes, I am.</p> <p>17 MR. ROSBOROUGH: Rebuttal report.</p> <p>18 BY MR. CAMPBELL-HARRIS:</p> <p>19 Q. Okay. And I'm going to present to you what</p> <p>20 I'm marking as Exhibit 3.</p> <p>21 (Plaintiffs' Exhibit 3 was marked for</p> <p>22 identification.)</p> <p>23 A. All right.</p> <p>24 Q. And I'm going to represent to you that this is</p> <p>25 Dr. Liu's rebuttal report.</p>
<p style="text-align: right;">Page 82</p> <p>1 A. Yeah. No, I haven't reviewed any of those in</p> <p>2 any significant depth.</p> <p>3 Q. Okay. Any that you skimmed?</p> <p>4 A. Perhaps. Can't recall.</p> <p>5 Q. Okay. And you didn't speak with any defense</p> <p>6 experts?</p> <p>7 A. No, I have not spoken with the defense experts</p> <p>8 prior to this, this meeting, no.</p> <p>9 Q. Okay. Have you reviewed any plaintiffs'</p> <p>10 expert reports?</p> <p>11 A. Yes. I've looked at some of the reports from</p> <p>12 plaintiffs' experts.</p> <p>13 Q. And which of the reports have you reviewed?</p> <p>14 A. The reports I have reviewed in enough depth to</p> <p>15 comment on would be Liu, Bagley, and Burch, if I recall</p> <p>16 correctly.</p> <p>17 Q. Okay. Did you review -- so you reviewed their</p> <p>18 initial reports?</p> <p>19 A. I reviewed their initial reports and took a</p> <p>20 subsequent and briefer look at their rebuttal reports.</p> <p>21 Q. Okay. I'm going to present to you what I'm</p> <p>22 marking as Exhibit 2.</p> <p>23 (Plaintiffs' Exhibit 2 was marked for</p> <p>24 identification.)</p> <p>25 A. All right.</p>	<p style="text-align: right;">Page 84</p> <p>1 A. All right.</p> <p>2 Q. And you're familiar with this as well?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Okay. And then I'm going to pull what I'm</p> <p>5 going to mark as Exhibit 4. This is Dr. Bagley's</p> <p>6 initial report.</p> <p>7 (Plaintiffs' Exhibit 4 was marked for</p> <p>8 identification.)</p> <p>9 A. Okay.</p> <p>10 Q. And, Dr. Reilly, you're familiar with this</p> <p>11 report?</p> <p>12 A. Uh-huh.</p> <p>13 MR. DAVIS: Yes?</p> <p>14 A. Hmm. Sorry. Yes.</p> <p>15 Q. Okay. I'm going to pull what I'm now marking</p> <p>16 as Exhibit 5, which I'm going to represent is</p> <p>17 Dr. Bagley's rebuttal report.</p> <p>18 A. All right.</p> <p>19 MR. ROSBOROUGH: We might have switched those.</p> <p>20 Check and see what --</p> <p>21 THE WITNESS: This is Bagley's rebuttal</p> <p>22 report.</p> <p>23 MR. ROSBOROUGH: Exhibit 4 is Bagley rebuttal</p> <p>24 report, and we'll mark Exhibit 5 --</p> <p>25 MR. CAMPBELL-HARRIS: As Bagley's initial</p>



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<p style="text-align: right;">Page 85</p> <p>1 report.</p> <p>2 THE WITNESS: Okay.</p> <p>3 (Plaintiffs' Exhibit 5 was marked for</p> <p>4 identification.)</p> <p>5 BY MR. CAMPBELL-HARRIS:</p> <p>6 Q. And you are familiar with this report?</p> <p>7 A. Yes, I am.</p> <p>8 Q. And I'm going to pull now what has been marked</p> <p>9 as Exhibit 6. This is Dr. Burch -- I'm going to</p> <p>10 represent is Dr. Burch's initial report.</p> <p>11 (Plaintiffs' Exhibit 6 was marked for</p> <p>12 identification.)</p> <p>13 Q. Dr. Reilly, you're familiar with this?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Okay. And then I'm going to pull the last one</p> <p>16 as Exhibit 7, what I'm presenting as Dr. Burch's</p> <p>17 rebuttal report.</p> <p>18 (Plaintiffs' Exhibit 7 was marked for</p> <p>19 identification.)</p> <p>20 Q. And you're familiar with this as well?</p> <p>21 A. Yes, I am.</p> <p>22 Q. Okay. So you took a look at all these reports</p> <p>23 in preparation of today's deposition?</p> <p>24 A. Yes, I did.</p> <p>25 Q. Okay. Did you review the sources in these</p>	<p style="text-align: right;">Page 87</p> <p>1 report?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. You didn't pull any graphs from any</p> <p>4 external sources?</p> <p>5 A. The data in the graphs in the report is</p> <p>6 obviously from previously -- to some extent -- I mean,</p> <p>7 things are added -- but from previously prepared</p> <p>8 academic materials, data sets and so on, but the graphs</p> <p>9 are put together in a program like Excel, yes, by -- by</p> <p>10 myself.</p> <p>11 Q. Okay.</p> <p>12 A. And they're all properly cited. I mean, so</p> <p>13 yeah, I obviously didn't go and individually ask the</p> <p>14 number of inmates in each state, that sort of thing.</p> <p>15 Q. Okay. Were there any sections or portions of</p> <p>16 your report that include opinions that you have not</p> <p>17 personally reached in this litigation?</p> <p>18 A. No.</p> <p>19 Q. Okay. And all the materials you relied on to</p> <p>20 reach your conclusions are contained in your report?</p> <p>21 A. That's an interesting question. I mean, the</p> <p>22 materials that I relied on to reach my conclusions</p> <p>23 include, you know, large scale statistics texts and the</p> <p>24 oeuvre of Thomas Sowell and so on. But all of the</p> <p>25 direct sources for my report are in the report, yes.</p>
<p style="text-align: right;">Page 86</p> <p>1 reports?</p> <p>2 A. Some of them. I can't say that I reviewed the</p> <p>3 majority of sources. I'm familiar with a number of</p> <p>4 them, of course.</p> <p>5 Q. Okay. Did you review the sources in the</p> <p>6 initial reports of Dr. Liu, Dr. Bagley, and Dr. Burch in</p> <p>7 preparation of your report?</p> <p>8 MR. DAVIS: Object to the form.</p> <p>9 A. I did not review every source. I read these</p> <p>10 reports. I read through them with some professional</p> <p>11 skill. I responded to points in them. My general</p> <p>12 assumption is that when someone of that level cites a</p> <p>13 source and it's an article I've read, that's probably an</p> <p>14 accurate citation.</p> <p>15 Q. Okay. Were there any other expert reports</p> <p>16 that you looked at?</p> <p>17 A. Not that I recall. Not in any depth, not in</p> <p>18 any this-is-a-review role sort of capacity.</p> <p>19 Q. Okay. And no one assisted you with preparing</p> <p>20 your report?</p> <p>21 A. No, no one did.</p> <p>22 Q. Okay. And you performed all the analysis in</p> <p>23 your report?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And did you prepare the graphs in your</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Okay. And you agree with all the contents in</p> <p>2 your entire report?</p> <p>3 A. I'm sure in a direct debate over drinks with</p> <p>4 Dr. Burch, I mean, we might change our mind on a point</p> <p>5 or two. But yes, I agree with my report.</p> <p>6 Q. Okay. We're about to switch topics. If you</p> <p>7 want to take a break now would be a good time.</p> <p>8 MR. DAVIS: Sounds good.</p> <p>9 (A recess was taken from 10:58 to 11:08.)</p> <p>10 Q. All right. We're back on the record. I want</p> <p>11 you to turn to page 4 of your report.</p> <p>12 A. Okay.</p> <p>13 Q. So under -- near the last sentence of the</p> <p>14 first paragraph of section IV of your report you write,</p> <p>15 "Most Black Alabamian taxpayers are Democrats, most</p> <p>16 white Alabamian taxpayers are Republicans, and" that</p> <p>17 "elections broken out by Dr. Lieu follow this pattern to</p> <p>18 such an extent that that race becomes totally</p> <p>19 non-predictive in a simple regression."</p> <p>20 What is the basis for these conclusions?</p> <p>21 A. Well, the basis for these conclusions is that</p> <p>22 if you put partisanship in a univariate or a bivariate</p> <p>23 regression model, it explains 100 percent of what's</p> <p>24 called the variance, the R and R squared, i.e., every</p> <p>25 Black voting majority cast their votes for a Democrat</p>



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<p style="text-align: right;">Page 89</p> <p>1 and every white voting majority cast their votes for a          2 Republican. In fact, if you do this model in Stata,          3 which has harder parameters, race is dropped from the          4 model; you're just looking at the effect of          5 partisanship.          6 So I mean, again, it's not the most complex          7 analysis in the world but just race, partisanship          8 explains 100 percent of who's voting for who. Black --          9 African-Americans are voting for Democrats and          10 Caucasians, whites, are voting for Republicans.          11 Q. Okay. What data did you rely -- well, scratch          12 that.          13 Did you perform a multi or bivariate analysis          14 in this report?          15 A. Yeah.          16 Q. Okay.          17 A. I mean, it's really easy. I mean, you're          18 talking -- it's almost binary code at this point. But I          19 mean, you're just putting in the Black -- you know, is          20 the -- what predicts Black-preferred voting for a          21 candidate, i.e., is the outcome -- or Black voting          22 percentage in a district, for example, would be the          23 dependent variable and the independent variable would be          24 partisanship.          25 So, I mean, if you have one candidate who'd --</p>	<p style="text-align: right;">Page 91</p> <p>1 on Black voting preference.          2 So yeah, I mean, but that is -- that is          3 something that I did as part of preparing this. I will          4 note that that kind of doesn't matter. I mean, the main          5 point here -- and I understand that there's a more          6 sophisticated debate you can have about this. But the          7 main point here with all these questions is, is there          8 something unique about Alabama. I mean, and if you're          9 looking at a Black voting percentage for the Democrats          10 of 89 percent -- that's the national norm -- there's          11 not -- I mean, the initial claim is dubious.          12 Q. Okay. Where is your multivariate analysis in          13 this report?          14 A. There is not a graph representing the          15 multivariate analysis in the report.          16 Q. Where do you discuss your multivariate          17 analysis in this report?          18 A. I just say -- I mean, Footnote 7, "In fact,          19 the effects of the two variables are statistically          20 impossible to distinguish, and the 'race' variable was          21 dropped from my model by the analytical software          22 (STATA)."          23 So this is not the focus of the report by any          24 means. But the basic point that if you take -- if          25 you're looking at the outcome, was the candidate</p>
<p style="text-align: right;">Page 90</p> <p>1 you'd code Republican, for example, 01, Democrat the          2 same, and you can look quite simply at who Blacks and          3 whites are voting for. I feel like for some reason I'm          4 saying what's obvious, but it's extremely simple to do.          5 And you find that partisanship is the total predictor of          6 who African-Americans are voting for.          7 The argument that Dr. Liu is making -- and          8 he -- he expands on this in his paper. But the argument          9 that he's making is essentially that race is the          10 predictor of who African-Americans are voting for. That          11 vanishes if you simply adjust for something else.          12 Q. Okay. But did you perform a bivariate or          13 multi-variate analysis in this report? And if you did,          14 can you point me to where that analysis is?          15 A. Well, yeah. I mean, it's the -- the          16 analysis -- so yes is the answer. If you're doing a          17 regression that has the variables of -- so, first of          18 all, technically you're doing a bivariate analysis when          19 you're just looking at the effect of partisanship on the          20 dependent variable of candidate preference by race.          21 But, I mean, in this particular case, the          22 reason Dr. Liu refers to this as a univariate analysis          23 is that if you run this correctly in Stata, race is          24 actually going to be thrown out of the model. So he's          25 saying all I'm looking at is the impact of partisanship</p>	<p style="text-align: right;">Page 92</p> <p>1 preferred by Blacks or whites, say, and you insert two          2 variables, candidate race, 1, 2 or whatever, and then          3 partisanship of the candidate, 1, 2, 01, candidate          4 partisanship is going to be 100 percent predictive of          5 whether the candidate was preferred by Blacks or whites.          6 I'm not saying this is an extraordinarily complex          7 regression and that's the point.          8 Q. Okay.          9 A. And that -- that is a -- that -- literally          10 that's a footnote in the literal sense. That's intended          11 to be one.          12 Q. Okay. Besides Footnote 7, do you have a          13 multivariate analysis anywhere else or reference          14 anywhere else that you performed for this report?          15 MR. DAVIS: Object o the form.          16 A. Well, I mean, I actually did perform an          17 analysis of the relationship between at least perceived          18 past racism and incarceration rates, but that's not in          19 this report. So no, the focus of this report is not          20 complex regressions.          21 Q. Okay. So no, there is not another reference          22 to your -- to a multivariate analysis in this report          23 that you performed?          24 A. There's no --          25 MR. DAVIS: Objection to the form.</p>

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<p style="text-align: right;">Page 93</p> <p>1 A. There's no -- other than the description of</p> <p>2 that multivariate analysis, there's no reference to a</p> <p>3 subsequent multivariate analysis, no. There's just the</p> <p>4 data which indicates the point that I'm making.</p> <p>5 Q. Okay. And that data is from the Pew graph you</p> <p>6 cite on page 6 of your report?</p> <p>7 A. Well, that data is -- I mean, you've got</p> <p>8 Figure 1. Let me go through here. I don't mean to make</p> <p>9 this a performance, but we've got a couple of these.</p> <p>10 Figure 2, which is the SAT means by race and section.</p> <p>11 Figure 3, which is totes scores nationally from one of</p> <p>12 my original publications for a respectable think tank,</p> <p>13 you know.</p> <p>14 And I mean, this -- this goes on. I mean,</p> <p>15 there are four figures dealing with incarceration. So</p> <p>16 all of those -- and one of those is a figure, by the</p> <p>17 way, that references my own original research. I mean,</p> <p>18 in that paper there are multiple, quite well -- there</p> <p>19 are multiple regressions. I'm not going to give an</p> <p>20 opinion on their quality.</p> <p>21 Q. Okay. Do you only analyze the 11 biracial</p> <p>22 elections that Dr. Liu performed his analysis on?</p> <p>23 A. Yes, that -- that is the sole subject of that</p> <p>24 analysis, yes.</p> <p>25 Q. Okay. Thank you. And would it be rare --</p>	<p style="text-align: right;">Page 95</p> <p>1 "Federal Rule of Civil Procedure 26," and let me know</p> <p>2 when you're done? I think it carries on to the second</p> <p>3 page.</p> <p>4 A. Okay. Okay.</p> <p>5 Q. Okay. Now let's turn to page 6 under the</p> <p>6 section titled "Opinions." And can you take a moment to</p> <p>7 review that section as well and let me know when you're</p> <p>8 done?</p> <p>9 A. Yes, done.</p> <p>10 Q. Okay. In your report you make no opinion of</p> <p>11 whether voting in specifically the greater Huntsville or</p> <p>12 greater Montgomery regions of Alabama in the last ten</p> <p>13 years are racially polarized, right?</p> <p>14 A. Again, it's more than a yes and a no. It's a</p> <p>15 semantic question. Voting in almost every U.S. state is</p> <p>16 racially polarized in the simple sense that both Blacks</p> <p>17 and whites are more likely to vote, all else equal, for</p> <p>18 same race candidates. The problem is that that almost</p> <p>19 entirely reflects a third variable, partisanship. I</p> <p>20 would assume that any expert on my side of the fence</p> <p>21 would note this.</p> <p>22 Q. Do you discuss the voting patterns of white</p> <p>23 voters in section IV of your report? And if so, why?</p> <p>24 A. I do not focus on the voting patterns of white</p> <p>25 voters. I will note -- again, you're talking about my</p>
<p style="text-align: right;">Page 94</p> <p>1 MR. ROSBOROUGH: Race. Race of the candidate.</p> <p>2 BY MR. CAMPBELL-HARRIS:</p> <p>3 Q. Wouldn't race of the candidate predict the</p> <p>4 voting patterns equally as well?</p> <p>5 A. Well, yes, which is why you adjust for</p> <p>6 something else. I mean, so the argument is that</p> <p>7 racially -- so, again, the argument that's being made is</p> <p>8 that racially polarized voting in the classic see it in</p> <p>9 Bosnia sense is occurring in U.S. states, and I think</p> <p>10 there are two responses to that. One, if you just</p> <p>11 adjust for preferences for one of two large multiple</p> <p>12 racial parties, that goes away. And two, whatever you</p> <p>13 might think of, these same exact levels of preference</p> <p>14 exist in every state.</p> <p>15 Q. Okay.</p> <p>16 A. Or similar. Very close levels of preference.</p> <p>17 Q. Okay. I want you to pull Dr. Liu's initial</p> <p>18 report, which I marked as Exhibit 2.</p> <p>19 A. Okay.</p> <p>20 (Mr. Rosborough and Mr. Campbell-Harris</p> <p>21 conferred off the record.)</p> <p>22 Q. Do you see on page 1 the section entitled</p> <p>23 "Introduction"?</p> <p>24 A. Yes.</p> <p>25 Q. Can you review the first paragraph following</p>	<p style="text-align: right;">Page 96</p> <p>1 own report here?</p> <p>2 Q. Yes, that is correct.</p> <p>3 A. Page 4, that sort of thing?</p> <p>4 Q. Yes.</p> <p>5 A. No. I will note, to find the data on white</p> <p>6 voters, if you're looking at Pew's data, any of that,</p> <p>7 you would just scroll down to the next page. So there's</p> <p>8 no attempt to hide the idea -- and I'm not saying you're</p> <p>9 implying that. But there's no attempt to hide that</p> <p>10 Blacks vote for Democrats and whites vote for</p> <p>11 Republicans.</p> <p>12 My only point with this opening three pages of</p> <p>13 the paper was that the Alabama patterns correlated about</p> <p>14 9-2 with the national patterns.</p> <p>15 Q. And is that your opinion for white voters as</p> <p>16 well?</p> <p>17 A. I would have to recheck the data on white</p> <p>18 voters. Don't want to -- don't want to speculate. But</p> <p>19 white voting patterns, again that national pattern of</p> <p>20 54 percent, even among white women, for even Donald</p> <p>21 Trump, I mean, these are very well known patterns.</p> <p>22 Q. Okay. We'll talk about Figure 1 in a second,</p> <p>23 but you're not offering criticisms or disagreements with</p> <p>24 Dr. Liu's statistical analysis itself, correct? You</p> <p>25 agree it's sound?</p>





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<p style="text-align: right;">Page 97</p> <p>1 A. I'm not disagreeing with the basic structure, 2 his methodology, no. 3 Q. Okay. Let's go to page 6 -- 4 A. Okay. 5 Q. -- of your report and you see Figure 1 6 entitled "Party Affiliation Among Blacks by State"? 7 A. Okay. 8 Q. So these tables, it shows the partisan 9 distribution of Black voters in 16 states plus the 10 District of Columbia in a single survey; is that right? 11 A. Yes. 12 Q. What was the sample size for each state and 13 the district? 14 A. Don't know that offhand. 15 Q. Okay. Do you know how many Black voters were 16 in each sample? 17 A. Pew does very large representative samples. 18 Gallup would be an equivalent peer competitor. I don't 19 know the exact number. 20 Q. Okay. And these are statewide surveys plus 21 District, I guess? 22 A. Generally methodology would be a statewide 23 randomized survey. I can't imagine they did something 24 else. 25 Q. Okay. So could mask regional and local</p>	<p style="text-align: right;">Page 99</p> <p>1 this. 2 Q. Okay. And this graph shows general 3 affiliation among black voters, correct? 4 A. Yes. 5 Q. Okay. And that's distinct from vote choice in 6 elections? 7 A. Yes. 8 Q. Okay. And you did not conduct an analysis of 9 vote choice by race, correct? 10 A. I did not do individual elections vote choice 11 by race. 12 Q. Okay. 13 A. Now, I will note, the correlation between your 14 political party and your vote choice by election is, 15 again, something like .96. Like the voting patterns 16 here for Blacks or Southern whites are not very 17 disputed. 18 Q. Did you perform an analysis to get that .96 19 number? 20 A. No, but many other people have. I mean, the 21 correlation between partisanship and voting is very 22 high. As I recall, one of the experts here looked at 23 straight ticket voting. Alabama's one of the rare 24 states where it's higher for Republicans. But I mean, 25 it's very commonly 50 percent of all voters just vote</p>
<p style="text-align: right;">Page 98</p> <p>1 differences then? 2 A. Theoretically, it could. I think that this is 3 a very -- it would be extraordin -- a brief comment. In 4 terms of the comment by one of the experts, perhaps Dr. 5 Burch, that in almost every county in Alabama, you see 6 Black/white differences in test scoring. There are many 7 differences like that from superior African-American 8 athletic performance to superior white performance on 9 the boards tests, to higher Caucasian suicide rates that 10 are found at the county level literally everywhere. 11 Why this is, is an interesting question. Poor 12 white suicides, that's a major problem in Kentucky. 13 There actually are a great number of poor white 14 pathologies, in both sides, quote/unquote, simply 15 ignored. 16 Q. Okay. 17 A. So I mean, but I don't want to ramble on about 18 this, but like so the idea that there is a county out 19 there somewhere that's 90 percent Republican Black guys, 20 I don't -- I don't think that's the case. 21 Q. Okay. But you don't know one way or another? 22 A. I assume no one can know that. The point of a 23 randomized statewide sample, though, is that almost 24 every county in a state would be -- would be sampled. I 25 don't think you have too many outliers in something like</p>	<p style="text-align: right;">Page 100</p> <p>1 their party ticket. So I think this is at very least 2 extraordinarily indicative. 3 Q. But you agree that it's possible that vote 4 choice can depend on the candidate running in the 5 election, right? 6 A. Theoretically. 7 Q. Okay. And there's no dichotomy whatsoever 8 regarding affiliation and vote choice? 9 MR. DAVIS: Objection to form. 10 A. There is always some dichotomy. I mean, you 11 might see that -- so, for example, as I noted, Mr. Biden 12 got 88 percent of the Black vote, and we know the votes 13 in presidential elections by state, absolutely by race. 14 That's why it's such a useful proxy. Mr. Obama got 15 93 percent. So you see a bit of a difference there. 16 But those -- those tend to be the size of the gaps you 17 see. 18 Q. Okay. This graph on Figure 1 of your report, 19 it doesn't show white voters partisan distribution, 20 right? 21 A. Well, no. My focus was Black voters. No. 22 Q. Okay. But this survey did look at white 23 voters partisan distribution, right? 24 A. Yes. 25 Q. Why didn't you include that in your report?</p>

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<p style="text-align: right;">Page 101</p> <p>1 A. My focus was Black voters. I assumed that 2 the point had been made. So I will note -- again, this 3 is the next page of the survey. So there's no attempt 4 to -- no, not the next page of the report. The next 5 page of Pew. So there's no attempt to hide this easily 6 available information or anything like that. No. 7 The point is that -- Liu himself looks, at 8 least as the first column of data, the voting 9 preferences of Black Americans. The voting preferences 10 of Black Americans are strikingly similar to the voting 11 preferences of Black Americans throughout the country if 12 you're looking at Alabama as his sample population. And 13 I just point that out. 14 Q. Okay. Is it your opinion that white party 15 affiliation is similarly represented across these states 16 just like being Black voters are in the survey? 17 A. I think that white party affiliation -- I 18 mean, I'd have to check. 19 Q. Okay. Why didn't you include that in this 20 report, though? 21 A. My initial focus was on -- so this is three 22 pages of the report early on. It's not the focus of my 23 report. My point was a pretty simple one. Black voting 24 patterns in Alabama match Black voting patterns 25 nationally. White voting patterns in Alabama, as far as</p>	<p style="text-align: right;">Page 103</p> <p>1 A. Sure. I think we've been focusing a lot on 2 methodology in the sense of, did you run a complex 3 multi-variate regression. I and the experts on the 4 other side are all rather notoriously capable of doing 5 that. But in many of these cases that's -- that's not 6 necessary. 7 Racially polarized voting -- if you're saying 8 simply people tend to vote for candidates of different 9 races in elections where those candidates are available, 10 that would be true for Black and white Americans in the 11 large, large majority of the U.S. states. But one 12 reason for that is due to tertiary variable inclusion. 13 Most Black Americans, 80 percent or so, 14 looking at that table that I just included, are 15 Democrats or strongly lean toward the Democratic party. 16 The majority of white Americans, I mean, 55 percent 17 among women as a baseline, 54, significantly up among 18 men, 65 among white males last I looked, could be wrong, 19 are Republicans. 20 So if you're looking for that pattern where 21 white guys are voting for white Republicans and 22 African-Americans are voting for Black Democrats or even 23 just for Black people and saying, well, that's racially 24 polarized voting, there's no state in which that doesn't 25 occur in a very large number of elections. And I think</p>
<p style="text-align: right;">Page 102</p> <p>1 I can tell, also match white voting patterns in many 2 states, but I simply didn't put that graphic in. 3 Q. Okay. Let's go to page 7 of your report. 4 A. All right. 5 Q. In it, you say, "If Alabama is racially 6 polarized," then "so is every other large state in the 7 U.S.A." 8 How did you reach that conclusion? 9 A. Well, I'm simply making the point that if 10 define -- extremely easily. If you're making -- and I 11 don't say here that racial polarization exists to the 12 same exact degree in every state. But if you are 13 defining racial polarization as African-Americans and 14 Caucasians voting with more than, say, a 20 percent 15 degree of difference for candidates from different 16 parties or different races, that would exist in almost 17 every U.S. state. 18 Q. Okay. 19 A. More than 80 percent of -- more than 20 70 percent of African-Americans are Democrats in almost 21 every state. 22 Q. Okay. What was your -- can you walk me 23 through your methodology to reach this conclusion that 24 if Alabama is racially polarized, so is every other 25 large state in U.S.A.?</p>	<p style="text-align: right;">Page 104</p> <p>1 that calling that RPV in the sense in which that term is 2 used in serious analysis of overseas election doesn't 3 make a great deal of sense. That's heavily partisan -- 4 heavily determined by partisanship. 5 Q. Can you determine whether a jurisdiction is 6 racially polarized or not without looking at the voting 7 breakdowns of two groups, say the Black voters and white 8 voters? 9 A. I'm sorry? 10 Q. Can you determine whether a locality is 11 racially polarized without looking at the voting 12 patterns between two groups? Can you determine racially 13 polarized voting by only looking at a single group of 14 voters? 15 A. Well, to some -- the answer -- it's not a yes 16 or no question because you're never just looking at a 17 single group of voters, right? So I mean, obviously the 18 Pew data that we've been focusing on comes from a very 19 easily available national survey that includes both 20 Blacks and whites. 21 The point here seems to be that I included the 22 Black graph but not the white graph. But you could 23 simply scroll down the page and find the white graph, 24 which is going to reveal fairly similar patterns. So I 25 mean, if you're talking about racial polarization and</p>

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<p style="text-align: right;">Page 105</p> <p>1 you're saying -- if you're saying that a pattern of</p> <p>2 whites voting the majority of the time for candidates</p> <p>3 who happen to be white, while Blacks vote the majority</p> <p>4 of the time, when they can, for candidates who happen to</p> <p>5 be Black, you're saying this indicates RPV, I'm saying</p> <p>6 there's an obvious third variable; almost all of the</p> <p>7 Black candidates would be running as Democrats and</p> <p>8 whites are in almost every case or in two-thirds of</p> <p>9 cases voting for candidates from the rival Republican</p> <p>10 party.</p> <p>11 Q. Okay. You also say -- this is still on page 7</p> <p>12 at the top.</p> <p>13 A. Okay.</p> <p>14 Q. "We may wish to question whether the simple</p> <p>15 reality of consensual voting for different political</p> <p>16 parties by large American groups is in fact evidence of</p> <p>17 continuing polarization along specifically racial lines</p> <p>18 at all."</p> <p>19 And I'm wondering what you mean by this?</p> <p>20 A. Well, again, I think that I would defend the</p> <p>21 language there, but I think you could argue that some of</p> <p>22 it is a bit clunky.</p> <p>23 I mean, so what we're talking about here --</p> <p>24 actually, the real argument for racially polarized</p> <p>25 voting from Dr. Liu, for example, is that Black</p>	<p style="text-align: right;">Page 107</p> <p>1 conservative.</p> <p>2 Q. Okay. But you would agree that there are at</p> <p>3 least partially racial issues responsible for those</p> <p>4 voting patterns?</p> <p>5 A. Well, I mean, perhaps as one of many. So this</p> <p>6 gets into the culturalist thing. It's one of many</p> <p>7 complex variables. So all of these are these massive</p> <p>8 duels in the literature, like was the Southern strategy</p> <p>9 the reason that -- and I mean massive duels in the</p> <p>10 literature today, when the academy leans 93 percent to</p> <p>11 the left, we'll note.</p> <p>12 But was the Southern strategy the reason for</p> <p>13 the shift toward the GOP? If African-Americans tend to</p> <p>14 vote for the Democrats because they see the Republicans</p> <p>15 as racist, is that legitimate, so on down the line.</p> <p>16 Essentially, racial perceptions may be one of many</p> <p>17 reasons for this, but people aren't just voting for</p> <p>18 people of their race.</p> <p>19 Q. Okay. Dr. Reilly, you have an account on, X</p> <p>20 formerly known as Twitter, right?</p> <p>21 A. I do.</p> <p>22 Q. Okay.</p> <p>23 A. Did you guys print out Tweets here?</p> <p>24 Q. I'm going to hand you what I am marking as</p> <p>25 Exhibit 8.</p>
<p style="text-align: right;">Page 106</p> <p>1 Americans are voting for Black-preferred candidates who</p> <p>2 often happen to be Black and white Americans are voting</p> <p>3 for white-preferred candidates who often happen to be</p> <p>4 white; whereas I'm actually saying that the reason for</p> <p>5 that is that -- and, by the way, I'd assume every expert</p> <p>6 on the defense side is saying -- the reason for that is</p> <p>7 that people are actually voting for candidates who</p> <p>8 represent their preferred political party, but I would</p> <p>9 still say this sentence is defensible.</p> <p>10 Like, the first pattern in most cases is going</p> <p>11 to lead to the second pattern, right? Like, if people</p> <p>12 vote for candidates of their ethnicity who support their</p> <p>13 party, they're going to end up voting for different</p> <p>14 political parties. I'm not sure that that represents</p> <p>15 anything negative whatsoever.</p> <p>16 In a classically RPV situation, by the way, if</p> <p>17 you look -- someone might correct this down the road.</p> <p>18 But if you look at, say, research on the</p> <p>19 former Yugoslavia, the idea is that people would vote</p> <p>20 for candidates of their clan no matter what party</p> <p>21 they're representing. There would be a pretty direct</p> <p>22 spoil system that groups had in mind. In the U.S.A. if</p> <p>23 white people vote for Republicans who happen to be</p> <p>24 white, I don't necessarily see that as any sort of</p> <p>25 problem. It's not -- it's not a racial sin to be a</p>	<p style="text-align: right;">Page 108</p> <p>1 A. Okay.</p> <p>2 (Plaintiffs' Exhibit 8 was marked for</p> <p>3 identification.)</p> <p>4 Q. And, Dr. Reilly, is this your Twitter account</p> <p>5 @wil -- or _@wil_da_beast630?</p> <p>6 A. This is my Twitter account, yes.</p> <p>7 Q. Okay. And in your tweet you quote another</p> <p>8 account that says, "Most black people vote Democrat</p> <p>9 because they think the GOP is full of Klansmen. This is</p> <p>10 quite literal amongst many in the South. But when you</p> <p>11 actually start talking to black folks about what they</p> <p>12 believe, it's decidedly conservative."</p> <p>13 And you respond by saying, "Yup. The</p> <p>14 dichotomy between Black survey responses and voting</p> <p>15 patterns is one of the largest and weirdest in politics.</p> <p>16 The practical question here...is 'Can it be ended'?"</p> <p>17 Did I read that right?</p> <p>18 A. Yeah.</p> <p>19 Q. Okay. And do you still agree with that</p> <p>20 statement from April 10th, 2023?</p> <p>21 A. I mean, I -- you know, these aren't published</p> <p>22 research articles. These are offhand opinions. I mean,</p> <p>23 I'd say I think there's some truth there --</p> <p>24 Q. Okay.</p> <p>25 A. -- to my response to Superflowspitta, my buddy</p>

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<p style="text-align: right;">Page 109</p> <p>1 who is an independent rapper back home, yeah.</p> <p>2 Q. Okay. And -- okay.</p> <p>3 A. So, I mean -- well, whatever. I mean, we --</p> <p>4 we can proceed forward. But this just in one sentence</p> <p>5 does get into some of the complex issues that we've</p> <p>6 been -- we've been talking about, like what you're</p> <p>7 seeing is not classic third world racially polarized</p> <p>8 voting. You're seeing partisan voting. The question is</p> <p>9 does racism influence this to some degree. Maybe. I</p> <p>10 don't think it's the majority influence.</p> <p>11 However, another point made here is that the</p> <p>12 beliefs that might play that role are nonsensical. They</p> <p>13 think the GOP is full of Klansmen and so on down the</p> <p>14 line. So again, a complex multivariate situation.</p> <p>15 Q. Sure. But you would agree that the</p> <p>16 perceptions of racism in the Republican party are among</p> <p>17 the reasons why Black voters in the South tend to vote</p> <p>18 more Democratic?</p> <p>19 A. I think inaccurate perceptions of racism are</p> <p>20 among about 12 reasons, including preference for a large</p> <p>21 welfare state, so on, that are quite well documented,</p> <p>22 but lead African-Americans and indeed many poor white</p> <p>23 groups to vote for the Democrats.</p> <p>24 Q. Yes, those perceptions do motivate Black</p> <p>25 voters in the South to vote more Democrat?</p>	<p style="text-align: right;">Page 111</p> <p>1 family affiliation.</p> <p>2 So what are the classic ones that Sniderman</p> <p>3 and Carmines talk about? I mean, so support for a</p> <p>4 larger welfare state is obviously one of them. Greater</p> <p>5 youth would be another factor. I mean, the modal age</p> <p>6 for a Black person in the U.S.A. is 27, white person is</p> <p>7 58. Young people are more likely to be radicals in</p> <p>8 general. It's fun to spar with the cops and hook up</p> <p>9 outside. It's a little less appealing if you're paunchy</p> <p>10 and 40, as I am now. That's an obvious factor.</p> <p>11 Family affiliation is an obvious factor and so</p> <p>12 on; perhaps lingering hostility toward the old order in</p> <p>13 the South when you move out. Again, there are 8 or 10</p> <p>14 things you can put in a model.</p> <p>15 Q. Who are you referring to when you say the "old</p> <p>16 order in the South"?</p> <p>17 A. Well, that -- it's a throw-away fifth</p> <p>18 variable, but I mean, people -- many Black people in the</p> <p>19 North came from the South.</p> <p>20 Q. Okay. But who are you referring to when you</p> <p>21 say, "the old order in the South"?</p> <p>22 A. Leaders of the South in the past who were</p> <p>23 perceived, often accurately, as racist.</p> <p>24 Q. Okay. Can you identify any?</p> <p>25 A. Not offhand. I don't think that's a primary</p>
<p style="text-align: right;">Page 110</p> <p>1 A. It can play a role in models. But one other</p> <p>2 note; black voters in the north vote for Democrats at</p> <p>3 the same rate. That's actually the one critique I</p> <p>4 believe I responded in the next series of tweets to</p> <p>5 Superflow about.</p> <p>6 So like, again, if we -- well, whatever.</p> <p>7 We've already gone through this table. But like the</p> <p>8 most, quote/unquote, woke state, I believe, if you look</p> <p>9 through that chart, was California. D.C. was right up</p> <p>10 there. So obviously it's not just perceptions of</p> <p>11 racism. That's a point I keep making. No one denies</p> <p>12 racism, but no one thinks Washington, D.C. is more</p> <p>13 racist than Alabama.</p> <p>14 Q. Okay. You said these perceptions of racism</p> <p>15 are among other reasons that Black voters in the South</p> <p>16 vote Democrat. What are some other reasons that you</p> <p>17 would name?</p> <p>18 A. Well, first, the one thing I would add there</p> <p>19 is it's not just Black voters in the South, right? So</p> <p>20 that's why I think the perceptions of racism are one</p> <p>21 among many variables. Black voters everywhere in the</p> <p>22 country -- provided a chart; Pew and Gallup do this</p> <p>23 annually -- vote for the GOP at the same 8 percent</p> <p>24 level. Why? I think there are a bunch of reasons;</p> <p>25 support for a larger welfare state; you know, general</p>	<p style="text-align: right;">Page 112</p> <p>1 predictor of why people in Washington D.C. are voting</p> <p>2 for the Democrats right now.</p> <p>3 Q. Okay. But again, you agree that the</p> <p>4 perceptions of racism in the Republican party are a</p> <p>5 motivating factor for Black voters to vote Democrat in</p> <p>6 the South?</p> <p>7 A. They could be one -- or they could be -- they</p> <p>8 would -- they could be one variable you would ethically</p> <p>9 put in a model anywhere. Black voting patterns in the</p> <p>10 North are not different from Black voting patterns in</p> <p>11 the South. That's the amazing thing about Black voting</p> <p>12 patterns, and that's the issue that I would have with</p> <p>13 this Tweet.</p> <p>14 Black voting patterns in -- let's see. Okay.</p> <p>15 So, I mean, Black voting patterns in -- let's pick the</p> <p>16 three most northerly states -- Michigan, 8 percent GOP;</p> <p>17 Pennsylvania, 6 percent GOP; D.C., 6 percent GOP; there</p> <p>18 are more Black Republicans in the South where there's</p> <p>19 long been an entrenched Black business class. I mean,</p> <p>20 Georgia is 12 percent. Alabama is 11 percent.</p> <p>21 Mississippi is 12 percent. That's a surprise to me. So</p> <p>22 yeah, I mean, I don't think you see a North-South</p> <p>23 dichotomy there.</p> <p>24 Q. Okay. Let me rephrase the question then a</p> <p>25 little bit. Are perceptions of racism in the Republican</p>



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<p style="text-align: right;">Page 113</p> <p>1 party among Black voters a reason why they would vote</p> <p>2 Democrat across the board generally?</p> <p>3 A. Possibly. I mean, that analysis would have</p> <p>4 to be done, and you'd have to -- you'd have to look at</p> <p>5 why -- one thing also is that Black people can be wrong.</p> <p>6 I mean, if perceptions of racism shape Democratic voting</p> <p>7 in Detroit more than Mississippi, I think that there's</p> <p>8 some serious problems there in terms of the kind of</p> <p>9 media being consumed in the community, I mean, so on</p> <p>10 down the line, perhaps. It's one of the things you'd</p> <p>11 throw in a model.</p> <p>12 Q. Okay. Let's move to -- I think we were on</p> <p>13 page 7 before.</p> <p>14 A. Okay.</p> <p>15 Q. So here under sub -- under section V titled</p> <p>16 "Voter Registration and Turnout" --</p> <p>17 A. Okay.</p> <p>18 Q. -- you discuss Dr. Burch's initial report,</p> <p>19 right?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have any reason to dispute the data</p> <p>22 underlying and supporting Dr. Burch's report?</p> <p>23 A. What data are you referring to?</p> <p>24 Q. Any of the sources she cites in her report</p> <p>25 that you read.</p>	<p style="text-align: right;">Page 115</p> <p>1 A. Racism.</p> <p>2 Q. Okay. Thank you.</p> <p>3 A. Just a little editing here or there.</p> <p>4 Q. Okay. What impact do you believe the Civil</p> <p>5 Rights Act had on voter registration and turnout for</p> <p>6 minorities in Alabama?</p> <p>7 A. Well, I think there was -- the Civil Rights</p> <p>8 Act is part of a long and continuing process in the</p> <p>9 U.S.A., obviously including Alabama. But I think that</p> <p>10 there's -- there's a clear reality that we have to look</p> <p>11 at here.</p> <p>12 When you see disparities between groups, the</p> <p>13 conventional upper middle class wisdom -- and this is</p> <p>14 what I thought when I started doing research, by the</p> <p>15 way. I'm Black and teach at a Black college. I like</p> <p>16 it, you know.</p> <p>17 But, I mean, seems to be that a disparity</p> <p>18 between groups must be due to discrimination; if there</p> <p>19 are fewer female marines than male ones, sexism; if</p> <p>20 Black people are doing worse in any particular field</p> <p>21 than Asians -- let's complicate the question -- racism,</p> <p>22 so on down the line. That's very often not the case.</p> <p>23 So I mean, the CRA, obviously benefits came to</p> <p>24 Alabama a bit later, but passed in 1964. Brown v Board,</p> <p>25 1954. National affirmative action, if you count --</p>
<p style="text-align: right;">Page 114</p> <p>1 A. I think her sources, like mine, are perfectly</p> <p>2 conventional. Yeah, I don't have any offhand reason to</p> <p>3 pick one out and attack it.</p> <p>4 Q. Okay. And just for clarity, is it your</p> <p>5 opinion that racial disparities in voter registration</p> <p>6 and turnout do indeed exist in Alabama?</p> <p>7 A. (Nodding head.)</p> <p>8 Q. Okay. Can you audible --</p> <p>9 A. Yes. Sorry. Yes. Yes.</p> <p>10 Q. Okay. And you agree that there are racial</p> <p>11 disparities in educational attainment and educational</p> <p>12 outcomes between Black and white Alabama -- Alabamians?</p> <p>13 A. There are disparities in educational outcomes</p> <p>14 between Black, white, and Asian students in all but, I</p> <p>15 think, seven counties in the U.S.A.</p> <p>16 Q. Okay.</p> <p>17 A. So yes.</p> <p>18 Q. Let's turn to page 8 of your report. You say</p> <p>19 in the first full paragraph, the second sentence, "Six</p> <p>20 decades after the Civil Rights Act, and following a</p> <p>21 truly massive focus on registering and turning out</p> <p>22 minority voters in Alabama and throughout the United</p> <p>23 States, we cannot simply make the default assumption</p> <p>24 that group variances in voting behavior are caused by</p> <p>25 historical or contemporary."</p>	<p style="text-align: right;">Page 116</p> <p>1 dating that to the Philadelphia Plan, as many would,</p> <p>2 1967. And since that point there's been a massive focus</p> <p>3 from many in the North in the upper middle class on</p> <p>4 bringing the benefits of civic life to the South and to</p> <p>5 the country in general. Appalachia, where I live, we've</p> <p>6 seen this as well.</p> <p>7 So assuming that that didn't work, seems to</p> <p>8 me, to be pretty fraught. And when you look at gaps</p> <p>9 between -- when you look at the gaps between groups, I</p> <p>10 think it's important to do a fairly comprehensive lens</p> <p>11 analysis there. So point one would be, the gaps in</p> <p>12 Alabama look a lot like those nationally. Point two</p> <p>13 would be, given Alabama's history, it's understandable</p> <p>14 why you would attribute state specific gaps to racism.</p> <p>15 But you also have to look at the effect of the massive</p> <p>16 campaign against racism there and elsewhere. You have</p> <p>17 to look at the impact of the developing welfare state</p> <p>18 after Cloward-Piven, I think most conservatives would</p> <p>19 say. You have to look at the impact of</p> <p>20 deindustrialization, general social change, all of these</p> <p>21 things. And so, I mean, just higher crime in Black</p> <p>22 communities which dates, in my opinion, largely to</p> <p>23 single motherhood, single fatherhood, just on and on.</p> <p>24 So racism, again, may play a role. But saying</p> <p>25 that contemporary racism is the cause of these gaps is</p>

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<p style="text-align: right;">Page 117</p> <p>1 very often a really weak argument.</p> <p>2 Q. Okay. What about historical racism?</p> <p>3 A. You kind of have to prove that. I mean, so</p> <p>4 again -- and, you know, we've been talking for a couple</p> <p>5 of hours already. I don't have a computer in front of</p> <p>6 me. So I mean, yeah, I would have to think about how</p> <p>7 exactly I would run the model. I'm not going to make</p> <p>8 one up right now.</p> <p>9 But basically what you would have to do at</p> <p>10 some level is look -- your dependent variable would be</p> <p>11 something like the ratio gaps in incarceration measured</p> <p>12 in hundreds. So Alabama's would be 269, 269. That's</p> <p>13 your DV. And then you have to look at something --</p> <p>14 you'd create a score for historical racism, was the</p> <p>15 stated segregated, something like that.</p> <p>16 And then you have to look at other things, you</p> <p>17 know, rate of, for example, single motherhood, which I</p> <p>18 would not -- that dates almost entirely for both Blacks</p> <p>19 and whites to the 1960s. I would not attribute that to</p> <p>20 historical racism. You'd probably want to do something</p> <p>21 that measures the deindustrialization of a lot of the</p> <p>22 South, blah, blah, blah.</p> <p>23 But, I mean, you couldn't just look at the</p> <p>24 gaps nationally, which actually paint Alabama in a</p> <p>25 pretty good light and say -- isolate the Alabama gap and</p>	<p style="text-align: right;">Page 119</p> <p>1 thing.</p> <p>2 But if you're seeing gaps in performance</p> <p>3 between Blacks and whites across the states and the</p> <p>4 Alabama gap is about typical, I don't think that's due</p> <p>5 to racism. And yes, I think the Civil Rights Act is</p> <p>6 part of a lengthy process that we have commenced in the</p> <p>7 U.S.A. to deal with historical racism.</p> <p>8 Q. And that process is still ongoing?</p> <p>9 A. Depends. I mean --</p> <p>10 Q. What does it depend on?</p> <p>11 A. Well, it depends on whether you think that a</p> <p>12 reasonable level of legal equality has been achieved.</p> <p>13 So, I mean, affirmative action laws advantage minorities</p> <p>14 over Caucasians in most circumstances. So the question</p> <p>15 is what you view the proper finishing point as being.</p> <p>16 Q. What do you view the proper finishing point as</p> <p>17 being?</p> <p>18 A. That's an interesting question. I view the</p> <p>19 proper finishing point as being strictly enforced legal</p> <p>20 equality and very strictly enforced legal equality. I</p> <p>21 think that what most of my political opponents would</p> <p>22 view the -- or most of my academic, I guess,</p> <p>23 opponents -- I'm not very political. But what most of</p> <p>24 them would view the final -- the proper finishing point</p> <p>25 as being would be, say, total equity.</p>
<p style="text-align: right;">Page 118</p> <p>1 say that's due to racism.</p> <p>2 Q. Okay. I have a few follow-up questions. The</p> <p>3 first is -- you talked about the Civil Rights Act being</p> <p>4 part of a long and continuing process for -- was it</p> <p>5 remedying racism?</p> <p>6 A. Well, yeah, the U.S.A. has devoted -- I mean,</p> <p>7 the massive national project, to some extent, of the</p> <p>8 past 60 years in the U.S.A. has been apologizing for the</p> <p>9 racist past. I mean, you know, affirmative action has</p> <p>10 been a factor in virtually every competitive system that</p> <p>11 I've participated in. Law school comes to mind, for</p> <p>12 example. I would imagine that's the case even in</p> <p>13 Alabama at the many educational institutions, and so on</p> <p>14 down the line.</p> <p>15 You know, you go across the board. I mean,</p> <p>16 there's still, in most of the business fields I've</p> <p>17 worked in, the equivalent of minority set asides. You</p> <p>18 can object to this or agree with this. That's not the</p> <p>19 point of this.</p> <p>20 But yes, obviously the Civil Rights Act has</p> <p>21 made more discrimination civilly and sometimes</p> <p>22 criminally illegal. Like, this just -- it is a reality.</p> <p>23 So the question is if you are now seeing gaps in</p> <p>24 performance between Blacks and whites -- feel like</p> <p>25 getting a bit tired of just kind of saying the same</p>	<p style="text-align: right;">Page 120</p> <p>1 So the idea that there are Black/white gaps in</p> <p>2 test score performance, to many people, is itself a sign</p> <p>3 of racism. I don't think that's the case.</p> <p>4 Q. Okay. What do you mean by strictly "enforced</p> <p>5 legal equality"? Can you define that, please?</p> <p>6 A. I'm a supporter of the Civil Rights Act. I</p> <p>7 think you should -- racial discrimination should be</p> <p>8 illegal, as it is in most civilized countries. If you</p> <p>9 find significant violations of the law, you should</p> <p>10 punish people for them.</p> <p>11 Q. Okay. Would -- would a lack of enforcement of</p> <p>12 the Civil Rights Act, for example, would that change</p> <p>13 your opinion about whether racism still exists in a</p> <p>14 locality?</p> <p>15 A. Well, perhaps. But that's -- that's not the</p> <p>16 point that I'm making. I don't deny that racism exists.</p> <p>17 There's a great line from Jesus Christ, though he's not</p> <p>18 a -- the individual I specifically follow, but the poor</p> <p>19 will always be with us. I mean, I think that's kind of</p> <p>20 how the bigot will be as well. You know, racism is the</p> <p>21 human vice of tribalism. I don't think you're going to</p> <p>22 get rid of racism. I don't deny that racism exists.</p> <p>23 The question is, is racism responsible for the</p> <p>24 things that we're looking at here.</p> <p>25 Q. Okay. But --</p>

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<p style="text-align: right;">Page 121</p> <p>1 A. So yes, if there are violations of the Civil 2 Rights Act, I might believe that racism exists in an 3 area. 4 Q. Okay. Thank you. Do you think -- scratch 5 that. 6 What efforts to register and turn out minority 7 voters in Alabama did you analyze? 8 A. Well, I mean, I looked at -- I mean, I spent a 9 couple of hours searching minority specific voter 10 turnout efforts in Alabama. There seemed to have been 11 quite a number. I don't recall the exact effort. 12 By the way, nationally, I mean, there are 13 hundreds of efforts, as I'm sure you know. You're 14 working for the ACLU, correct? 15 Q. Yeah. 16 A. Yeah. I mean, I'm sure you know there are 17 hundreds of minority targeted voter turnout projects 18 around the country. I'm a former canvass field manager 19 for The Fund for the Public Interest. I mean, a lot of 20 what we did -- I still support gay and women's rights. 21 A good idea. 22 But a lot of what we did was very specifically 23 targeted, quote/unquote, minoritized communities. There 24 are massive projects doing this. The only Caucasian 25 area where I've been that has equivalent projects</p>	<p style="text-align: right;">Page 123</p> <p>1 the model, saying racism's at fault is just meaningless. 2 What you're saying is that any gap is racism. 3 Q. Okay. Is it your view then as well that 4 historical discrimination no longer has an impact on 5 Black Alabamians' ability to register to vote or turn 6 out to vote? 7 A. I wouldn't say there's zero -- there's a 8 zeroed out impact. I would say that you'd have to 9 measure that. I mean -- 10 Q. Okay. 11 A. So, again, a lot of these are semantic 12 questions. The question here would be what is racism. 13 If a state has a history of racism -- 14 (Zoom interruption.) 15 (Discussion off the record.) 16 BY MR. CAMPBELL-HARRIS: 17 Q. Do you want me to repeat the question? 18 A. Sure, please. 19 Q. Okay. Is it your view -- you would agree that 20 historical discrimination still plays a role, has an 21 impact on Black voters in Alabama's ability to turn out 22 and register to vote? 23 A. Perhaps. Probably. I mean, yeah, perhaps, 24 probably I think it's very likely if you model that, 25 there would be some impact.</p>
<p style="text-align: right;">Page 122</p> <p>1 devoted to it is Appalachia where I live now. 2 Q. Okay. 3 A. So, yeah, I don't recall the list of the 4 projects. There's no doubt that they exist. 5 Q. Okay. But for the purposes of this report, 6 did you analyze any efforts to register and turn out 7 minority voters in Alabama? 8 A. No, I didn't do a comprehensive analysis. 9 Q. Okay. 10 A. The sentence here is "Six decades after the 11 Civil Rights Act," and I would add 5 1/2 after the 12 Philadelphia Plan, "and following a truly massive focus 13 on registering and turning out...voters in Alabama and 14 throughout the United States" -- and I link to the 15 national Defend the Black vote initiative and discuss 16 that a bit -- "we cannot simply make the default 17 assumption that group variances in voting behavior are 18 caused by historical or contemporary" racism. 19 And that line, actually, is a good redirect 20 for me because that's basically the point. If you see 21 something like group test score gaps, and you don't 22 adjust for very basic things like immigration status and 23 language fluency or hours of study time or, yes, SES, 24 income, which is still lower for minorities for a bunch 25 of reasons, if you don't go through those ten things in</p>	<p style="text-align: right;">Page 124</p> <p>1 The question again is what factors actually 2 influence the trends we see in society. And last line, 3 but no one who actually sees, say, Washington, D.C. or 4 Connecticut underperform the State of Alabama could 5 really believe that racism is the primary factor 6 variable here. 7 Q. Okay. We're going to dig a little bit deeper 8 into that. 9 A. Okay. 10 Q. Under subsection A, you talk about one of the 11 variables that we were mentioning earlier, educational 12 performance. And you write, "The next-step argument, 13 generally and in the plaintiff's experts' reports is 14 that all tertiary variables like group differences in 15 educational performance themselves almost entirely 16 reflect the effects of racism." 17 Which expert reports are you referring to 18 here? 19 A. Well, I mean, Burch said -- so first of all, 20 almost everyone that writes in contemporary, what I call 21 Kendiangelist social science, says that. The line that 22 all group disparity -- I mean. there's a very famous 23 line from both Dr. Kendi himself and Rich Delgado, you 24 know, all disparities are either caused by racism -- 25 what is it -- somewhere in systems or there's something</p>

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<p style="text-align: right;">Page 125</p> <p>1 wrong with Black and brown people. I mean, that's the 2 cliché standard assumption, that every gap must be due 3 to racism. 4 And it becomes kind of a God of the gaps 5 prognosis to them. Just like briefly, but there's a 6 test score gap. You know, I'd trace that to study time, 7 which -- like I have done and multiple people have done. 8 Okay. Well, study time is influenced by 9 racism. Well, what if you look at rich people? Well, 10 income is influenced by racism. I mean, it can really 11 go on for quite a while with points on both sides. But, 12 in general, I disagree with the idea that every gap is 13 caused by racism. 14 Many people, including several of the 15 experts -- Burch herself, racial disparities shown are 16 caused, I think she does say at least in part, 17 by historical or contemporary discrimination. That is a 18 very standard argument. I'm not sort of making it up. 19 Q. Just a clarifying question. When you use 20 "racism" in this sentence, subsection A, how do you 21 define it? 22 A. Well, again, that's a fascinating semantic 23 question. So I would define racism in any practical 24 sense -- this is common in political science -- as 25 expressed bigotry today. So if you say that -- and</p>	<p style="text-align: right;">Page 127</p> <p>1 Q. Okay. 2 A. What everyone thinks it is, like expressed 3 bigotry from other people. 4 Q. Okay. Thank you. But my question is what you 5 think it is, not -- 6 A. I'm sorry. 7 Q. So you define racism here as expressed bigotry 8 today? 9 A. Current bigotry, contemporary racism. If I 10 were mentioning historical racism, I'd probably say 11 historical racism, which is a writing convention. 12 Q. You then quote Dr. Burch's report on page 9. 13 Well, let's see. Yes. You say, "White residents fare 14 better in every" -- or that she notes that "White 15 residents fare better in every county relative to Black 16 residents." 17 A. Yes. 18 Q. Okay. Do you have any reason to disagree that 19 white residents indeed fare better in Alabama relative 20 to Black residents? 21 A. No, I expect that to be true. 22 Q. Okay. Okay. So then let's turn to the first 23 full paragraph here on page 9. You write, "White 24 students perform better educationally than Black 25 students in every single state," and that "Alabama is in</p>
<p style="text-align: right;">Page 126</p> <p>1 expressed bigotry -- well, whatever. Expressed bigotry 2 today is a good definition. 3 So if you say that lack of -- if you say that 4 earnings differences between Blacks and whites and men 5 and women are caused by bigotry, what I would take that 6 to mean is that bosses prefer white male candidates and 7 are hostile to black and female candidates. If it turns 8 out that, for example, the preference of women for 9 working fewer hours because women still have more child 10 care duties and so down the line -- if it turns out 11 that's the 100 percent explainer, which it is -- even 12 most modern feminist writers admit that -- I wouldn't 13 describe that as sexism, at least at that level of 14 analysis. 15 If it turns out that the difference between 16 Black and white wage earners is explained largely by 17 test scores, which it is -- I mean, aptitude board 18 scores explain a great deal of this. 19 Q. Okay. 20 A. Age; you know, the Black guy's 30 years 21 younger. I wouldn't describe that as racism. 22 Q. Okay. But in this sentence, specifically the 23 first sentence of subsection A, you are defining racism 24 as expressed bigotry today. 25 A. Bigotry, racism.</p>	<p style="text-align: right;">Page 128</p> <p>1 no way an outlier here - and racism seems to have very 2 little to do with this;" and that the "gaps in SAT 3 scoring and college attendance correlates only slightly 4 with documented levels of historical racism." 5 A. Yes. 6 Q. Okay. First, I want to know how you 7 distinguish racism from historical racism in this 8 paragraph. 9 A. Okay. Now, I've done some analyses here 10 myself, and I've read a lot of literature. This is one 11 where I can break down a number of ways to do this. 12 Q. Okay. 13 A. So, I mean, when you're talking about 14 historical racism, again, if you're looking at SAT 15 scoring gaps between Blacks and whites, you can look at 16 whether a state was a slave state or not -- 17 Q. Okay. 18 A. -- a Confederate state or not. I've given 19 some of these before, but I'll give them in a little 20 more detail. Jim Crow or not. You can create a racism 21 score based on a number of things, lynchings, past 22 abuses, civil rights cases. 23 And people -- people have done all this. I 24 think it was Sniderman and Carmines' "Reaching Beyond 25 Race" in 1994 really broke out some of these metrics,</p>



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<p style="text-align: right;">Page 129</p> <p>1 but I could be wrong on the title of that book. There 2 are a whole bunch of people, like the linked fate guy, 3 "Behind the Mule," 1994 classic political science work, 4 Dawson, I believe, again, discuss some of the ways 5 racism could be conceptualized. 6 He came up with a metric called linked fate, 7 which looks at how people, particularly 8 African-Americans, in a region feel about their 9 association with other Black people. And part of that 10 is another metric that looks at how much bigotry people 11 feel they've been exposed to. So, I mean, that -- 12 that's a little far afield, actually. 13 There are a couple of metrics for historical 14 racism right there. I mean, just slave states, a very 15 simple one. Obviously you cannot argue that, again, 16 Connecticut had more historical racism than Alabama or 17 New York did. If you're talking about contemporary 18 racism today, I mean, there are multiple ways to look at 19 state SAT scores and put a racism score in the model. 20 I mean, the level of racism that Black kids in 21 the state had experienced could be one. I haven't seen 22 a good study with that done. But I mean, that's -- 23 that's one you could do. 24 Something I have seen is a level of expressed 25 racism by white residents in a state. You just ask</p>	<p style="text-align: right;">Page 131</p> <p>1 So you could do list experiment measure of 2 racism. You could do anonymous survey measured racism. 3 You could do the perceptions of Black students in that 4 area. And now I'm brain -- I'm just spit blind, but you 5 could determine the number of hate crimes in that state 6 per capita adjusted. 7 So many of these have been done. I won't say 8 that all of them have. But if you take that IV and just 9 regress against the DV, which is the test score 10 dependent variable, like, you'll find that just doing 11 slave state, like there's -- there are not larger 12 educational gaps between Black and white students in the 13 former Confederacy. In fact, there are smaller 14 educational gaps between Black and white students in the 15 former Confederacy. 16 So I actually -- I wondered -- I think a lot 17 about taking out this IQ note. But I mean, like the 18 test IQ in Alabama is 95.7. Black residents are not 19 significantly far below that. Mississippi is 94.2. So, 20 again, I'm not a hereditarian. I don't think IQ is 21 everything in life. But if you're saying that white 22 kids are outpacing black kids down there because of the 23 better facilities in the white schools or something, 24 you'd have to show that. 25 Q. Okay. Did you perform a racism -- as in your</p>
<p style="text-align: right;">Page 130</p> <p>1 people if they're racists; would you date someone of a 2 different race. I mean, it's totally anonymous. People 3 are reasonably honest. 4 Q. You think a survey of white residents asking 5 if they're racist would help demonstrate whether or not 6 a state is racist? 7 A. Well, the percentage of anonymous racists in 8 the state would be a pretty good metric for racism. 9 Q. Okay. 10 A. And in fact, there are -- we -- if you're 11 interested in the methodology here, we don't just walk 12 up to people and go, hey, are you a racist. For my 13 dissertation I did what's called a list experiment where 14 you present to a group of, say, 500 people a series of 15 20 questions, asking like which of these things do you 16 think of as despicable or something like that. 17 Q. Okay. 18 A. You know, cannibalism, one of the options. So 19 half of the people get a list of three options and half 20 of the people get a list of four options. 21 Q. Okay. 22 A. And trust me, you can find out what percentage 23 of people are, with a double level of secrecy, perhaps 24 privately racist. And that figure is usually in the 11 25 to 12 percent range for all groups.</p>	<p style="text-align: right;">Page 132</p> <p>1 own words, racism score for this report for Alabama? 2 A. Well, no, because I don't have to. So my 3 thing with this, my report -- I wanted to note this. 4 The focus of this report is looking at the gaps in 5 Alabama in the context of gaps around the country and 6 seeing if they are larger, if they are different. 7 Q. Okay. 8 A. In the case of voting, there were some 9 significance analyses done there. Like, I'm aware of 10 how they rank nationally. 11 Q. Uh-huh. 12 A. But no, I mean, I didn't go through every 13 county in Alabama and see if racism in Alabama -- but 14 no. But I -- like I did -- just looking at the models 15 that 15 people have done, I mean you can see that racism 16 doesn't correlate with SAT score gaps. 17 Q. Okay. 18 A. I didn't write all those articles. 19 Q. Okay. Okay. You agree, though, that like 20 white Alabamians outperform Black Alabamians on SAT 21 scoring? 22 A. 95 to -- I mean, yeah, there is a performance 23 difference, yes. 24 Q. Okay. 25 A. I don't mean to make fun of those scores in</p>

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<p style="text-align: right;">Page 133</p> <p>1 Alabama. I live in Kentucky. Also a great state.</p> <p>2 Q. Did you -- at the end of page -- well, scratch</p> <p>3 that.</p> <p>4 How, if at all, I guess, does the presence of</p> <p>5 racial disparities in education in other states inform</p> <p>6 your conclusion about the existence of discrimination in</p> <p>7 Alabama?</p> <p>8 A. It provides context. I think when you look at</p> <p>9 gap, especially in -- for example, in Alabama, you would</p> <p>10 probably say if you were -- even at my level of the</p> <p>11 political spectrum, well, that could well be racism. If</p> <p>12 you look around the country and the same gap exists</p> <p>13 everywhere, you know, and there's fairly slight variance</p> <p>14 in that gap and there's enormous variance in past</p> <p>15 racism, something other than racism explains the gap.</p> <p>16 And when we talk about methodology -- last</p> <p>17 line -- but that -- that's a pretty simple analysis. I</p> <p>18 mean, like if you look at some of these charts and you</p> <p>19 see the worst state in the country is Connecticut --</p> <p>20 there really are problems in, you know, various regions</p> <p>21 of the country that relate to cultures across a number</p> <p>22 of groups, not just minority groups, that we should fix.</p> <p>23 But like historical racism is not -- it doesn't look</p> <p>24 like the elephant in the room to me.</p> <p>25 Q. Okay. At the end of page 9 you say, "Notably</p>	<p style="text-align: right;">Page 135</p> <p>1 this, whatever. Academic quibble.</p> <p>2 But when you look at a lot of those studies,</p> <p>3 they've moved them beyond just African-Americans. A lot</p> <p>4 of them looked at women, which I thought was long</p> <p>5 overdue. But some of them started looking at Asians and</p> <p>6 they found that Asian names, because Asians were</p> <p>7 perceived as hyper hard competitors, and a lot of sort</p> <p>8 of training for it, maybe didn't want it or were</p> <p>9 perceived as a little wonky, Asians faced more</p> <p>10 discrimination than African-Americans in several cases.</p> <p>11 Asians -- I mean, even in economic terms, if</p> <p>12 you look at books like "Chinese Girl in the Ghetto" -- I</p> <p>13 mean, there are a number of narratives where Asian</p> <p>14 students talk about facing discrimination from both</p> <p>15 Blacks and whites as they come here as penniless</p> <p>16 immigrants.</p> <p>17 I mean, you can look at hate crimes. Stop</p> <p>18 Asian hate was the call two years ago. You can look at</p> <p>19 audit studies. You can look at individual meta</p> <p>20 narratives. I mean, there's no denying there's a lot of</p> <p>21 racism against Asian Americans. The Bureau Of Justice</p> <p>22 statistics -- again, last thing -- but actually breaks</p> <p>23 down crime against each group by year.</p> <p>24 Q. Okay.</p> <p>25 A. Asians are the only group that's victimized</p>
<p style="text-align: right;">Page 134</p> <p>1 East and South Asians, who also experience significant</p> <p>2 racism in the United States, outperformed whites by more</p> <p>3 than 100 points" --</p> <p>4 A. Yeah.</p> <p>5 Q. -- "bringing home average board scores of</p> <p>6 1223."</p> <p>7 How do you define "significant racism" here?</p> <p>8 A. Well, the same level of racism as that</p> <p>9 experienced by African-Americans in multiple audit</p> <p>10 studies. I mean, so all of this -- I don't do all this</p> <p>11 research myself. I have a public intellectual role as</p> <p>12 well as an academic role, so I'm expected to some extent</p> <p>13 by, say, commentary to be a consolidator of recent good</p> <p>14 research as well as a producer. But I --</p> <p>15 So, for example, I read -- in fact, this was,</p> <p>16 I'd say, an academic piece or academic questions. I</p> <p>17 read the probably 30 best-known what are called audit</p> <p>18 studies, which are attempts by people to find racism by</p> <p>19 sending in anonymized resumes with names of people of</p> <p>20 different races on them, and actually wrote a response</p> <p>21 called "Testing the Tests for Racism." I said some are</p> <p>22 good, some are bad, about a 17-page article.</p> <p>23 So I'm actually very familiar with the</p> <p>24 literature. I thought it was funny, one or two of the</p> <p>25 commentators were like, I don't know about this guy,</p>	<p style="text-align: right;">Page 136</p> <p>1 primarily by people other than their own group. There's</p> <p>2 like 25 percent white, 27 percent Black, 24 percent</p> <p>3 Hispanic and native, just vicious. Like, 20 percent</p> <p>4 Asian. I mean, so that -- there's no denying this</p> <p>5 happens.</p> <p>6 Q. Okay. So correct me if I'm wrong, but your</p> <p>7 use of "significant racism" here is that East and South</p> <p>8 Asians experience racism similarly to African-Americans?</p> <p>9 A. I think that "similarly" is kind of a loaded</p> <p>10 phrase there. I mean, I think I'm supposed to say</p> <p>11 something like everyone experiences white supremacy</p> <p>12 differently. I think that if you take a real measure of</p> <p>13 racism, like number of racist hate crimes, or like not</p> <p>14 being hired because of racism, Asians experience a lot</p> <p>15 of racism.</p> <p>16 So a basic way of looking at this, Asians</p> <p>17 don't experience less racism than white people. Like,</p> <p>18 it's plausible that Asians only experience two-thirds as</p> <p>19 much racism as Black people, and that would explain a</p> <p>20 racial gap between Asians and Black people. It doesn't</p> <p>21 explain Asians kicking everyone's ass by 150 points.</p> <p>22 Q. Okay. Can you provide me your definition of</p> <p>23 "significant racism" here?</p> <p>24 A. You experience a lot of racism in society in</p> <p>25 the direct traditional sense. You experience more</p>

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<p style="text-align: right;">Page 137</p> <p>1 racial hate crimes per capita than most other groups. 2 You have a higher rate of rejection from jobs in audit 3 studies than anyone except African-Americans. You 4 report -- 5 THE COURT REPORTER: I'm sorry, Doctor. Can 6 you slow down just a little? 7 THE WITNESS: Yeah. 8 A. You report very high levels of racism. 9 Q. Okay. 10 A. Any of the metrics we used. 11 Q. Is there a difference between significant 12 racism and racism, in your opinion? 13 A. That's an adjective. 14 Q. Okay. 15 A. I mean, and so I'm not -- I'm not saying 16 there's a scientific -- 17 Q. Okay. 18 A. Yeah, that's a good question. I'm not saying 19 there's a scientifically statistically significant or 20 something. They experience a whole lot of racism. 21 Q. Okay. 22 A. More than white people. 23 Q. Is there a difference between significant 24 racism and historical racism, in your opinion, and how 25 you use those terms in this report?</p>	<p style="text-align: right;">Page 139</p> <p>1 compare students in same race versus out race schools. 2 So in the 1980s there's were a number of 3 papers that attempted to prove that Black students in 4 Black empowerment Black-led schools did better than 5 other Black students, and they don't. They did quite 6 well, but they did about as well as other Black students 7 with the same middle class background. So that's one 8 attempt. Like if you go to an all-Black school -- I 9 teach at an HBC, which I quite like. If you go to an 10 all-Black school, do you see better GPAs, better GRE 11 scores with people -- for Black students? Not really. 12 GRE when they leave is kind of the gold 13 standard there. So, I mean, you compare HBCs to PWIs 14 and look at GRE. That would be a good way to do it. I 15 mean, there are at least a dozen. 16 Q. Okay. 17 A. I do want to emphasize that for -- this has 18 all been done a lot. Like, both myself and the other 19 experts will have fun going back and forth, but like, 20 the idea that you can look at the impact of racism as 21 well as the impact of cultural proxies or even a genetic 22 proxy if you want to go there -- Murray's done that. 23 That's not particularly novel. I mean, so, like, the 24 idea that racism doesn't explain intra-state test score 25 gaps is, I think, probably accepted by most people, at</p>
<p style="text-align: right;">Page 138</p> <p>1 A. Well, what I'm referring to with Asians is 2 contemporary racism because Asians are here now. Now, 3 Asians have also experienced a great deal of historical 4 racism. I mean, you can go back to the Chinese 5 Exclusion Act, the coolie man rules. You know, there 6 were large number of lynchings against Asians in 7 California, which aren't counted toward either the Black 8 or the white totals, which is crazy. 9 But I would say that if you're looking at 10 large income or populations like the Vietnamese, the 11 racism they're experiencing is contemporary. But again, 12 the racism that Black people are experiencing in the 13 North or that Black immigrants are experiencing is also 14 contemporary racism. 15 These are complex questions. But obviously 16 there are major variables much more important than 17 racism at play because Asians are beating whites by 100 18 some points. 19 Q. Okay. How do you measure, in your word, 20 "racism" between different racial groups in educational 21 attainment? 22 A. Well, I mean, there are a number of ways you 23 could measure that. I mean, again, so if you're looking 24 at how to measure the effects of racism on student 25 attainment, one common technique that's used is to</p>	<p style="text-align: right;">Page 140</p> <p>1 least quietly. 2 Q. Okay. Let's go to Figure 2 on page 10 of your 3 report. 4 A. All right. 5 Q. What does this chart represent? 6 A. These are just SAT scores across the U.S.A. or 7 representative student population. This was a very 8 typical year, a lot of test takers. 9 Q. Okay. So it's not Alabama-specific? 10 A. No. It illustrates that gaps as large as 11 Alabama's exist literally everywhere. This is the 12 U.S.A. sampling population. 13 Q. Okay. And did you choose -- why did you 14 choose to analyze the national SAT scores? 15 A. Well, again, my point here, and I think that 16 the -- the Yellowhammer state wanted me to do a pretty 17 specific thing, which is look at these Alabama gaps in 18 the context of national gaps and see whether there are 19 differences at all and in some cases whether these 20 differences appear significant. 21 And the big question is, is racism the cause. 22 And obviously the question is, if the Alabama gaps look 23 like the national gaps, racism's probably not the cause. 24 But so, I mean, like, if you look at this SAT chart, 25 which is Figure 2 --</p>

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<p style="text-align: right;">Page 141</p> <p>1 Q. Uh-huh.</p> <p>2 A. -- I mean, you're seeing -- you see this in</p> <p>3 almost every state. I mean, so white 1100. Whites had</p> <p>4 a good year that year. Black is usually about 930 to</p> <p>5 950.</p> <p>6 Q. Okay.</p> <p>7 A. Hispanic is right around there. Hispanics</p> <p>8 this year beat African-Americans, 970.</p> <p>9 Q. Okay.</p> <p>10 A. Asian laps everybody. Pacific Islander.</p> <p>11 Native is usually the lowest.</p> <p>12 Q. Okay. Where do you analyze Black, white,</p> <p>13 other ethnicity groups' SAT scores in Alabama?</p> <p>14 A. Well, I don't break out Alabama.</p> <p>15 Q. Okay.</p> <p>16 A. The point is Alabama looks like every other</p> <p>17 state.</p> <p>18 Q. How do you know it looks like that when you</p> <p>19 didn't analyze it in your report?</p> <p>20 A. Well, because you can -- okay. So Alabama has</p> <p>21 a very similar gap. I believe the Alabama gap is 160</p> <p>22 points. That could be off by a bit. But the Alabama</p> <p>23 gap, I assure you, looks almost exactly like the</p> <p>24 national gaps. This is the case in almost every one of</p> <p>25 these situations. I specifically, to sort of avoid that</p>	<p style="text-align: right;">Page 143</p> <p>1 Q. Okay. Do you have an opinion about whether or</p> <p>2 not Black citizens in Alabama have unequal educational</p> <p>3 opportunities compared to white students?</p> <p>4 A. Not a strong one.</p> <p>5 Q. Okay.</p> <p>6 A. I would have to look at -- not a strong one.</p> <p>7 Q. Okay. Well, what is your opinion?</p> <p>8 A. My opinion is that -- again, this would get</p> <p>9 into a lot of semantic questions like, can you -- should</p> <p>10 you adjust for class first before you determine that. I</p> <p>11 think I would and Dr. Burch probably would not. No</p> <p>12 disrespect to either position, really.</p> <p>13 I also -- if you actually look at the amount</p> <p>14 of money spent on each child in Alabama and most other</p> <p>15 states, it is almost identical across African-Americans</p> <p>16 and whites. I noticed that one of the expert reports,</p> <p>17 perhaps Dr. Burch's, used something -- no need to look</p> <p>18 it up now, but it was like an after-expenditures figure</p> <p>19 of \$7,300 for white kids and \$7,100 for Black kids. My</p> <p>20 immediate response is twofold; one, that's a \$200 gap;</p> <p>21 two, that's after expenditures that presumably include</p> <p>22 special education, athletic equipment, so on. I have no</p> <p>23 idea what the real figure is, but I would be surprised</p> <p>24 if it wasn't identical.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 142</p> <p>1 line of argument, broke out Alabama when it comes to</p> <p>2 incarceration, that sort of thing.</p> <p>3 Here, I didn't. But it's identical. So the</p> <p>4 entire point is, if there is a national -- don't want to</p> <p>5 write too much on here, but let's say --</p> <p>6 Q. You can write as much you want.</p> <p>7 A. Okay. 180. I mean, all I'm going to write is</p> <p>8 the number 180.</p> <p>9 But if there's a national B-W gap, as it's</p> <p>10 called, of 180 on the SAT, on the board test, there's an</p> <p>11 Alabama gap of let's say 170. Arguing that</p> <p>12 Alabama-specific racism is the cause of the Alabama gap</p> <p>13 doesn't make a lot of sense because it looks exactly</p> <p>14 like the national gap. It looks exactly like the mean</p> <p>15 gap we see across every state.</p> <p>16 Q. Where is the Alabama gap reflected in your</p> <p>17 report?</p> <p>18 A. We're going back and forth. There is no</p> <p>19 broken-out Alabama gap in this chart.</p> <p>20 Q. Okay.</p> <p>21 A. But I can tell you the Alabama gap.</p> <p>22 Q. But it's not in your report?</p> <p>23 A. I'll add a footnote. The Alabama gap looks</p> <p>24 exactly like the national gap. No, I did not think it</p> <p>25 necessary to break out the state gaps.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. So I would say --</p> <p>2 MR. DAVIS: There's no question on the table.</p> <p>3 BY MR. CAMPBELL-HARRIS:</p> <p>4 Q. Let's pull up briefly what I marked as Exhibit</p> <p>5 7, which is Dr. Burch's rebuttal.</p> <p>6 A. Okay.</p> <p>7 MR. ROSBOROUGH: Excuse me.</p> <p>8 Q. And let's go to page 4, first full paragraph.</p> <p>9 A. Okay.</p> <p>10 Q. Is this the figure you were just referring to</p> <p>11 about the roughly \$200 difference per white and Black</p> <p>12 student in school districts for funding?</p> <p>13 A. Yeah. Okay. And a slight mistake in my</p> <p>14 language there. So school districts spend \$7,329 per</p> <p>15 pupil on instruction for white students and 7,169 on</p> <p>16 instruction for Black students.</p> <p>17 Q. Uh-huh.</p> <p>18 A. When I looked most recently at the data,</p> <p>19 school districts spent slightly more money on Black</p> <p>20 students. So like, Black school districts receive --</p> <p>21 and these differences are not significant in either</p> <p>22 direction. There is no discrimination against white</p> <p>23 students.</p> <p>24 But school districts received \$300 more per</p> <p>25 kid in majority Black districts, something on that</p>





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<p style="text-align: right;">Page 145</p> <p>1 order. There's federal money that supplements. "On</p> <p>2 instruction" is one of those high IQ caveats that means</p> <p>3 specifically in the classroom and excludes athletics and</p> <p>4 excludes SD and BD classrooms probably, so on.</p> <p>5 Q. How do you know how on instruction is funded,</p> <p>6 like the breakdown of the funding?</p> <p>7 A. Well, I -- offhand, I don't think either of us</p> <p>8 does.</p> <p>9 Q. Okay.</p> <p>10 A. I mean, there are a series of funding</p> <p>11 pipelines that go into schools.</p> <p>12 Q. Okay. Do you have any response to Dr. Burch's</p> <p>13 comment here following those figures, "These gaps seem</p> <p>14 small at first glance, but when multiplied across</p> <p>15 thousands of students, it can mean that" these</p> <p>16 "districts serving a larger number of Black students can</p> <p>17 receive millions fewer dollars than a comparable White</p> <p>18 district."</p> <p>19 A. My response would just be the gap is \$200, and</p> <p>20 it's since flipped in the other direction. And she's</p> <p>21 using an on instruction figure. I mean, it's just --</p> <p>22 it's a -- it's a skillful argument, but the actual gap</p> <p>23 is almost nothing.</p> <p>24 Q. Okay.</p> <p>25 A. And that's what you find nationally. There</p>	<p style="text-align: right;">Page 147</p> <p>1 students in your district just to lag a district of</p> <p>2 similar size by a million. I mean, no, these -- I think</p> <p>3 these are the very small gaps that they look like.</p> <p>4 Q. Okay. Did you review the source and Footnote</p> <p>5 11 here by Hannah Rubinton and Maggie Isaacson?</p> <p>6 A. Yeah, actually, I have read this.</p> <p>7 Q. Okay.</p> <p>8 A. I don't remember exactly my opinion, but I</p> <p>9 thought it was pretty good.</p> <p>10 Q. Okay. You agree with the article and contents</p> <p>11 of it?</p> <p>12 A. Yeah, the point --</p> <p>13 MR. DAVIS: Objection to form.</p> <p>14 A. The point of the article would be essentially</p> <p>15 some racism remains, but funding is rather equal. I</p> <p>16 mean, I -- most -- whether you're talking about Tom</p> <p>17 Sowell and charter schools from the right or something</p> <p>18 like Isaacson's general work from kind of the center</p> <p>19 left, I mean, most people would agree that school</p> <p>20 funding is not among the top three predictors of student</p> <p>21 performance.</p> <p>22 The highest funded school district in the</p> <p>23 U.S.A. right now is Washington, D.C. I mean, just --</p> <p>24 Detroit's in the top ten. I mean, I don't mean to mock</p> <p>25 those cities, but yeah, I don't think this is a very big</p>
<p style="text-align: right;">Page 146</p> <p>1 are also -- by the way, very briefly, I got to note</p> <p>2 Dr. Burch also says some things I don't really say.</p> <p>3 Like a good debater, here. But "In short, Dr. Reilly</p> <p>4 argues that the existence of racial disparities in</p> <p>5 socioeconomic and other outcomes in states outside</p> <p>6 Alabama absolves Alabama..."</p> <p>7 I mean -- but I mean, so obviously this is</p> <p>8 written in the format best designed to make the argument</p> <p>9 of the author. I think in reality if you were looking</p> <p>10 neutrally at school funding, certainly within same class</p> <p>11 districts across race, you would see very little</p> <p>12 difference.</p> <p>13 Q. So are you disagreeing with Dr. Burch that</p> <p>14 these districts with predominantly Black students are</p> <p>15 receiving millions of dollars fewer than districts with</p> <p>16 predominantly white students?</p> <p>17 A. Well, yes, actually. I mean, so, first, as I</p> <p>18 understand, the actual all expenditures figure for Black</p> <p>19 districts is higher than the actual all expenditures</p> <p>20 figure for white districts. So there are differences</p> <p>21 between the on instruction per student and so on</p> <p>22 figures.</p> <p>23 But also, I mean, like we can both do math.</p> <p>24 Just like taking a figure of 1 to 2 hundred dollars per</p> <p>25 kid -- I mean, even taking \$200, you'd need 5,000</p>	<p style="text-align: right;">Page 148</p> <p>1 gap.</p> <p>2 Q. Okay. But you don't discuss difference in</p> <p>3 school district funding in your report, correct?</p> <p>4 A. Well, no, I don't. My point is there are a</p> <p>5 number of other things that predict these results. I</p> <p>6 don't think the \$200 difference has anything to do</p> <p>7 with -- actually, the \$160 difference has anything to do</p> <p>8 with most of these outcomes.</p> <p>9 And I mean, there's a great deal of writing on</p> <p>10 this, again. I mean, I'm a bit heterodox in the modern</p> <p>11 American academy. But there are also modern American</p> <p>12 think tanks, Chinese universities. I mean, many people</p> <p>13 have looked at educational spending around the world.</p> <p>14 And I mean, the highest board scores in the world</p> <p>15 currently are in Hong Kong. I mean, there are many</p> <p>16 places that spend far less than we do that do much</p> <p>17 better with quite diverse populations.</p> <p>18 Q. You don't think the difference in per people</p> <p>19 on instruction funding for white and Black students</p> <p>20 makes any difference in their educational opportunities?</p> <p>21 A. The difference of 169 -- 160, no. Well, what</p> <p>22 is that? A 1 percent difference, a third of 1 percent</p> <p>23 difference. I think that it might have a half of 1</p> <p>24 percent effect if we're just being core practical, we're</p> <p>25 assuming both schools have physical plans on. I don't</p>

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<p style="text-align: right;">Page 149</p> <p>1 think that that is a top three predictor of student 2 performance across these districts. I think that's a 3 fair way to put it. 4 Q. Okay. Going back to page 10 of your report, 5 which is the chart we were just looking at, Figure 2 -- 6 A. Okay. 7 Q. -- you agree that Black SAT test takers have 8 the second lowest average SAT score relative to the 9 other represented race or ethnic groups represented on 10 this chart? 11 A. Yes. 12 Q. Okay. Let's turn the page to page 11. Second 13 paragraph, you begin writing about SAT score differences 14 for students who attended public and charter schools. 15 You write, "The average SAT scores." Are those the ones 16 referenced here, they're national averages? 17 A. Yeah, these are -- well, that is the -- as I 18 recall, it's the size norm state average across every 19 state that had data. So, I mean, this is -- this is -- 20 you can look up the paper in the footnote -- 21 Q. Okay. 22 A. -- and see what you think of it. But that's a 23 pretty comprehensive paper and yeah, that's -- that's 24 every state's score taken -- there's a size adjustment, 25 as I recall, they're added together, and then just --</p>	<p style="text-align: right;">Page 151</p> <p>1 point is contrasting these Alabama level gaps with 2 national gaps. So it's -- it's probably worth saying. 3 But anyway, like the whole point is that all of these 4 exist nationally. 5 Q. Why didn't you include -- can you explain a 6 bit further why you didn't include the state specific 7 metrics in this report? 8 A. That's an interesting question. I mean, the 9 short answer is the point of the report is that the 10 national metrics are identical around the country and 11 across most states, including Alabama. That is the 12 focus. 13 Q. Okay. But -- 14 A. If the comment is just next time you should 15 put in Alabama, I mean, that's a useful piece of 16 consulting advice. 17 Q. Well, how did you compare Alabama's metrics to 18 the national metrics without adding Alabama metrics to 19 your report? 20 A. Well, the specific comparison that's being 21 made is the gap in Alabama and the gap nationally. And 22 in two of these situations -- we're talking about 23 slightly different things in each case. I mean, so in 24 the case of voting by race in Alabama I include Alabama. 25 In the case of incarceration I include Alabama.</p>
<p style="text-align: right;">Page 150</p> <p>1 you do a mean analysis divided by the number of states 2 that provided data. 3 Q. Okay. 4 A. And the same thing for charter school data. 5 All of this is publicly available -- 6 Q. Okay. 7 A. -- with some effort. 8 Q. These average SAT score and these graduation 9 rates, they're national, correct? 10 A. Yes, they are national. 11 Q. Okay. 12 A. None of these are going to be specifically 13 like Center County Alabama or something like that. 14 Q. They're not specific to Alabama? Okay. 15 A. No, they're intentional -- like they're in 16 national contrast with Alabama. 17 Q. Okay. Did you look at high school graduation 18 rates that are specific to Alabama? 19 A. Yeah. So the high -- I actually am aware. I 20 know the Alabama Black/white SAT gap. During the 21 production of this report I did look up the Alabama 22 graduation gap by race. It's, again, quite similar to 23 these. It's not in the report. 24 Q. Okay. 25 A. The reason it's not in the report is that the</p>	<p style="text-align: right;">Page 152</p> <p>1 Here my focus is national, and the question 2 is, why didn't you include Alabama. It's an interesting 3 question. But the short point is that the focus in each 4 case is on the gap around the country. Perhaps 5 including Alabama would have been a good idea, but it's 6 worth noting that it wouldn't have changed anything. 7 Q. Thank you. Okay. At the bottom of page 11 8 you write "Alabama's 'unique' problem with Black/white 9 gaps is in fact a major and well-known national issue." 10 Can you explain what you mean by "gaps" here? 11 A. Yeah. I mean, so the -- what's often called 12 the B-W gap, the learning gap, the test score gap is 13 something that's been written about very extensively. 14 So again, when -- if you say, well, there's a -- let's 15 say 170 point SAT gap in Alabama, the immediate 16 Kendiangelist response, to use that term, is going to be 17 racism. 18 The problem is that these gaps exist in every 19 state in the country, which I think this report does 20 demonstrate. And, again, if -- it would be just as easy 21 to put in a chart including every state and the gap in 22 that state, which is an interesting idea. But there's 23 nothing being hidden. Those gaps would all look 24 identical. They'd look like the incarceration gaps, 25 so -- or they'd all be of varying sizes, but large,</p>

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<p style="text-align: right;">Page 153</p> <p>1 something of that nature. Alabama would be nowhere near</p> <p>2 the top.</p> <p>3 Q. Okay.</p> <p>4 A. So the point is that the B-W gap issue is one</p> <p>5 of the biggest issues in education writing. It's a</p> <p>6 national -- a national known fact.</p> <p>7 Q. Okay. Can you walk me through -- scratch</p> <p>8 that.</p> <p>9 How does your belief that these racial</p> <p>10 disparities in Alabama also appear in other states</p> <p>11 inform your opinions about equal educational</p> <p>12 opportunities in Alabama specifically?</p> <p>13 A. Well, I mean, I think to the extent possible</p> <p>14 equal educational opportunities -- everyone should have</p> <p>15 a clean school, good teachers. All that are good. But</p> <p>16 I, frankly, don't think that that is anywhere near -- I</p> <p>17 don't think that gaps that currently exist in education</p> <p>18 opportunity, quote/unquote, are anything like the</p> <p>19 biggest predictor in these gaps.</p> <p>20 Q. Okay. What are the biggest predictors of</p> <p>21 these gaps, in your opinion?</p> <p>22 A. The biggest predictor of these gaps is how</p> <p>23 hard people study and train for school.</p> <p>24 Q. Okay.</p> <p>25 A. A mildly taboo but easily demonstrable fact.</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. Okay. Let's turn to page 13. You write here</p> <p>2 that "America's cross-state racial gaps in aptitude test</p> <p>3 scores, which are almost totally causal for racial</p> <p>4 differences in educational attainment, seem to have far</p> <p>5 less to do with present-day or even historical basis</p> <p>6 than with cultural practices such as study time."</p> <p>7 How did you determine that America's</p> <p>8 cross-state racial gaps in aptitude test scores are</p> <p>9 almost totally causal for racial differences in</p> <p>10 educational attainment?</p> <p>11 A. Well, I mean, a number of people, including</p> <p>12 Tom Sowell, 2005; John Ogbu, 2023; Thernstrom and</p> <p>13 Thernstrom, 2023; "Mismatch," 2012; I forget the</p> <p>14 authors, 2012, have pointed out that the biggest</p> <p>15 predictor of going beyond secondary to higher education</p> <p>16 is SAT score. Before that, there are -- at least if</p> <p>17 you're looking at selective colleges.</p> <p>18 I mean, before that you're looking at very</p> <p>19 often various forms of tests used to enter selective</p> <p>20 prep schools, that kind of thing. So, I mean, yeah,</p> <p>21 almost totally causal. I would stand by they're highly</p> <p>22 causal for racial differences in educational attainment.</p> <p>23 Yeah.</p> <p>24 The basic point here is, have far less to do</p> <p>25 with present day or even historical bias than with</p>
<p style="text-align: right;">Page 154</p> <p>1 Q. Okay. Let's turn to Figure 3 on page 12. Why</p> <p>2 did you add this figure on your report? And for the</p> <p>3 record, it's the "Public and Charter School Performance</p> <p>4 by Six Metrics."</p> <p>5 A. Well, this is just a national level, the data</p> <p>6 from all states included, the link to a paper that</p> <p>7 includes a chart with all 50 states on it, including</p> <p>8 Alabama, by these metrics, by the way.</p> <p>9 But I mean, this is just another example of</p> <p>10 this gap that we're discussing in the context of Alabama</p> <p>11 exists pretty much everywhere. I mean, so you're seeing</p> <p>12 public school graduation 85 percent. By the way, the</p> <p>13 Black metrics in the U.S.A. are fairly good and are</p> <p>14 improving. I mean, so I'll oftentimes note this to</p> <p>15 folks on the right. But public school graduation rate</p> <p>16 85, black 78. SAT mean score 1100. Again, you see</p> <p>17 that's a majority white population. They're usually</p> <p>18 around 1100. Black SAT, that's more typically your</p> <p>19 African-American, 966.</p> <p>20 The point is, there's no doubt about any of</p> <p>21 this. The standards that you see in Alabama, that you</p> <p>22 see in most other middle to low performing states are</p> <p>23 not uncommon.</p> <p>24 Q. Okay. But these are all national? Sorry.</p> <p>25 A. Yes, these are national gaps.</p>	<p style="text-align: right;">Page 156</p> <p>1 cultural practices such as study time. So what you're</p> <p>2 talking about is, again, the sort of multiple stage</p> <p>3 process that I referred to as becoming a, quote/unquote,</p> <p>4 God of the gaps argument where you have the basic</p> <p>5 reality of, okay, there are differences in education</p> <p>6 between different racial groups.</p> <p>7 Okay. Well, is the reason bias among teachers</p> <p>8 who weed out minority students? Well, it doesn't</p> <p>9 necessarily look like it. Colleges are desperate for</p> <p>10 diversity. The reason seems to be, at least beyond the</p> <p>11 post secondary level, that there are these trackable</p> <p>12 differences in board scores.</p> <p>13 Well, are those due to racism? Well, not</p> <p>14 really. It seems to be that the biggest predictor of</p> <p>15 test scores and certainly grades is how often people</p> <p>16 study and prep. And you can, again, measure that. I</p> <p>17 mean, Ogbu did back in 2003. And again, that's been</p> <p>18 pretty intensely replicated. I mean, Burch notes at one</p> <p>19 point that this -- this is a dated book. People found</p> <p>20 the same thing multiple times and across countries,</p> <p>21 blah, blah, blah. But I mean, yeah, I would stand by</p> <p>22 the sentence.</p> <p>23 Q. Okay. How do you define "study time" here?</p> <p>24 A. Study time would be time spent studying.</p> <p>25 Q. Okay. On homework or anything else?</p>

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<p style="text-align: right;">Page 157</p> <p>1 A. Homework is a proxy that the Brookings 2 Institute used. Other people have used other training, 3 tutoring, flash cards. Most people prefer to use 4 training that doesn't cost much, if anything. And we 5 find that Asian and West African immigrants do, by far, 6 the most work of this kind, and also do, by far, the 7 best in school, like East Asian, South Asian, Nigerian, 8 and so on. 9 Q. Okay. How -- scratch that. 10 What do you mean by study time being a 11 cultural practice here? 12 A. What I mean is that -- and "culture," again, 13 is an interesting and somewhat loaded phrase. I mean, 14 what does it mean? The most basic term would be the 15 personal and work habits of groups of people that are 16 roughly identifiable. I kind of pulled that out of 17 let's politely say thin air, but it coheres very closely 18 with terms that are used. 19 So, I mean, it simply is the case. Sowell in 20 one of his books and a number of other people, Walter 21 Williams, center right, black economist -- several more 22 come to mind; I think Horowitz and "Ethnic Groups in 23 Conflict." There are a number of people that have 24 pointed out various large scale differences across 25 almost random variables like rate of liquor consumption</p>	<p style="text-align: right;">Page 159</p> <p>1 that are used when we're speaking in generalities, and I 2 think that -- that actually is a pretty good brief 3 definition. 4 So, I mean, when we talk about a cultural or a 5 systemic variable -- I mean, one that I use in this 6 paper is that the modal average age for a Black guy is 7 27, for a white guy it's 58. 8 Regions often have distinctive cultures. So 9 55 percent of African-Americans, I think 14 percent of 10 whites live in the American South. Rates of study time 11 in general are lower in the South. And that's why you 12 see lower tested state IQs and lower SAT scores in the 13 South. 14 Q. Okay. How did -- did you go about trying to 15 determine any specific cultural variables to Alabama in 16 this report? 17 A. Well, actually, to some extent, yeah. I mean, 18 so when I'm looking through this report, I'm looking at 19 a number of things that vary between groups that predict 20 outcomes, which I will describe as cultural variables, 21 meaning that I don't think these are genetic, and I 22 don't think they're due to racism. 23 So, I mean, for example, when you're talking 24 about a felony conviction -- obviously, I don't think -- 25 well, actually, I would describe that as a cultural</p>
<p style="text-align: right;">Page 158</p> <p>1 across different countries and different ethnic and 2 racial groups. 3 And any of those could be described as a 4 cultural variable. But in the U.S. South, for example, 5 people study much less than they do in the U.S. North. 6 True for Blacks and whites. 7 Q. Is it your opinion that the rate of liquor 8 consumption is a culture variable? 9 A. My assumption is that there are different 10 cultures that have developed around variables like the 11 religion practiced in different countries and the 12 availability of different sources of alcohol. And now 13 this is getting kind of deep into the -- the weeds, but 14 that do -- that are reflected -- at least historically 15 were reflected in differential rates of consumption of 16 alcohol and drugs. 17 The stereotype that the Irish drank much more 18 than other Europeans was true until about 50 years ago. 19 I mean, there's extensive documentation of that. We've 20 been surveying people for a while. 21 Q. Okay. Can you walk me through how you 22 determine whether something's cultural or not? 23 A. Well, I don't think there's one process; well, 24 it's not due to racism and it's not genetic. I mean, I 25 think that there are three paradigms that are very broad</p>	<p style="text-align: right;">Page 160</p> <p>1 variable. What's the rate of gang culture in urban 2 majority African-American versus Caucasian rural 3 communities or something like that? It's certainly not 4 a genetic variable. There's no felony gene. 5 But, I mean, when I say 14.7 percent of 6 otherwise eligible Black people in Alabama can't vote 7 because of a relevant felony conviction, yeah, that's 8 Alabama-specific. And there are a number of other 9 Alabama-specific variables noted in the report. 10 But again, the point is that a lot of these 11 are relevant not just in Alabama but nationally. 12 Q. Okay. Why do you think Black students study 13 less? 14 A. I think there are a bunch of reasons for that. 15 One reason would probably just be the origin of most 16 Black American populations in the South where there's a 17 lower rate of study. 18 Why that is, is a fascinating question. Many 19 people have attributed it to Southern agrarianism. It 20 doesn't just mean slavery. It means different growing 21 seasons for different things. But like you can actually 22 go to schools in the South and the North, and to some 23 extent, because we're so used to thinking of bias, this 24 might sound almost primitive or bizarre, but you can 25 literally just ask kids, how much you study, ask their</p>



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<p style="text-align: right;">Page 161</p> <p>1 parents.</p> <p>2 I mean, you can conduct double blind</p> <p>3 observations, and you do find substantial differences</p> <p>4 between the North and the South.</p> <p>5 Q. Okay.</p> <p>6 A. You find substantial differences between Black</p> <p>7 and white Americans.</p> <p>8 Q. Okay. Besides the agrarian culture, why do</p> <p>9 you think Black students study less in Alabama?</p> <p>10 A. I think Black students study less in every</p> <p>11 state. I feel -- I'm a little weary after just the</p> <p>12 three hours of talking, but I mean -- so I think that</p> <p>13 none -- the thing is, none of this is disputed.</p> <p>14 Culturalists, hereditarians, racialists, might be a</p> <p>15 better term, will certainly shout at each other about</p> <p>16 the core points. But just like no one disputes that</p> <p>17 racism exists, the basic idea that Black kids study less</p> <p>18 than white kids really isn't disputed.</p> <p>19 Q. Are there racial disparities in study time in</p> <p>20 Alabama?</p> <p>21 A. There are racial -- I would assume so. There</p> <p>22 are racial disparities in 75 -- in every state.</p> <p>23 Q. Did you analyze whether there are racial</p> <p>24 disparities in study time in Alabama?</p> <p>25 A. I didn't break out Alabama.</p>	<p style="text-align: right;">Page 163</p> <p>1 study time in Alabama, what would you attribute those</p> <p>2 disparities to?</p> <p>3 A. Well, I wouldn't attribute it to historical</p> <p>4 racism, which I think would be the argument of the other</p> <p>5 side. I think that there are a large number of things</p> <p>6 that come into play. One is -- one is higher rate of</p> <p>7 single motherhood in the Black community. But another</p> <p>8 is something that you could just call history. Groups</p> <p>9 do things because they've done them. White Americans,</p> <p>10 for example -- and let's kind of start at the top here.</p> <p>11 There are much higher rates of study time in Asian</p> <p>12 American communities than there are in white or Black</p> <p>13 communities.</p> <p>14 Q. Okay.</p> <p>15 A. If you actually go -- so none of this --</p> <p>16 African-Americans are much more, on average, successful</p> <p>17 at a whole range of pursuits, and not just like sport,</p> <p>18 like theater, per capita than white kids.</p> <p>19 Q. Okay.</p> <p>20 A. Nobody is puzzled by any of this. It's only</p> <p>21 when you get into a very few specific things that touch</p> <p>22 on core physical capabilities or intelligence that the</p> <p>23 question becomes at all loaded.</p> <p>24 In reality -- I think starting with Asian</p> <p>25 Americans is a good way to address the question. Asians</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. Okay.</p> <p>2 A. So for about half these variables I break out</p> <p>3 Alabama, but for about half I don't. The point is that</p> <p>4 you would have to adjust for all of these things to</p> <p>5 claim that an Alabama gap that looks just like the</p> <p>6 American gap is caused by racism or whatnot.</p> <p>7 Q. How did you determine whether or not to</p> <p>8 include Alabama-specific breakdowns or not in your</p> <p>9 report?</p> <p>10 A. To some extent it depended on the</p> <p>11 available -- I mean, there are multiple things. It</p> <p>12 depended on the focus that I had, on the data, whether</p> <p>13 it was addressed by other experts. It depended on the</p> <p>14 availability of the data. It depended on how primary</p> <p>15 the data was to me. So, for example, I mean, these</p> <p>16 variables here I refer to as tertiary variables.</p> <p>17 Q. Uh-huh.</p> <p>18 A. So mean, median age. Now, again, with all of</p> <p>19 these, if I break out for the next report or whatnot the</p> <p>20 Alabama data, it'll look just like the national data.</p> <p>21 Black Alabamians are not all 60. But, I mean, for the</p> <p>22 tertiary variables in the report, I often didn't think</p> <p>23 it necessary, wanted to move on to the next primary</p> <p>24 variable.</p> <p>25 Q. Okay. If there were racial disparities in</p>	<p style="text-align: right;">Page 164</p> <p>1 study on average about three times as much as white</p> <p>2 kids; maybe two to three times as much looking at that</p> <p>3 Brookings data.</p> <p>4 Q. Okay.</p> <p>5 A. And the question would be, why is that. The</p> <p>6 simple answer would be Asian families focus a lot on</p> <p>7 study. There almost always are two very</p> <p>8 academically-focused parents, academics as versus</p> <p>9 athletics as versus the theater as versus music as a</p> <p>10 focus. There are a limited number of acceptable fields</p> <p>11 that you can enter into, so on down the line.</p> <p>12 Again, this has nothing to do with genes or</p> <p>13 racism. The group that's just behind Asians in all</p> <p>14 these categories is Nigerians and Ghanaians, as you</p> <p>15 probably know.</p> <p>16 So when you look at Blacks or Southern whites,</p> <p>17 who in Kentucky are almost identical, what you see is</p> <p>18 the reverse of that. There's often one parent. There</p> <p>19 is a range of interests that are acceptable. Both of</p> <p>20 those groups are known for excelling in athletics, but</p> <p>21 going beyond that into the arts, that kind of thing.</p> <p>22 And I think when you look at that and take all</p> <p>23 that into account, without sort of thinking that you're</p> <p>24 not supposed to, you see some pretty obvious patterns.</p> <p>25 And again, this is just all in the data.</p>

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<p style="text-align: right;">Page 165</p> <p>1 Q. Okay. You mentioned that history can affect</p> <p>2 these disparities, and I'm wondering how -- scratch</p> <p>3 that.</p> <p>4 What impact do you believe history has on</p> <p>5 disparities in study time?</p> <p>6 A. Well, I think it has some, but again, the</p> <p>7 thing is we've almost become -- the term would be</p> <p>8 univariate in our analysis in a lot of kind of the</p> <p>9 American upper middle class. So like history doesn't</p> <p>10 mean our ancestors used to fight each other.</p> <p>11 History is sort of everything, like my</p> <p>12 ancestors -- neither group came over here willingly,</p> <p>13 actually. One was battle captures from West Africa.</p> <p>14 One are battle captures from Ireland. The only</p> <p>15 difference was that massah had to let the second group</p> <p>16 go after seven years.</p> <p>17 But I mean, so history is what society you're</p> <p>18 from. Both of those societies were known for fairly</p> <p>19 high levels of civilization with Rozzi rating and so on.</p> <p>20 What do you encounter? Those two groups came to</p> <p>21 encounter each other in, for example, the American</p> <p>22 South. So that's founder culture, to quote, I believe,</p> <p>23 Horowitz in "Counterculture." What's the region like?</p> <p>24 What are the characteristics there? Are you an agrarian</p> <p>25 region, a trading region? This is all just what used to</p>	<p style="text-align: right;">Page 167</p> <p>1 racial gaps, you know, almost totally causal for racial</p> <p>2 differences. And it seems to have far less to do with</p> <p>3 present theory than historical bias than with cultural</p> <p>4 practices such as study time.</p> <p>5 A. Well, I mean, to some extent that's my</p> <p>6 conclusion. And obviously a big element of any</p> <p>7 researcher of this kind of writing is reviewing previous</p> <p>8 writing, checking it, and then coming up with a</p> <p>9 synthesized conclusion.</p> <p>10 Q. Okay.</p> <p>11 A. I mean these sources here, the Brookings</p> <p>12 Institute, well-known center left source, they -- what</p> <p>13 they do essentially is break down the data on study time</p> <p>14 across groups.</p> <p>15 Q. Uh-huh.</p> <p>16 A. I don't actually agree with all the</p> <p>17 conclusions they reach about it, I will note.</p> <p>18 Q. Okay.</p> <p>19 A. But solidly done. They have a couple of</p> <p>20 tables in there that literally just review study for</p> <p>21 Asians. They have a well-known table that has become an</p> <p>22 internet meme, actually, although I saw it in the</p> <p>23 original, but that's, you know, whites, Blacks,</p> <p>24 Hispanics, and then Asians, and also high- and</p> <p>25 low-income students. So that -- Brookings is just</p>
<p style="text-align: right;">Page 166</p> <p>1 be pretty standard social science.</p> <p>2 Q. Okay.</p> <p>3 A. And, I mean, so all of that develops your --</p> <p>4 into your culture. Does that culture -- culture usually</p> <p>5 endures with five generations. Does that influence</p> <p>6 something like study time? Yeah.</p> <p>7 Q. Okay. So when you talk about cultural</p> <p>8 practices, you agree that history can impact those</p> <p>9 practices, correct?</p> <p>10 A. History, broadly speaking, of course.</p> <p>11 Q. Okay.</p> <p>12 A. That's how you get culture, if it's not just</p> <p>13 genetics or racism.</p> <p>14 Q. Okay.</p> <p>15 MR. DAVIS: Can we go off the record for a</p> <p>16 second?</p> <p>17 MR. CAMPBELL-HARRIS: Yeah.</p> <p>18 (Discussion off the record.)</p> <p>19 (A recess was taken from 12:38 to 12:40.)</p> <p>20 BY MR. CAMPBELL-HARRIS:</p> <p>21 Q. We're back on the record.</p> <p>22 Okay. So we turned to page 13 of your report.</p> <p>23 So on page 13 you cite a number of different</p> <p>24 authorities. Can you walk me through how you reached</p> <p>25 this determination that, you know, America's cross-state</p>	<p style="text-align: right;">Page 168</p> <p>1 saying, well, we did this again, we reviewed some of the</p> <p>2 preexisting data that's out there --</p> <p>3 Q. Okay.</p> <p>4 A. -- often on the right, and we found that these</p> <p>5 gaps do exist, and here's our theory about why. This is</p> <p>6 just the time gap. John Ogbu is a guy who looked at a</p> <p>7 really famous case study. It's called the Shaker</p> <p>8 Heights High study.</p> <p>9 Q. Okay.</p> <p>10 A. But he was asked by upper middle class Black</p> <p>11 parents why, at a well-known high school, Cleveland,</p> <p>12 suburban Shaker Heights, there were massive differences</p> <p>13 in performance between Black and white kids. And he</p> <p>14 noticed this in a couple of other suburban schools.</p> <p>15 And Ogbu's a Nigerian guy whose own kids were</p> <p>16 performing pretty well, as I understand. He went in</p> <p>17 there and assumed racism and so on. And what he</p> <p>18 actually found was just pretty much the same thing, that</p> <p>19 there were mappable differences of about, you know, a</p> <p>20 ratio one to two in study time between Black and white</p> <p>21 kids.</p> <p>22 And this is true well outside what I once</p> <p>23 called the Old South in my paper. And that's been</p> <p>24 replicated a number of times by brilliant socially</p> <p>25 awkward social scientists. I mean, you know, no one</p>

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<p style="text-align: right;">Page 169</p> <p>1 really disputes it. The question is, is why.          2 Q. Uh-huh.          3 A. And that, by the way, is a tough question --          4 Q. Okay.          5 A. -- that's led some people to come up with,          6 frankly, racism conclusions, well, they just can't do          7 better.          8 The actual answer of -- well, take the Asian          9 family and kind of reverse some of those variables, and          10 yeah, look at history, sure. Then think about what else          11 impacted that. That's probably the answer.          12 Q. Okay.          13 A. But I mean, then the article -- Dr. Burch          14 responded to this and said he put a newspaper column in          15 here. The point is that -- the newspaper column          16 obviously cites a well-known study on Nigerian          17 Americans. But the point is that since 2008, the best          18 educated group in the U.S.A. hasn't been white or Asian.          19 It's been Nigerian.          20 Q. Okay.          21 A. Yeah, that's not disputed. This was found,          22 again, two years ago. You know, so we've -- and again,          23 study time for Nigerians is on par with study time for          24 Asian Americans. And I'm glad to drop some sources for          25 that.</p>	<p style="text-align: right;">Page 171</p> <p>1 mentioned how you can code racism. That's how you          2 employ history. But you can't code like the ghosts of          3 the past as a variable.          4 What you do is look at things, like study,          5 that impact performance, and you look at how perhaps          6 racism could impact those. But the basic point is that          7 we're looking at a situation where the gaps in          8 performance between -- so like the three major things          9 I'm looking at, right, like test scores across the          10 states, incarceration rates across states, voting          11 patterns across states, those measurably don't track          12 with historical or contemporary racism. So that's why          13 you would be looking at other culture variables as          14 explainers.          15 I think that's a genuinely fair answer. I          16 mean, so Ogbu cites history. I cite history at least          17 eight times in this. It's just that's not the thing I'm          18 looking at.          19 Q. Okay. I'm going to present to you what I'm          20 going to mark as Exhibit 9.          21 (Plaintiffs' Exhibit 9 was marked for          22 identification.)          23 Q. And I'm going to reflect that this is the          24 Brookings Institute --          25 A. All right.</p>
<p style="text-align: right;">Page 170</p> <p>1 Q. Okay.          2 A. So it's just -- that's the point.          3 Q. Okay. Did any of these three materials that          4 you cited on page 13, the Ogbu book, the Houston          5 Chronicle article, the Brookings blog post -- did any of          6 them try explaining why racial gaps in study time          7 exists?          8 A. Well, Ogbu goes -- well, Ogbu provides a          9 couple of possible theories.          10 Q. Okay.          11 A. He definitely talks about the impact of --          12 father present is how I code that variable. He also          13 notes that historical racism could play some role. No          14 one denies that some role could be played.          15 Q. Okay.          16 A. He goes through a couple of other different          17 things. I think his real theory is the leniency of          18 American culture. He seems to feel that whites aren't          19 doing really well in school either.          20 Q. Okay. So he looked at, it sounds like,          21 cultural practices and then history. Why didn't you          22 look at history in your report?          23 A. Well, I mean, I'm not sure what you're saying.          24 I look at -- I think that cultural practices -- these          25 are -- you can't code history, at least very easily. I</p>	<p style="text-align: right;">Page 172</p> <p>1 Q. -- blog post. Is this the Brookings Institute          2 blog post that you --          3 A. Yeah, it's --          4 Q. -- reviewed in your report?          5 A. It's right there. Read blog posts. I mean,          6 Brookings does hard copy and online versions of papers.          7 This is one of their fairly major papers that's online.          8 But yes, this is Brookings Institute analyzing the          9 homework gap.          10 Q. Okay. And this post is not Alabama-specific?          11 A. Well, no. The whole point of most of these is          12 that they are national and that the gaps exist          13 everywhere.          14 Q. Okay. Do you see the second full paragraph on          15 the first page starting with, "In this blog post"?          16 A. Yes.          17 Q. Okay. Do you see that the authors try to          18 explain that they rely on data from the American Time          19 Use Survey?          20 A. Yeah, they use ATUS.          21 Q. Okay. Did you ever review that data?          22 A. I've looked at ATUS data, yeah.          23 Q. But did you review the data used in this          24 specific blog post?          25 A. Well, I mean, again, in this Brookings paper,</p>



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<p style="text-align: right;">Page 173</p> <p>1 they're already breaking out the ATUS data. I may have</p> <p>2 at some point earlier, just as a researcher, clicked</p> <p>3 through ATUS, but -- I like that data source, but I have</p> <p>4 no idea.</p> <p>5 Q. Okay. Let's turn to page 2. Specifically, I</p> <p>6 want to focus on Figure 1, which is titled "Time high</p> <p>7 school students spend on homework by race and parents'</p> <p>8 income."</p> <p>9 And you see that the calculations are based on</p> <p>10 ATUS data from 2003 to 2013?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And what are you contributing these</p> <p>13 gaps of Black students relative to others to?</p> <p>14 A. Well, I think that this is -- there are</p> <p>15 multiple levels of this analysis.</p> <p>16 Q. Okay.</p> <p>17 A. I mean, at the first level of analysis there</p> <p>18 is less reported study time from Black students</p> <p>19 because -- and this sounds almost silly -- Black</p> <p>20 students spend less time studying and training. And</p> <p>21 around this same level of analysis there are pretty</p> <p>22 obvious reasons for this. Black students reported</p> <p>23 spending more time watching television, more time</p> <p>24 spending with their girlfriend or boyfriend -- again,</p> <p>25 none of this is contested -- and most notably more time</p>	<p style="text-align: right;">Page 175</p> <p>1 that. I'm sure the law reviews and so on operate in a</p> <p>2 pretty similar fashion.</p> <p>3 So how did I come to my conclusion? I mean, I</p> <p>4 just read what -- as a skilled methodologist myself, I</p> <p>5 read what other people said and looked at it. So, for</p> <p>6 example, does the data showing that Black students spend</p> <p>7 considerably more time participating in varsity</p> <p>8 athletics than white students, which I don't consider a</p> <p>9 dishonorable pursuit, you know, but does that track? Is</p> <p>10 it real? Yes, it is.</p> <p>11 So once you do that, if you're spending two</p> <p>12 hours a day in practice and that's 50 percent of Black</p> <p>13 males and 20 percent of white males -- that second</p> <p>14 figure is a guess -- is that going to impact time spent</p> <p>15 doing homework? Probably.</p> <p>16 Do Black families have a lower rate of parents</p> <p>17 that insist on flash carding with their kids and so on</p> <p>18 than Asian families? Yes. You know, that hasn't been</p> <p>19 measured more than twice, I think. I don't know.</p> <p>20 But, I mean, once you see that, once you see</p> <p>21 that the data exists and it looks pretty reliable, you</p> <p>22 accept it. You write it down. It's your article then.</p> <p>23 Q. Would you expect to see a smaller racial study</p> <p>24 gap in Alabama specifically because all the students</p> <p>25 would be from the same region?</p>
<p style="text-align: right;">Page 174</p> <p>1 pursuing nonacademic elite pursuits like student</p> <p>2 government, athletics, music, so on down the line.</p> <p>3 So that's the first level of analysis. The</p> <p>4 second question would be why.</p> <p>5 I think a big part of that would be that the</p> <p>6 majority of Black students come from a less academic</p> <p>7 region for both Blacks and whites. So less academic</p> <p>8 region. If I were teaching -- I do say I think father</p> <p>9 absence plays a role here. We're now seeing study time</p> <p>10 for whites drop as divorce and out-of-wedlock birth</p> <p>11 rates increase for whites. Out-of-wedlock birth rates</p> <p>12 for whites is now 36 percent. So, I mean, no hate for</p> <p>13 single moms, but you're going to see some of those same</p> <p>14 patterns in the general community. But I mean, so</p> <p>15 that's it, level one, level two.</p> <p>16 Q. Okay. For the first level, how did you -- can</p> <p>17 you walk me through your analysis to reach your</p> <p>18 determination there?</p> <p>19 A. Well, a lot of this, as I said, is really a</p> <p>20 synthesis of research, which is very common in social</p> <p>21 science. I mean, when you say -- like Brookings is</p> <p>22 using ATUS. And then there are conservative people</p> <p>23 responding to some of the things Brookings said. That's</p> <p>24 entirely normal. You'd have a debate that involves ten</p> <p>25 professors and eight think tankers or something like</p>	<p style="text-align: right;">Page 176</p> <p>1 A. I would expect -- yeah, actually, I would</p> <p>2 expect to see somewhat smaller. Now, that, again,</p> <p>3 that's just one of the variables, right? You have to</p> <p>4 look at father absent. You have to look at a bunch of</p> <p>5 different things. But, in fact, in Alabama you do see</p> <p>6 smaller SAT and IQ gaps than in most other states. I</p> <p>7 mean, the IQ and IQ gaps in Alabama are in my report.</p> <p>8 So yeah, I would expect a smaller gap that</p> <p>9 would still be influenced by a number of other</p> <p>10 variables, like family structure, so on. So in reality,</p> <p>11 all of these analyses, when -- generally, when you write</p> <p>12 one academic paper, you have one dependent variable and</p> <p>13 you have like seven or eight independent variables, and</p> <p>14 you look at what impacts that DV. So the DV, number</p> <p>15 one, is -- is study time, study culture.</p> <p>16 And I mean, if you then break that out</p> <p>17 regionally and you look at Alabama, you can't include</p> <p>18 region in the model anymore but you still have family,</p> <p>19 you still have past racism. You still have eight other</p> <p>20 things. And you might find that seven of them are</p> <p>21 significant, if you're a good modeler, which I am. So,</p> <p>22 I mean, that's -- you know, maybe you find a smaller</p> <p>23 gap.</p> <p>24 Q. Did you perform an analysis of the study gap</p> <p>25 for students in Alabama?</p>



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<p style="text-align: right;">Page 177</p> <p>1 A. No, I didn't perform an independent analysis 2 of the Alabama study gap. 3 Q. Why not? 4 A. Because, again, the point is the Alabama 5 differences are -- so, if the point is -- no, I mean, 6 the response is all that's really needed, I think. The 7 point is that the Alabama differences are mirrored 8 everywhere. Like, these are the national differences. 9 Like, we're looking at the national study differences. 10 We're looking at the national incarceration differences. 11 For some of these variables, I did include Alabama. 12 Q. Okay. Did you check for any errors or 13 mistakes in this data, in the Brookings blog post? 14 A. No, I did not. And again, the Brookings paper 15 is on the internet, like virtually all academic articles 16 including mine. No, I did not. I did not go through -- 17 so the ATUS, as it's often called, is a pretty 18 respectable data, but no, I don't go through there and 19 see if they made mistakes. 20 Q. Okay. If you had spotted mistakes, how would 21 you respond? 22 A. Generally, if I were looking through a major 23 database like that and I spotted a mistake, and I do 24 think on my level I might -- I would contact a 25 contributing scholar, something like that, and see --</p>	<p style="text-align: right;">Page 179</p> <p>1 within their institution but that's because students of 2 color are, on average, lower scoring within their 3 institution. Similarly, teachers perceive white 4 students as lower scoring than Asians and West Africans 5 because they are. 6 The only question is would a teacher who's 7 confronted with a Black, white, and Asian student treat 8 them dramatically different before she knows what their 9 first test score is going to be. And we don't find much 10 evidence of that. There's some 2, 3 percent differences 11 that have been found but nothing -- no, nothing huge. 12 Q. Then why is minority performance higher in 13 integrated schools? 14 A. Well, that's the opposite of what you would 15 expect to find. I mean, so if you're arguing that white 16 teachers see black students as academically inferior -- 17 now that black teachers are catching up in board score 18 performance, you would expect minority students to 19 perform better if they had mostly Black teachers, right? 20 I mean, like -- so if student performance is 21 higher in integrated schools with white students and 22 teachers, that's actually an argument against the claim 23 that teachers are enormous bigots. 24 If Black student performance is higher where 25 there are more white students and teachers, that's --</p>
<p style="text-align: right;">Page 178</p> <p>1 see what could be done. 2 Q. Okay. Let's turn to page 4 of this Brookings 3 blog post titled Societal Norms. 4 The post reads, in the third paragraph here, 5 "Many studies, including recent research, have shown 6 that teachers perceive students of color as academically 7 inferior to their white peers." 8 Do you agree with that statement? 9 A. You know, so it depends what you mean. And 10 all of this gets into these intense debates in good 11 literatures. Teachers do perceive students of color to 12 be lower scoring on standardized tests than their white 13 peers, but that's because they are. So, I mean, the 14 question would be if you take -- so there are a lot of 15 ways to test this, again. If you're arguing that the 16 lower scores are due to racism, which is a non-crazy 17 ethical argument you can make, but if you're making that 18 argument, you would have to show that in, for example, 19 middle class majority minority schools, minority student 20 performance dramatically improved. That's been tried 21 many, many times, and it doesn't. In fact, minority 22 performance is slightly higher in integrated schools. 23 So do teachers perceive students of color as 24 academically inferior? Teachers perceive students of 25 color, the way that normally is worded, as lower scoring</p>	<p style="text-align: right;">Page 180</p> <p>1 that's just an interesting random fact almost. By the 2 way, coming from an HBCU perspective, that really 3 depends on what you mean. 4 I mean, like HBCUs produce a minority of Black 5 graduates but a very representative number in a lot of 6 elite fields. I mean, so you can -- you can really go 7 back and forth with this stuff all day. Like, I'm not 8 sure a lot of that means anything. 9 Q. Okay. Later in the blog post, the next 10 paragraph, it reads, "Students of color are also less 11 likely to attend high schools that offer advanced 12 courses (including Advanced placement courses) that 13 would likely assign more homework, and thus access to 14 rigorous courses may partially explain the gaps as 15 well." 16 Do you agree with that? 17 A. Maybe a partial. I mean, so what they say 18 here in -- by the way, Brookings isn't exactly to the 19 right of Charlemagne. Like, if they're saying may 20 partially explain, I mean, that's -- that's not going 21 back to a majority explainer there. That may be a 22 partial explanation. 23 Again, you have to dig into why that is, 24 though. Advanced placement courses are offered where 25 you have a sufficient body of students by, what,</p>

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<p style="text-align: right;">Page 181</p> <p>1 sophomore year that are testing at a level or performing</p> <p>2 at a level where they could use AP. So, I mean, if</p> <p>3 you're looking at freshmen through juniors over ten</p> <p>4 years at homework, the fact that AP is not available for</p> <p>5 the upper end of that scale explains a very small</p> <p>6 percentage of that, I would imagine.</p> <p>7 I haven't -- I haven't vetted all this, as you</p> <p>8 understand. But I mean, so to some extent -- I don't</p> <p>9 want to get into the full-on Conservative blackmailing,</p> <p>10 stop making excuses thing, but like some of this, you'd</p> <p>11 really have to check that out for me.</p> <p>12 I will note that schools with, again, a lot of</p> <p>13 Asians and West Africans, regardless of income, offer a</p> <p>14 lot of AP classes because the kids are doing well. So</p> <p>15 does racism play a role there? Maybe a small one.</p> <p>16 Probably not. It's just like the more you study, the</p> <p>17 better you do in school. The hereditarians are wrong.</p> <p>18 The racialsists are mostly wrong.</p> <p>19 Q. Okay.</p> <p>20 A. One last quick point.</p> <p>21 Q. Yeah.</p> <p>22 A. This graphic on -- I don't know if you guys</p> <p>23 care about this one way or another, but this graphic</p> <p>24 here almost entirely predicts like test score</p> <p>25 differences that are used by all sides to argue for</p>	<p style="text-align: right;">Page 183</p> <p>1 prophecy."</p> <p>2 Do you have any response to that statement?</p> <p>3 A. I think there's a very low level of what you</p> <p>4 could call -- the term might be Bayesian externality</p> <p>5 here. But like, the idea would be that the external</p> <p>6 variable of racism is making kids not study or is making</p> <p>7 kids get initial low test scores in like freshman year</p> <p>8 when the big tests start. I don't think that's the</p> <p>9 case.</p> <p>10 I mean, a much more plausible model, to me,</p> <p>11 would be that if you come in after grade school, after</p> <p>12 middle school, having shown a particular level of</p> <p>13 reading and mathematical ability -- and some of that may</p> <p>14 be due to horrible historical ethnic conflict in your</p> <p>15 area, some may just be due to dad leaving. But if you</p> <p>16 come in with those board scores -- and we see them.</p> <p>17 Even in higher education, I mean, we know what people's</p> <p>18 marks are -- there might be some perceptions about you.</p> <p>19 But those are very much distanced from, I think, pure</p> <p>20 race.</p> <p>21 I mean, if you come in and you've a Ghanaian</p> <p>22 guy or for that matter, a Black American guy and you</p> <p>23 have an SAT 1450, I mean, that's -- that would be the</p> <p>24 assumption. And even then the goal from anyone ethical</p> <p>25 would be to treat you like any other student, see what</p>
<p style="text-align: right;">Page 182</p> <p>1 everything from genetic inferiority to extreme racism.</p> <p>2 Like, if you break out the numbers in the original ATUS</p> <p>3 study, just like how much people study, and you regress</p> <p>4 that against the SAT scores, it's the same thing.</p> <p>5 Q. Okay. You're talking about Figure 1 of this</p> <p>6 article?</p> <p>7 A. Yeah, this -- this is irrelevant to the case,</p> <p>8 but it's just that's one of the things that I found that</p> <p>9 I thought most interesting as an academic</p> <p>10 Q. This figure is irrelevant to the case or --</p> <p>11 A. No, no, the figure's not irrelevant to the</p> <p>12 case. The point that I just made probably is. But like</p> <p>13 just your -- the amount of time you study, like you make</p> <p>14 your kid hit the books or whatever is identical to the</p> <p>15 test scores there. Has nothing to do with race, has</p> <p>16 nothing to do with racism in many cases.</p> <p>17 Q. Okay.</p> <p>18 MR. ROSBOROUGH: I'm going to step out.</p> <p>19 (Mr. Rosborough left the room.)</p> <p>20 BY MR. CAMPBELL-HARRIS:</p> <p>21 Q. Okay. The blog post continues. The next</p> <p>22 paragraph, it says, "Low-income students and students of</p> <p>23 color may be assigned less homework based on lower</p> <p>24 expectations for their success, thus preventing from</p> <p>25 learning as much and thus creating a self-fulfilling</p>	<p style="text-align: right;">Page 184</p> <p>1 you can do.</p> <p>2 Q. Let's go back to your report.</p> <p>3 A. Okay. Put this over here.</p> <p>4 Q. On the bottom of page, 13 titled "Tertiary</p> <p>5 Variable (2)" median and mean age.</p> <p>6 MR. DAVIS: Are we just jumping to a new</p> <p>7 subject?</p> <p>8 MR. CAMPBELL-HARRIS: It's very short.</p> <p>9 BY MR. CAMPBELL-HARRIS:</p> <p>10 Q. Here are you saying that the gaps in voter</p> <p>11 registration and voter turnout exist because Black</p> <p>12 voters have a younger median age compared -- relative to</p> <p>13 white voters in Alabama?</p> <p>14 A. I'm saying that's almost certainly a</p> <p>15 contributing variable. Yeah, almost certainly a</p> <p>16 contributing variable.</p> <p>17 Q. Okay. Can you walk me through how you reached</p> <p>18 that conclusion that it's almost certainly a</p> <p>19 contributing variable?</p> <p>20 A. Well, younger people are less likely to vote.</p> <p>21 Q. Anything else?</p> <p>22 A. I mean, no, that's -- in every state that's</p> <p>23 the case. I believe the footnote breaks down age</p> <p>24 nationally, if not in Alabama. You've got -- yeah,</p> <p>25 Kathryn Schaeffer. That's Pew. She's got the states in</p>



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<p style="text-align: right;">Page 185</p> <p>1 there.</p> <p>2 I mean -- oh, yeah, Footnote 24, I've got the</p> <p>3 Alabama Department of Public Health. Yeah. I mean, so</p> <p>4 20-year-old people are half -- I'm being very generous</p> <p>5 here -- as likely to vote as 60-year-old people. So if</p> <p>6 we know that there's a ten-year gap -- and again, I'm</p> <p>7 being very generous there. That's a straight mean gap.</p> <p>8 That's not the mode. That's not the median.</p> <p>9 If we know there's a ten-year gap between</p> <p>10 different ethnic groups you, again, have to adjust for</p> <p>11 that when you look at voting rates.</p> <p>12 Q. Okay.</p> <p>13 A. That's just not controversial. That has</p> <p>14 nothing to with racism, any -- none of that.</p> <p>15 Q. Okay. Did you -- are you familiar with voter</p> <p>16 registration rates by age in Alabama?</p> <p>17 A. I'd have to look them up again.</p> <p>18 Q. Okay. Are you familiar with voter turnout</p> <p>19 rates by age in Alabama?</p> <p>20 A. I'd have to look them up again.</p> <p>21 Q. Okay. Did you consider those metrics in</p> <p>22 making your opinion in subsection C?</p> <p>23 A. As a recall, I looked at them. They are not</p> <p>24 included in subsection C.</p> <p>25 Q. Why did you not include them in subsection C?</p>	<p style="text-align: right;">Page 187</p> <p>1 potentially impact these national gaps and these Alabama</p> <p>2 gaps. And that's not an exotic position. That's not</p> <p>3 the fringe hereditarian position. That's not the</p> <p>4 extreme racist position. It's a sort of standard.</p> <p>5 So when you see a gap like this, you have to</p> <p>6 adjust for this stuff. Yeah, I mean, so,</p> <p>7 fatherlessness, I mean, you better call that OOW birth.</p> <p>8 I mean, that's just something that, again, you'd throw</p> <p>9 in here. I mean, it obviously affects every kind of</p> <p>10 civic behavior.</p> <p>11 And I mean, I assume your point is going to be</p> <p>12 I don't see the broken out Alabama rates here, but again</p> <p>13 we do the American rates. I did the last year's;</p> <p>14 35.3 percent only for American whites, 52.6 for</p> <p>15 Hispanics. That includes Caucasian Hispanics.</p> <p>16 66 percent for natives. 69 percent for</p> <p>17 African-Americans. This isn't a Black problem, but it's</p> <p>18 a group variant problem. I mean, that's going to affect</p> <p>19 voting.</p> <p>20 That's also going to affect criminal</p> <p>21 incarceration, which is something that directly affects</p> <p>22 voting. I mean, I do break out Alabama here.</p> <p>23 Q. Okay. How did you go about trying to draw the</p> <p>24 connection between voting and OOW, which I'm assuming</p> <p>25 you mean out of wedlock?</p>
<p style="text-align: right;">Page 186</p> <p>1 A. Can't recall. And I genuinely can't recall.</p> <p>2 I definitely don't remember Alabama having hyper high</p> <p>3 rates of like post high school turnout for voting.</p> <p>4 MR. CAMPBELL-HARRIS: Okay. I think we're</p> <p>5 good to take a break for now.</p> <p>6 (A recess was taken from 1:01 to 1:58.)</p> <p>7 (Mr. Rosborough entered the room.)</p> <p>8 BY MR. CAMPBELL-HARRIS:</p> <p>9 Q. Okay. We're back on the record after lunch.</p> <p>10 Can you go to page 14 of your report, Dr. Reilly?</p> <p>11 A. I sure can. 14.</p> <p>12 Q. Okay. And under subsection C about "Family</p> <p>13 Structure and Criminal Behavior," you write that, "The</p> <p>14 rate of fatherlessness...and family stability and the</p> <p>15 differences in socio-economic status with which it</p> <p>16 correlates can famously and significantly affect civic</p> <p>17 participation."</p> <p>18 A. That is correct.</p> <p>19 Q. Why did you choose to analyze that for this</p> <p>20 report?</p> <p>21 A. Well, I think the point is not so much that</p> <p>22 these variables have an effect, although they do. I</p> <p>23 mean, I think we just looked at age nationally and in</p> <p>24 Alabama. That's in one of the footnotes.</p> <p>25 But there are a ton of variables that can</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Yeah. Yeah, I mean, well, that connection's</p> <p>2 been drawn a bunch of times. I mean, again, so with</p> <p>3 every one of these, I'm not doing an independent</p> <p>4 multivariate regression analysis.</p> <p>5 Q. Okay.</p> <p>6 A. And if -- I will say if an independent</p> <p>7 multivariate regression analysis was done, it would</p> <p>8 show, in almost every case, what I'm saying, which is</p> <p>9 one reason I'm just sort of confidently presenting</p> <p>10 these. There are other variables I wouldn't have this</p> <p>11 confidence with.</p> <p>12 But if I -- if I wanted to look at the effect</p> <p>13 of age on crime or age on voting -- I mean, that effect</p> <p>14 would almost always be there. But yeah, I'm just</p> <p>15 pointing out that what -- so the question is, when you</p> <p>16 see a gap of this size that we're talking about for</p> <p>17 Alabama and most other states -- and a debate opponent</p> <p>18 would be a situation I'm more often in. They say, well,</p> <p>19 what could explain this but racism. Are you a bigot? I</p> <p>20 would say, well, no, there are ten things that could.</p> <p>21 Q. Okay. What sources did you rely on for that</p> <p>22 conclusion here?</p> <p>23 A. Well, I mean, the fact of fatherlessness on</p> <p>24 civic behavior, I mean, that's been documented by -- I</p> <p>25 mean, there's an entire Tiger mother literature, for</p>

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<p style="text-align: right;">Page 189</p> <p>1 example, that looks at the impact of both a mom and a          2 dad in the household. What is that? I think Chin,          3 2019, is a well-known paper in that literature. I mean,          4 obviously all the people I have cited, Sowell, all the          5 conservative writers have drawn on that.          6 What is it? The person -- I'm blanking on the          7 author who wrote the actual Tiger mother book, which has          8 been cited several thousand times. But there's a pretty          9 massive literature correlation between fatherlessness          10 and civic participation.          11 Q. Okay. Did you cite any of those materials in          12 this report?          13 A. No. In this report, I simply cite -- you          14 know, you could put five or six of those in parentheses.          15 The assumption is that people at the level of the other          16 side's experts will know that this is the case.          17 Q. Okay.          18 A. So you tend to document things that, as I'm          19 sure you know, that are questionable, debatable. I          20 assume you wouldn't cite Marbury versus Madison five          21 times in every case, like that.          22 Q. In the next sentence on page 14, you say,          23 "Dr. Burch herself points out another variable which          24 very directly affects rates of voter participation:          25 Criminal behavior."</p>	<p style="text-align: right;">Page 191</p> <p>1 actually a much smaller role than you might expect. I          2 mean, some of these things we're talking about -- study          3 culture, I mean, you could talk about history with          4 racism as part of that.          5 I mean, in this case fatherlessness is a          6 phenomenon that began in the U.S.A. really in the 1960s.          7 Walter Williams broke this out at length. Without going          8 into his whole book, I mean, in 1938, just before World          9 War II, African-American out-of-wedlock birth rate was          10 11 percent. Whites were doing a little better. It was          11 4 or 5 percent. That was it.          12 And we saw a sharp -- I mean, the graph looks          13 like a ski slope up peak from that point. The Moynihan          14 report discusses this. The responses to the Moynihan          15 report discuss this with alternative explanations.          16 But this really started in the early 1960s.          17 I'm a conservative, although center right. I tend to          18 think growth of welfare played a major role. You also          19 have to look at outsourcing, what happened to the job          20 market, "When Work Disappears," Wilson. So it's an          21 interesting question. All of these are interesting          22 questions.          23 Q. So you think the welfare state and job          24 outsourcing played a role in these racial disparities of          25 fatherlessness?</p>
<p style="text-align: right;">Page 190</p> <p>1 A. Yes.          2 Q. Okay. Well, actually one other point. You          3 say "civic participation" in the prior sentence. What          4 do you mean exactly by "civic participation" here?          5 A. Well, I mean, if you're looking at how family          6 structure -- this is a bit of an unusual resource. But          7 the National Center for Fathering or National          8 Clearinghouse for Fathering actually has a website that          9 contains virtually all of the studies -- and I think          10 it's 177, last I looked -- that deal with the impact of          11 having both a mother and father on civic participation.          12 So if you have both a mother and father,          13 you're less likely to drop out of high school. You're          14 less likely to go to jail. You're more likely to vote.          15 You're less likely to become pregnant in high school.          16 You're more likely to volunteer for campaigns. I mean,          17 just on and on. The only real question, is that          18 impacted by racism.          19 Q. Okay.          20 A. The basic idea that just -- as kind of contra          21 the feminists here as well, in a few words, like the          22 big -- at the most basic level, you have two incomes.          23 Q. Okay. What do you attribute the racial          24 disparities of fatherlessness to?          25 A. In this case, I think historic racism plays</p>	<p style="text-align: right;">Page 192</p> <p>1 A. There's no doubt about it. I mean, the          2 welfare state in particular. I mean, so welfare --          3 fatherlessness is not an American Black phenomenon.          4 It's not a Black phenomenon even in America. I mean,          5 the rate for whites is about 40 percent. I mean, that's          6 just a figure for non Hispanic Caucasians, as I          7 understand.          8 So to the extent you think two-parent families          9 are good, there really are no excuses there. I mean,          10 Natives, the first Americans, are at 66 percent, right?          11 So I mean -- but overseas you see a very similar          12 pattern. I mean, in Norway for women under 40, rate of          13 fatherless first birth is 41 percent. So that tracks          14 very highly with the adoption of what you could call          15 social Democratic or Socialist welfare states.          16 And again, there's just -- there's no debate          17 about that. There's a guy named Banerjee from, I think,          18 MIT, who I cite at length in "Taboo," which is cited in          19 this brief, but I mean he looks at the impact of welfare          20 systems on work and finds that the more welfare is          21 available, the less people work in sort of low-paying          22 but kind of, you know, marriage-producing, tax-producing          23 jobs.          24 Q. Okay. These metrics here, they're national          25 metrics as well, they're not Alabama-specific?</p>



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<p style="text-align: right;">Page 193</p> <p>1 A. Yeah, the fatherlessness rate is a national 2 metric. And again, yeah, a point, but the Alabama 3 metric is going to be pretty much the same. 4 Q. Okay. Do you have the Alabama metric in here? 5 A. I think the Alabama metric may be footnoted. 6 I don't know it offhand. Now, right, I notice one 7 sentence done, because I do have many of these Alabama 8 metrics. I have the Alabama metric for felony 9 conviction. But the point is -- perhaps is the answer 10 to the question. But the point is that all these 11 metrics are going to look the same nationally. They're 12 going to look the same intra-state. 13 Q. Okay. Why did you choose to add the Alabama 14 felony conviction percentages but not the Alabama 15 fatherlessness percentages? 16 A. I think because a respected opposing expert 17 thought the felony conviction percentage important 18 enough to note and gave an alternative explanation for 19 it. So, I mean, there's not -- in each of these -- 20 that's the answer. But in each of these cases the 21 numbers are well known. You might cite state. You 22 might cite the national. 23 Q. Okay. Thank you. I'm going to pull up, 24 again, what we previously marked as Exhibit 6, which is 25 Dr. Burch's initial report. And if you can turn to page</p>	<p style="text-align: right;">Page 195</p> <p>1 Black voter turnout in the state? 2 A. Well, in that you can't vote if you are in 3 prison, yes. But is the answer -- like the question 4 would be, is that unfair. 5 Q. Okay. Let's return back to your report. 6 A. Okay. 7 Q. At the end of page 14, you write that "there 8 is no reason to think that this last gap is due to 9 bigotry or racism: The victim-reported African-American 10 violent crime rate, across Alabama and the rest of the 11 United States, is at least 2.4 times the white VCR," 12 which I'm guessing means violent crime rate. 13 A. Violent crime rate. 14 Q. How -- how are you defining "bigotry" here, 15 and is it different from racism? 16 A. Bigotry and racism should be treated as near 17 synonyms here. The point is, again, basically the same. 18 Now, this is data that, as you guys know, is broken out 19 by the FBI, what's now called the NIBRS database. It's 20 broken out by the BJS, Bureau of Justice statistics, 21 national crime victimization survey, BJS and CVS. 22 We know it nationally. We know it for all the 23 states. And you can, again, just sort of break that 24 down and look at any of the metrics of racism that I've 25 used. Just say former slave state and then look at gaps</p>
<p style="text-align: right;">Page 194</p> <p>1 18, please. So my question is, this section on page 18 2 titled "Race and the Criminal Justice System," is that 3 what you're referring to in your report when you say 4 Dr. Burch points to criminal behavior affecting voter 5 participation rates? 6 A. Well, not quite. What Dr. Burch is saying 7 there -- Dr. Burch has a discussion of this that goes on 8 at length. I disagree with it. But cogent throughout a 9 lot of her report. At one point she just makes the 10 point that 15 percent of Black Alabamians -- Alabamians 11 can't vote. 12 So, I mean, I think that a lot of these points 13 that are being made from the kind of center right may be 14 unpopular in political science, but are just kind of 15 argument winners. Like, if you're looking at lower 16 voter turnout and one group has 15 percent of its 17 population that can't vote, you might argue that perhaps 18 racism plays a tertiary role at that level, but that's 19 why you have lower voter turnout. 20 I mean, it's just like the comment earlier on, 21 that the voting patterns in Alabama look like they do 22 nationally. Well, we can look at why that is, but 23 there's nothing unique about Alabama in that case. 24 Q. Is it your opinion that the percentage of 25 African-Americans incarcerated in Alabama has affected</p>	<p style="text-align: right;">Page 196</p> <p>1 in rates of crime. Are they higher? They're not. 2 They're actually a lot lower to the extent that things 3 like Florida manor, Georgia manor kind of meets. I 4 mean, so that's -- that's not what we find. 5 Q. Okay. I'm wondering what materials did you 6 review to help reach your conclusion, again, that "there 7 is no reason to think that this last gap is due to 8 bigotry or racism." This is on page 14. 9 A. Sure. What you would do is first review the 10 BJS and CVS and NIBRS, and you'd look at the national 11 and state crime data, and you'd see there's a 12 Black/white gap in violent crime. 13 Now, the BJS is just strictly victim reported. 14 It's a -- as you probably know, it's a census style 15 project. It contacts, I believe, 216,000 people per 16 year. This is where I get sexual assault data that I 17 think is unreliable, for example. It's dramatically 18 underreported to the FBI. 19 But this is just you contact the victim. 20 We're working -- you don't have to give any identifying 21 information. We're working on a project to reduce 22 crime. Has X happened, by this legal definition? 23 Response rate is like 93 percent. 24 Q. Okay. 25 A. So when you --</p>



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<p style="text-align: right;">Page 197</p> <p>1 MR. DAVIS: Slow down, please.</p> <p>2 THE WITNESS: Sorry.</p> <p>3 A. When you look at that data, and you look at</p> <p>4 that data nationally and at the state level, that's</p> <p>5 where you get that information. Now, how do you know</p> <p>6 that that is not caused by racism? I mean, it's a</p> <p>7 simple level of a model of perhaps 6 variables. You</p> <p>8 adjust for racism. Are former slave states displaying</p> <p>9 larger gaps than former free states? Are states with a</p> <p>10 very high level of recorded racism -- I mean, there are</p> <p>11 states where today perhaps 20 percent of citizens</p> <p>12 wouldn't want a relative to marry a Black person. Do</p> <p>13 they display higher disparities in terms of</p> <p>14 incarceration?</p> <p>15 It basically -- and this is a point that's</p> <p>16 been made by everyone from the Manhattan Institute's</p> <p>17 Heather MacDonald to perhaps more traditionally</p> <p>18 academically Harvard University's Roland Fryer, the</p> <p>19 entire paper panel of Michigan State University.</p> <p>20 If the crime rate nationally tracks the arrest</p> <p>21 rate or the incarceration rate, if we were's looking at</p> <p>22 any metric, murder rate, so on down the line, then</p> <p>23 racism plays zero role. And up from there. I mean,</p> <p>24 we're looking at what role it might play. I don't think</p> <p>25 the role is zero, but it's small.</p>	<p style="text-align: right;">Page 199</p> <p>1 A. I'm not aware of that. I'm also not entirely</p> <p>2 surprised, given what that would mean in the current</p> <p>3 interpretation of the law. I mean, that's happened in</p> <p>4 Louisville and many other cities, Seattle.</p> <p>5 Q. Why are you surprised? Can you explain?</p> <p>6 A. Well, I mean, just there's fairly extensive --</p> <p>7 so there's fairly residential segregation in the U.S.A.,</p> <p>8 which tracks to a number of things, including, again,</p> <p>9 historical racism, which no one denies; also voluntary</p> <p>10 self-segregation by the minority middle class. Also,</p> <p>11 just where people have always lived. I mean, there are</p> <p>12 more Black people in Mississippi than there are in</p> <p>13 Oklahoma.</p> <p>14 I mean, so segregation in and of itself</p> <p>15 just -- again, we're getting into semantic terms. In</p> <p>16 the sense of a lot of people of one race going to a</p> <p>17 functional working or middle class school district</p> <p>18 doesn't appear to have a massive impact on educational</p> <p>19 outcomes.</p> <p>20 So when I say that study time has a large</p> <p>21 impact on educational outcomes, I think that's</p> <p>22 independent of whether the school districts have a lot</p> <p>23 of whites in them as well as Blacks or Asians as well as</p> <p>24 Hispanics or something. That's another variable in the</p> <p>25 model, right?</p>
<p style="text-align: right;">Page 198</p> <p>1 Q. Okay. Did you consider Alabama's history of</p> <p>2 segregation in this analysis, and not specifically for</p> <p>3 crime -- criminal behavior, as you put it, but any of</p> <p>4 the other tertiary variables? Did you consider</p> <p>5 Alabama's history of racism -- sorry, segregation?</p> <p>6 A. No, no, no, understood. I did not throw that</p> <p>7 in as a tertiary variable. I mean, I would -- perhaps</p> <p>8 an expert on the other side would analyze that in some</p> <p>9 detail.</p> <p>10 Q. Okay.</p> <p>11 A. But I do note that -- I do note, actually, the</p> <p>12 impact of history in the report, but again, the question</p> <p>13 is, if you have these gaps nationally and you use five</p> <p>14 variables, including racial history, and you find that</p> <p>15 non-raced variables explain most of the gaps, then the</p> <p>16 question's been answered.</p> <p>17 So I think it's obviously relevant that</p> <p>18 Alabama has a history of racial conflict to many</p> <p>19 questions. The issue is, is something like a test score</p> <p>20 gap today determined primarily by that. If 3 percent of</p> <p>21 the gap is determined by that, then that's interesting</p> <p>22 but it's not -- it's not persuasive, really.</p> <p>23 Q. Okay. Are you aware that some Alabama schools</p> <p>24 in the challenged districts in this litigation are still</p> <p>25 under desegregation orders?</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. So is it your opinion then that segregated</p> <p>2 schools have no impact on a student's educational</p> <p>3 outcome?</p> <p>4 A. That's certainly not how I'd lead a paper. I</p> <p>5 mean --</p> <p>6 Q. Okay.</p> <p>7 A. But like, so, I think that all thing -- all</p> <p>8 other things being absolutely equal, there is -- I mean,</p> <p>9 there's -- again, there's a whole body of research on</p> <p>10 diversity. This time and from the business schools.</p> <p>11 And what they find -- I mean, this is McKinsey, 2016.</p> <p>12 That's just been challenged, like yesterday. Haven't</p> <p>13 read it, though.</p> <p>14 What they find in the 2016 paper and some</p> <p>15 others is that there is a slight positive impact of</p> <p>16 diversity if you look at bottom lines, test scores, that</p> <p>17 kind of thing. So I mean, you would assume that there</p> <p>18 would be a slight negative impact to school segregation.</p> <p>19 On the other hand, I mean, there are a huge</p> <p>20 number of extremely high performing all-Black Catholic</p> <p>21 schools, all-Black boys schools, all-Asian schools. So,</p> <p>22 once again, what you'd have to do is put all these</p> <p>23 variables into something like a Stata model and look at</p> <p>24 the impact of segregation with study time adjusted for.</p> <p>25 I don't think -- as hard as many of my</p>

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<p style="text-align: right;">Page 201</p> <p>1 colleagues try, and they do so honorably, I don't think</p> <p>2 that something like racism through some subtle refractor</p> <p>3 is the reason Black kids are doing fairly poorly in</p> <p>4 school. Southern white kids where I live do almost</p> <p>5 identically badly, and the reasons look identical.</p> <p>6 Q. Okay. Let me rephrase the question a little</p> <p>7 bit.</p> <p>8 A. Okay.</p> <p>9 Q. Do you -- scratch that.</p> <p>10 Is it your opinion then that whether or not a</p> <p>11 school is segregated in Alabama -- does that affect a</p> <p>12 student's educational outcome; yes or no?</p> <p>13 A. I don't think it's a yes or no question. I</p> <p>14 mean, on average, I would expect the outcomes of</p> <p>15 students in all Black, or for that matter, all poor</p> <p>16 white schools to be worse. The question is why.</p> <p>17 So one thing that I would criticize some of</p> <p>18 the papers I've read for -- and the one thing I was</p> <p>19 really criticized for here is sort of univariate</p> <p>20 analysis of questions. And so obviously if you take a</p> <p>21 look at poor one-race schools, you're going to find</p> <p>22 lower SATs. No one really disputes that. But looking</p> <p>23 at that, you haven't adjusted for anything that we're</p> <p>24 talking about. You haven't adjusted for any of the</p> <p>25 study variables. You haven't adjusted for family</p>	<p style="text-align: right;">Page 203</p> <p>1 They're certainly not bad. They're just ordinary</p> <p>2 working or middle class schools. So, again, all these</p> <p>3 variables come into play.</p> <p>4 Q. Okay. Let's see here. So on page 15,</p> <p>5 subsection D, you're discussing the voter percentage --</p> <p>6 voter registration percentages of Black and white</p> <p>7 Alabamians here.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Where'd you pull this data from?</p> <p>10 A. I looked at the Burch report. Then I looked</p> <p>11 at her sources. The sources would be largely identical.</p> <p>12 Q. Okay.</p> <p>13 A. I just took state voter registration database,</p> <p>14 I mean, like the information itself.</p> <p>15 Q. Okay. Thank you. So you write here in the</p> <p>16 second paragraph, "Almost certainly, none of these gaps</p> <p>17 are statistically significant" and that "(most county</p> <p>18 level gaps in racial turnout would not be, either)."</p> <p>19 I'm wondering what county level voter</p> <p>20 registration data did you review to come to this</p> <p>21 conclusion?</p> <p>22 A. Well, looking at the -- I would have -- I</p> <p>23 would have to go back through the three papers that I</p> <p>24 reviewed in depth to answer that completely and</p> <p>25 honestly. But, I mean, just looking at the information</p>
<p style="text-align: right;">Page 202</p> <p>1 structure.</p> <p>2 I'm not even breaking this up by race, by the</p> <p>3 way. I assume that like working poor white Alabama</p> <p>4 schools would have many of these same problems. I don't</p> <p>5 know the exact range, although I'm interested enough to</p> <p>6 look.</p> <p>7 But, you know, you haven't done any of this</p> <p>8 stuff. You haven't even looked at income if you're just</p> <p>9 looking at segregated schools. The segregated white</p> <p>10 school might be in an tony suburb. A segregated black</p> <p>11 school might be in the Black Belt. In Appalachia the</p> <p>12 poor segregated schools are all white. The integrated</p> <p>13 schools tend to be in the Louisville suburbs.</p> <p>14 Q. Are you aware of any wealthy segregated Black</p> <p>15 schools in Alabama?</p> <p>16 A. Not off -- I'm not aware of any wealthy</p> <p>17 segregated white schools in Alabama because I don't have</p> <p>18 a list of the Alabama schools in front of me, so no.</p> <p>19 Q. Let's go to page 14 of your report.</p> <p>20 A. Although -- one very brief note. I, actually,</p> <p>21 because of the distribution of my family and what I</p> <p>22 research, am aware of a large number of segregated</p> <p>23 mostly Black schools in the Atlanta suburbs, the Chicago</p> <p>24 South suburbs, HBCU feeder schools and so on. And those</p> <p>25 schools do not perform stunningly well academically.</p>	<p style="text-align: right;">Page 204</p> <p>1 that's available publicly on the internet and looking at</p> <p>2 what was discussed by Liu and Burch, I think you can --</p> <p>3 you can make that statement.</p> <p>4 And I want to note specifically, I'm -- the</p> <p>5 primary focus of that sentence is these gaps here, 89</p> <p>6 versus 84 percent, 96 versus 93 percent, 88 versus</p> <p>7 88.4 percent. There's -- I assume you guys have studied</p> <p>8 some, fairly, mathematics. There's no doubt that that's</p> <p>9 true. There's no statistical significance there.</p> <p>10 That's the only point of that.</p> <p>11 Q. Okay. Did you look at any level -- county</p> <p>12 level voter turnout data as well?</p> <p>13 A. During the course of the project, in passing,</p> <p>14 yes. I don't recall the exact figures right now.</p> <p>15 Q. Okay. Do you remember for which counties?</p> <p>16 A. Offhand, no --</p> <p>17 Q. Okay.</p> <p>18 A. -- to be honest.</p> <p>19 Q. Okay. You also write down here that these</p> <p>20 gaps in turnout and registration do not trend in the</p> <p>21 temporal direction that one would expect were racism a</p> <p>22 proximate cause.</p> <p>23 What do you mean by "temporal direction"?</p> <p>24 A. Well, in terms of time. Now, again, we're</p> <p>25 talking about a series of gaps. I think the largest</p>

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<p style="text-align: right;">Page 205</p> <p>1 that Dr. Burch identified was 12 or 13 percent. I mean, 2 her actual -- the current voter registration gap is 88 3 or 89 percent versus 84 percent. So, I mean, we know 4 what these gaps are. So the first is a turnout gap. 5 The second is a registration gap. 6 But, I mean, the -- if you assume that racism 7 is a primary cause of these kind of gaps, what you would 8 expect to see is increasing gaps going back over time. 9 Again, this is a secondary point, but it's a fairly 10 clear one. You would expect to see X gap in 2022, X 11 plus 1 gap in 2020, X plus 2 gap in 2018, X plus 4 gap 12 in 2016, and so on. You don't. 13 Again, this is a very quick review done at 14 some point in the past. But looking at these gaps, and 15 I write down one here, there -- at least in the past 20 16 years there doesn't seem to be a trend at all. Now, the 17 smallest gap on record was seven years ago. So that 18 doesn't seem to have much to do with racial attitudes. 19 But again, that's not -- this is the modern 20 era but, yeah, no, I don't find that trend. 21 Q. Okay. Okay. You also write down here, that 22 in Montgomery, Alabama, "1.3 percent more 23 African-Americans than Caucasians are currently 24 registered as voters." 25 A. Yeah, Burch said that. Yeah, that's correct.</p>	<p style="text-align: right;">Page 207</p> <p>1 we're about to get to, you're not seeing a plausible 2 argument that racism causes the gaps we're looking at. 3 Are those gaps influenced by some history of racial 4 discrimination, i.e., would there be even fewer people 5 in jail had racism never existed? I mean, that -- 6 that's a plausible argument. 7 Q. Can you, like, walk me through perhaps 8 step-by-step how you came to the conclusion that 9 Alabama's gaps in voter registration are heavily 10 influenced by factors unrelated to racial bias, just 11 step by step? 12 A. Sure. If you look -- and again, we 13 might disagree on whether every one of these factors is 14 not heavily influenced by racial bias. But I mean, so 15 first, 15 percent of Black people in Alabama can't vote 16 because of felony convictions for crimes unrelated to 17 race. I mean, that -- that's the hoss in the room when 18 you look at a 13 percent turnout gap. 19 But I mean, then you look at these other 20 things. I mean, there's almost always an age gap in 21 turnout. The Alabama age rates by race mirror those 22 nationally. 23 Let's look at each one of these things. Now, 24 I don't have this in front of me, don't want to 25 exaggerate it, but there's almost always a racial gap in</p>
<p style="text-align: right;">Page 206</p> <p>1 Q. Okay. I just want to make sure you're 2 speaking about the voter registration rate or the 3 percentage of voters who are registered in Montgomery. 4 A. That's a voter registration rate by race. 5 Q. Okay. 6 A. It's higher for African-Americans. 7 Q. Okay. In the next paragraph, or starts in the 8 next paragraph, you write that "Alabama's" gap "in voter 9 registration and turnout are small and very heavily 10 influenced by factors other than and sometimes unrelated 11 to racial bias (age?)." 12 First, when you say "sometimes," is it your 13 opinion that sometimes Alabama's voter registration gaps 14 between Black and white Alabamians is influenced by 15 racial bias? 16 A. Well, what I'm saying is that of the factor 17 variables that I look at, some, if you're discussing 18 them ethically, could potentially be influenced by 19 racial bias, today or in the past. 20 The question is what that rate is. No one is 21 going to come to me in the social sciences and say 22 racism doesn't exist. And I don't think that's what the 23 state of Alabama is asking. 24 But again, the point is that if you're looking 25 across the states that we have in these tables that</p>	<p style="text-align: right;">Page 208</p> <p>1 fatherlessness, OOW. The Alabama rate at least almost 2 certainly mirrors the national rate, family stability 3 rate. Income, which is heavily influenced by test 4 scores, study time, so on, in Alabama, I know that 5 mirrors the national rates. Actually, a little below 6 and for both groups. So on down the line. 7 So those factor variables predict voting. The 8 only question -- those factor variables predict voting. 9 I mean, that -- that's it. That would be the position 10 of my cite. 11 Q. Okay. But again, those fatherlessness rates 12 specific to Alabama are not in your report, right? 13 A. Well, the fatherlessness rate, national -- I 14 think the Alabama rate is footnoted or the location 15 where you'd find it. But the fatherlessness rate 16 nationally is the focus, not the Alabama fatherlessness 17 rate. 18 Q. Okay. Thank you. So now, the line at the 19 very last sentence of page 15, it starts off, "A 20 through-line finding of my research to this point has 21 been that MOST racial performance gaps, very many of 22 which are popularly attributed to a single factor" or 23 "variable - be this racism or genetics - shrink 24 dramatically or disappear totally when other factor 25 variables are adjusted for."</p>



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<p style="text-align: right;">Page 209</p> <p>1 And I'm wondering, when you say your "research 2 to this point," do you mean this case or generally as an 3 academic? 4 A. Just in general, when I've -- I've put 5 together models for "Hoax" or "Taboo" or my 6 dissertation, the book that became, just other work. 7 Q. Okay. Thank you. Okay. 8 A. That's where I discussed the BLM chapter of 9 "Taboo," which became an article, a pretty good article 10 with a guy named Bob Maranto from U Arkansas, that sort 11 of thing. 12 Q. Okay. Let's go back to 17. Actually, let's 13 go back to 16. I am curious, I guess, about what 14 research have you conducted concerning voter 15 registration gaps? 16 A. Voter registration gaps? Working on this 17 project, I applied my usual techniques to the question 18 of voter registration gaps. Other than looking at other 19 colleagues' research in a reviewer role or something, 20 I -- that's not my focus. Not much. 21 Q. Okay. So prior to your research in this case, 22 you have not conducted research about voter registration 23 gaps? 24 A. I've not done public -- published research 25 specifically on voter registration gaps, I think would</p>	<p style="text-align: right;">Page 211</p> <p>1 movement, and again, short of the rioting, I had some 2 sympathy for BLM. I mean, they're young Black men, 3 primarily. They're terrified about the police, 4 contested urban environments. 5 But the basic claim they're making, which was 6 that there were very -- this is something I have written 7 professionally about. I mean, Bob and I looked, for 8 "Administration &amp; Society," at what makes police 9 departments perform well. How can you both stop crime 10 and not shoot people? I mean, this is something we 11 looked at in-depth. I've written professional and sort 12 of semi pro but high-end public intellectual pieces 13 about this probably 20 times. 14 Q. Okay. 15 A. So this is just an example I decided to use 16 where the argument was, well, we're seeing these high 17 rates of police shootings of Black men, what could it be 18 but racism. And when I looked at this, first of all, 19 there was a massive amount of exaggeration going on with 20 the activists exaggerating the number of shootings 21 themselves, and for that matter, the Right exaggerating 22 background Black criminality. I mean, you're now seeing 23 videos across social media that say Black people 24 attacking lone white people, this sort of thing. 25 So there is this climate of frenzy, which</p>
<p style="text-align: right;">Page 210</p> <p>1 be fair. 2 Q. Okay. 3 A. I will also note, the same techniques would 4 apply that would apply to analysis of police shooting 5 rates or something. 6 Q. Okay. Let's go to page 17 now. 7 A. Yeah. 8 Q. So broadly speaking, I'm curious why you chose 9 to write about the unarmed Black citizens killed by 10 police in your report for this case. 11 A. Well, one of the things in this report -- it's 12 getting worse, and it doesn't matter. 13 One of the things in this report that I'm 14 trying to do is make this broader point. So each expert 15 for each side, if you will, had a role. I mean, so Liu 16 is known for specifically his focus on RPV. 17 What I'm doing is saying that the -- the 18 context here isn't just this case within Alabama. This 19 basic question of racism or occasionally the specter of 20 inferiority on one side or the other or something else, 21 something very basic like -- I'm looking around for 22 options -- something very basic like these variables I'm 23 discussing. This applies in at least 20 major national 24 debates that are going on right now. 25 So I wrote about the Black Lives Matter</p>	<p style="text-align: right;">Page 212</p> <p>1 obscured the real numbers. And then beyond that, no one 2 was adjusting for anything. I mean, you were seeing 3 whole serials in the New York Times and so on. They 4 were just taking raw numbers, blah, blah, blah. 5 But so that's why I break this down. The 6 total number of Black -- unarmed Black men shot by cops 7 is 12; 18 in a bad year. And if you adjust for a number 8 of things, like crime rate, the gap vanishes. That's 9 one where it literally just goes away. Black people 10 are -- just presenting both sides of his article flat, 11 Black people are more likely to be likely manhandled by 12 the police than whites but are 30 percent less likely to 13 be shot. That's Roland Fryer, 2017. So, I mean... 14 Q. Okay. Let's look at the paragraph you have 15 below Figure 4. Here you write "The Washington Post -- 16 in brackets -- (bravely) began to note in 2015, the 17 total number of unarmed Black citizens slain annually by 18 police is tiny: Generally around 20." You then, later 19 on, write, "This disproportion almost entirely vanishes 20 after adjustment for the 240 percent over-representation 21 of Blacks among serious criminals" that you're just 22 referencing. 23 You trust the data used by The Washington Post 24 in this analysis of theirs, right? 25 A. Yeah, I mean -- yes.</p>

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<p style="text-align: right;">Page 213</p> <p>1 Q. Okay.</p> <p>2 A. It's fairly good.</p> <p>3 Q. Okay.</p> <p>4 A. All of -- murder data is usually pretty</p> <p>5 good. It's hard to ignore a corpse. I note that this</p> <p>6 doesn't -- in my paper -- I mean, Bob and I know this</p> <p>7 doesn't include correctional officer killings, that sort</p> <p>8 of thing. But yes, there are no large number of unarmed</p> <p>9 Black men shot by police that's escaping notice.</p> <p>10 Q. Okay. How do you define "serious criminals"</p> <p>11 here?</p> <p>12 A. Index criminals in the FBI and BJS sense. The</p> <p>13 index crimes are assault on -- assault, ag assault,</p> <p>14 rape, et cetera. Well, obviously.</p> <p>15 Q. Okay. And then you cite The Washington Post</p> <p>16 and -- well, turn to page 18.</p> <p>17 A. All right.</p> <p>18 Q. You cite the -- well, I guess starting on page</p> <p>19 17, you cite The Washington Post article and then on</p> <p>20 page 18 you cite the Roland Fryer piece.</p> <p>21 A. Yeah.</p> <p>22 Q. Did you look at anything else to help</p> <p>23 formulate your opinions about police shootings here in</p> <p>24 your report?</p> <p>25 A. Well, yeah, I've read probably -- I mean,</p>	<p style="text-align: right;">Page 215</p> <p>1 Fryer now is preparing a response to the responses and</p> <p>2 so on.</p> <p>3 Q. Okay. I'm going to hand you what I'm going to</p> <p>4 mark, I believe, as Exhibit 10.</p> <p>5 (Plaintiffs' Exhibit 10 was marked for</p> <p>6 identification.)</p> <p>7 Q. And I'm going to represent that this is The</p> <p>8 Washington -- a printout of the Washington Post --</p> <p>9 A. Sure.</p> <p>10 Q. -- database that you referred to. And can you</p> <p>11 confirm that this is a copy of the database that you</p> <p>12 were referring to?</p> <p>13 A. Yeah, police shooting database. That is</p> <p>14 correct.</p> <p>15 Q. Update from -- by April 19th, 2024.</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And you see the headline at the top.</p> <p>18 It reads, "1133 people have been shot and killed by the</p> <p>19 police in the past 12 months"?</p> <p>20 A. Yep.</p> <p>21 Q. Okay.</p> <p>22 A. Notably that's up significantly following the</p> <p>23 brief de-policing era, but yes, I do notice that.</p> <p>24 Q. Okay. And you have no reason to dispute that</p> <p>25 number?</p>
<p style="text-align: right;">Page 214</p> <p>1 Fryer is what's cited because he also cites all this</p> <p>2 material. But I've read probably 50 pieces on this from</p> <p>3 Singoway, if I'm getting that correct, who's probably</p> <p>4 more a man of the political Left, to Ralph Mangual from</p> <p>5 the think tank world, Fryer, the responses to Fryer.</p> <p>6 There were four or five attempts. I mean,</p> <p>7 there are two papers which I think of, is MSU and WSU,</p> <p>8 that have looked at this police shootings question</p> <p>9 recently.</p> <p>10 Q. Okay.</p> <p>11 A. There's another paper -- yes, I've read</p> <p>12 substantially on this particular issue.</p> <p>13 Q. Okay. You said you read the responses to</p> <p>14 Fryer's argument?</p> <p>15 A. Yeah. I've read -- I don't think most of them</p> <p>16 are all that successful. I mean, one common -- a common</p> <p>17 response is that Fryer is correct about the people that</p> <p>18 police encounter, but police could encounter</p> <p>19 African-Americans more often for various reasons. One</p> <p>20 of those reasons, though, is that there are more police</p> <p>21 calls to black neighborhoods because there's a higher</p> <p>22 rate of crime.</p> <p>23 I mean, it's just -- so you -- again, you get</p> <p>24 to that cycle where smart people are arguing with each</p> <p>25 other. But I find that response pretty convincing. And</p>	<p style="text-align: right;">Page 216</p> <p>1 A. No. It's correct.</p> <p>2 Q. Okay. And in your report you say that "only</p> <p>3 51 unarmed persons of all races were fatally shot by</p> <p>4 police in 2023"?</p> <p>5 A. I believe that's correct, last I looked at the</p> <p>6 data.</p> <p>7 Q. Okay.</p> <p>8 A. The data sometimes shifts by a small number of</p> <p>9 people.</p> <p>10 Q. How do you define "unarmed person" here?</p> <p>11 A. An unarmed person is a person who is not using</p> <p>12 a weapon in the legal definition of that term. Now, you</p> <p>13 can -- you can argue -- there are two caveats. An</p> <p>14 unarmed person would not include someone driving a</p> <p>15 pickup truck or Escalade toward a cop. Actually, it</p> <p>16 would include someone who's driving a pickup truck or an</p> <p>17 Escalade toward a cop. That's the point there.</p> <p>18 But an unarmed person, that would not include</p> <p>19 someone using a potentially silly weapon like a golf</p> <p>20 putter. So, I mean, there's -- there's some flexibility</p> <p>21 in both directions. But in general, it's a fairly -- a</p> <p>22 fairly capturable category, I would say.</p> <p>23 Q. Okay. So you agree that an armed person could</p> <p>24 be someone driving a car?</p> <p>25 A. Well, if you're driving a car, as I recall,</p>

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<p style="text-align: right;">Page 217</p> <p>1 you're unarmed. If you're shot while you are driving a 2 car, you are an unarmed attacker. 3 Q. Do you know how this database calculated or 4 distinguished between armed and unarmed individuals? 5 A. Yes. The unarmed people were the people who 6 had no weapons. So if you were -- again, if you were 7 driving a vehicle -- and that was not the majority of 8 these cases. There weren't that many cases. 9 But if you were driving a vehicle, as I 10 recall, you were unarmed. But again, if you were waving 11 any -- a brickbat, you were armed. You didn't have to 12 have a gun. But unarmed people were the people who did 13 not have potential deadly weapons. 14 Q. Okay. Would a piece of wood be a deadly 15 weapon? 16 A. Potentially. 17 Q. Okay. But driving a motor vehicle would not 18 be a deadly weapon, in your view? 19 A. Well, it's not my view. It's the view that's 20 generally used to categorize data sets like this. I 21 think most criminal justice and political science 22 professionals are well aware that 2 or 3 percent of the 23 cases are pretty silly. 24 But the overall trends are what they are. I 25 mean, if there are twice as many unarmed whites killed</p>	<p style="text-align: right;">Page 219</p> <p>1 go case by case. That's been done a few times. 2 Q. Okay. So in the second paragraph -- you 3 picked up where I was going with Michael Brown -- you -- 4 it reads that "A Post investigation found that data 5 reported to the FBI on fatal police shootings was 6 undercounted by more than half. That gap has widened in 7 recent years." And that "by 2021, only a third of 8 departments' fatal shootings appeared in the FBI 9 database." 10 A. Okay. 11 Q. You have no reason to disagree with that 12 statement from The Post? 13 A. No, that's why I don't use the FBI database 14 alone. 15 Q. Okay. 16 A. That's why nobody does. That's why -- The 17 Washington Post database, which is heavily contributed 18 to by activists, off-duty cops, so on, exists. Everyone 19 would -- I mean, papers speculate it's about 95 percent 20 accurate, for that reason. 21 Same thing if you're looking at sexual assault 22 data. I mean, that's a tragically underreported crime. 23 You would use what's called the NCVS to check the FBI. 24 So there's a difference between saying, well, the cops 25 are perfect paladins, and this data is available. And I</p>
<p style="text-align: right;">Page 218</p> <p>1 as unarmed Blacks and they're in similar situations, 2 pickup versus Escalade and so on, you can say, well, 3 that's meaningful data. 4 Q. But someone could be considered armed simply 5 by driving a vehicle, right? 6 A. Well, I believe that's unarmed. 7 Q. Okay. 8 A. Again, I would have to check The Washington 9 Post set up terms, but I'm pretty positive that's 10 unarmed. 11 Q. Okay. Let's go to the second page here. 12 A. Very brief point there. 13 Q. Yeah. 14 A. It is just as possible to argue that the 15 unarmed category should be smaller than that it should 16 be larger. I mean, so a martial arts expert who attacks 17 an officer with his hands and feet, which are considered 18 to be deadly weapons in eight states, is unarmed. 19 Q. Uh-huh. 20 A. I mean, literally a guy -- but I mean, just 21 bad jokes aside, he is an unarmed attacker. So there's 22 a lot of that. Virtually none of these people -- 23 Michael Brown, for example, I mean, a tragic killing, 24 but the guy was going for a cop's gun. That is an 25 unarmed shooting. So that's -- it's interesting if you</p>	<p style="text-align: right;">Page 220</p> <p>1 say the second. 2 Q. Okay. Thank you. Let's turn the page. Turn 3 the page, please. So you see the paragraph that starts 4 with, "Although"? 5 A. Okay. 6 MR. DAVIS: This is page 4 of 13? 7 MR. CAPPBELL-HARRIS: This is 4 of 13. 8 MR. DAVIS: Thank you. 9 MR. CAMPBELL-HARRIS: No problem. 10 BY MR. CAMPBELL-HARRIS: 11 Q. It reads, "Although half of the people shot 12 and killed by the police are White, Black Americans are 13 shot at disproportionate" rates. "They account for 14 roughly 14 percent of the U.S. population and are killed 15 by police at more than twice the rate of White 16 Americans." 17 Do you agree? 18 A. I don't agree they're shot -- we are shot at a 19 disproportionate rate. I would say Black Americans are 20 shot at a higher rate. But again, that's -- this gets 21 back to the curse of univariate analysis. If you look 22 at rates of police shootings without looking at rates of 23 crime or police calling or officer involvement, you have 24 what looks like damnable racism. The problem is that 25 once you adjust for police calls from Black victims or</p>

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<p style="text-align: right;">Page 221</p> <p>1 something like that -- and this obviously has been done</p> <p>2 dozens of times -- then you find that goes away.</p> <p>3 Q. Okay. I'm not asking why. I'm just asking,</p> <p>4 is -- you agree with the metrics used by The Post here?</p> <p>5 A. Yes, Black people are shot at a higher rate by</p> <p>6 the cops.</p> <p>7 Q. Okay.</p> <p>8 A. Just as -- if you turn the page -- well, very</p> <p>9 briefly. "An overwhelming majority of the victims are</p> <p>10 male," 95 percent. I don't think we found sexism.</p> <p>11 Q. Okay.</p> <p>12 A. Or have we?</p> <p>13 Q. Let's go back to your report --</p> <p>14 A. Just screwing around with that last comment,</p> <p>15 for the record.</p> <p>16 Q. -- on page 17.</p> <p>17 A. All right.</p> <p>18 Q. You agree with -- I think Roland Fryer's</p> <p>19 report or article?</p> <p>20 A. Uh-huh.</p> <p>21 Q. And that it found that police do use</p> <p>22 disproportionate -- or use force disproportionately</p> <p>23 against Black people, right?</p> <p>24 A. Well, he finds -- I agree with both sides of</p> <p>25 his report. Yeah, what Fryer found is that police were</p>	<p style="text-align: right;">Page 223</p> <p>1 bias in policing"?</p> <p>2 A. Well, there's a massive amount of research on</p> <p>3 policing. Whether you find racial bias or not depends</p> <p>4 almost entirely on what you adjust for. This is not a</p> <p>5 radical position coming from me. I've mentioned a huge</p> <p>6 number of studies. I've mentioned Fryer. I've</p> <p>7 mentioned Fryer's conversations and prepared rebuttals</p> <p>8 to these notes we're looking at. I've talked about the</p> <p>9 books that come out of the think tanks. I've talked</p> <p>10 about the stuff -- going back, Heather MacDonald and the</p> <p>11 OOs on the other end. I mean, I've actually read Knox &amp;</p> <p>12 Dean. I mean, that was an APSR. That's very reliable.</p> <p>13 But on the other side, I mean, so are the</p> <p>14 studies to come out of Washington State, Michigan State.</p> <p>15 I don't remember the name of every one of the 20 authors</p> <p>16 in each camp. But I mean, so just to say, well, there</p> <p>17 is clear evidence that there's enormous racial bias in</p> <p>18 policing, that's -- that's not true.</p> <p>19 Basically what you get back to is what we just</p> <p>20 saw with The Washington Post article. If you just look</p> <p>21 at raw rates of arrest or something like that, you would</p> <p>22 assume you found incredible racial bias. When you</p> <p>23 actually adjust for crime rate, income, urban police</p> <p>24 density, all of that, what you found is, well, there may</p> <p>25 be some role left for racism. I think that's fair to</p>
<p style="text-align: right;">Page 222</p> <p>1 about 11 to 15 percent more likely to sort of put hands</p> <p>2 on Black defendants that are -- Black suspects, that</p> <p>3 sort of thing.</p> <p>4 Q. Okay.</p> <p>5 A. As I recall, he didn't adjust for things like</p> <p>6 mild verbal confrontation that could explain that. But</p> <p>7 that might very well be what it sounds like. But he</p> <p>8 also found that white guys were 30 percent more likely</p> <p>9 to get shot. And in interviews he specifically</p> <p>10 attributed this to the fact there's not a Black Lives</p> <p>11 Matter movement for poor white guys. And if you shoot</p> <p>12 an Italian or Caucasian, Hispanic criminal, you are --</p> <p>13 there's probably not going to be a lot of marching going</p> <p>14 on.</p> <p>15 Q. Okay. Let's return briefly to what I already</p> <p>16 marked as Exhibit 7, which is Burch's rebuttal.</p> <p>17 A. Okay. 7.</p> <p>18 Q. And then turn to page 11, and let me know when</p> <p>19 you're there.</p> <p>20 A. All right. I am here.</p> <p>21 Q. Awesome. Okay. Do you see Footnote 50?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. And do you see the sentence before it</p> <p>24 that says, "Dr. Reilly" -- oh -- "Dr. Reilly also</p> <p>25 ignores other widely cited research that finds racial</p>	<p style="text-align: right;">Page 224</p> <p>1 say. But like the original 200 to 500 percent</p> <p>2 disparity, no, that -- that has -- the question is</p> <p>3 whether it's 3 percent or 8 percent or something like</p> <p>4 that.</p> <p>5 So, I mean, looking at this -- by the</p> <p>6 way, again, Dr. Burch, skillful for her side. But</p> <p>7 "Dr. Reilly argues that police do not discriminate</p> <p>8 against Black people," I mean, a lot of these points</p> <p>9 aren't things that someone's going to say in a</p> <p>10 scientific paper. They're not really what I'm arguing.</p> <p>11 What I'm saying is that if you adjust for the</p> <p>12 other things that are in most models, including mine and</p> <p>13 hers, when we actually publish stuff, that's not really</p> <p>14 what you find. Yeah. "Dr. Reilly relies on counts of</p> <p>15 unarmed Black deaths at the hands of police by The</p> <p>16 Washington Post."</p> <p>17 THE COURT REPORTER: I'm sorry. Can you slow</p> <p>18 down? Dr. Reilly relies on?</p> <p>19 THE WITNESS: "Relies on counts of unarmed</p> <p>20 Black deaths at the hands of police by The</p> <p>21 Washington Post."</p> <p>22 A. I mean, the implication there is, well, that's</p> <p>23 just a newspaper.</p> <p>24 But as we've all just agreed, The Washington</p> <p>25 Post is better than the FBI on this. "As well as</p>



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<p style="text-align: right;">Page 225</p> <p>1 one...scholarly article by Roland Fryer." That's not 2 discredited at all. Someone has responded to it, and 3 note, he's now responding. That's kind of what you do. 4 I mean, so no. There's a healthy debate, but 5 Fryer has the best methods models that I've really seen 6 on this point, where he went into a city, he looked at 7 all of the records available, adjusted for behavior. A 8 fine article. Very good. 9 Q. Do you see the sources that Dr. Burch cites in 10 Footnote 50? 11 A. Sure, yeah. These are standard academic 12 journals. I mean -- well, the first two are pretty 13 good. "Palgrave Communications" number 4. "Personality 14 Science." I mean, but yes, these are -- these are 15 academic journals, as Fryer would -- this kind he'd 16 publish. And Fryer's a Harvard man. 17 Q. Okay. Do you see the James J. Heckman piece? 18 A. Let's move down to Heckman. Yeah, I see he 19 wrote a comment for JPE. 20 Q. Okay. Are you familiar with this article at 21 all? 22 A. Looked at it years ago. I'm not familiar with 23 it in depth, no. 24 Q. Okay. I'm going to pull what's been 25 premarked -- or what I am marking as Exhibit 11.</p>	<p style="text-align: right;">Page 227</p> <p>1 exist simply from the fact that you did not find a 2 discriminatory outcome in one large end study. Maybe. 3 I mean, that's an interesting mathematical point. 4 I look forward to pulling this up on my 5 computer when I get home. But you certainly can't 6 establish that discrimination did exist where you didn't 7 find discrimination. And I mean, we kind of knew what 8 was going to happen when you get into page 2 and he's 9 getting, you know, "Pr" -- like he's breaking down these 10 equations and so on. 11 Q. Uh-huh. 12 A. It is theoretically possibly that 13 discrimination could exist in a situation where no 14 discriminatory differences are found, just as it's 15 theoretically possible that discrimination could not 16 exist in a situation where discriminatory differences 17 are found. But that -- to me, and I'm sure this guy is 18 at least as good. But to me, that's just correlation, 19 not equal causation sort of. 20 Q. Okay. 21 A. Fryer is widely cited. It's a pretty good 22 piece. I look forward to reading this response as well. 23 Q. Okay. Let's turn to page -- so you see -- 24 well, let's start with page 2. So you see that in the 25 middle of page 2, the middle paragraph starts with</p>
<p style="text-align: right;">Page 226</p> <p>1 (Plaintiffs' Exhibit 11 was marked for 2 identification.) 3 Q. I'm going to represent that it is the James J. 4 Heckman, Steven N. Durlauf comment "An empirical 5 analysis of racial differences in police use of force: 6 A comment." 7 A. Okay. Okay. 8 Q. And take your time to familiarize yourself 9 with the comment in the book. 10 A. Yeah, I think I know what they're arguing. 11 Q. Okay. 12 A. Now, again, we've had a couple of minutes in 13 this conference to read this. I mean, maybe -- it would 14 take me a couple of hours to read through and go through 15 all the methods. But like, I get what he's arguing. 16 Q. Okay. What is he arguing here? 17 A. Well, I mean, he says it on page 2. Simply, 18 his argument is kind of the reverse of Kendi's argument; 19 "The absence of racial differences is treated as 20 sufficient evidence for not further exploring the 21 presence of discrimination." 22 I mean, what he's saying, as I understand 23 it -- because, again, I haven't read this article for 24 several years. What he's saying, as I understand it, is 25 that you can't establish that discrimination did not</p>	<p style="text-align: right;">Page 228</p> <p>1 "There are no good reasons"? 2 A. Okay. 3 Q. And you see, "There are no good reasons to 4 conclude that the equality of equation...implies the 5 absence of discrimination," what we were just talking 6 about. And "This is so for two distinct reasons" he 7 provides. The first, which is following that sentence, 8 is that "the paper is based on administrative data that 9 do not enable the author to determine the probability 10 that a person is stopped in the first place." 11 Do you agree with that or disagree? 12 A. I agree that the -- I would agree with that, 13 but I view it as something of a truism. I mean, so what 14 he's saying is that Dr. Fryer's data set of whether 15 violence is likely during police stops is based on 16 police stops. I don't mean to be glib about it, but 17 yes. So the argument is that theoretically other 18 factors, potentially including racism, could influence 19 whether you stop somebody. 20 But, I mean, that's -- you would then have to 21 demonstrate whether the rate of stops by race, if this 22 makes sense, in a neighborhood, varied from the rate of 23 crime by race in that neighborhood. A lot of this 24 becomes extremely theoretical and abstruse. 25 It seems perfectly reasonable to me to get up</p>



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<p style="text-align: right;">Page 229</p> <p>1 to about the -- what'd be the fourth level of analysis</p> <p>2 and say, okay, we've gotten all the police data, we're</p> <p>3 looking at whether police are more likely to shoot</p> <p>4 whites or Blacks, there's no statistically significant</p> <p>5 difference in either direction. You know, good job,</p> <p>6 boys. That's not -- and I think that's a widely shared</p> <p>7 point of view.</p> <p>8 Q. Okay. So you -- okay. So is then it your</p> <p>9 opinion that based on the administrative data, you could</p> <p>10 determine -- well, determine what the probability that a</p> <p>11 person will be stopped in the first place is?</p> <p>12 A. No.</p> <p>13 MR. DAVIS: Objection to the form.</p> <p>14 THE WITNESS: I'm sorry?</p> <p>15 MR. DAVIS: I objected to the form of the</p> <p>16 question, but you're free to answer.</p> <p>17 A. I don't think that's the question. I think --</p> <p>18 so, to me, papers generally take place at one level of</p> <p>19 analysis. Fryer's looking at whether, at the level of</p> <p>20 the stop, there is any evidence of bias.</p> <p>21 Q. Okay.</p> <p>22 A. In fact, he finds there's not. There's</p> <p>23 evidence of reverse bias. And that's not very strong</p> <p>24 either.</p> <p>25 Now, so the next question would be at the</p>	<p style="text-align: right;">Page 231</p> <p>1 A. Interesting piece, though.</p> <p>2 Q. -- and to page 18. So in the first full</p> <p>3 subparagraph you're starting with "Such examples</p> <p>4 abound!" You are discussing the median income gap</p> <p>5 between white and Black folks nationally, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. So where did you pull these numbers of</p> <p>8 74,932 and 48,297?</p> <p>9 A. Census Bureau.</p> <p>10 Q. Okay.</p> <p>11 A. I mean this is -- yeah, Census Bureau.</p> <p>12 Q. Okay. Did you consider a metric specific to</p> <p>13 Alabama?</p> <p>14 A. For this question, no. Because the point of</p> <p>15 this question is simply illustrating that this happens</p> <p>16 often.</p> <p>17 Q. Okay.</p> <p>18 A. This is not a U.S.A. versus Alabama question</p> <p>19 at all. This is the national gap.</p> <p>20 Q. Okay. Do you know what the median income gap</p> <p>21 is between white and Black Alabamians?</p> <p>22 A. I've looked it up, but not offhand right now.</p> <p>23 Q. Why did you look it up?</p> <p>24 A. Curiosity. This was not intended to be part</p> <p>25 of this paper, really, at all.</p>
<p style="text-align: right;">Page 230</p> <p>1 level of the decision to stop, is there evidence of</p> <p>2 bias. What I would say there is, you have to adjust for</p> <p>3 crime. What you'd find automatically -- and I don't</p> <p>4 mean to sound a little weary and benighted going through</p> <p>5 some of these. But what you'd find automatically is</p> <p>6 that more Black people would be stopped than white</p> <p>7 people.</p> <p>8 But you would also find that about 85 percent</p> <p>9 of the people who are stopped -- this is true every time</p> <p>10 I've reviewed a data set -- are men. You also find that</p> <p>11 in most cities 84 percent of criminals are men. So</p> <p>12 you'd have to adjust for this variable of who in that</p> <p>13 neighborhood is the source of victim calls or something,</p> <p>14 the cause of victim calls. And then you might find some</p> <p>15 bias, and you might not. At the level of the shoot, at</p> <p>16 the level of the confrontation, Fryer found very little</p> <p>17 prejudice.</p> <p>18 Q. Okay.</p> <p>19 A. He found none, actually. A last, very quick</p> <p>20 comment. This doesn't debunk Fryer's article at all.</p> <p>21 Like, what it says is there should be another article.</p> <p>22 So it's kind of like throwing down the glove, like you</p> <p>23 didn't even test this. Well, it's not saying the core</p> <p>24 point is wrong at all.</p> <p>25 Q. Okay. Let's go back to your report --</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. Okay.</p> <p>2 A. But I'm just interested.</p> <p>3 Q. Okay.</p> <p>4 A. I care about my fellow human beings.</p> <p>5 Q. Okay. Next you say, "Economists have noted</p> <p>6 for at least 35 years that the gap almost disappears in</p> <p>7 multi-variate regression models that adjust for other</p> <p>8 traits which vary between large groups, such as age,</p> <p>9 test scores, and region of residence."</p> <p>10 Are you referring to the median income gap</p> <p>11 here?</p> <p>12 A. Yeah, the median, mean, et cetera, income gap.</p> <p>13 Yeah, I'm talking about June O'Neill. Many people have</p> <p>14 rerun these numbers. I essentially have, although</p> <p>15 that's a simpler calculation than O'Neill's. But I</p> <p>16 mean, O'Neill very famously said -- and by the way,</p> <p>17 again, re one of Dr. Burch comments, this is a 1990</p> <p>18 article that she redid in 2005, and I think she redid at</p> <p>19 a conference in 2011. She didn't just let it sit for</p> <p>20 30 years.</p> <p>21 This basic point, "Overall, Black men earn</p> <p>22 82.9 percent of the white wage." It's still about that.</p> <p>23 "Adjusting for Black-white differences in...region,</p> <p>24 schooling, and age ranges" that ratio to about 88</p> <p>25 percent. Adding differences in standardized test scores</p>



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<p style="text-align: right;">Page 233</p> <p>1 raises the ratio to 95.5 percent.</p> <p>2 I'll note she doesn't use abstruse IQ tests.</p> <p>3 It was like the state NAEP test. Everyone had to take</p> <p>4 it. And "adding differences in years of work</p> <p>5 experience raises the ratio to 99.1 percent." So, I</p> <p>6 mean, that's -- now, you could argue racism comes in</p> <p>7 that last one. Do you have the same chance to work?</p> <p>8 But a lot of this stuff is just -- it sort of is what it</p> <p>9 is. I mean, age gap's in there. Test scoring gap's in</p> <p>10 there.</p> <p>11 Q. Okay. Would you be able to recognize the</p> <p>12 O'Neill article if you saw it?</p> <p>13 A. Yeah, I would assume so. It depends which</p> <p>14 one.</p> <p>15 Q. Okay. I'm going to mark this as Exhibit 12,</p> <p>16 and I'm going to represent that it is the O'Neill</p> <p>17 article that you cited. But can you confirm that for</p> <p>18 me, Dr. Reilly?</p> <p>19 (Plaintiffs' Exhibit 12 was marked for</p> <p>20 identification.)</p> <p>21 A. Yeah, sure. "The Role of Human" -- yeah,</p> <p>22 looks like it.</p> <p>23 Q. Okay.</p> <p>24 MR. DAVIS: Take your time. Make sure.</p> <p>25 A. Yeah, it is. I mean, it obviously is, yes,</p>	<p style="text-align: right;">Page 235</p> <p>1 Robert Maranto, looking at what stops cops were shooting</p> <p>2 people. I think it's pretty important.</p> <p>3 We found a lot of articles with titles like</p> <p>4 Sweet Revolution, How Black Lives Matter Influenced the</p> <p>5 Production of Ice-Cream Flavors by Ben &amp; Jerry's, and</p> <p>6 similar players, like, a lot of larping, foe revolution.</p> <p>7 And there's a ton of that, as I'm sure you're aware.</p> <p>8 So, I mean, there aren't a whole bunch of</p> <p>9 articles that are pointing out that if you just adjust</p> <p>10 for five basic things, the gaps go away.</p> <p>11 There's a fair amount of that in the think</p> <p>12 tank world. I mean, I mentioned Heather MacDonald. I</p> <p>13 mean, I mentioned Chris Benoit maybe, and there are a</p> <p>14 bunch of people that have done these -- Eric Kaufmann.</p> <p>15 "Social Construction of Racism" by Kaufmann is actually</p> <p>16 a very serious project. You know, there are plenty of</p> <p>17 people that have done this. And I have mentioned many</p> <p>18 of them in my work, some of which is cited in my report.</p> <p>19 But this is one of the classic fully academic examples.</p> <p>20 Q. Okay. I want to return to Exhibit 7,</p> <p>21 Dr. Burch's rebuttal report, for a moment.</p> <p>22 A. Okay. 7.</p> <p>23 Q. And page 7 as well. Actually, not yet. I'm</p> <p>24 curious. So you said you did not consider any more</p> <p>25 recent scholarship since this 1990 article?</p>
<p style="text-align: right;">Page 234</p> <p>1 the original 1990 article.</p> <p>2 Q. Do you want to turn to the second page?</p> <p>3 A. All right.</p> <p>4 Q. Well, first, I guess, my question is, women</p> <p>5 are not included in this article's analysis, right?</p> <p>6 A. Yeah, it's a look at males.</p> <p>7 Q. Okay. And why didn't you consider more recent</p> <p>8 scholarship for your report on this point?</p> <p>9 A. Well, I think one obvious reason is that this</p> <p>10 same author redid this same article several times and</p> <p>11 changed some of the language that will likely be at</p> <p>12 issue here. I mean, so this has -- this has been widely</p> <p>13 cited by a number of people that I've cited throughout</p> <p>14 this conversation. And also, I think it's just a good</p> <p>15 overall breakdown of what we're looking at here.</p> <p>16 A third point, by the way, academia currently</p> <p>17 leans about 93 percent, I believe, to the political Left</p> <p>18 in sociology and political science. So it -- no</p> <p>19 excuse-making, but when you ask, well, why don't people</p> <p>20 retest Roland Fryer's point from a somewhat friendly</p> <p>21 perspective, you know, using his parameters, well, Bob</p> <p>22 and I might. But I mean, like, there aren't that many</p> <p>23 people that want to.</p> <p>24 There are a lot of articles about when -- we</p> <p>25 looked at the Black Lives Matter literature, myself and</p>	<p style="text-align: right;">Page 236</p> <p>1 A. Well, I mean, when you say I didn't consider,</p> <p>2 I think that any analysis of this today would show the</p> <p>3 exact same thing.</p> <p>4 Q. Okay.</p> <p>5 A. And as I understand -- I also cite the 2005</p> <p>6 article by the same author in their report. And again,</p> <p>7 anyone to Google the author, would also find that</p> <p>8 article and the second follow-up piece, whether or not</p> <p>9 that's cited in the report.</p> <p>10 So no, there's no attempt to rely on</p> <p>11 decades-old scholarship. If you take this information</p> <p>12 and just do this today, you'll find the same thing.</p> <p>13 Q. Okay.</p> <p>14 A. So I just consider that a good classic</p> <p>15 article.</p> <p>16 Q. Okay. Are you familiar with Kevin Lang and</p> <p>17 Ariella Kahn-Lang Spitzer's article "Race</p> <p>18 Discrimination: An Economic Perspective"?</p> <p>19 A. Don't -- not offhand.</p> <p>20 Q. Okay. That's okay if not offhand. Are you</p> <p>21 familiar with Marianne Bertrand and Sendhil Mu -- Mu --</p> <p>22 A. Mullanathan.</p> <p>23 Q. Yeah.</p> <p>24 A. Yes, of course.</p> <p>25 Q. Their 2004 article?</p>

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<p style="text-align: right;">Page 237</p> <p>1 A. Yeah. I'm also familiar with -- I wrote one 2 of the responses. 3 Q. Did that -- does that article affect your 4 analysis at all here? 5 A. You're talking about audit studies? 6 Q. Yes. 7 A. No, not really. I mean, so there are two 8 different tracks that we're talking along here. And 9 again, so they're -- this is, again, something that I 10 would be -- like professionally wrote one of the pieces, 11 prepared to discuss for hours, which no one wants. 12 But, I mean, like, there are two tracks that 13 we're talking about here. One is, does racism exist. 14 And I think I saved you guys some time as a conservative 15 academic by saying yes, racism exists. 16 The second is, does racism explain the gaps 17 that we're looking at here. And very often the answer 18 is no. Racism is in the model, along with the other six 19 variables, and you see what it does. It's often 20 significant. No one denies it. But so is study time, 21 so is age, so is all this other stuff. 22 I mean, the O'Neill paper is a good -- really 23 simple, actually. It's one of the reasons I used it, an 24 example of how this works. You look at age, region, 25 test scores, so on down the line, and you find out</p>	<p style="text-align: right;">Page 239</p> <p>1 Minorities are encouraged to apply. I'd have to check 2 the figure for that this year. 3 What does that say about jobs with minority 4 bosses? You know, that's 18.3 percent of all employers 5 now, Asian Americans, Black businessmen, so on. Jewish 6 Americans are considered white, by the way, so you might 7 expand that category. But, I mean you know, so those 8 are -- those are some responses. Like, within that 9 category you do find some prejudice. 10 But the second thing is that you have to 11 adjust for class as well as race while we're talking 12 about adjustments. So -- and there's a guy, a Gaddis, 13 that's attempted to do this somewhat successfully. But 14 while he says that he still finds a fair amount of 15 racism, his actual results are very interesting. 16 He finds a lot of upper middle class Black 17 names and lower middle class white names are seen as 18 opposite race names, as I recall, or they're not seen as 19 raced at all. I'd love to see what would happen with 20 the audit studies if you took Appalachian white names 21 like Bubba and Jordie and applied to high-end corporate 22 businesses, Bain and McKinsey and so on. I think I know 23 what would happen. So you have to adjust for class. 24 They're very limited in scope. 25 And I think those two points are actually</p>
<p style="text-align: right;">Page 238</p> <p>1 what people's job prospects are. That's been redone, 2 but it -- that's it. There's not that much -- there are 3 only so many numbers tricks you can play to get past 4 that. 5 So the audit studies to get back to the point, 6 are on the other side of that. The audit studies are 7 basically a technique used to discover how much racism 8 is out there. But there are pretty considerable 9 responses to the audit genre. Do you want to hear some? 10 Q. Sure. 11 A. Okay. The first is that almost all audit 12 studies focus in to what you could call the entry level 13 non affirmative action job space generally with white 14 employers. 15 Q. Okay. 16 A. Again, if you want to read what I wrote about 17 this, the article is called "Testing the Test for 18 Racism." But I mean, you can go through like the top 19 11, and you'll find that this is the pattern. So what 20 does that show about government jobs, which are all, by 21 definition, equity forward? You could argue even that 22 they should be. The government should be roughly 23 proportional. That's an interesting debate. 24 What does that say about affirmative action, 25 which are something like 17 percent of all jobs.</p>	<p style="text-align: right;">Page 240</p> <p>1 pretty sweeping. But with the class thing, there are 2 two other guys who you might have on there, Darolia and 3 Koedel, who actually just did the ultimate test for this 4 where they did a totally declassified first name like Chloe 5 and they did an obviously minority last name like 6 Hernandez or Blackman. 7 And they sent these resumes in to a series of 8 employers, and they found that there was no racial 9 difference in hiring. The perception was that you were 10 hiring an upper middle class minority, like zero 11 difference. And again, there have been responses there. 12 Darolia and Koedel are writing a response. But I think 13 that the argument we found a great deal of racism, one, 14 and that explains the gaps, two, that neither side has 15 conclusive evidence here. And I don't think it's 16 stronger for the group against my position. 17 Q. Okay. 18 A. Mullanathan. 19 Q. Did you look at any Alabama-specific 20 employment metrics in your analysis on page 18? 21 A. In this specific analysis on page 18, no, 22 because the point of this analysis is just demonstrating 23 that -- I mean, obviously the next page gets into 24 incarceration in Alabama. 25 The point of this analysis is just</p>





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<p style="text-align: right;">Page 241</p> <p>1 demonstrating that the state level, at the federal level</p> <p>2 you see these gaps and they resolve, so no.</p> <p>3 Q. Okay. Did you look at any Alabama-specific</p> <p>4 employment metrics for your report?</p> <p>5 A. No. This is the only discussion of employment</p> <p>6 in the report.</p> <p>7 Q. Okay. Let's turn to page 20.</p> <p>8 A. All right.</p> <p>9 Q. Second sentence you -- let me know when you're</p> <p>10 ready.</p> <p>11 A. I'm ready now.</p> <p>12 Q. Second sentence you write, "on page 22 of"</p> <p>13 this -- "of his comprehensive report, Georgia State</p> <p>14 University's Dr. Joseph Bagley contends that 'Black</p> <p>15 citizens are grossly over-represented in Alabama's</p> <p>16 prison system."</p> <p>17 You agree that Black Alabamians are</p> <p>18 over-represented in Alabama's prison system, right?</p> <p>19 A. Yeah. In raw numbers, yes. There's a</p> <p>20 disproportionate number of Black Americans in every</p> <p>21 state's prison system.</p> <p>22 Q. Okay. And you reviewed Dr. Bagley's report?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. You have no reason to disagree with his</p> <p>25 opinion or his data in his report?</p>	<p style="text-align: right;">Page 243</p> <p>1 reasons" here, what are you referring to?</p> <p>2 A. What I'm referring to is the complex and</p> <p>3 confusing nature of reality that we've now been</p> <p>4 discussing and debating for several hours. So we know</p> <p>5 that if you take socioeconomic status, fatherlessness,</p> <p>6 any of these other variables and look at their overall</p> <p>7 run of impact on your likelihood of going to jail, that</p> <p>8 that's going to be there. I don't think anyone would</p> <p>9 dispute that.</p> <p>10 The question is, does racism have some role,</p> <p>11 statistically significant, greater than 10 percent,</p> <p>12 whatever, re those secondary variables. And it goes on</p> <p>13 and on. Sometimes, yes. Sometimes, no.</p> <p>14 I mean, for me, when I say -- and there are</p> <p>15 more than a dozen other factor variables; again, age,</p> <p>16 fatherlessness, SES, social economic status, does play a</p> <p>17 role for this one, male versus female, just so on, that</p> <p>18 predict who goes to jail.</p> <p>19 But crime rate is kind of the big boy, and you</p> <p>20 can put that in a model with other things; crime rate by</p> <p>21 county, something like that. And the Black crime rate</p> <p>22 is higher -- this is like the study time point. It's a</p> <p>23 bit awkward to talk about. Not a leading dinner party</p> <p>24 line. But the crime rates by race vary. The white</p> <p>25 crime rate's three times the Asian crime rate. The</p>
<p style="text-align: right;">Page 242</p> <p>1 MR. DAVIS: Object to the form.</p> <p>2 A. Yeah, as that might indicate. I mean, the --</p> <p>3 the data on the raw number of prisoners, no, no one --</p> <p>4 no one disagrees.</p> <p>5 Q. Okay. Let's turn to page 21. Here you write,</p> <p>6 in the second sentence, "For a matrix of complex</p> <p>7 reasons, certainly including historical racial</p> <p>8 oppression but" -- in brackets -- (again) also including</p> <p>9 more than a dozen other" factors, "variables starting</p> <p>10 with plain crime rate, Black Americans are</p> <p>11 over-represented relative to white Americans in every</p> <p>12 state prison system."</p> <p>13 A. Yes.</p> <p>14 Q. And you agree that this over-representation in</p> <p>15 Alabama is at least in part because of Alabama's</p> <p>16 discriminatory history against Black Americans?</p> <p>17 A. I would always include racism in the model.</p> <p>18 Q. Okay.</p> <p>19 A. I think when you look at the disparities</p> <p>20 nationally, it's pretty obvious racism isn't the primary</p> <p>21 driver, if you mean anything contemporary by "racism."</p> <p>22 Q. Uh-huh. I'm just saying it is a factor.</p> <p>23 A. Very possible -- very probably it is something</p> <p>24 of a factor.</p> <p>25 Q. Okay. When you say "matrix of complex</p>	<p style="text-align: right;">Page 244</p> <p>1 Black crime rate's about twice the white crime rate.</p> <p>2 Natives, about the Black crime, right? Hispanic really</p> <p>3 varies.</p> <p>4 Q. Okay. So these other factor variables that</p> <p>5 you have listed here, you're referring to the other</p> <p>6 tertiary variables that you refer to in your report?</p> <p>7 A. Not just the variables in my report. I mean,</p> <p>8 I think that the -- the point that I, and I'm sure many</p> <p>9 a more skilled culturalist writer would make, is that in</p> <p>10 every situation there are going to be quite a few of</p> <p>11 these things at play.</p> <p>12 I mean, I recently reviewed a paper that was</p> <p>13 looking at IQ by country. And I viewed the data as</p> <p>14 almost worthless. I mean, you have to look at not just</p> <p>15 income, but, say, years of education for women, which is</p> <p>16 apparently something -- I'm not going to name the</p> <p>17 author -- that hadn't even been considered. That's half</p> <p>18 the population.</p> <p>19 So there's long been a debate on -- you know,</p> <p>20 there's been a debate in part of the academic</p> <p>21 community -- I don't know if it's entirely the</p> <p>22 mainstream -- but why Arab countries tend to have fairly</p> <p>23 low IQ scores. One obvious reason is that there's not a</p> <p>24 lot of education for young women.</p> <p>25 You can just go on down the line with this.</p>

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<p style="text-align: right;">Page 245</p> <p>1 So there almost always are 10 or 12 things you could 2 throw into the mix.</p> <p>3 Q. Why do you believe the Black crime rate is 4 twice that of the white crime rate?</p> <p>5 A. Again, for -- I think that the polite way to 6 put this would be for the same reasons that the white 7 crime rate is three times the Asian crime rate; family 8 structure, family stability, attitudes toward 9 government and the law, outlaw culture historically. 10 Yes, for Black Americans, racism historically, but I 11 mean, a number of things. Gang cultural in the area.</p> <p>12 I mean, one of the things that came out of the 13 Great Migration -- I'm reading a fascinating book on the 14 vice lords in my home city right now. But I mean, one 15 of the things that came out of the Great Migration was 16 gangs to protect against tough white neighbors, so on, 17 in Chicago and Detroit. The tough white neighbors left. 18 The gangs are still there. So I mean, you know, gang 19 cultural in the region.</p> <p>20 Q. In your opinion, what are Black Americans 21 attitudes' towards the law?</p> <p>22 A. Well, you could measure them. I mean, so 23 there are two different things. First of all, most 24 Black Americans are law-abiding normal people just like 25 anybody else. So during the defund the police movement</p>	<p style="text-align: right;">Page 247</p> <p>1 this is another thing that was not a focus of my 2 original report. But, you know, I respect the people on 3 both teams. I looked at the response from, for example, 4 Burch. I don't find that convincing at all.</p> <p>5 Q. Okay.</p> <p>6 A. So the argument is that the arrest rate should 7 track the imprisonment rate, if I have that correct. 8 The question would be, arrests for what.</p> <p>9 So I actually looked up some of the crime 10 rates in Alabama, and it looks like to me like 11 52 percent of crimes against persons involve 12 African-Americans. And this is subtly mentioned in the 13 report. The phrase is something like only 80 more 14 African-Americans than whites were arrested for crimes 15 against persons.</p> <p>16 So, I mean, like your -- most people have been 17 arrested, you know, fraternity brawling or something 18 like that. I mean, that's not going to send you to 19 prison. So you have to look at the arrests for index 20 crime, murder, so on down the line.</p> <p>21 Murderers, I believe, in Alabama were 22 66 percent Black. You might check me on that. But 23 just -- so just saying arrest rate should match 24 incarceration rate, so that's not how it works. Very 25 few -- last line. But very few people are in prison for</p>
<p style="text-align: right;">Page 246</p> <p>1 one of the interesting things that completely 2 flabbergasted my Caucasian feminist and so on friends 3 was that the group that most wanted the police refunded 4 was African-Americans.</p> <p>5 But at the same time the groups with the 6 highest percentage of, quote/unquote, outlaws, people 7 who say they're affiliated with a criminal organization, 8 they don't respect the law, they don't need no boss, 9 that kind of thing, are African-Americans and Southern 10 whites who lived near each other for a long time.</p> <p>11 Q. Okay.</p> <p>12 A. There's a book about that, too, "Black 13 Rednecks and White Liberals." So I mean, again, I'm not 14 primarily a theorist. So I guess my question is -- not 15 a bad one. But when you look at something like this, I 16 think that that basic answer, well, the same things that 17 caused the Asian rate to be a third of the white rate is 18 probably correct. That's a complex answer.</p> <p>19 Q. Okay. I want to go back to what other factor 20 variables you considered to reach your conclusion about 21 criminal behavior affecting voter registration gaps 22 between black and white voters. Did you consider arrest 23 rates relative to incarceration rates between Black and 24 white Alabamians?</p> <p>25 A. Yeah, I actually did. And this -- by the way,</p>	<p style="text-align: right;">Page 248</p> <p>1 misdemeanor, dope offenses, that sort of thing. It 2 normally takes six convictions -- convictions to go to 3 prison.</p> <p>4 I actually think there are a lot of major 5 problems with our carceral system in the U.S.A., but 6 it's -- there aren't a lot of totally innocent guys 7 there, whatever happened in their last case.</p> <p>8 Most common crime for both Black and white 9 males in state prison is murder. So you've have to -- 10 you'd have to -- and neither she nor I did this. You'd 11 have to break down what the percentage of incarcerated 12 felons was out of each arrest claimed by each year. And 13 I think you would again find -- is there is a 3 percent 14 effect here? Maybe. But the huge predictor is crime.</p> <p>15 Q. Okay. Did you consider sentencing differences 16 between Black Alabamians and white Alabamians in your 17 report?</p> <p>18 A. That is not analyzed in the report. I will 19 note briefly that, again, all of this is -- the debate 20 in the social science literature comes down to good 21 univariate versus good multi-variate analysis basically.</p> <p>22 Q. Okay.</p> <p>23 A. Sentencing disparities, this is -- I mean, the 24 source I have in mind, actually, is my criminal justice 25 textbook. I mean, this is not -- there are 15 articles</p>

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<p style="text-align: right;">Page 249</p> <p>1 condensed into that chapter. But my understanding is</p> <p>2 that sentencing disparities vanish -- are reduced</p> <p>3 roughly 90 percent when you adjust for very simple</p> <p>4 variables like prior record, but also recency of crime,</p> <p>5 when was your last crime.</p> <p>6 One that I would throw in, that comes from my</p> <p>7 first academic publication, is quality of lawyer. In</p> <p>8 Illinois we have a database called Judici, which allows</p> <p>9 you -- and it's the only state where you can do this, as</p> <p>10 far as I know. J-u-d-i-c-i.</p> <p>11 But you can go into the database and you can</p> <p>12 look and see not just who is the defendant, what's his</p> <p>13 race, what's he charged with and all that, but what kind</p> <p>14 of lawyer he has, is it a legal aid, is it a private</p> <p>15 lawyer. They name the private lawyer. You can link to</p> <p>16 ratings of their firm. I don't know how lawyers feel</p> <p>17 about this.</p> <p>18 But I was able to actually just check and see</p> <p>19 like what lawyer quality did in terms of sentence. And</p> <p>20 it's the explanatory there. You're not going to jail if</p> <p>21 you get a good enough lawyer.</p> <p>22 So you'd, again, have to adjust for all this</p> <p>23 stuff. I'm not saying I do. I'm not saying she did.</p> <p>24 But just saying there's a raw sentencing difference,</p> <p>25 that doesn't mean anything.</p>	<p style="text-align: right;">Page 251</p> <p>1 them or discuss them?</p> <p>2 A. Because I didn't think that was an important</p> <p>3 addition to a report that already contained three or</p> <p>4 four breakdowns of the state level and national level</p> <p>5 variables. I mean, at a point -- at a certain level the</p> <p>6 point simply becomes repetitious, I think.</p> <p>7 Like, my point is, well, these -- these unique</p> <p>8 Alabama variables, in fact, exist almost everywhere in</p> <p>9 the country, and I'm going to demonstrate that. So in</p> <p>10 some cases -- from a consultant's perspective, I might</p> <p>11 even write down, opposing counsel suggested this.</p> <p>12 But, I mean, like to a certain extent you want</p> <p>13 to keep your report at a reasonable length. There are</p> <p>14 things you think are more important than others. So I</p> <p>15 focused on those things that I thought supported my case</p> <p>16 and made a good point.</p> <p>17 Q. Okay. How -- you have "crime rate" here. How</p> <p>18 would you define "crime rate" on page 21 of your report,</p> <p>19 third line?</p> <p>20 A. 21. Rate of crime -- rate of a -- the usual</p> <p>21 standard that I use is rate of index violent crime.</p> <p>22 Q. Okay. And how did you factor in the crime</p> <p>23 rate to affect Black Alabamians' over-representation in</p> <p>24 Alabama's prisons?</p> <p>25 A. You just look at crime rate by state. That's</p>
<p style="text-align: right;">Page 250</p> <p>1 Q. Okay. But did you -- why didn't you consider</p> <p>2 sentencing disparities in your analysis here?</p> <p>3 A. Well, because you only have 30-odd pages or so</p> <p>4 for a report of this kind, and I wanted -- I mean,</p> <p>5 there's a CV in there as well. So like, I did a full</p> <p>6 analysis, I think, of incarceration rates, incarceration</p> <p>7 ratios. I threw in a piece on RPV. You know, I've read</p> <p>8 some of Liu's work before. Wanted no partianship there.</p> <p>9 So, I mean, all of these things.</p> <p>10 If I -- I didn't see that putting in ten</p> <p>11 additional pages contrasting Alabama-specific variables</p> <p>12 to the national means would have been a plus.</p> <p>13 Q. Okay. Were you given a page limit for this</p> <p>14 report?</p> <p>15 A. No, there's not a formal page limit.</p> <p>16 Q. Okay.</p> <p>17 A. But an artist has opinions.</p> <p>18 Q. So you could have put the sentencing</p> <p>19 disparities in the report, but you chose not to?</p> <p>20 A. Theoretically, I could have put any amount of</p> <p>21 additional content in the report.</p> <p>22 Q. Okay.</p> <p>23 A. But this is what I chose to do.</p> <p>24 Q. Okay. So again, why did you chose not to put</p> <p>25 the sentencing disparities into your report or analyze</p>	<p style="text-align: right;">Page 252</p> <p>1 one of the simpler answers.</p> <p>2 Q. Okay. Okay. In the same paragraph you write,</p> <p>3 the last sentence, "Indeed, should we take this</p> <p>4 numerical over-representation as a res ipsa loquitur</p> <p>5 proxy for oppression, then Alabama is one of the least</p> <p>6 oppressive places in the country."</p> <p>7 A. Yes.</p> <p>8 Q. How are you defining "oppression" here?</p> <p>9 A. The most unfair racism-provoked abuse of</p> <p>10 Blacks or whatever the target group is. So, I mean,</p> <p>11 that sentence is in there intentionally to make a point,</p> <p>12 which is that we can't automatically assume the cause of</p> <p>13 these gaps at all, given the quality of modern analysis</p> <p>14 on, frankly, both sides of this debate.</p> <p>15 So yeah, just -- if you accept that there is a</p> <p>16 univariate, Ibram Kendi, 90 to 100 percent racism-caused</p> <p>17 gap, then you have to accept that Alabama is the least</p> <p>18 racist state in the Union.</p> <p>19 Q. What do you mean by "res ipsa loquitur proxy</p> <p>20 for oppression"?</p> <p>21 A. It speaks for itself and illustrates</p> <p>22 oppression. Like looking at this chart, so Alabama's</p> <p>23 incarceration ratio -- and I did the classic chart that</p> <p>24 many people use. But I also just broke it out again and</p> <p>25 redid it as a chart. So Alabama's, right now,</p>

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<p style="text-align: right;">Page 253</p> <p>1 Black/white incarceration ratio is 2.69 to 1, and I</p> <p>2 think there's one state that beats Alabama, and that's</p> <p>3 Hawaii at 2.31.</p> <p>4 Q. Okay.</p> <p>5 A. So I guess we'd be the -- they would be the</p> <p>6 second least oppressive state in the Union. I will note</p> <p>7 that I don't think anyone believes that. That's sort of</p> <p>8 the point.</p> <p>9 It's also, just in terms of different crime</p> <p>10 rates across groups in the existence of culture -- by</p> <p>11 the way, if you look down this white column, I mean,</p> <p>12 you'll see some white incarceration rates like 450,</p> <p>13 Idaho 502, Kentucky 466. I mean, if you look at</p> <p>14 Massachusetts for Blacks, it's 466.</p> <p>15 I mean, so the idea there's not a sort of</p> <p>16 regional culture and it contributes to crime -- I mean,</p> <p>17 again, a bit awkward to discuss, but it's pretty clearly</p> <p>18 evident.</p> <p>19 Q. Did you look at any other metrics besides</p> <p>20 incarceration rates by race to determine that Alabama is</p> <p>21 one of the least oppressive places in the country?</p> <p>22 A. No. My focus at the end of this report was</p> <p>23 incarceration rates by race because another expert, a</p> <p>24 well-known academic, stated that these incarceration</p> <p>25 rates by race were indicative of bigotry today or in the</p>	<p style="text-align: right;">Page 255</p> <p>1 conditions disproportionately and that such conditions,</p> <p>2 for Black inmates, are a historical continuity."</p> <p>3 Do you agree with that statement?</p> <p>4 A. Well, I mean, I disagree with almost all that</p> <p>5 piece by piece.</p> <p>6 Q. Okay.</p> <p>7 A. First of all, I mean -- and it's an awkward --</p> <p>8 again, an awkward topic to talk about, but my</p> <p>9 understanding is that the prison rape in Alabama is</p> <p>10 almost all Black on white. When I've looked at --</p> <p>11 again, I have some interest in the carceral system, and</p> <p>12 that -- that's my understanding in that particular</p> <p>13 state. It's obviously different out West, so on down</p> <p>14 the line. So I don't -- I don't see how you could</p> <p>15 describe that as an abuse of Black inmates.</p> <p>16 You know, so also -- and I don't think it's</p> <p>17 true that many other states are not the subject of</p> <p>18 numerous findings of appalling and unconstitutional</p> <p>19 conditions in their prisons. But that's not the</p> <p>20 primary -- so I would go down through most of this and</p> <p>21 critique it. But that's not really my point.</p> <p>22 The point is simply that Dr. Bagley</p> <p>23 originally, and this is -- this is something that often</p> <p>24 happens in this arena because there are a lot of</p> <p>25 disparities between giant groups who sometimes beat</p>
<p style="text-align: right;">Page 254</p> <p>1 past. My point is that that's not the case. I'm not</p> <p>2 necessarily arguing that Alabama is the least oppressive</p> <p>3 place in the world.</p> <p>4 Q. Okay. Thank you. You reviewed Dr. Bagley's</p> <p>5 rebuttal report?</p> <p>6 A. Yes, I reviewed the -- the rebuttal report.</p> <p>7 My report is contained in about a paragraph of it.</p> <p>8 Yeah.</p> <p>9 Q. Did you -- let's pull it up. It's been</p> <p>10 premarked as Exhibit 4.</p> <p>11 A. Okay.</p> <p>12 Q. Let's go to page -- I believe it's page 15.</p> <p>13 A. Okay.</p> <p>14 MR. DAVIS: Bagley rebuttal?</p> <p>15 MR. CAMPBELL-HARRIS: Yes, that's correct.</p> <p>16 BY MR. CAMPBELL-HARRIS:</p> <p>17 Q. Okay. Do you see the sentence in the bottom</p> <p>18 that starts with "Still"?</p> <p>19 A. Yes.</p> <p>20 Q. It reads, "Still, other states are not the</p> <p>21 subject of numerous findings of appalling and</p> <p>22 unconstitutional conditions in their prisons, including</p> <p>23 systemic violence, rape, and drastic overcrowding, as in</p> <p>24 Alabama. Alabama is unique" -- go on to page 16 --</p> <p>25 "...that its Black citizens are subjected to these</p>	<p style="text-align: right;">Page 256</p> <p>1 other in Field A, lose in Field B.</p> <p>2 So he makes this point where he says, look,</p> <p>3 there's a gap in Alabama, we know Alabama's history, I'm</p> <p>4 assuming racism, and I'm going to make that argument</p> <p>5 quite coherent.</p> <p>6 And I actually broke out, across 20 years, the</p> <p>7 data on incarceration and said well, Doc, that's not</p> <p>8 true.</p> <p>9 And now he responds and says well,</p> <p>10 nonetheless, the prisons are bad. I mean, that's a</p> <p>11 response. But it doesn't have anything to do with the</p> <p>12 point about the original claim.</p> <p>13 Looking at the response, I would say I don't</p> <p>14 think Alabama necessarily has uniquely bad prisons. I</p> <p>15 don't think the sexual abuse of inmates, which should be</p> <p>16 ended, is going in the direction that he's implying it</p> <p>17 is. But I don't think primarily that's a response to</p> <p>18 what I said.</p> <p>19 Q. You said you reviewed Dr. Bagley's original</p> <p>20 report?</p> <p>21 A. I read through it. I'm not a historian, so</p> <p>22 limits to my focus on some of it.</p> <p>23 MR. CAMPBELL-HARRIS: Okay. Can you pull the</p> <p>24 notice?</p> <p>25 A. I'll also note that Dr. Bagley says a number</p>





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<p style="text-align: right;">Page 257</p> <p>1 of things that are pretty openly partisan here, like the          2 Moynihan report was widely discredited. I mean, that          3 was essentially just the prediction that out-of-wedlock          4 birth rates would rise.          5 Q. Okay. I'm going to be handing you now what          6 I'm marking as Plaintiffs' Exhibit 13.          7 (Plaintiffs' Exhibit 13 was marked for          8 identification.)          9 A. All right.          10 Q. There you go.          11 A. Thank you.          12 Q. Don't worry, we're not going to go through all          13 the pages. Are you familiar with the DOJ's -- this DOJ          14 2019 notice letter and report about Alabama's prisons?          15 A. I was --          16 MR. DAVIS: Take your time to look at it to          17 see whether you, in fact, are familiar with --          18 May I ask a question for clarification? Are          19 you asking whether he's familiar with this specific          20 document or the investigation in general? And I          21 know you're not required to answer it, but it would          22 help me to follow through.          23 MR. CAMPBELL-HARRIS: The investigation more          24 broadly, yes.          25 BY MR. CAMPBELL-HARRIS:</p>	<p style="text-align: right;">Page 259</p> <p>1 A. I don't really recall, honestly.          2 Q. Okay. Okay. So when you were forming your          3 opinions about criminality -- criminal behavior in          4 Alabama and its effects on gaps in voter registration          5 and voter turnout, how did you account for Dr. Bagley's          6 discussion of Alabama's criminal justice system?          7 A. Well, Dr. Bagley's -- are you referring to his          8 discussion of this?          9 Q. Anything he cited about the criminal justice          10 system in Alabama.          11 A. Well, I think there's an important point here.          12 If you're talking about Dr. Bagley's general thrust that          13 historically racism has influenced the carceral system          14 in the South, I don't think there's a great deal of          15 dispute about this.          16 If you're talking about this, I mean, this is          17 a series of documents that describes the prisons as, in          18 some cases, inhuman, in part because Black guys are          19 attacking white guys, which should be stopped. I don't          20 really view this as all that relevant to the case in          21 point at all, though, again, some of these things we're          22 talking about I'll go home and read.          23 But I don't see that this -- most of this is a          24 counter to my point, which is simply that if you are          25 arguing that these gaps that we're seeing are the</p>
<p style="text-align: right;">Page 258</p> <p>1 Q. Are you familiar with the investigation or          2 this document, Dr. Reilly?          3 A. At the fringes of my vision, I'm familiar with          4 the investigation.          5 Q. What are you familiar with about this          6 investigation?          7 A. Well, the Alabama prisons from serious legal          8 commentary to literally like Chad Mark's discussions on          9 YouTube have been the subject of a fair amount of          10 commentary.          11 Again, I will note one of the problems with a          12 civil rights argument here is that prisoner-on-prisoner          13 sexual abuse in Alabama, as I understand, is 70 plus          14 percent African-American on white. I mean, so that's --          15 that's something that's pretty widely discussed by          16 ex-inmates.          17 So that's very unfortunate and should be          18 stopped, but I don't think that the fact that Alabama          19 has a lower rate and ratio of Black incarceration than          20 many other states and that violence in Alabama prisons          21 seems to be primarily focused on weaker white inmates is          22 evidence of racism. But I -- to be honest, I -- of          23 course, I haven't read this.          24 Q. Okay. So this was -- did you know that this          25 notice and letter were in Dr. Bagley's initial report?</p>	<p style="text-align: right;">Page 260</p> <p>1 results of racism in any real sense, and the thing --          2 the specific critique I make of Dr. Bagley is his          3 discussion of over-representation in the prison system,          4 not the idea that prison is an unpleasant place or          5 something like that. If you're making that argument,          6 you need to demonstrate that there is, in fact, a          7 situation where Alabama is underperforming the rest of          8 the country, certainly once you adjust for other things.          9 Q. Okay. Let's go to page 6 of this initial          10 report, the second last paragraph. And let me know when          11 you're there.          12 A. Uh-huh.          13 Q. Okay. Do you see the second last paragraph?          14 It reads, ADOC, which I'll represent to you means          15 Alabama's Department of Corrections' "prisons are          16 dangerous appears to be acknowledged at all levels. The          17 following data highlights that danger. Alabama          18 prisoners endure an extraordinarily high rate of          19 violence at the hands of other prisoners. Based on the          20 latest data available from the Department of Justice's          21 Bureau of Justice Statistics, Alabama prisons have the          22 highest homicide rate in the country."          23 A. Okay.          24 Q. And later on they say, "This is approximately          25 eight times the 2014 national rate."</p>

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<p style="text-align: right;">Page 261</p> <p>1 A. Okay.</p> <p>2 Q. Does this affect your analysis in any way?</p> <p>3 A. No. I mean, so my -- it's important to break</p> <p>4 down what racism is, at least in my conception, which is</p> <p>5 pretty common in political science. I think Alabama</p> <p>6 should clean up its prisons. That's a charitable cause</p> <p>7 to which I have given funds. I'm somewhat familiar with</p> <p>8 the situation in Alabama prisons, although from, let's</p> <p>9 say, civilian world media. And I'm actually fairly</p> <p>10 familiar with the directionality of a lot of that.</p> <p>11 So I don't think that that relates to the</p> <p>12 point that I'm making, which is that there is not an</p> <p>13 exceptionally high racialized rate of incarceration in</p> <p>14 Alabama.</p> <p>15 My point is that if you adjust for the crime</p> <p>16 rate, Alabama's racial gaps in incarceration seem to</p> <p>17 largely vanish. And this is not an -- and you can do</p> <p>18 this with FBI crime data. This crime data, we both</p> <p>19 know, is easily available. This is not an</p> <p>20 Alabama-specific issue.</p> <p>21 In fact, I probably much less want to go to</p> <p>22 prison in Alabama as a white guy than a black guy. I</p> <p>23 would not want to do either. But it's an interesting</p> <p>24 point. I don't really think it counters anything that</p> <p>25 I'm saying.</p>	<p style="text-align: right;">Page 263</p> <p>1 Q. Let me know when you're there.</p> <p>2 A. All right.</p> <p>3 Q. Okay. You see the sentence starting with,</p> <p>4 "However, given the number of well-performing Southern</p> <p>5 states just listed which are not known for exceptionally</p> <p>6 high rates of crime, it" would "also simply be the case</p> <p>7 that serious racism is no longer significantly more</p> <p>8 prevalent in the American South than in many other</p> <p>9 locales, race relations are arguably often better, and</p> <p>10 constant assertions that this is not so are becoming a</p> <p>11 bit of a calumny"?</p> <p>12 A. Calumny.</p> <p>13 Q. What do you mean by "well-performing" here in</p> <p>14 reference to Southern states?</p> <p>15 A. Well, this is another back and forth between</p> <p>16 myself and the good Dr. Burch. She argues that I say</p> <p>17 all the Southern states are well-performing and argues</p> <p>18 that on average Southern states have higher rates of</p> <p>19 crime than Northern states.</p> <p>20 What I'm actually doing here, as I recall, is</p> <p>21 pointing out that across these two -- across these two</p> <p>22 tables of incarceration rate and incarceration ratio,</p> <p>23 the South, in general, does pretty well. I mean, so in</p> <p>24 addition to Alabama, which has the second lowest</p> <p>25 incarceration ratio, you've got Mississippi at fourth in</p>
<p style="text-align: right;">Page 262</p> <p>1 Q. Okay.</p> <p>2 A. Yeah. It's worth noting, by the way, that the</p> <p>3 African-American homicide rate in the U.S.A. overall is</p> <p>4 33 per 100,000. So we are a violent society. I mean,</p> <p>5 Alabama should work to get this under control. But the</p> <p>6 overall rate of 7 homicides per 100,000 prisoners is</p> <p>7 actually well below the national homicide average for</p> <p>8 men. So I don't think that sounds like an</p> <p>9 extraordinarily brutal situation in every case. Alabama</p> <p>10 has some work to do. And I don't think it counters my</p> <p>11 point.</p> <p>12 Q. Okay. So did you consider Alabama's parole</p> <p>13 rates at all in your analysis?</p> <p>14 A. In my written analysis, no.</p> <p>15 Q. Okay. Let's return to your --</p> <p>16 MR. ROSBOROUGH: Can we take a break maybe?</p> <p>17 MR. CAMPBELL-HARRIS: Oh, yeah.</p> <p>18 MR. ROSBOROUGH: Take like a five-, ten-minute</p> <p>19 break.</p> <p>20 (A recess was taken from 3:26 to 3:40.)</p> <p>21 BY MR. CAMPBELL-HARRIS:</p> <p>22 Q. Okay. We're back on the record. Dr. Reilly,</p> <p>23 I'd like you to turn back to your report and</p> <p>24 specifically page 24.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 264</p> <p>1 at least one of these years, Georgia at fifth, Arkansas,</p> <p>2 so on down the line.</p> <p>3 Moving over to this next table, you've got the</p> <p>4 South and the Midwest, I mean, Missouri, Tennessee, and</p> <p>5 so on down the line.</p> <p>6 The only point that's being made with that one</p> <p>7 sentence is that a lot of the Southern states seem to be</p> <p>8 doing better in terms of Black/white incarceration</p> <p>9 ratios than the country overall, and not every one of</p> <p>10 those Southern states is known for exceptionally high</p> <p>11 rates of crime at all. That's it.</p> <p>12 Q. Okay. And just for the record, you were</p> <p>13 referring to Figure 6 when you say going "down the line"</p> <p>14 here?</p> <p>15 A. Yeah. Going down the line, yeah, it's</p> <p>16 Figure 6. Figure 5 actually makes this same point.</p> <p>17 Q. Okay.</p> <p>18 A. I mean, yeah. So in Figure 5, the -- in</p> <p>19 Figure 5 Alabama is the eighth best state in the</p> <p>20 country. The only states to incarcerate fewer</p> <p>21 African-Americans per capita were the island of Hawaii,</p> <p>22 Idaho, Alaska, Mississippi, Georgia, Nevada, and</p> <p>23 Arkansas. And if you move up to Figure 6 -- and</p> <p>24 Figure 6 is just a very -- I mean, this is 20 -- it's</p> <p>25 published 2022, prisoners in 2019. I mean, it's some of</p>



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<p style="text-align: right;">Page 265</p> <p>1 the more recent data you're going to have. You're</p> <p>2 usually lagging a couple of years.</p> <p>3 Q. Okay.</p> <p>4 A. So here, I mean, like the highest ratio is</p> <p>5 Washington, D.C., 30 to 1. But we don't need to go</p> <p>6 through all those.</p> <p>7 The bottom or least oppressive ten states --</p> <p>8 and again, "oppressive" is -- to some extent is banter</p> <p>9 there. But they included Mississippi, Georgia,</p> <p>10 Arkansas, Alabama. Florida is 11th. South Carolina is</p> <p>11 12th. Missouri is 13th. Tennessee is 14th.</p> <p>12 The only real point of well-performing</p> <p>13 Southern states, "well-performing" means they're doing</p> <p>14 well in terms of relative incarceration by race. And</p> <p>15 "not known for exceptionally high rates of crime" means</p> <p>16 that some of these states, like South Carolina, are not</p> <p>17 known for through the roof crime rates.</p> <p>18 Q. Okay. That's what you mean you by</p> <p>19 "well-performing"?</p> <p>20 A. What I mean by "well-performing," is that</p> <p>21 they're doing well in terms of incarceration rate and</p> <p>22 incarceration ratio.</p> <p>23 Q. Okay. Nothing else?</p> <p>24 A. No, nothing else.</p> <p>25 Q. You next say -- well, scratch that.</p>	<p style="text-align: right;">Page 267</p> <p>1 arguably often better, and then you cite -- let's see</p> <p>2 here. This is 2013. Sorry. No. Going back to --</p> <p>3 scratch that.</p> <p>4 When you talk about racism no longer being</p> <p>5 significantly more prevalent in the American South, you</p> <p>6 also cite this article from the radio station in 2013.</p> <p>7 Did you consider any peer-reviewed materials to come to</p> <p>8 this conclusion?</p> <p>9 A. Well, every popular press article that I cite</p> <p>10 is a reference to data from Pew or Gallup or to</p> <p>11 peer-reviewed material. I generally use the</p> <p>12 peer-reviewed material itself, but I have a computer.</p> <p>13 I mean, so when you see something that</p> <p>14 includes the data in an easily consumable fashion, I'll</p> <p>15 occasionally, about 5 percent of the time, use that. I</p> <p>16 don't view that as particularly unusual. I've done that</p> <p>17 as an occasional boost in academic articles.</p> <p>18 By the way, the topic of racial resentment,</p> <p>19 itself -- because, again, I've contributed to the</p> <p>20 academic literature at some length. The topic of racial</p> <p>21 resentment is itself another hotly contested sort of</p> <p>22 button issue.</p> <p>23 Racial resentment is the idea that there's</p> <p>24 something different from racism, as you probably know,</p> <p>25 that can be measured by a series of questions that you</p>
<p style="text-align: right;">Page 266</p> <p>1 How did you reach your opinion that serious</p> <p>2 racism here is no longer significantly more prevalent in</p> <p>3 the American South compared to many other locales?</p> <p>4 A. I used a pretty standard metric, in all</p> <p>5 honesty. And again, this is the subject of a bit of</p> <p>6 back and forth between myself and Dr. Burch. She says</p> <p>7 that the metric of a close relative marrying someone of</p> <p>8 a different race is a bit better.</p> <p>9 But I mean, like looking here -- I'm looking</p> <p>10 at the quant Pew data regarding anonymous attitudes</p> <p>11 towards interracial marriage. In 2021, large anonymized</p> <p>12 study, 93 percent of Southerners across all races,</p> <p>13 Blacks and whites, support interracial union. That's up</p> <p>14 from 4 percent of both groups, by the way.</p> <p>15 In the U.S.A. overall we're at 94 percent. Or</p> <p>16 because the South is in the U.S.A., let's say</p> <p>17 95 percent. But the idea that there are major gaps</p> <p>18 around the world -- this isn't the time to tell stories.</p> <p>19 When I went down to Kentucky, my friends in</p> <p>20 Chicago were generally a little worried, like are they</p> <p>21 going to have the banjos and the gut fiddles out. The</p> <p>22 reality is that that's -- that's not what's going on in</p> <p>23 Louisville. The attitudes are almost identical to what</p> <p>24 they were in the working class Chicago suburbs.</p> <p>25 Q. Okay. You also say, race relations are</p>	<p style="text-align: right;">Page 268</p> <p>1 use to create ordinal scales. The problem is that many</p> <p>2 of the questions are almost worthless in the opinion of</p> <p>3 a lot of scholars to look at this from sort of a</p> <p>4 skeptical perspective.</p> <p>5 I would say Maranto and Wolf, who worked on</p> <p>6 the recent article with me, have this opinion. This</p> <p>7 goes back to -- again, I mentioned Carmines in 1994,</p> <p>8 where the question is does -- an example might be, do</p> <p>9 you oppose affirmative action. That's a question used</p> <p>10 to measure racial resentment.</p> <p>11 Another question would be, my ancestors were</p> <p>12 Irish, Italian, and Jewish. We worked our way up.</p> <p>13 Black people have had it even harder, but they should</p> <p>14 work their way up, too.</p> <p>15 The problem with this is that when you give</p> <p>16 these questions to minorities, we prove to be even more</p> <p>17 racially resentful than whites. Because the majority of</p> <p>18 people think this stuff. So, I mean, the idea, well,</p> <p>19 you're using sort of popular press material to debunk</p> <p>20 this widely beloved idea, that -- I don't think that's</p> <p>21 valid.</p> <p>22 I think this is another thing where there's a</p> <p>23 massive ongoing debate and where the core idea is</p> <p>24 probably wrong. I don't -- I doubt racial resentment</p> <p>25 predicts much of anything.</p>

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<p style="text-align: right;">Page 269</p> <p>1 Q. Okay.</p> <p>2 A. There are a few articles about it. I'm not</p> <p>3 denying that.</p> <p>4 Q. Uh-huh. Are you familiar with David Wilson</p> <p>5 and Darren Davis' "Reexamining Racial Resentment:</p> <p>6 Conceptualization and Concept," that article?</p> <p>7 A. Yes, I am familiar with that article.</p> <p>8 Q. Okay. Did it change your analysis or opinions</p> <p>9 at all in this report?</p> <p>10 A. No. Read it several years back. Noticed it's</p> <p>11 cited here.</p> <p>12 The idea of racial resentment is essentially</p> <p>13 that these -- your reply to this question suite might be</p> <p>14 predictive of certain DV. It's an interesting idea.</p> <p>15 No, that didn't dramatically change my</p> <p>16 perspective, given the research that shows that</p> <p>17 minorities are more racially resentful than whites and</p> <p>18 so on. But we're also talking about different things.</p> <p>19 I mean, so the -- the point that I'm making, which is</p> <p>20 that if you take a traditional metric like attitudes</p> <p>21 towards interracial marriage -- and again, all of this</p> <p>22 is measured using dozens of different metrics. None of</p> <p>23 that's disputed. So if you look at attitudes toward</p> <p>24 interracial marriage, attitudes toward a close relative</p> <p>25 marrying someone of a different race for Blacks and</p>	<p style="text-align: right;">Page 271</p> <p>1 the 2002 piece, you can -- you can find the Alabama</p> <p>2 results. But Alabama is not an outlier on most of --</p> <p>3 most of these points.</p> <p>4 Q. Okay. So in Footnote 42, you say, "Hard data</p> <p>5 has indicated for some time that perceived race</p> <p>6 relations in the South are on par with...the rest of the</p> <p>7 United States of America, and sometimes even better"?</p> <p>8 A. Yes, that's correct. Now, whenever I cite a</p> <p>9 dated or I would say a classic article, that's to</p> <p>10 illustrate that a trend has gone on for a very long</p> <p>11 time.</p> <p>12 Q. Uh-huh.</p> <p>13 A. So yeah, I mean, 25 years ago Gallup did one</p> <p>14 of the better comprehensive polls. I mean, you guys</p> <p>15 asked some questions about how wide ranging are these</p> <p>16 polls earlier.</p> <p>17 Q. Uh-huh.</p> <p>18 A. And they found 70 percent of Southerners -- and</p> <p>19 this is both races -- rated relations between whites and</p> <p>20 Blacks as good or very good or very good or somewhat</p> <p>21 good. The poll-takers described this as similar to the</p> <p>22 country as a whole. Southerners' opinions on</p> <p>23 discrimination in the workplace and in public life are</p> <p>24 quite similar to those for other regions and became a</p> <p>25 published piece by Josephine Mazzuca.</p>
<p style="text-align: right;">Page 270</p> <p>1 whites, again, Dr. Burch, fighting gamely on this one,</p> <p>2 says that that is only down to 14 percent in terms of</p> <p>3 opposition. That's down from 99 to 14, though.</p> <p>4 I mean, support for interracial marriage used</p> <p>5 to be at 4 percent among American whites and Blacks.</p> <p>6 Support for your sister marrying the enemy used to be at</p> <p>7 1 percent. So we've seen really dramatic shifts. And</p> <p>8 the South has shifted as dramatically as virtually any</p> <p>9 other region. I can't imagine someone saying something</p> <p>10 like "mixed couple" or "domino couple" today, observing</p> <p>11 people of different races at an event. And I mean,</p> <p>12 that -- that's reflected in all the data.</p> <p>13 Q. Okay. Nothing you cite here on page 24 about</p> <p>14 serious racism no longer being significantly more</p> <p>15 prevalent in the American South or about race relations</p> <p>16 improving is Alabama-specific?</p> <p>17 A. Well, let's see. Well, the first one is</p> <p>18 Florida-specific. But no, in all seriousness, this is</p> <p>19 Gallup. This is -- the Gallup 2002 data breaks out each</p> <p>20 Southern state, I will say. "The Color of Justice" is</p> <p>21 state by state, and obviously that includes Alabama.</p> <p>22 But that's not about race relations.</p> <p>23 No, again, that -- no, none of that is</p> <p>24 Alabama-specific. The point is that these are large</p> <p>25 national trends that also exist in Alabama. Looking at</p>	<p style="text-align: right;">Page 272</p> <p>1 I mean, so yes. That's -- and by the way,</p> <p>2 when you -- I see the new data on race relations. I</p> <p>3 don't think that makes the point that race relations are</p> <p>4 getting worse and that's centered in the South. There's</p> <p>5 a specific reason for that.</p> <p>6 Q. Okay. So you have looked at more recent</p> <p>7 polling from Gallup about race relations in the South?</p> <p>8 A. Yes, I've looked at more -- and again, I've</p> <p>9 looked at more recent poll -- race relations in the</p> <p>10 South, I think, are still better than race relations in</p> <p>11 the country overall. That's not the focus of an article</p> <p>12 by me.</p> <p>13 What we've seen with race relations -- and</p> <p>14 you've got the Gallup chart where the end is 33 percent</p> <p>15 for both groups or whatever. That actually is what we</p> <p>16 would call an extreme outlier or a media-caused outlier.</p> <p>17 And I think for everyone to kind of the right of Mao,</p> <p>18 that's become acknowledged in the academy.</p> <p>19 So what we've seen over the past couple of</p> <p>20 years, everyone's heard the term "racial reckoning."</p> <p>21 There's been a very intense conversation about race in</p> <p>22 the U.S.A., which at times has included the Left and the</p> <p>23 Right shooting at each other in the street; I mean, Kyle</p> <p>24 Rittenhouse, Jacob Blake.</p> <p>25 Kenosha, Wisconsin, is about 80 miles north of</p>



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<p style="text-align: right;">Page 273</p> <p>1 where my house used to be. Used to be. It's a --</p> <p>2 substantial damage done there. But so that had a major</p> <p>3 effect on race relations or perceptions of race</p> <p>4 relations that's not really reflected in attitudes that</p> <p>5 we would traditionally define as racist.</p> <p>6 What I mean by that is, so you can ask people,</p> <p>7 would you be willing to vote for a qualified Black</p> <p>8 presidential candidate. I know that hasn't changed in</p> <p>9 the past ten years. It's about 8 percent of whites say</p> <p>10 they wouldn't vote for a Black person in that position.</p> <p>11 4 percent of Blacks say they wouldn't vote for a white</p> <p>12 person in that position, as I understand it.</p> <p>13 You can ask people if they would be</p> <p>14 comfortable with an interracial marriage. We're</p> <p>15 currently at 96 percent for minorities and 93 percent</p> <p>16 for whites. So whites are trailing a little on now.</p> <p>17 You know, you can ask people, are you</p> <p>18 comfortable with a close relative marrying across racial</p> <p>19 lines, where currently Burch gave -- Dr. Burch gave the</p> <p>20 lowest figure -- or the highest I've seen, which is 14</p> <p>21 percent said no, 86 percent said yes across all groups.</p> <p>22 So none of that has changed for a decade.</p> <p>23 What has changed is that people in the social media era</p> <p>24 have looked at their phones and seen what looks like</p> <p>25 constant ethnic tension and decided race relations are</p>	<p style="text-align: right;">Page 275</p> <p>1 like that is increasing.</p> <p>2 Q. Okay. But you agree that 34 percent of</p> <p>3 Americans said race relations in 2021 are somewhat bad?</p> <p>4 A. Yes. I would agree that after a great deal of</p> <p>5 woke shouting about how the U.S.A. is one of the most</p> <p>6 oppressive countries in the world, I mean, to be only</p> <p>7 half bantering, yes, many people believe race relations</p> <p>8 are very bad.</p> <p>9 Q. Okay. So you disagree that race relations</p> <p>10 have worsened since 2022?</p> <p>11 A. Object -- do you mean since 2002?</p> <p>12 Q. 2002, yeah.</p> <p>13 A. Objectively, no. I think that there are real</p> <p>14 objective questions and then there are perceptions. So</p> <p>15 I mean, you are pointing out that one of the sources I</p> <p>16 used for improved race relations back there was a</p> <p>17 perception measure.</p> <p>18 But I also used the interracial marriage</p> <p>19 measure. I also used most of the classic measures.</p> <p>20 This is entirely a perception measure. And this is an</p> <p>21 important distinction. Interracial marriage rates are</p> <p>22 up. Rates of diversity in business are up to the point</p> <p>23 where McKinsey and Bain are writing about this. People</p> <p>24 just feel race relations are bad.</p> <p>25 Q. Okay. But you agree that the survey reflects</p>
<p style="text-align: right;">Page 274</p> <p>1 worse. That doesn't have anything to do with any actual</p> <p>2 measure of race relations getting worse.</p> <p>3 Q. How -- okay. First, I'm going to introduce as</p> <p>4 Plaintiffs' Exhibit 14, which is the more recent Gallup</p> <p>5 survey that you were referencing in your last answer.</p> <p>6 A. Okay.</p> <p>7 (Plaintiffs' Exhibit 14 was marked for</p> <p>8 identification.)</p> <p>9 Q. And so, just for the record, you agree that</p> <p>10 this more recent polling shows a large decline in the</p> <p>11 belief that race relations are very or somewhat good?</p> <p>12 A. Yes, despite the improvement of actual race</p> <p>13 relations.</p> <p>14 Q. Okay. When you say "despite the improvement</p> <p>15 of actual race relations," how you are you determining</p> <p>16 that?</p> <p>17 A. Any -- any metric that up until 2008 was</p> <p>18 uncontroversial. The number of interracial marriages</p> <p>19 last year was, I believe, 17 percent of newlyweds.</p> <p>20 Q. Is there any other reasons why you think this</p> <p>21 survey is unreliable?</p> <p>22 A. I think the data is -- I mean, I use Gallup</p> <p>23 myself. I think the data is perfectly reliable.</p> <p>24 Q. Okay.</p> <p>25 A. I don't think it means racism or something</p>	<p style="text-align: right;">Page 276</p> <p>1 that in 2001, 7 percent of respondents said race</p> <p>2 relations are very bad and in 2021, that number -- that</p> <p>3 percentage increased to 23 percent? This is on page</p> <p>4 2 --</p> <p>5 A. Yes. I agree that that's --</p> <p>6 Q. -- of the survey.</p> <p>7 A. -- that's what people said despite the</p> <p>8 tangible improvement in race relations. I mean,</p> <p>9 something like a quarter of those people would be in</p> <p>10 interracial relationships. They just feel that the race</p> <p>11 war is coming because people tell them that. It's on</p> <p>12 NBC, Fox, so on.</p> <p>13 Q. Okay. So even though people have said that</p> <p>14 race relations are getting worse, you do not agree with</p> <p>15 that?</p> <p>16 A. I think that there are objective metrics that</p> <p>17 have generally been used across disciplines that are</p> <p>18 used alongside perceptual metrics, and I think that's</p> <p>19 important. And I'll give a brief example.</p> <p>20 Q. Okay.</p> <p>21 A. The journal "World Population Review" for a</p> <p>22 very long time ranked the most and least racist</p> <p>23 countries in the world. The U.S.A. was generally the</p> <p>24 third or fourth least racist country in the world. The</p> <p>25 ranking was based on a calculus which used a number of</p>

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<p style="text-align: right;">Page 277</p> <p>1 factors, including actual home sales and what people 2 said anonymously. 3 They used a calculus of how willing you were 4 to live next to someone of a different race or caste or 5 whatever. This varied across countries. 6 In 2021, following the George Floyd death and 7 the first year of people fighting each other and mass 8 media lunacy, they moved to a purely kind of 9 opinion-based metric, which is how racist you thought 10 the country was. So your -- the U.S.A. dropped from 11 third best in the world to 169th. And I think we saw a 12 great deal of that kind of thing, not coincidentally, 13 within one very short period of time. 14 And I think it's silly, frankly. Like, it's 15 just odd for a country where a quarter of the young 16 people are in interracial relationships to think race 17 relation have gotten worse since the '60s. No, I don't 18 think that's correct. 19 Q. Okay. Because the number of interracial 20 relationships have increased, is that your sole 21 reasoning or -- 22 A. No. Because any metric you can use, the 23 diversity of business and military, interracial 24 relationships, attitudes toward interracial 25 relationships, the work-for question, the vote-for</p>	<p style="text-align: right;">Page 279</p> <p>1 one another. 2 But when I refer to segregated schools in 3 1958, I mean segregated schools. If you were dating a 4 football player from the other school, you couldn't show 5 up there and use the water fountain. So if you're 6 asking me about those schools, yes, I think legal 7 segregation is bad. Today I certainly think we should 8 make efforts to link hands with one another more often. 9 Q. Okay. Let's go to page 25 of your report. 10 Okay. In it you write "Obviously, both the state of 11 Alabama and these states United have a long, contested, 12 and sometimes tortious history of racism and ethnic 13 conflict." 14 So you agree that Alabama has a tortious 15 history of racism? 16 A. Yes, I agree the U.S.A. as a whole and almost 17 every country. Alabama, yes. 18 Q. And when you say "tortious history of racism," 19 what exactly are you referring to here? 20 A. Well, I mean, you're talking about slavery, 21 segregation, Jim Crow. I mean, I'm quite familiar with 22 American history, which helps underline my general 23 disagreement with many of the points raised by the other 24 side in this case. I will note for a sentence, we've 25 also seen, following that, I mean, Brown v Board, the</p>
<p style="text-align: right;">Page 278</p> <p>1 question, any objective metric indicates that this 2 change is -- is upon us. 3 I mean, we're a reasonably diverse room here. 4 I mean, it's something that's absolutely expected 5 everywhere in American sort of up, middle class life and 6 has been for 25 plus years. 7 There's a department of diversity everywhere 8 I've worked. I've hired people who helped head it up. 9 I mean, denying this is bizarre. And we've recently 10 gone through a period of -- I don't mean to keep adding 11 examples here. But I mean, there are other questions 12 that ask people if they think race relations are worse 13 than they were in the '60s. And I believe it's 14 33 percent of people say yes -- or 35 percent of people 15 say yes. This is the third group. So no, that's crazy. 16 Q. Okay. 17 A. It's objectively nuts. We had segregated 18 schools back then. Like the Titans hadn't been 19 remembered yet. 20 Q. Do you think segregated schools are a sign of 21 poor race relations? 22 A. I think it depends what you mean. Obviously, 23 we've talked about this before. I think that in many 24 states, including Alabama, it would be better for a 25 number of reasons if people lived in closer proximity to</p>	<p style="text-align: right;">Page 280</p> <p>1 Civil Rights Act, 50 years of affirmative action. You 2 know, obviously imperfect stage by stage, but at this 3 point today, I note in the next sentence, seven to eight 4 of the highest-earning ten American populations are 5 people of color. As I recall, one of them is a heavily 6 Black African population. So you can't simply look at a 7 gap and say that that's due to racism. But yes, I do 8 recall our history. 9 Q. Okay. When did that tortuous history of 10 racism end in Alabama? 11 A. Well, I don't think anything ever exactly -- I 12 don't think there's a date you can point to. But I also 13 think that you couldn't point to a date when the 14 glorious American history of civil rights activism 15 began, when the first American soldiers from the Union 16 marched south blaring out the "Battle Hymn of The 17 Republic" or something like that. 18 The question is today whether the residual 19 impact of racism, which is still there, is a causal 20 factor when countered-weighted by the massive systems 21 that we have put in place to balance it, one, and by all 22 the other things that we've discussed today, two, when 23 it comes to outcome disparities like those we're talking 24 about today, three. And I don't think it is. 25 Q. Okay. So you --</p>

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<p style="text-align: right;">Page 281</p> <p>1 A. Does history ever end? I don't think so. 2 Fukuyama was wrong. 3 Q. Okay. So you cannot point to a precise date 4 in which you believe the tortious history of racism in 5 Alabama ended? 6 A. I cannot point to a date when racism ended, 7 no. 8 Q. Okay. Do you believe the tortious history of 9 racism in Alabama is ongoing? 10 A. I believe that -- not in any real sense. I 11 believe that racism still exists. So because racism has 12 a history, it's possible for a skilled debater, which 13 both of us are, to argue that racism is still ongoing in 14 its former form or something like that. 15 However, in reality I think that things exist 16 in measurable units. 17 Q. Okay. 18 A. And I don't think that the measurable quantum 19 of racism today is what explains most outcomes we see in 20 the U.S.A. 21 Q. Okay. What is the racism that is still 22 ongoing in Alabama? 23 A. I think that that would be up to each 24 Alabamian to describe. But, I mean, racism takes many 25 forms, individual bigotry. I mean, people have looked</p>	<p style="text-align: right;">Page 283</p> <p>1 rape in the law, as I understand, was ended in 1993. 2 Any feminist girlfriend will be glad to tell you this. 3 So I think that the simple fact that horrible things 4 have happened in the past gives me sympathy for the 5 people that they have happened to. But it's important 6 that that sympathy not override kind of the predictive 7 logic that underlies both of our professions. 8 Q. Okay. Do you think that because -- do you 9 think that a -- because a significant portion of 10 Alabama's population went to these segregated schools -- 11 does that have any impact on voter turnout or voter 12 registration rates in Alabama? 13 A. I, frankly, have no idea. If I went to a 14 segregated institution in a state -- I mean, the South, 15 in the past, as well as the West between whites and 16 natives came, while it didn't make -- political 17 scientists would say came fairly close to the edge of 18 racial war or at least localized conflict. If I grew up 19 in that environment, I would damn sure want to vote. I 20 mean, as soon as rights came in, I would become 21 extremely politically active, and I would arm myself. 22 So, I mean, that could go either way. I don't 23 know. I would have to look and see whether, say, older 24 African-American, quote/unquote, church women were less 25 likely to vote than the average in Alabama. I don't see</p>
<p style="text-align: right;">Page 282</p> <p>1 at residual systems from the past, so on, just as there 2 are counterweights to racism like formalized 3 institutional affirmative action in the U.S.A. 4 Q. Okay. Would you agree if there were residual 5 systems that -- racist systems, as you refer to them -- 6 if those are ongoing, would you agree that's an 7 indication of racism? 8 A. Well, if there were still ongoing racist 9 systems, yes, I would say that is racist. 10 Q. Okay. 11 A. The question is whether that explains what 12 we're looking at, given the counterweights, et cetera. 13 Q. Okay. Okay. Is it significant to you that a 14 significant percentage of Alabama's current voters grew 15 up in segregated schools back when Black folks couldn't 16 drink from the same water fountains as white people? 17 A. It would depend on what we're asking about 18 that being significant toward. Is it significant toward 19 my level of sympathy toward, say, lower adult literacy 20 rates in Alabama? Hell, yeah. Is it something that I 21 think is relevant to many of the questions we're 22 discussing, like the performance of the grandchildren of 23 these people in often integrated schools? Not 24 necessarily. 25 I think that -- so I mean, women -- marital</p>	<p style="text-align: right;">Page 284</p> <p>1 any reason to suspect that that's true. 2 Q. Okay. You write later on that the "7-8 of the 3 highest earning populations are" current "people of 4 color" or "currently 'people of color.'" 5 Are any of these populations Black Alabamians? 6 A. No, none of these populations are specifically 7 Black Alabamians. 8 Q. Okay. 9 A. Although, I mean, when you look at South 10 Africans and Nigerians and so on, you do see -- you'd 11 see plenty of Black people. 12 Q. Okay. 13 A. Alabama itself, not at all to be glib, would 14 not make it into, say, the 20 or so highest earning 15 populations. So, again, many variables. 16 Q. Okay. Why would Alabama not make it into that 17 metric? 18 A. Because the average salary in Alabama would 19 not place Alabamians, white Alabamians, for that matter, 20 among the top 20 mostly Asian, African descended, et 21 cetera, groups that lead the national income. 22 Now, there are obviously differences in income 23 and in cost of living among states. In the state of 24 Kentucky, although my -- I mean, I have some profitable 25 sidelines. My baseline salary is, let's say, \$65,000,</p>



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<p style="text-align: right;">Page 285</p> <p>1 as a school teacher. So that would seem very low in</p> <p>2 most places I've ever lived. I've worked on bullpen</p> <p>3 floors in downtown Chicago and so on.</p> <p>4 But in Kentucky, it's actually quite</p> <p>5 reasonable. The cost of living is almost nothing.</p> <p>6 Alabama doesn't come near this -- this roster.</p> <p>7 Q. And you mentioned in the seven to eight</p> <p>8 highest earning populations, one of them was South</p> <p>9 African?</p> <p>10 A. South Africans, yes.</p> <p>11 Q. And that can include white Afrikaners,</p> <p>12 correct?</p> <p>13 A. It would include -- white Afrikaners, Black</p> <p>14 Goshu and white British all do pretty well. Black</p> <p>15 Zulus, for some reason, as I recall, do less well.</p> <p>16 That's why I said seven to eight. Most of them are</p> <p>17 just -- I mean, so the question is whether seven or</p> <p>18 eight of them are minorities.</p> <p>19 I mean, the best educated population is</p> <p>20 undisputably Nigerians. The highest earning population</p> <p>21 is undisputably Indian Americans with a slant toward,</p> <p>22 quote/unquote black-skinned Dravid Indians. I mean, so</p> <p>23 there's really no debate there. It's just do we include</p> <p>24 South Africans? I usually don't.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 287</p> <p>1 mentioned five or six -- can be observed everywhere in</p> <p>2 the country. I mean, there are four national charts in</p> <p>3 the report. They correlate little at all, or if at all,</p> <p>4 with current or past rates of bias. I've discussed how</p> <p>5 you can measure that; past history of the state, racism</p> <p>6 observed in the state, so on. And they seem to be</p> <p>7 smaller or better in Alabama than in most other places.</p> <p>8 I'm not necessarily making a claim that every</p> <p>9 single metric meets every single one of these -- these</p> <p>10 four points that are outlined in the sentence. The</p> <p>11 point is simply that these gaps are almost everywhere,</p> <p>12 and in all almost every case they can be explained by</p> <p>13 these different variables.</p> <p>14 Now you're asking about voter turnout</p> <p>15 specifically?</p> <p>16 Q. Uh-huh. And voter registration.</p> <p>17 A. My focus was -- but okay. For both voter</p> <p>18 registration and voter turnout, I mean, age limits. So</p> <p>19 out-of-wedlock birth. And again, the sentence itself is</p> <p>20 simply describing the national existence of all these</p> <p>21 gaps to very similar extents, which we all seem to</p> <p>22 pretty much agree on.</p> <p>23 But okay. So I mean, how would each of these</p> <p>24 variables impact, you know, age limits, the population</p> <p>25 of people that are old enough to vote. Criminality, and</p>
<p style="text-align: right;">Page 286</p> <p>1 A. Too high a number of whites. Not that there's</p> <p>2 anything wrong with that.</p> <p>3 Q. Okay. I'm -- at the end of your analysis</p> <p>4 here, you say it is your professional opinion that gaps</p> <p>5 in voter turnout correlate little, if at all, with</p> <p>6 current or past rates of bias. I just want to know how</p> <p>7 you reached that conclusion.</p> <p>8 A. Let's see.</p> <p>9 Q. Starts from the third line. Sentence begins</p> <p>10 in the fourth bottom line.</p> <p>11 A. Okay. So you're -- so are you talking about</p> <p>12 "Many or most of these, indeed, can be observed</p> <p>13 literally every in the country"?</p> <p>14 Q. Uh-huh.</p> <p>15 A. Okay. So now, again, we're not talking about</p> <p>16 any -- with a broad sentence like this -- and I can</p> <p>17 defend the specific claim and so on. But there are a</p> <p>18 number of things that are discussed in the report. One</p> <p>19 of them is RPV, racial differences in voting between</p> <p>20 whites and African-Americans. One of them is test</p> <p>21 scoring. One of them is age. One of them is voter</p> <p>22 turnout. One of them is crime rates. One of them is</p> <p>23 incarceration rates.</p> <p>24 So when I say many or most of these, what I'm</p> <p>25 saying is that many or most of those -- we just</p>	<p style="text-align: right;">Page 288</p> <p>1 this is -- I think is the big one, I mean, when you talk</p> <p>2 about 15 percent of the population being disenfranchised</p> <p>3 on the basis of a past felony.</p> <p>4 We might actually agree that something should</p> <p>5 be done about felony disenfranchisement. But felons</p> <p>6 can't vote. So if you take a group of people and their</p> <p>7 population is X minus 15, and they trail the population</p> <p>8 X by 13, I don't -- I don't think we need to really come</p> <p>9 to any complex explanation of why that is. I think</p> <p>10 that's one of kind of my major points.</p> <p>11 So that would be the effect of criminal</p> <p>12 behavior. That would be the effect of age. I don't</p> <p>13 argue that every single one of these variable impacts</p> <p>14 voter turnout, but I would -- I would strongly speculate</p> <p>15 that family structure impacts voter turnout and so on</p> <p>16 down the line.</p> <p>17 Q. Do you think it's a coincidence that felons</p> <p>18 can vote in Vermont and Maine but nowhere else in the</p> <p>19 country?</p> <p>20 A. Well, I mean, when you -- so this is kind of</p> <p>21 like the term that people sometimes use, conspiracy of</p> <p>22 everyone to the left of Mitch McConnell, like when</p> <p>23 people talk -- if you hear, say, someone on the Charlie</p> <p>24 Kirk Right say they're conspiring against us, the</p> <p>25 conspiracy being the Senate voting.</p>



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<p style="text-align: right;">Page 289</p> <p>1 I mean, it would seem that almost every state</p> <p>2 in the Union, including states with large poor white</p> <p>3 populations like Idaho and Alaska, don't let felons</p> <p>4 vote. So race might play a role there. I would assume</p> <p>5 that, looking at Idaho, Alaska, Wyoming, North Dakota,</p> <p>6 South Dakota, class probably plays a much bigger role. I</p> <p>7 don't know.</p> <p>8 I sound a little irritable.</p> <p>9 I would assume that when you're talking about</p> <p>10 Vermont, you're talking about an upper middle class,</p> <p>11 very small outlier. This is sometimes called the</p> <p>12 Scandinavian comparison in political science. People</p> <p>13 will say, for example, what's the homicide rate in</p> <p>14 Sweden, in debates about gun ownership, for example.</p> <p>15 And a glib but real reply is, well, what's the</p> <p>16 homicide rate for Swedes here. You're talking about</p> <p>17 small suburban communities that are all racially</p> <p>18 homogenous, mostly upper middle class. That's who</p> <p>19 happen to immigrate.</p> <p>20 It's the same thing. I don't really think</p> <p>21 Vermont is very representative of either Alabama or --</p> <p>22 what's a poor white state -- Oklahoma.</p> <p>23 Q. Okay. All right. I want you, Dr. Reilly, to</p> <p>24 go back to page 6 of your report for a moment. Figure</p> <p>25 1, "Party affiliation Among Blacks by State."</p>	<p style="text-align: right;">Page 291</p> <p>1 chart?</p> <p>2 A. Yeah, I see Alabama.</p> <p>3 Q. Okay. And you see under the Republican lean</p> <p>4 category it's 68 percent Republican?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Okay. Do you see a state with a higher</p> <p>7 Republican lean among white voters?</p> <p>8 A. Let's see. No. I see many that come close.</p> <p>9 None that are -- none that are higher.</p> <p>10 Q. In fact, Alabama is the highest percent of</p> <p>11 white Republicans in the country?</p> <p>12 A. Okay.</p> <p>13 Q. Yes?</p> <p>14 A. Yes, certainly looks that way.</p> <p>15 Q. Okay. Also the percentage of white voters</p> <p>16 that are Democrat, Democratic leaning, Alabama has the</p> <p>17 lowest percentage, correct?</p> <p>18 A. It looks like it. I mean, you're seeing very</p> <p>19 similar percentages in many of these states. I mean,</p> <p>20 28 percent in Texas, 27 percent in Virginia, 29 percent</p> <p>21 in Kansas. I mean, the white -- no, actually, that's</p> <p>22 not true. Wyoming is tied at 50 percent.</p> <p>23 Q. Uh-huh.</p> <p>24 A. I mean, so it's right down there, yes. I</p> <p>25 don't think anyone ever disputed that.</p>
<p style="text-align: right;">Page 290</p> <p>1 A. All right.</p> <p>2 Q. So you said -- earlier you referred to both</p> <p>3 Black affiliation by party -- party affiliation among</p> <p>4 Blacks by state and also whites by state.</p> <p>5 A. Okay.</p> <p>6 Q. But you only included Blacks by state in your</p> <p>7 report, right?</p> <p>8 A. Okay. Yes, that's correct.</p> <p>9 Q. Okay. I'm going to mark what I am presenting</p> <p>10 as Exhibit 15.</p> <p>11 (Plaintiffs' Exhibit 15 was marked for</p> <p>12 identification.)</p> <p>13 Q. And I'll represent to you that this is the</p> <p>14 party affiliation among -- do you recognize this</p> <p>15 document?</p> <p>16 A. Yeah. Okay. Pew by whites.</p> <p>17 Q. And this is the same survey that you referred</p> <p>18 to earlier in your testimony today?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. I want to -- it's double sided, so I</p> <p>21 want you to turn and just take a brief moment to</p> <p>22 familiarize yourself with the document and let me know</p> <p>23 when you're ready to talk about it.</p> <p>24 A. Yeah, I'm ready to talk about it now.</p> <p>25 Q. Do you see Alabama listed, first state on this</p>	<p style="text-align: right;">Page 292</p> <p>1 Q. Okay. So it's tied for last place with</p> <p>2 Wyoming?</p> <p>3 A. It's right down there. I mean, Mississippi.</p> <p>4 Yes, in this particular year -- South Carolina went past</p> <p>5 it. In this particular year, yeah, it looks like it's</p> <p>6 right down there at the bottom.</p> <p>7 Q. So are there other -- let's take a look, for</p> <p>8 example, at -- I don't know -- Pennsylvania. You see</p> <p>9 that white voters there -- 44 percent of white voters</p> <p>10 are registered as Republicans, 41 percent registered as</p> <p>11 Democrats?</p> <p>12 A. Okay.</p> <p>13 Q. That's very different from Alabama, correct?</p> <p>14 A. Yes. That particular state has a different</p> <p>15 registered -- yes, that particular state has a different</p> <p>16 registration rate from Alabama.</p> <p>17 What you're going to find is that in virtually</p> <p>18 every state -- I can count these up for you if you want.</p> <p>19 But I mean, like, in almost every state, so one, two,</p> <p>20 three, four -- California breaking the pattern -- five,</p> <p>21 six, seven, eight nine. Count that as a tie. Ten, 11,</p> <p>22 12, 13, 14, 15. Okay. 16, 17, 18, 19, 20, 21, 22, 23,</p> <p>23 24, 25, 26. 34, 35.</p> <p>24 Let's see. One, two, three, four, five, six,</p> <p>25 seven, eight. Yeah, I mean, so you find two things.</p>

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<p style="text-align: right;">Page 293</p> <p>1 One, you find that in at least -- well, 35 in this year, 2 of the states in the Union, more whites -- generally 3 substantially more whites vote for the GOP than for the 4 Democrats. 5 What you're also going to find is, I would 6 guarantee that in all 50 of these states, more whites 7 than Blacks vote for the Republicans. So, I mean, 8 Alabama is a leader in at least one of these categories. 9 But I don't see Alabama -- Alabama is not an 10 outlier. I mean, in terms of white voter registration 11 or white lean here, Alabama is a couple of points ahead 12 of Mississippi, right up there with a number of states 13 that are out West that don't have any particular racial 14 history. 15 And in general, again, you find that around 16 60 percent of whites, in fact, often over that, are 17 Republican voters. So yeah, I mean, there's nothing 18 particularly mysterious here. 19 Q. Okay. How many states are there with a 20 10 percent party affiliation lean among white voter gap 21 on this chart? 22 A. 10 percent party afil -- what do you mean? 23 Q. Like gap between Republic leaning and then 24 Democrat leaning. 25 A. I don't know. I'd have to add them up again.</p>	<p style="text-align: right;">Page 295</p> <p>1 BY MR. CAMPBELL-HARRIS: 2 Q. Sorry. I thought you had finished. 3 A. So okay. California here, for example, whites 4 that are Republican lean Republican 41, plus 14 percent 5 of Independents, African-Americans 8 percent. I mean, 6 you see substantial well over that 20 percent mark 7 that's sometimes used to indicate polarization gaps in 8 pretty much every state in the Union, the large majority 9 of them. I don't want to exaggerate here. 10 But there's no -- there are very, very few 11 states where you would not see at least a 20 to 30 12 percentage point gap, almost none, I would speculate, in 13 Black/white partisan voting. 14 Q. Okay. How many other states in this survey 15 have over 60 percent of white voters listed as 16 Republican or Republican lean besides Alabama? 17 A. As Republican or -- Republican or Republican 18 lean. I assume that's a fairly small number. And then, 19 I mean, you'd have to go down to South Carolina, 20 59 percent; South Dakota, 58 percent; Tennessee, 57 21 percent; Texas, 58 percent; Utah, 55 percent. 22 I would assume that there are obviously 23 questions you would ask that could indicate, at least at 24 first glance, that Alabama is, to some extent, different 25 from the overall American map, but don't necessarily</p>
<p style="text-align: right;">Page 294</p> <p>1 I know there are 35 where there are more -- often 2 substantially more Republicans than there are Democrats. 3 Q. Okay. But you would agree that there are 4 fluctuations in this chart with party affiliation 5 amongst white voters? Yes? 6 A. Well, I mean, there are -- so I think there 7 are two things that I would say pretty consistently. 8 One, the large majority of states are going to have a 9 generally pretty substantial Republic voting majority 10 among whites. In fact, there's a pretty famous graphic, 11 maybe -- I don't know who did it. Maybe Peter Silla. 12 But if you just look at only whites over 21 13 voting, the entire country would be red. I mean, that's 14 not really challenged anywhere, as far as I understand. 15 That might vary year by year. 16 But yeah, I mean, so, one, you are going to 17 have a mass majority GOP voting by whites. And also, 18 two, literally state by state you're going to have more 19 white than Black voting in every state for the 20 Republicans. Alabama might be a somewhat extreme case. 21 But I mean, let's look at some of these here. 22 Q. Well, Dr. Reilly -- sorry. 23 MR. DAVIS: Had you finished your response, 24 Dr. Reilly? 25</p>	<p style="text-align: right;">Page 296</p> <p>1 think that's true to a striking extent. 2 I mean, when you look at Democratic lean -- 3 when you look at Dem lean, just talking about this 4 pretty openly and honestly, I mean, in a lot of these 5 states -- I mean, Alaska Dem lean, Dem, all whites, 30 6 percent; Arkansas, 31 percent; Florida, 37 percent; 7 Georgia, 25 percent; Idaho, 30 percent. Those are very 8 typical white Dem voting percentages. Independents, 9 remember, are going to swing 50 percent to the GOP. 10 So I'm not surprised by this at all. If the 11 point is that Alabama is one of the more conservative 12 white states, I'm not surprised about that either. 13 Q. Based on these figures, and what we discussed 14 earlier today, does Alabama have the most extreme 15 racially polarized voting in the country? 16 MR. DAVIS: Object to the form. 17 A. No. Probably no. I mean, so looking at this, 18 I -- so to actually properly answer that question I 19 would have to break out the Dem, lean Dem, and Rep, lean 20 Rep for Blacks and whites in every state. That may be a 21 question down the road. But I suspect not. I mean, if 22 you look at a number of the states in the country, I 23 mean, 6 percent Republican voting, 7 percent Republican 24 voting, I would not necessarily -- in fact, I wouldn't 25 assume that's the case.</p>

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<p style="text-align: right;">Page 297</p> <p>1 Q. Okay. Of the states you listed on Figure 1 on</p> <p>2 page 6 of your report, and based on what I have</p> <p>3 presented to you in Plaintiffs' Exhibit 15, does Alabama</p> <p>4 have the worst racially polarized voting of the states</p> <p>5 you listed in your report?</p> <p>6 MR. DAVIS: Object to the form.</p> <p>7 A. I can't offhand tell without doing 11</p> <p>8 mathematical analyses or a little more. I mean, if you</p> <p>9 take South Carolina -- so let's see. You've got</p> <p>10 7 percent Republican lean for African-Americans in South</p> <p>11 Carolina, so you've got 7 percent, and 59 percent for</p> <p>12 Caucasians. So it's a 52 percent gap.</p> <p>13 Now, in Alabama you've got 11 percent and</p> <p>14 68 percent. I mean, so that's a 57 percent gap. I</p> <p>15 don't know. I mean, I'm not going to go through all of</p> <p>16 them. It seems like Alabama's certainly up there, but</p> <p>17 there are also a lot of gaps right around this size.</p> <p>18 I'm not sure that they're -- in terms of what</p> <p>19 RPV is, I'm not sure that there's a great deal of</p> <p>20 difference between 57 percent and 52 percent. And</p> <p>21 again, the question is, is that caused by racism in any</p> <p>22 conventional sense or is that caused by partisanship?</p> <p>23 Q. Okay. But you would agree that party</p> <p>24 affiliation among white voters varies widely across the</p> <p>25 country at least relative to party affiliation among</p>	<p style="text-align: right;">Page 299</p> <p>1 A. There it is.</p> <p>2 Q. -- you reviewed this report before today?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any reactions or responses to</p> <p>5 Dr. Liu's critiques of your report?</p> <p>6 A. Well, Dr. Liu's critique is simply that what</p> <p>7 I'm doing is using a limited or univariant or bivariant</p> <p>8 analysis to look at this. This gets back to the</p> <p>9 conversation that we pretty much had earlier. I don't</p> <p>10 think that that is a response that deflates the</p> <p>11 critique.</p> <p>12 Really, a lot of the questions here are</p> <p>13 questions that a judge or a jury would have to decide to</p> <p>14 some extent. I mean, is -- are simple differences in</p> <p>15 partisan voting between people who happen to be of</p> <p>16 different races troubling RPV? So, I mean, what I find</p> <p>17 is that rates of African-American voting, and to a large</p> <p>18 extent rates of voting in Alabama, look like rates of</p> <p>19 voting nationally.</p> <p>20 That's -- I mean, that's the response.</p> <p>21 Dr. Liu says I should have used a multi-variate</p> <p>22 analysis. I don't think that's necessary.</p> <p>23 Q. You don't think it it's necessary to perform a</p> <p>24 multi-variate analysis to determine racially polarized</p> <p>25 voting?</p>
<p style="text-align: right;">Page 298</p> <p>1 Black voters?</p> <p>2 A. Party -- so, yes, but party affiliation among</p> <p>3 Black voters does not vary widely. And this is why I</p> <p>4 focused on Black voters because Black voters are almost</p> <p>5 all Democrats.</p> <p>6 So there are a couple of ways of looking at</p> <p>7 this. It is accurate to say that white voters are not</p> <p>8 all Republicans. But in 35 of the U.S. states, even per</p> <p>9 this chart, the majority of white voters are Republicans</p> <p>10 or Republican leaners. And in every state there is a</p> <p>11 gap of roughly similar size -- or in most states there's</p> <p>12 a gap of roughly similar size between Black and white</p> <p>13 voters in terms of party affiliation.</p> <p>14 I'd actually have to check that, that</p> <p>15 statement. There's probably some outliers, like D.C.,</p> <p>16 where you got 77 percent blue whites but very, very few.</p> <p>17 Q. Okay. We can put this away for now.</p> <p>18 MR. DAVIS: What was this exhibit number?</p> <p>19 MR. CAMPBELL-HARRIS: 15.</p> <p>20 BY MR. CAMPBELL-HARRIS:</p> <p>21 Q. Okay. I want to go back to what I have marked</p> <p>22 as Plaintiffs' Exhibit 3, which was Dr. Liu's rebuttal</p> <p>23 report.</p> <p>24 A. Okay. All right.</p> <p>25 Q. Dr. Reilly --</p>	<p style="text-align: right;">Page 300</p> <p>1 MR. DAVIS: Object to the form.</p> <p>2 A. Often, no.</p> <p>3 Q. Okay.</p> <p>4 A. In many cases multi-variate analyses are</p> <p>5 superior. In this case the simple question is, does</p> <p>6 adjusting for partisanship remove most or all of the</p> <p>7 effect of race.</p> <p>8 Q. Okay. Do you have any other responses to</p> <p>9 Dr. Liu's rebuttal report?</p> <p>10 A. No, not at the moment.</p> <p>11 Q. Okay. You can put that away.</p> <p>12 A. Okay.</p> <p>13 Q. Next I'd like you to pull up Exhibit 7, which</p> <p>14 we have premarked as Dr. Burch's rebuttal report.</p> <p>15 A. Okay.</p> <p>16 Q. Okay. We've discussed Dr. Burch's rebuttal</p> <p>17 report quite a bit already, but do you have any</p> <p>18 additional responses generally to her rebuttal?</p> <p>19 MR. DAVIS: Object to the form.</p> <p>20 A. No.</p> <p>21 Q. Okay. Let's go the bottom of page 4 of her</p> <p>22 rebuttal. Last full sentence, it starts with, "In 2020,</p> <p>23 38.6 percent of votes in the Alabama general election</p> <p>24 were cast by people age 60 and older - people who were</p> <p>25 at least school age in 1965."</p>

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<p style="text-align: right;">Page 301</p> <p>1 A. Okay.</p> <p>2 Q. We spoke a little bit about this already, but</p> <p>3 do you have any reactions to that fact?</p> <p>4 A. I think segregation is bad. I mean, so the --</p> <p>5 without being glib about this, the basic question would</p> <p>6 be, is there some impact of past racism, past ethnic</p> <p>7 conflict, so on, in Alabama, once everyone can register</p> <p>8 to vote, that would explain, with everything else</p> <p>9 adjusted for, say, lower rates of voter turnout among</p> <p>10 older Black members of the church or something like</p> <p>11 that. And you'd have to first demonstrate that there is</p> <p>12 a lower rate of turnout among older Black members of the</p> <p>13 church.</p> <p>14 Looking at this, actually just as a competent</p> <p>15 mathematician in my head, 38.6 percent of all votes in</p> <p>16 the Alabama general were cast by people age 60 and</p> <p>17 older? I mean, unless you guys have a really unusual</p> <p>18 demographic breakdown, they're voting at a very high</p> <p>19 rate. So good for them. I don't think indicates that</p> <p>20 the past has prevented these citizens and warriors from</p> <p>21 voting at all.</p> <p>22 Q. Okay. Would you agree that the discriminatory</p> <p>23 effects of Alabama's educational systems are not limited</p> <p>24 to the end of the era of de jure segregation?</p> <p>25 MR. DAVIS: Object to the form.</p>	<p style="text-align: right;">Page 303</p> <p>1 my report. I mean, he essentially says that -- he does</p> <p>2 not seem to object to any of the data I provided. He</p> <p>3 describes it at one point as what-aboutism. I don't</p> <p>4 think it is. He says the Moynihan report was</p> <p>5 discredited historically. I don't think it is, looking</p> <p>6 at the out-of-wedlock birth rates that I provided.</p> <p>7 And then he moves on to a debate with the</p> <p>8 historians. So no, I don't have any -- any lengthy</p> <p>9 critiques.</p> <p>10 Q. Okay. You testified earlier that you have a</p> <p>11 Twitter account?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 A. Yes, I do.</p> <p>15 Q. I'd like to ask you about some of those</p> <p>16 tweets.</p> <p>17 A. Okay.</p> <p>18 Q. You tweeted on April 9th of this year that</p> <p>19 "The primary issues holding back the GOP, statistically,</p> <p>20 are abortion and the" perceptions "of racism," right?</p> <p>21 A. I'm sure I did.</p> <p>22 MR. DAVIS: Can he see the tweet if you're</p> <p>23 going to ask him about it?</p> <p>24 MR. CAPPBELL-HARRIS: Yeah. Sure.</p> <p>25 MR. ROSBOROUGH: Why don't you mark this?</p>
<p style="text-align: right;">Page 302</p> <p>1 A. Yeah, I mean -- so I think that a lot of these</p> <p>2 are theoretical questions. Like I would imagine that</p> <p>3 going to a worse school than a potential rival or</p> <p>4 countryman would have negative effects.</p> <p>5 However, the question -- you'd have to be able</p> <p>6 to measure the extent to which those negative effects</p> <p>7 exist once again we've adjusted -- once again, after</p> <p>8 we've adjusted for all the other things that we're</p> <p>9 discussing.</p> <p>10 Very often when you put historical racism in a</p> <p>11 model, you do find some effect. Again, since we're</p> <p>12 looking at a series of gaps that are very similar across</p> <p>13 the country, however, that's almost never the driver.</p> <p>14 Not much more to say than that, really.</p> <p>15 Q. Okay. Okay. Let's go to -- we can put this</p> <p>16 away.</p> <p>17 A. Okay.</p> <p>18 Q. Let's go to Dr. Bagley's report, which I</p> <p>19 have already marked as -- rebuttal report, which is</p> <p>20 Exhibit 4. Now, we looked at this report already</p> <p>21 briefly earlier. I'm just going to ask, do you have any</p> <p>22 other responses to Dr. Bagley's critique of your report?</p> <p>23 MR. DAVIS: Object to the form.</p> <p>24 A. None in depth. Dr. Bagley seems to primarily</p> <p>25 provide a histor -- I don't think Dr. Bagley responds to</p>	<p style="text-align: right;">Page 304</p> <p>1 BY MR. CAPPBELL-HARRIS:</p> <p>2 Q. I'm going to premark this as Exhibit 16.</p> <p>3 (Plaintiffs' Exhibit 16 was marked for</p> <p>4 identification.)</p> <p>5 Q. There you go.</p> <p>6 A. Uh-huh. Okay.</p> <p>7 Q. Okay. Do you still agree with that statement?</p> <p>8 A. I think there's some truth to it. I will note</p> <p>9 that nothing that I say on Twitter or equivalent social</p> <p>10 media platforms should be taken as equivalent to my</p> <p>11 comments here in various academic articles and works of</p> <p>12 literature.</p> <p>13 Here I'm responding to a close friend, I think</p> <p>14 ex-girlfriend, known as The Feminist TM. So anyway,</p> <p>15 yeah, I think there's some truth there. It would be</p> <p>16 dishonest to deny that.</p> <p>17 Abortion, I think, is the larger factor</p> <p>18 variable there. You've specifically seen 8, 9 point</p> <p>19 swings away from the GOP after their sudden interest in</p> <p>20 fetal empowerment. I mean, Dobbs had a major impact in</p> <p>21 several states you wouldn't have expected, like Kansas,</p> <p>22 where apparently people also have sex.</p> <p>23 So the perception of racism, I think, is -- it</p> <p>24 does exist. Again, the question is whether the</p> <p>25 perception of racism is tied to real racism, whether the</p>



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<p style="text-align: right;">Page 305</p> <p>1 perception of racism is at all unique to Southern 2 states, so on. I'd say there's some truth here. 3 Q. Okay. So there is some truth to the 4 perception of racism holding the GOP back? 5 A. There is some truth to the fact that some 6 minority voters perceive the Republic party as racist. 7 I don't see how anyone could deny that. 8 Q. Okay. And like, Black voters also perceive 9 the Republican party as racist? 10 A. Yes. And that's one of many reasons, 11 including support for a kind of supportive state, if you 12 will, that people -- people vote as they do. 13 Q. Okay. You also tweeted that -- I'm going to 14 premark this as exhibit -- Plaintiffs' Exhibit 17. 15 (Plaintiffs' Exhibit 17 was marked for 16 identification.) 17 A. Yeah, I don't have a problem with this one at 18 all. 19 Q. Okay. On April 10th, 2024, you tweeted that 20 virtually every Black victim of police killings? 21 A. Didn't say that. 22 Q. BLM martyrs was a scumbag criminal? 23 A. Yeah, every prominent Black Lives Matter 24 martyr, Michael Brown, Freddie Gray. You can argue that 25 some of these people should not have been killed. I've</p>	<p style="text-align: right;">Page 307</p> <p>1 anyone dies. But I mean, so Mr. Blake turned around. 2 He allegedly had a knife. I find the testimony there a 3 bit conflicted. But he gets shot. He'd already been 4 tased, so on. I think scumbag criminal is an accurate 5 description. 6 And I think -- last line. But I think the 7 idea that we're supposed to pretend that these people 8 are heroes because the police might have used excessive 9 force is just bizarre. You can argue excessive force 10 without pretending that -- I mean, George Floyd himself 11 was an armed robber. It's just -- there's a real trend 12 to the people that are made into lionized figures by the 13 American Left. 14 Q. Okay. Just for the record, to be clear, "BLM" 15 here means Black Lives Matter? 16 A. Yes. And "BLM martyr" means very prominent 17 figure who received, say, marches and protests in the 18 U.S.A. It doesn't mean any person who is shot by the 19 police. 20 Q. Okay. 21 A. There are a thousand people who are shot by 22 the police, just as there are 20,000 people shot by 23 other citizens every year. But if you break down the 24 list of them, I mean, go through the record -- say, 25 Alton Sterling was a multiply convicted pedophile.</p>
<p style="text-align: right;">Page 306</p> <p>1 made that argument myself. 2 But I mean, like this -- this brother here, 3 "Police fire 96 shots in 41 seconds, killing Black man." 4 That's because the guy shot at a cop. The guy who 5 posted this, Matt Thornton, whose is a martial arts 6 instructor, as I understand, actually knew the cop that 7 was shot at. I mean, I'll check and verify that. 8 But like, yeah, almost every one of these 9 cases turned out to be an easily avoidable situation 10 involving a criminal who got into a violent 11 confrontation with a cop. I'm actually glad to say this 12 is on video. 13 So yeah, the Jacob Black case, I think is the 14 archetypal case, the case that led to the Kyle 15 Rittenhouse shooting. He's no hero either. But I mean, 16 Jacob Blake was a rapist who went back to his victim's 17 house. Like he -- there was a -- there was an 18 outstanding warrant for this guy for manually raping a 19 woman. No one doubted that he'd done it. 20 The woman herself had filed a complaint, in 21 excruciating detail. The guy goes back to her house, 22 apparently tries to take a van full of kids. The cops 23 fight with him. There are three different officer 24 testimonies about what had happened. 25 Finally, unfor -- it's always unfortunate when</p>	<p style="text-align: right;">Page 308</p> <p>1 You'll find that everyone that Kyle Rittenhouse shot, 2 interestingly enough -- he's probably fairly fortunate 3 those were white felons, but I mean, you had a 4 pedophile, like someone who'd actually been convicted of 5 raping little boys. 6 Q. Okay. 7 A. You had a burglar who -- 8 MR. ROSBOROUGH: Let him finish. 9 A. You had a guy who actually beat up his 10 grandmother during a home robbery. Now, the grandmother 11 beater was different. You had a burglar, a domestic 12 abuser, and not a conflicted -- he was beating up older 13 relatives of his, and you had the home invasion guy. 14 MR. DAVIS: Dr. Reilly, I'm sure these 15 lawyers are going to let you provide any important 16 context -- 17 THE WITNESS: I'm sorry. 18 MR. DAVIS: Yeah. He's asking questions. 19 Just provide answers to those questions, and 20 they'll ask you more. 21 THE WITNESS: So that's one of the tweets I 22 had strong opinions about, Bro. 23 MR. DAVIS: Okay. 24 BY MR. CAMPBELL-HARRIS: 25 Q. Was Michael Brown a scumbag criminal?</p>



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<p style="text-align: right;">Page 309</p> <p>1 A. I'd rather not give my public opinion.</p> <p>2 Q. Yes or no, was Michael Brown a scumbag</p> <p>3 criminal?</p> <p>4 A. Yeah, sure. I mean, Michael Brown was a guy</p> <p>5 who committed a strong-arm robbery the day he was shot.</p> <p>6 He was shot while trying to take a gun from a cop.</p> <p>7 Q. Okay. Was Trayvon Martin a scumbag criminal?</p> <p>8 A. I don't think I'd put Trayvon Martin in that</p> <p>9 category, but Trayvon Martin himself was shot during a</p> <p>10 fight that he started with a local neighborhood</p> <p>11 watchman. He, himself, was also not a martyr, not a</p> <p>12 hero of any kind. But I'd rank him above the scumbag</p> <p>13 criminal category.</p> <p>14 Q. Okay. Trayvon Martin started a fight with</p> <p>15 George Zimmerman, is that what you're saying?</p> <p>16 A. Yes, that's what emerged in largest undisputed</p> <p>17 fashion during the actual testimony in the case where</p> <p>18 George Zimmerman was acquitted. The original claim,</p> <p>19 which was falsely edited by the news network, was that</p> <p>20 George Zimmerman was unprovokedly following Trayvon</p> <p>21 Martin, he called the police and said he was Black, had</p> <p>22 a wide-set nose.</p> <p>23 The actual situation, far more complex.</p> <p>24 Q. Was Tamir Rice a scumbag criminal?</p> <p>25 A. Is there a point to these?</p>	<p style="text-align: right;">Page 311</p> <p>1 A. Not offhand.</p> <p>2 Q. Okay.</p> <p>3 A. I'm very familiar with the names Jacob Blake,</p> <p>4 George Floyd, Michael Brown, so on down the line, the</p> <p>5 people who were lionized enough to generate riots and</p> <p>6 get giant gold statues. We all know who I'm talking</p> <p>7 about.</p> <p>8 Q. Are you familiar with Eric Gardner?</p> <p>9 A. Yes, I am familiar with Eric Gardner.</p> <p>10 Q. Would you consider him a scumbag criminal?</p> <p>11 A. I would definitely consider him a criminal. I</p> <p>12 don't know if I would use the label "scumbag." Almost</p> <p>13 all of these people, Alton Sterling, so on, had</p> <p>14 extraordinarily lengthy criminal records and were shot</p> <p>15 during unnecessary confrontations with the police.</p> <p>16 I'm trying to think of the name of the guy who</p> <p>17 was firing at random at a bunch of police officers out</p> <p>18 of the window of a woman's house. He, himself, received</p> <p>19 at least some protests. There was another woman,</p> <p>20 McKayla something, perhaps, who was shot by a cop while</p> <p>21 trying to stab another woman with a knife. I mean --</p> <p>22 MR. DAVIS: Wait for questions.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MR. CAMPBELL-HARRIS:</p> <p>25 Q. We can move on. I'm going to mark what I'm</p>
<p style="text-align: right;">Page 310</p> <p>1 Q. Yes. Was Tamar Rice a scumbag criminal?</p> <p>2 A. Tamar Rice, no, but I could give you ten that</p> <p>3 were if you'd like.</p> <p>4 Q. Was Breonna Taylor a scumbag criminal?</p> <p>5 A. Breonna Taylor's boyfriend, who shot a cop,</p> <p>6 was. So virtually everyone involved in the Breonna</p> <p>7 Taylor case was. Breonna Taylor, no.</p> <p>8 And I notice you're only picking those people</p> <p>9 who are, arguably, somewhat sympathetic.</p> <p>10 Breonna Taylor was the long-term partner of a</p> <p>11 fairly major drug dealer nicknamed Chap, for El Chapo,</p> <p>12 in Louisville, the city I live next to.</p> <p>13 The Breonna Taylor case was initiated when the</p> <p>14 police began investigating her man for selling drugs.</p> <p>15 And there are a whole series of incidents around this.</p> <p>16 A body was found in her car at one point.</p> <p>17 I'm actually pretty intimately familiar with</p> <p>18 the Breonna Taylor case. The police served a warrant on</p> <p>19 the home of her new boyfriend, and her new boyfriend --</p> <p>20 perhaps suspecting it was her old boyfriend, the guys at</p> <p>21 the door -- opened fire and almost crippled a cop. So I</p> <p>22 mean, when you're describing virtually any party in that</p> <p>23 case other than Ms. Taylor, the answer there would be</p> <p>24 yes, scumbag criminal.</p> <p>25 Q. Are you familiar with the name, Elijah McKay?</p>	<p style="text-align: right;">Page 312</p> <p>1 representing to you is another tweet.</p> <p>2 A. Okay.</p> <p>3 Q. And it's going to be Plaintiffs' Exhibit 18.</p> <p>4 (Plaintiffs' Exhibit 18 was marked for</p> <p>5 identification.)</p> <p>6 A. Okay.</p> <p>7 Q. Are you familiar with this tweet, Mr. Reilly?</p> <p>8 A. Yeah.</p> <p>9 Q. So you said that the lowest Black -- the</p> <p>10 lowest average Black IQ was in Alabama?</p> <p>11 A. Yeah, but the -- yes, at this time. But the</p> <p>12 whole point here -- Zach Goldberg is a hereditary</p> <p>13 writer. The point here is that IQ gaps in states like</p> <p>14 Alabama are small and not due to genetics. That's the</p> <p>15 entire thrust of this debate. I'm pretty famously not</p> <p>16 an IQ hereditarian.</p> <p>17 Q. Okay. A couple of more.</p> <p>18 A. One sentence note.</p> <p>19 MR. DAVIS: Wait for questions.</p> <p>20 THE WITNESS: Sure.</p> <p>21 BY MR. CAMPBELL-HARRIS:</p> <p>22 Q. One last Tweet, what I'm going to mark as</p> <p>23 Plaintiffs' Exhibit 19.</p> <p>24 (Discussion off the record.)</p> <p>25 (Plaintiffs' Exhibit 19 was marked for</p>



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<p style="text-align: right;">Page 313</p> <p>1 identification.)</p> <p>2 Q. Okay. So here you say, "The only problem for</p> <p>3 the Euros here is the second 2nd 'tradition'.....does</p> <p>4 not exist. U.S.A. desegregated our Deep South in 1954."</p> <p>5 And then you continue with some percentages;</p> <p>6 is that correct?</p> <p>7 A. Yeah. So a lot of these seem totally</p> <p>8 noncontroversial, Counselor. The -- I'm responding to</p> <p>9 someone who says killing Jews is a tradition, we have a</p> <p>10 similar one.</p> <p>11 Q. Okay. Do you believe the American South</p> <p>12 desegregated in 1954?</p> <p>13 A. I believe the Brown v Board case was decided</p> <p>14 in 1954.</p> <p>15 Q. But do you believe the South desegregated in</p> <p>16 1954?</p> <p>17 A. A process followed that, including Brown, too.</p> <p>18 You have a character limit.</p> <p>19 Q. Okay. Are you -- do you know when the South,</p> <p>20 as you put it, desegregated?</p> <p>21 A. I think that there are a number of landmarks</p> <p>22 over the years as re Southern desegregation, and I think</p> <p>23 we've talked about them at length today.</p> <p>24 I'm going to read this tweet very briefly.</p> <p>25 "We have a tradition called 'killing Jews' which</p>	<p style="text-align: right;">Page 315</p> <p>1 Alabama -- reviews and so on were taken by Alabama and</p> <p>2 most other states in 1954.</p> <p>3 The point of this tweet is not comprehensive</p> <p>4 analysis of the state of Alabama. That's why it's on</p> <p>5 Twitter.</p> <p>6 Q. Okay. I'm going to put that away. I think</p> <p>7 those are all my questions, Dr. Reilly.</p> <p>8 A. Fair enough. And again, none of these tweets</p> <p>9 are academic analyses.</p> <p>10 THE COURT REPORTER: Signature?</p> <p>11 MR. DAVIS: I will have some questions. Do</p> <p>12 you need a break?</p> <p>13 THE WITNESS: No, I'm fine.</p> <p>14 MR. DAVIS: Do you guys need a break?</p> <p>15 MR. ROSBOROUGH: No. Fine.</p> <p>16 (Discussion off the record.)</p> <p>17 BY MR. DAVIS:</p> <p>18 Q. Dr. Reilly, has a significant portion of your</p> <p>19 career been spent studying and writing about racial</p> <p>20 performance gaps in various socioeconomic categories?</p> <p>21 A. Yes, I'd say it's fair to say that.</p> <p>22 Q. How long has that been an area of interest for</p> <p>23 you?</p> <p>24 A. Well, I've been a tenured track professor at a</p> <p>25 state university for at least ten years now.</p>
<p style="text-align: right;">Page 314</p> <p>1 consists of drinking wine and you have a tradition</p> <p>2 called racial segregation which consists of keeping</p> <p>3 Blacks in ghettos and" keeping them -- "killing them</p> <p>4 arbitrarily. Yes, we are the racists."</p> <p>5 This is a Spaniard called LittleMammith saying</p> <p>6 that Americans today are engaging in segregation and</p> <p>7 killing Black people for no reason. And I am making fun</p> <p>8 of that.</p> <p>9 Q. Okay. Do you believe Alabama desegregated in</p> <p>10 1954?</p> <p>11 A. I believe the process of desegregation began</p> <p>12 in 1954. It took some time. Again, I'm sure there's a</p> <p>13 follow-up tweet.</p> <p>14 Q. Do you believe Alabama desegregated in 1954,</p> <p>15 yes or no?</p> <p>16 A. That's not a yes or no question. I believe</p> <p>17 the Brown v Board decision, which ended de jure</p> <p>18 segregation on many metrics, occurred in that year.</p> <p>19 Obviously, there were follow-ups that occurred in many</p> <p>20 states, including Alabama.</p> <p>21 Q. Do you believe Alabama started to desegregate</p> <p>22 in 1954?</p> <p>23 A. I believe the very -- I mean, there are</p> <p>24 historical analysis of these. I believe the very first</p> <p>25 steps towards desegregation by law were taken by</p>	<p style="text-align: right;">Page 316</p> <p>1 Q. So has this interest in racial performance</p> <p>2 gaps and their causes been an interest to you your</p> <p>3 entire time as an academic career?</p> <p>4 MR. CAPPBELL-HARRIS: Objection to form. You</p> <p>5 can answer.</p> <p>6 A. It's actually been an interest since before my</p> <p>7 current job. I wrote my -- yeah. But I wrote my</p> <p>8 dissertation about one of these topics. You probably</p> <p>9 don't want me to go on at length here. But in response</p> <p>10 to what's called the Hacker question -- a guy named</p> <p>11 Andrew Hacker, very famously -- we all went to</p> <p>12 college -- back in 1992 asked a group of white guys how</p> <p>13 much they'd have to be paid to become black, and the</p> <p>14 average answer was \$50 million.</p> <p>15 This became extremely a cocktail party thing.</p> <p>16 As I remember it from grad school, it's the idea of the</p> <p>17 value of whiteness in a racist society. Cheryl Harris,</p> <p>18 a famous academic, wrote a paper about this. And I</p> <p>19 did -- almost by accident, one of my first papers looked</p> <p>20 at what -- I assumed African-American and Asians would</p> <p>21 perhaps take -- like, would change their ethnic -- using</p> <p>22 the same question, would do this for free or would pay</p> <p>23 money to do it.</p> <p>24 But no, it turned out that minorities value</p> <p>25 our racial identities slightly more than whites do. And</p>

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<p style="text-align: right;">Page 317</p> <p>1 there were a couple of other things I threw in the model</p> <p>2 to predict identity valuation, like linked fate, for</p> <p>3 example. So yeah, it's been an interest for 15, 20</p> <p>4 years.</p> <p>5 Q. As you've studied this issue, have you applied</p> <p>6 your experience and skills in statistics and political</p> <p>7 science to the topic?</p> <p>8 A. Sure. I would definitely say so in the</p> <p>9 articles and in the books. And also I'm a running</p> <p>10 contributor to a large number of intellectual and</p> <p>11 sometimes academic journals around the country, that</p> <p>12 sort of thing.</p> <p>13 Q. As you've looked into different socioeconomic</p> <p>14 gaps among races, have the conclusions that you reached</p> <p>15 surprised you?</p> <p>16 MR. CAPPBELL-HARRIS: Objection. Form. You</p> <p>17 can answer.</p> <p>18 A. Very often. Yeah. I think one assumption is</p> <p>19 that a number of people that look at this -- Roland</p> <p>20 Fryer came up earlier and myself. I mean, there are</p> <p>21 people like Tom Sowell that are conservative. But</p> <p>22 many -- I teach at a historically Black college and many</p> <p>23 of us are just people who decided to look beyond what</p> <p>24 was sort of approved, beyond like common academic models</p> <p>25 like Marxism, feminism -- and I'm not teasing here --</p>	<p style="text-align: right;">Page 319</p> <p>1 word for the people over the hill that means the dirty</p> <p>2 enemy. Like, "Sioux" is an abbreviation of an</p> <p>3 Anishinaabe insult that means rattlesnake.</p> <p>4 So, I mean, I think that that's something that</p> <p>5 humans fight against, like excessive lust or greed is.</p> <p>6 No, I don't think that's something novel. I don't think</p> <p>7 that's something that can be eliminated, in fact, in any</p> <p>8 legal method.</p> <p>9 Q. In your opinion, has there been a different</p> <p>10 level of historic discrimination in, say, the states</p> <p>11 with Jim Crow laws and states that did not have Jim Crow</p> <p>12 laws?</p> <p>13 MR. CAPPBELL-HARRIS: Objection. Form. You</p> <p>14 can answer.</p> <p>15 A. Yes, I think that's fair to say. In one</p> <p>16 sentence here, I think that it's commonly said, well,</p> <p>17 there was discrimination everywhere. Sure. But we can</p> <p>18 probably agree that slavery is worse than having a sales</p> <p>19 covenant on your house or something like that.</p> <p>20 Q. If the wealth gap were caused entirely by</p> <p>21 historic racism, would you expect the gap in, say,</p> <p>22 Alabama to be significantly different from the gap in,</p> <p>23 say, Connecticut?</p> <p>24 MR. CAPPBELL-HARRIS: Objection. Form. You</p> <p>25 can answer.</p>
<p style="text-align: right;">Page 318</p> <p>1 constructivism, these are things that are commonly used</p> <p>2 today, and just looked at what actually predicts things,</p> <p>3 like does study time -- from the Nigerian guy, Ogbu,</p> <p>4 Dr. Ogbu -- predict going to school, doing well in</p> <p>5 school. And the answer is obviously yeah.</p> <p>6 So I found a lot of things like that that</p> <p>7 seemed kind of obvious, but where everyone seemed to be</p> <p>8 saying, well, no, that can't be the case and where that</p> <p>9 was indeed the case.</p> <p>10 Q. In your opinion, if there is a wealth gap</p> <p>11 between Black and white Alabamians, is the mere</p> <p>12 existence of that gap proof of racism?</p> <p>13 MR. CAMPBELL-HARRIS: Objection. Form. You</p> <p>14 can answer.</p> <p>15 A. Of contemporary racism, not at all, no.</p> <p>16 Q. You don't deny that racism exists?</p> <p>17 A. No.</p> <p>18 Q. You don't deny that it existed in the past?</p> <p>19 A. I think that dislike of the out group is</p> <p>20 probably the oldest human vice. The first -- so I was</p> <p>21 talking once with a -- a native American elder would be</p> <p>22 an honest term, although it sounds like nonsense.</p> <p>23 But I mean, one thing he told me was that</p> <p>24 every tribe he's familiar with has a word for their</p> <p>25 group that means the people or the good people and a</p>	<p style="text-align: right;">Page 320</p> <p>1 A. Obviously yes. Alabama was a slave state, a</p> <p>2 Jim Crow state. Yes, the gaps being the same would</p> <p>3 imply that the past 50 to 60 years of social activism</p> <p>4 has had some impact.</p> <p>5 Q. That was the follow-up question. In fact, is</p> <p>6 the gap in various socioeconomic categories in Alabama</p> <p>7 significantly different from what you would see in, say,</p> <p>8 Northern states?</p> <p>9 A. Well, in general, I think it's fair to say no.</p> <p>10 If you look at -- I mean, so when you guys brought up</p> <p>11 test scores and IQ, the point there was that those gaps</p> <p>12 are actually small and shrinking in the U.S.A. I mean,</p> <p>13 and they are -- they are emphatically not larger in the</p> <p>14 South than in the North.</p> <p>15 When you're talking about income, I haven't</p> <p>16 looked exactly at wealth over the past couple of years.</p> <p>17 Income, that's very similar in terms of gaps.</p> <p>18 Incarceration, the South has an advantage in terms of</p> <p>19 gaps, so on down the line.</p> <p>20 Q. Is it common in the social sciences when</p> <p>21 you're looking at an issue, you're studying something,</p> <p>22 to look at what other researchers may have found on the</p> <p>23 topic?</p> <p>24 A. Well, yes. I mean, in terms of reports like</p> <p>25 this one, where the question might be why I indeed or</p>



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<p style="text-align: right;">Page 321</p> <p>1 another expert used Pew data or used -- or I'm citing</p> <p>2 O'Neill from 2005 or something like that, you're not</p> <p>3 going to go do the study yourself again.</p> <p>4 Q. Didn't Dr. Burch cite to other</p> <p>5 people's studies occasionally?</p> <p>6 MR. CAMPBELL-HARRIS: Objection. Form. You</p> <p>7 can answer.</p> <p>8 A. Well, all of the experts on both sides.</p> <p>9 You're not going to study each of the 80 topics</p> <p>10 yourself. I'm not -- I can't do the census. I don't</p> <p>11 mean to make fun of it. But yes, all that Pew data, how</p> <p>12 do people vote in 80 states -- or 50 states, of course.</p> <p>13 You obviously -- you're going to rely on the wisdom of</p> <p>14 others for that.</p> <p>15 Q. In this case, are you simply parroting other</p> <p>16 people's opinions or are you expressing your own?</p> <p>17 MR. CAMPBELL-HARRIS: Objection. Form. You</p> <p>18 can answer.</p> <p>19 A. Well, I mean, in this case it would be bizarre</p> <p>20 to accuse me of parroting other people's opinions</p> <p>21 because we're involved in a legal matter, so we're sort</p> <p>22 of aggressively responding to one another's reports.</p> <p>23 No, I think that even many of the sources I used,</p> <p>24 Brookings, for example, there are some minor</p> <p>25 disagreements between myself and them about</p>	<p style="text-align: right;">Page 323</p> <p>1 Q. But it is it.</p> <p>2 A. Okay.</p> <p>3 Q. First, before I ask about the chart,</p> <p>4 Dr. Reilly, do you find it true that when people talk</p> <p>5 about -- do you find it true that oftentimes when people</p> <p>6 talk about racially polarized voting, they may mean</p> <p>7 something different from the way someone else uses that</p> <p>8 term?</p> <p>9 A. I think that there are a great many terms that</p> <p>10 are used like that in social science and upper end</p> <p>11 conversation. Racism itself one of them.</p> <p>12 Q. Let's look at a couple of -- well, first off,</p> <p>13 if I say blue state, what does that mean to you?</p> <p>14 A. That would obviously mean a Democratic</p> <p>15 majority state.</p> <p>16 Q. Let's look at California.</p> <p>17 A. Okay.</p> <p>18 Q. In California is a white voter more likely to</p> <p>19 vote Republican than a Black voter?</p> <p>20 A. Substantially. You've got 41 percent for</p> <p>21 whites, and it's probably going to be about 3 percent</p> <p>22 for -- no, 8 percent for Blacks.</p> <p>23 Q. And is a Black voter in California more likely</p> <p>24 to support the Democratic party than a white voter in</p> <p>25 California?</p>
<p style="text-align: right;">Page 322</p> <p>1 interpretations. And that's what research is. You look</p> <p>2 at the raw data someone found. You run the data</p> <p>3 yourself again, and then you see what you think of it.</p> <p>4 Q. At various times in this deposition you have</p> <p>5 been asked why you did not note an Alabama-specific</p> <p>6 measurement in your report.</p> <p>7 A. Okay.</p> <p>8 Q. Is it not true that some of the plaintiffs'</p> <p>9 experts cited Alabama-specific measurements in their</p> <p>10 reports?</p> <p>11 MR. CAMPBELL-HARRIS: Objection. Form. You</p> <p>12 can answer.</p> <p>13 A. Yes. Some of them did. I think their focus</p> <p>14 would be making Alabama look distinct. My focus would</p> <p>15 be on comparing Alabama to the rest of the country and</p> <p>16 seeing whether these are, in fact, distinct unusual</p> <p>17 gaps.</p> <p>18 Q. Would you look at Plaintiffs' Exhibit 15?</p> <p>19 A. Okay.</p> <p>20 Q. And also page 6 of your report, Figure 1 on</p> <p>21 page 6 of your report.</p> <p>22 A. Figure 1 on page 6. All right. This is mine.</p> <p>23 All right. Here we go.</p> <p>24 Q. That's my copy.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 324</p> <p>1 A. Substantially. I mean, the Black voter lean</p> <p>2 in California, 75 percent here is the lowest I've ever</p> <p>3 seen, whereas for whites it's 46 percent.</p> <p>4 In most of the states where whites are,</p> <p>5 quote/unquote, blue they are essentially tied. There</p> <p>6 are a few exceptions like D.C., but Connecticut's 40 to</p> <p>7 44. That's pretty typical.</p> <p>8 Q. What's the most extreme example than the</p> <p>9 District of Columbia? In the District of Columbia is a</p> <p>10 white voter more likely to vote Republican than a Black</p> <p>11 voter in the District of Columbia?</p> <p>12 A. Yes. By 2 or 3 to 1. A white guy is</p> <p>13 15 percent. A Black guy is 6 percent.</p> <p>14 Q. So earlier when you said racially polarized</p> <p>15 voting patterns in Alabama are seen elsewhere in the</p> <p>16 country, is that what you meant, that just about</p> <p>17 anywhere you go white voters are more likely to support</p> <p>18 Republicans than Black voters and Black voters are more</p> <p>19 likely to support Democrats than white voters?</p> <p>20 MR. DAVIS: Objection. Form. You can answer.</p> <p>21 A. That's something pretty specific, actually,</p> <p>22 which is that there's more than, let's say, a 20 percent</p> <p>23 gap in partisan preference between Black and white</p> <p>24 voters in, I would say, almost every state. I'm not --</p> <p>25 D.C. is probably an outlier. I don't want to make</p>



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<p style="text-align: right;">Page 325</p> <p>1 sweeping statements here.</p> <p>2 But this is extremely well known. I mean,</p> <p>3 last thing, but looking at any of the states here -- I</p> <p>4 mean, in New York 9 percent Black voters, Pennsylvania</p> <p>5 6 percent Black voters. I mean, let's see if those gaps</p> <p>6 are over the typical threshold. Oh, yeah, Pennsylvania</p> <p>7 is 44 percent. Pennsylvania is majority Republican</p> <p>8 state when it comes to whites. Pennsylvania's</p> <p>9 44 percent -- I don't think I marked on that --</p> <p>10 44 percent white Republican, 6 percent Black Republican.</p> <p>11 So yes, but what I mean by RPV is not that</p> <p>12 every state is going to match Alabama or Idaho but that</p> <p>13 you're going to see massive partisan voting and</p> <p>14 registration differences in pretty much every state.</p> <p>15 And that's it. Why that is, is a complex question.</p> <p>16 Q. All right. Are you aware that Alabama had</p> <p>17 racial struggles going on into at least the '60s?</p> <p>18 A. I am indeed aware of that, yeah.</p> <p>19 Q. You're aware of Selma?</p> <p>20 A. Yes.</p> <p>21 Q. And you know that it took a process over years</p> <p>22 for Alabama to make any significant progress --</p> <p>23 MR. CAMPBELL-HARRIS: Objection.</p> <p>24 BY MR. DAVIS:</p> <p>25 Q. -- in desegregation?</p>	<p style="text-align: right;">Page 327</p> <p>1 THE COURT REPORTER: Okay. Signature?</p> <p>2 MR. DAVIS: Yes.</p> <p>3 THE COURT REPORTER: And do you want to order</p> <p>4 the transcript?</p> <p>5 MR. CAMPBELL-HARRIS: Yes, please.</p> <p>6 MR. ROSBOROUGH: Electronic only.</p> <p>7 MR. CAMPBELL-HARRIS: Yeah.</p> <p>8 MR. DAVIS: Same here. Electronic only.</p> <p>9</p> <p>10</p> <p>11 _____</p> <p>12 WILFRED REILLY, Ph.D.</p> <p>13 ---</p> <p>14 DEPOSITION CONCLUDED AT 4:58 P.M.</p> <p>15 ---</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 326</p> <p>1 MR. CAPPBELL-HARRIS: Sorry. Objection.</p> <p>2 Form. You can answer.</p> <p>3 A. Yes, of course. Yeah. I think everyone is</p> <p>4 aware of that. And it was honestly something I wondered</p> <p>5 about when looking at working with the State of Alabama.</p> <p>6 Yeah, there's a history there. The question is, does it</p> <p>7 impact -- to what extent does it impact the present?</p> <p>8 Q. People who will be reading this written</p> <p>9 transcript later on won't have any visuals. For the</p> <p>10 record, are you Black, Dr. Reilly?</p> <p>11 A. Yes, last I checked I am. I'm Black, Irish,</p> <p>12 and Plains Indian. But yeah, Black in order of</p> <p>13 oppression.</p> <p>14 Q. Are you anti-Black?</p> <p>15 MR. CAPPBELL-HARRIS: Objection.</p> <p>16 BY MR. DAVIS:</p> <p>17 Q. Are you biased against Blacks?</p> <p>18 MR. CAPPBELL-HARRIS: Objection. Form. You</p> <p>19 can answer.</p> <p>20 A. Not at all, no. I'm a pretty staunch</p> <p>21 anti-racist in all directions.</p> <p>22 MR. DAVIS: Thank you.</p> <p>23 THE WITNESS: All right. Thanks.</p> <p>24 MR. CAMPBELL-HARRIS: No further questions for</p> <p>25 plaintiffs.</p>	<p style="text-align: right;">Page 328</p> <p>1 C E R T I F I C A T E</p> <p>2 State o f Ohio :</p> <p>3 : SS</p> <p>4 County of Hamilton :</p> <p>5 I, S. Diane Farrell, RDR, CRR, the</p> <p>6 undersigned, a duly commissioned notary public within</p> <p>7 and for the State of Ohio, do hereby certify that before</p> <p>8 the giving of his aforesaid deposition, WILFRED REILLY,</p> <p>9 Ph.D. was by me first duly sworn to depose the truth, the</p> <p>10 whole truth and nothing but the truth; that the</p> <p>11 foregoing is the deposition given at said time and place</p> <p>12 by WILFRED REILLY, Ph.D.; that said deposition was taken</p> <p>13 in all respects pursuant to stipulations of counsel;</p> <p>14 that I am neither a relative of nor employee of any of</p> <p>15 their parties or their counsel, and have no interest</p> <p>16 whatever in the result of the action; that I am not, nor</p> <p>17 is the court reporting firm with which I am affiliated</p> <p>18 under a contract as defined in Civil Rule 28 (D).</p> <p>19 IN WITNESS WHEREOF, I have hereunto set my</p> <p>20 hand and official seal of office at Cincinnati, Ohio, on</p> <p>21 this 15th day of May, 2024.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>My commission expires: Stella Diane Farrell, RDR, CRR</p> <p>October 18, 2026 Notary Public - State of Ohio</p>



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<p>1 DEPOSITION ERRATA SHEET</p> <p>2 Our Assignment No. J11152422</p> <p>3 Case Caption: KHADIDAH STONE, et al.</p> <p>4 vs. WES ALLEN, et al.</p> <p>5 DECLARATION UNDER PENALTY OF PERJURY</p> <p>6 I declare under penalty of perjury</p> <p>7 that I have read the entire transcript of</p> <p>8 my Deposition taken in the captioned matter</p> <p>9 or the same has been read to me, and</p> <p>10 the same is true and accurate, save and</p> <p>11 except for changes and/or corrections, if</p> <p>12 any, as indicated by me on the DEPOSITION</p> <p>13 ERRATA SHEET hereof, with the understanding</p> <p>14 that I offer these changes as if still under</p> <p>15 oath.</p> <p>16 Signed on the _____ day of</p> <p>17 _____, 2024.</p> <p>18 _____</p> <p>19 WILFRED REILLY, Ph.D.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 SIGNATURE: _____ DATE: _____</p> <p>24 WILFRED REILLY, Ph.D.</p> <p>25</p>
<p>1 DEPOSITION ERRATA SHEET</p> <p>2 Page No. _____ Line No. _____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. _____ Line No. _____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. _____ Line No. _____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. _____ Line No. _____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. _____ Line No. _____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. _____ Line No. _____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. _____ Line No. _____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 SIGNATURE: _____ DATE: _____</p> <p>24 WILFRED REILLY, Ph.D.</p> <p>25</p>	

