

# Exhibit P

Page 1

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

ORAL CLARKE, ROMANCE REED, GRACE  
PEREZ, PETER RAMON, ERNEST  
TIRADO, and DOROTHY FLOURNOY,  
Plaintiffs,

v.

Index No.

TOWN OF NEWBURGH and TOWN BOARD  
OF THE TOWN OF NEWBURGH,  
Defendants.

EF002460-2024

## DEPOSITION OF

DR. BRAD LOCKERBIE

DATE: Wednesday, September 11, 2024

TIME: 11:07 a.m.

LOCATION: Remote Proceeding

Duncan, SC ZIP

REPORTED BY: Thea Popko

JOB NO.: 6903384

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## A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS ORAL CLARKE, ROMANCE REED,  
GRACE PEREZ, PETER RAMON, ERNEST TIRADO, AND DOROTHY  
FLOURNOY:

SAMUEL DAVIS, ESQUIRE (by videoconference)  
Election Law Clinic, Harvard Law School  
6 Everett Street, Suite 4105  
Cambridge, MA 02138  
sadavis@law.harvard.edu  
(631) 807-2327

ON BEHALF OF PLAINTIFFS ORAL CLARKE, ROMANCE REED,  
GRACE PEREZ, PETER RAMON, ERNEST TIRADO, AND DOROTHY  
FLOURNOY:

RUTH GREENWOOD, ESQUIRE (by videoconference)  
Election Law Clinic, Harvard Law School  
6 Everett Street, Suite 4105  
Cambridge, MA 02138  
rgreenwood@law.harvard.edu  
(202) 560-0590

1 A P P E A R A N C E S (cont'd)

2 ON BEHALF OF PLAINTIFFS ORAL CLARKE, ROMANCE REED,  
3 GRACE PEREZ, PETER RAMON, ERNEST TIRADO, AND DOROTHY  
4 FLOURNOY:

5 STEVEN STILL, ESQUIRE (by videoconference)

6 DAVID IMAMURA, ESQUIRE (by videoconference)

7 Abrams Fensterman, LLP

8 81 Main Street, Suite 400

9 White Plains, NY 10601

10 sstill@abramslaw.com

11 (914) 409-7340

12 dimamura@abramslaw.com

13 (914) 275-6132

14

15 ON BEHALF OF DEFENDANTS TOWN OF NEWBURGH AND TOWN  
16 BOARD OF THE TOWN OF NEWBURGH:

17 MARY WEEKS, ESQUIRE (by videoconference)

18 Troutman Pepper Hamilton Sanders LLP

19 600 Peachtree Street, Suite 3000

20 Atlanta, GA 30308

21 mary.weeks@troutman.com

22 (404) 885-3634

23

24

25

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A P P E A R A N C E S (cont'd)

ALSO PRESENT:

Veniece Miller, Harvard Election Law Clinic (by  
videoconference)

Michael Rios, Expert (by videoconference)

Dr. Matt Barreto, Expert (by videoconference)

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## I N D E X

## EXAMINATION:

PAGE

By Mr. Davis

9

## E X H I B I T S

NO.

DESCRIPTION

PAGE

Exhibit 1

Expert Report of Brad

Lockerbie, Ph.D.

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Exhibit 2

Expert Report, Matt A.

Barreto, Ph.D.

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Exhibit 3

Barreto File Path

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Exhibit 4

2021 Newburgh Election

Results

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Exhibit 5

2019 Newburgh Election

Results

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Exhibit 6

2013 Newburgh Election

Results

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Exhibit 7

2011 Newburgh Election

Results

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Exhibit 8

Imai Article Cited in

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Exhibit 9

Barreto Report Addendum

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1 B. LOCKERBIE

2 THE REPORTER: Good morning,  
3 everyone. My name is Thea Popko. I'm the  
4 reporter assigned by Veritext to take the  
5 record of this proceeding. We are now on  
6 the record at 11:07 a.m.

7 This is the deposition of Dr. Brad  
8 Lockerbie, taken in the matter of Oral  
9 Clarke, et al. against the Town of  
10 Newburgh, et al. on September 11, 2024, in  
11 Duncan, South Carolina.

12 I am going to stipulate that I'm a  
13 notary authorized to take acknowledgements  
14 and administer oaths remotely. Parties  
15 agree that I will swear in the witness  
16 remotely.

17 Additionally, absent an objection on  
18 the record before the witness is sworn,  
19 all parties and the witness understand and  
20 agree that any certified transcript  
21 produced from the recording of this  
22 proceeding:

23 - is intended for all uses permitted  
24 under applicable procedural and  
25 evidentiary rules and laws in the same

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1 B. LOCKERBIE  
2 manner as a deposition recorded by  
3 stenographic means; and  
4 - shall constitute written  
5 stipulation of such.

6 So at this time, can I have everyone  
7 in attendance please identify yourself for  
8 the record, starting with the noticing  
9 attorney?

10 MR. DAVIS: My name's Samuel Davis.  
11 I'm an attorney for the plaintiffs with  
12 the Harvard Election Law Clinic.

13 MS. GREENWOOD: My name is  
14 Ruth Greenwood. I'm an attorney for the  
15 plaintiffs with the Harvard Election Law  
16 Clinic.

17 MR. IMAMURA: David Imamura, also  
18 with the plaintiffs, Abrams Fensterman,  
19 F-E-N-S-T-E-R-M-A-N, LLP, for the  
20 plaintiffs.

21 MR. STILL: This is Steven Still,  
22 also with Abrams Fensterman, LLP, and also  
23 for the plaintiffs.

24 MS. WEEKS: Mary Weeks of Troutman  
25 Pepper, counsel for the named defendants.



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2 MR. DAVIS: And I'll also just note  
3 we have Veniece, who's here from the  
4 Harvard Election Law Clinic, and then  
5 Matt Barreto and Michael Rios, who are --  
6 Matt is an expert in this case.

7 THE REPORTER: Okay. Thank you.  
8 Hearing no objection, I will now swear in  
9 the witness.

10 Dr. Lockerbie, could you please state  
11 your name and spell it for the record?

12 DR. LOCKERBIE: Brad Lockerbie,  
13 B-R-A-D, L-O-C-K-E-R-B-I-E.

14 THE REPORTER: Okay. Thank you very  
15 much. And would you raise your right  
16 hand?

17 WHEREUPON,

18 DR. BRAD LOCKERBIE,  
19 called as a witness and having been first  
20 duly sworn to tell the truth, the whole  
21 truth, and nothing but the truth, was  
22 examined and testified as follows:

23 THE REPORTER: Okay. You may  
24 proceed, Counsel. Thank you.

25 MR. DAVIS: Thank you.

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## EXAMINATION

BY MR. DAVIS:

Q Good morning, Dr. Lockerbie. We just met --

A Good morning.

Q -- but for the record, my name is Sam Davis. I'm one of the attorneys representing the Clarke Plaintiffs in this case. I'm going to be asking you some questions today. Can you hear me all right?

A I can hear you.

Q Great. Have you ever been deposed before?

A Yes.

Q Okay. So you may already know this, but I'll just go over some ground rules before we start, just so we all have the same understanding of how this will work.

So I'll be asking you some questions, and the court reporter is transcribing everything we say. So the court reporter is able to get everything

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2 in the record, please wait for me to  
3 finish asking my question before you give  
4 an answer, and I'll try and do the same so  
5 that we're not talking over each other.  
6 Does that make sense?

7 A Yes.

8 Q The court reporter can only  
9 record verbal responses. So it's  
10 important that your answer out loud with  
11 words rather than nodding your head or  
12 saying "uh-huh." Does that make sense?

13 A Yes.

14 Q If you don't understand a  
15 question for any reason, or if I speak too  
16 fast or mangle my words, please tell me,  
17 and I'll try to clarify. But if you do  
18 answer the question, I'm going to assume  
19 that you understood what I was asking.  
20 Does that make sense?

21 A Yes.

22 Q Okay. And we can take a break  
23 anytime you feel you need one. I'll only  
24 ask that you don't take a break while the  
25 question is pending. Does that sound

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2 good?

3 A Yes.

4 Q Do you understand that you're  
5 under oath today?

6 A Yes.

7 Q Are you taking any medications,  
8 or do you have any conditions that would  
9 impair your memory?

10 A No.

11 Q Is there any reason why you  
12 cannot give truthful answers to my  
13 questions today?

14 A No.

15 Q Part of the oath you took was to  
16 tell the whole truth, which means  
17 providing full and complete answers to the  
18 questions that I ask. Do you understand  
19 that?

20 A Yes.

21 Q Is there any reason why you  
22 cannot give full, complete, and accurate  
23 testimony today?

24 A No.

25 Q In today's deposition I'll be

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2 using terms "Hispanic" and "Latino"  
3 interchangeably. Do you understand that  
4 if I refer to Hispanic voters or to Latino  
5 voters I'm referring to the same group?

6 A Yes.

7 Q And when I refer to White  
8 residents, I'm referring to White  
9 residents who do not identify as Hispanic  
10 or Latino. Does that make sense?

11 A Yes.

12 Q I'll also be using the term  
13 "Black" and "African American"  
14 interchangeably. So if I refer to Black  
15 voters or to African American voters, I'm  
16 referring to the same group. Does that  
17 make sense?

18 A Yes.

19 Q Okay. Is there anyone in the  
20 room with you currently?

21 A No.

22 Q Do you have any documents or  
23 papers in front of you?

24 A I have a copy of the report I  
25 wrote.

1 B. LOCKERBIE

2 Q And that's the report you  
3 prepared for this case; correct?

4 A Correct.

5 Q And do you have any other  
6 documents in front of you?

7 A No.

8 Q Do -- sorry. Okay. Do you have  
9 any other windows or tabs open on your  
10 computer right now besides this video?

11 A Yes.

12 Q And what are those tabs or  
13 windows?

14 A "Veritext" and "join  
15 conversation" tab.

16 Q Do you have any email accounts  
17 open on your computer?

18 A No.

19 Q Any instant messaging  
20 applications on your computer currently?

21 A No.

22 Q Are you able to see incoming  
23 text messages on either your telephone or  
24 computer right now?

25 A I don't know if they'll show up

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1 B. LOCKERBIE

2 on my computer or not. My phone is turned  
3 over.

4 Q Okay. I'll ask that you just  
5 keep your phone off during questioning, if  
6 that's okay?

7 A Yes. It's on airplane mode.

8 Q Great. Thank you. What did you  
9 do to prepare for this deposition?

10 A I reviewed my report. I  
11 reviewed Dr. Barreto's report. I talked  
12 with the attorneys to get the logistics  
13 squared away.

14 Q And which attorneys are you  
15 referring to?

16 A I talked with Ms. Weeks and  
17 Ms. Kent.

18 Q How long was that meeting,  
19 roughly?

20 A Hour and a half.

21 Q Did you speak to anyone else  
22 besides those attorneys in preparation for  
23 this deposition?

24 A No.

25 Q You did not discuss this case

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1 B. LOCKERBIE

2 with any of your colleagues?

3 A No.

4 Q With any of your students?

5 A No. Other than to mention that  
6 I -- no, actually, I didn't. Not at all.

7 Q Okay. And you said you reviewed  
8 your report and the Barreto report. Is  
9 that correct?

10 A Yes.

11 Q Did you review any other  
12 documents to prepare for this deposition?

13 A I looked at -- yes.

14 Q What were those documents?

15 A I looked briefly at some of the  
16 data that I'd looked at earlier.

17 Q And when you say "the data" you  
18 looked at earlier, do you mean data you  
19 relied on in your report?

20 A Yes.

21 Q Okay. Did you review the expert  
22 report prepared by Professor Critchlow in  
23 this case?

24 A No.

25 Q Did you review the expert report



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2 prepared by Professor Sandoval-Strausz in  
3 this case?

4 A No.

5 Q Did you review any of the court  
6 filings in this case?

7 A No.

8 Q Have you ever reviewed the  
9 complaint in this case?

10 A No.

11 Q Have you ever looked at any  
12 other court documents in this case?

13 A No.

14 Q About how long do you think you  
15 spent preparing for this deposition?  
16 Rough estimate is fine.

17 A Two to four hours.

18 Q Okay. I'm going to try and  
19 introduce the first exhibit. So just bear  
20 with me for one second. Okay. Do you see  
21 a document in that folder?

22 A Yes.

23 Q Are you able to open the  
24 document?

25 A Yes.

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2 Q Okay. Do you recognize this  
3 document?

4 A Yes.

5 Q What is it?

6 A My expert report.

7 THE REPORTER: I'm sorry to  
8 interject. Do you want this marked as 1  
9 or A or --

10 MR. DAVIS: Apologies. You can mark  
11 this as Exhibit 1.

12 (Exhibit 1 was marked for  
13 identification.)

14 THE REPORTER: Okay. Thanks.

15 MR. DAVIS: Thank you.

16 BY MR. DAVIS:

17 Q Okay, Dr. Lockerbie. Can we --  
18 I'll have you scroll down to the ninth  
19 page in the document, which has the header  
20 "Brad Lockerbie Curriculum Vitae." Can  
21 you let me know when you get there?

22 A I'm there.

23 Q Let me get there myself. Okay.  
24 Do you recognize this document?

25 A Yes.

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2 Q What is it?

3 A It's my CV.

4 Q So there's no date on the CV.

5 Do you know roughly when it is from?

6 A Within the last year.

7 Q Is there anything missing from  
8 your CV?

9 A Not that I'm aware.

10 Q Okay. No new --

11 A Excuse me. Yes. I have some  
12 conference presentations that I had in the  
13 last week or so.

14 Q Okay. What were those  
15 conference presentations on?

16 A I was chair of a panel on  
17 forecasting the presidential election.

18 I was scheduled to deliver a  
19 paper on the election at a separate panel  
20 but had to leave early, and then I was  
21 scheduled to also serve as a discussant on  
22 another panel where I couldn't make it to  
23 that one, either, because of having to  
24 leave early.

25 Q Okay. Do you have any new

1 B. LOCKERBIE

2 publications to add to your CV?

3 A No.

4 Q Have you written any  
5 publications that relate to estimating the  
6 voter preferences of racial or ethnic  
7 groups?

8 A Yes.

9 Q Which publications are those?

10 A One of the early ones, the  
11 Cambridge University Press book chapters  
12 or book, depending on how it's listed on  
13 the vitae -- they list it in multiple ways  
14 at the publisher -- looking at race and  
15 voting behavior in presidential elections.

16 Q Is that the only publication  
17 relating to this topic?

18 A Yes, I believe so.

19 Q Okay. And sorry. Can you point  
20 out specifically where in the CV that  
21 publication is listed? I'll give you a  
22 second.

23 A That would be under the section  
24 labeled "Book Chapters."

25 Q And is it --

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2 A The last two.

3 Q -- all of these -- oh, the last  
4 two. Okay. So the one starting "United  
5 States of America, with Arthur H. Miller,"  
6 and then "Electoral Change and Social  
7 Change"? Those two publications?

8 A Yes.

9 Q Okay. Have you written any  
10 publications that utilize a quantitative  
11 methodology for estimating group voting  
12 patterns?

13 A Could you rephrase the question,  
14 'cause I want to make certain I answer it  
15 clearly.

16 Q So, in any of your publications,  
17 did you utilize a quantitative method for  
18 estimating the voting patterns of  
19 particular groups, such as racial or  
20 ethnic groups?

21 A If I understand your question  
22 correctly that race is an influence or  
23 groups is an influence on voting behavior,  
24 yes.

25 Q And which publications are

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2 those?

3 A Those would be the ones that I  
4 referenced just a minute ago. And could  
5 you explain what you mean by "voting  
6 patterns" to make certain I answer you  
7 clearly -- or completely?

8 Q Yeah. So the behavior of voters  
9 in elections at the group level. So who  
10 they vote for or -- yeah -- who they vote  
11 for?

12 A With regard to who they vote  
13 for, I believe that's it.

14 Q Okay. Thank you. And those are  
15 those same two publications at the end of  
16 the heading "Book Chapters;" correct?

17 A Yes.

18 Q Thank you. And do you recall  
19 what kind of data you used to estimate  
20 voting preferences in those publications?

21 A Yes.

22 Q And what was the data, as you  
23 recall?

24 A American National Election  
25 Studies data.

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2 Q And were those peer-reviewed  
3 publications?

4 A Yes.

5 Q Have you written any  
6 publications that utilize a statistical  
7 method called ecological inference for  
8 estimating group voting patterns?

9 A Could you -- I didn't hear you  
10 clearly at the beginning of the question.

11 Q I apologize. I'll restate the  
12 question. Have you written any  
13 publications that utilize a statistical  
14 method called ecological inference for  
15 estimating group voting patterns?

16 A No, I have not.

17 Q Have you written any  
18 publications on the topic of race or  
19 ethnicity?

20 A Yes.

21 Q Which publications are those?

22 A The same that we've been  
23 referring to.

24 Q Okay. And, aside from those  
25 two, have you written any other

1 B. LOCKERBIE

2 publications on the topic of race or  
3 ethnicity?

4 A There have been publications  
5 where race was at least a variable in the  
6 item, such as the 1994 piece at the  
7 "American Journal of Political Science."

8 Q Okay. Have you --

9 A And also -- excuse me.

10 Q Sorry. Yes.

11 A And also 2013 piece, "Race and  
12 Religion: Voting Behavior and Political  
13 Attitudes," at "Social -- Social Science  
14 Quarterly."

15 Q Okay. And that is listed on  
16 your CV; correct?

17 A Yes, under "Articles." I  
18 believe it's the sixth one down.

19 Q Thank you. And was that a peer-  
20 reviewed publication?

21 A Yes.

22 Q Have you --

23 A If I'm correct, that would also  
24 be one that did talk about specifically  
25 race and voting behavior, but I forgot



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2 about it for a second.

3 Q No problem. If you ever need to  
4 correct, just let me know. Have you  
5 written any publications that use precinct  
6 level voting data in a quantitative  
7 analysis or model?

8 A No.

9 Q Have you written any  
10 publications that use a statistical method  
11 called Bayesian Improved Surname  
12 Geocoding, or BISG?

13 A No.

14 Q You're a professor in the  
15 Department of Political Science at East  
16 Carolina University; correct?

17 A Yes.

18 Q What courses do you teach?

19 A Intro to American Government,  
20 Voting Behavior and Public Opinion,  
21 Religion in American Politics, Research  
22 Design and Statistics for the Social --  
23 for Political Science.

24 Q Are you teaching all of those  
25 this semester?

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2 A Thankfully, no.

3 Q Which ones are you teaching?

4 A I am teaching enough of them.

5 American -- Intro to American Government,

6 Voting Behavior and Public Opinion, and

7 Religion in American Politics.

8 Q Sounds like you'll be busy.

9 A Yes.

10 Q Okay. Turning to your report,  
11 if you go to page 1, paragraph 6, you  
12 write that you've published over 30 peer-  
13 reviewed articles on elections and public  
14 opinion. Is that correct?

15 A Yes.

16 Q Is it fair to say you are an  
17 expert on the topic of elections and  
18 public opinion within your field?

19 A Yes.

20 Q Do you have any other expertise  
21 in the field of political science?

22 A I have expertise in research  
23 methods and statistics within political  
24 science. And, more broadly speaking, I  
25 have expertise in the area of religion in

1 B. LOCKERBIE

2 American politics.

3 Q So is it fair to say you do not  
4 have expertise in racial or ethnic  
5 politics in the United States?

6 A No. That -- the race comes into  
7 play with the Religion in American  
8 Politics, and also, the earlier book  
9 chapters I wrote with Arthur H. Miller.

10 Q But that's not a focus of your  
11 research?

12 A Race and religion is.

13 Q Race and religion. Okay. You  
14 said you have expertise in, I believe,  
15 research methods and statistical methods.  
16 Is that correct?

17 A Yes.

18 Q What did you mean by that?

19 A That I have been trained very  
20 well to make use of statistics in  
21 political science analysis. I have been  
22 selected to review statistics books for  
23 major publishers.

24 Q Do you have any experience using  
25 the software program "R" to perform

1 B. LOCKERBIE

2 statistical analyses?

3 A Yes.

4 Q What is your level of experience  
5 using the program "R"?

6 A I'm not certain what you mean by  
7 "level of experience." How long I've used  
8 it, or what?

9 Q Would you say you're an expert  
10 in the software program "R"?

11 A Expert, no.

12 Q How frequently do you use the  
13 software program "R"?

14 A At a minimum, weekly.

15 Q Have you ever published a peer-  
16 reviewed article utilizing an analysis you  
17 conducted with the software program "R"?

18 A Yes.

19 Q What are those publications?

20 A The most recent one -- go back  
21 down to my CV. Excuse me.

22 Q No problem.

23 A That would be the last two  
24 publications that I have there, the one  
25 from "Polity" and the one from PS,

1 B. LOCKERBIE

2 "Political Science and Politics."

3 Q And did you write any "R"  
4 packages for those publications?

5 A No.

6 Q Have you ever written an "R"  
7 package?

8 A No.

9 Q Do you know how to write an "R"  
10 package?

11 A I could write small ones, but  
12 I'm not somebody who's written a package  
13 specifically within "R."

14 Q Fair enough. You said you  
15 taught statistical methods for political  
16 science. Is that correct?

17 A Yes.

18 Q When was the last time you  
19 taught that course?

20 A I believe it was two years ago.

21 Q And, prior to that, had you  
22 regularly taught that course?

23 A Yes.

24 Q Have you taught any courses  
25 where you discuss the use of ecological

1 B. LOCKERBIE  
2 inference methods in the context of  
3 studying voting patterns?

4 A Yes.

5 Q Which courses?

6 A The statistics class, as well as  
7 Voting Behavior and Public Opinion.

8 Q In the statistics -- let's start  
9 with the statistics class. So you said  
10 the last time you taught that was two  
11 years ago; correct?

12 A Correct.

13 Q And what was the nature of your  
14 discussion of the use of ecological  
15 inference techniques in that class?

16 A I discussed how to use  
17 ecological regression as a way of  
18 estimating voting patterns of various  
19 groups in a community.

20 Q Okay. Did you use any other  
21 methods beside -- or strike that. Did you  
22 discuss other methods of ecological  
23 inference besides ecological regression?

24 A I believe I did mention  
25 ecological inference that Gary -- Gary

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2 King wrote the package for.

3 Q Okay. And how extensive was  
4 your discussion in that class?

5 A Of which technique or both?

6 Q Let's start with the ecological  
7 regression?

8 A I spent probably 30 minutes  
9 talking about it.

10 Q Okay. Throughout the semester?

11 A It would've been a component of  
12 one class session. So a total of 30  
13 minutes, yes.

14 Q Okay. And you said the last  
15 time you taught that was about two years  
16 ago; right?

17 A Correct.

18 Q Thank you. And I apologize.  
19 What was the other class you said you  
20 taught ecological inference in?

21 A I referenced ecological  
22 inference in the Voting Behavior and  
23 Public Opinion class.

24 Q Thank you. When was the last  
25 time you taught that class?

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2 A I am currently teaching it.

3 Q Okay. And what's the nature of  
4 your discussion of ecological inference in  
5 that class?

6 A The nature of the discussion is  
7 to look at racial voting patterns, discuss  
8 how they have changed over time, not  
9 changed over time.

10 Q And what methodologies have you  
11 discussed in that class or plan to discuss  
12 in that class?

13 A I have used -- I have discussed  
14 or plan to discuss ecological regression  
15 and ecological inference.

16 Q Okay. Is it fair to say roughly  
17 in the same terms as you discuss them in  
18 your other class?

19 A Correct.

20 Q Do you teach students how to  
21 code -- or strike that. Do you teach  
22 students how to conduct ecological  
23 inferences using "R" in either of those  
24 classes?

25 A I have taught students how to



1 B. LOCKERBIE

2 conduct ecological regression within "R."

3 Q Okay. Is that a regular feature  
4 of your classes?

5 A I started -- well, in my recent  
6 classes, yes.

7 Q When you say "recent," what time  
8 period, roughly?

9 A The last four to five years.

10 Q And you said you've taught "R"  
11 to conduct ecological regression; correct?

12 A Correct.

13 Q But not ecological inference;  
14 right?

15 A That is correct.

16 Q Have you ever presented a paper  
17 at a conference on the use of ecological  
18 inference methods in the analysis of  
19 voting behavior in American elections?

20 A No.

21 Q Okay. Let's turn back to your  
22 report, and if we could look at paragraph  
23 7 on the first page. If you just let me  
24 know when you're there?

25 A I'm there.

1 B. LOCKERBIE

2 Q Okay. You state that you have  
3 been retained as an expert in relation to  
4 four court cases. Is that correct?

5 A Yes.

6 Q Is that a complete list of the  
7 cases you've been involved with?

8 A No.

9 Q What other cases have you been  
10 involved with as an expert?

11 A I was involved in one as an  
12 expert witness in Arkansas, dealing with  
13 racial polarization.

14 And in terms of testimony or  
15 deposition, I was an expert in the court  
16 case -- I can't remember the exact name of  
17 it, but it was the Georgia Trial Lawyers,  
18 I believe, versus the State of Georgia, on  
19 a ballot proposition item.

20 Q Is the Arkansas case Arkansas  
21 NAACP verse Arkansas Board of  
22 Apportionment?

23 A I believe that is.

24 Q Okay. Are you currently  
25 involved with a case in Nassau County on

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B. LOCKERBIE

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Long Island?

A Yes.

Q Is that Coads v. Nassau County  
and New York Communities for Change, the  
County of Nassau?

A I believe so.

Q Okay. Were you involved in a  
case called Faith Rivera, et al. v. Scott  
Schwab and Michael Abbott?

A That sounds familiar.

Q Okay.

A Could you tell me where it was  
or what it is?

Q Believe that was in Kansas.

A Yes.

Q Okay. I'm just going to go  
through each of these cases. Let's go one  
by one. So let's start with Agee v.  
Benson or Agee v. Benson. Who were you  
retained by in that case?

A The attorneys representing the  
plaintiffs against the Commission, as I  
recall.

Q And what was the subject of your

1 B. LOCKERBIE

2 consulting?

3 A I was asked to evaluate levels  
4 of racial polarization and racial animus  
5 in the -- the area under consideration.

6 Q Did you file an expert report?

7 A Yes, I did.

8 Q Were you deposed?

9 A I believe so.

10 Q Did you testify at trial?

11 A Yes.

12 Q I guess you'd remember that.

13 A Yes.

14 Q Okay. Moving on to Nielsen v.  
15 DeSantis, who were you retained by in that  
16 case?

17 A A law firm representing the  
18 State.

19 Q The State of Florida?

20 A Yes.

21 Q And what was the subject of your  
22 consulting in that case?

23 A Looking at the ability to vote  
24 by -- via drop boxes and US Postal  
25 Service.

1 B. LOCKERBIE

2 Q Did you file an expert report?

3 A Yes, I did.

4 Q Were you deposed?

5 A I believe so.

6 Q And did you testify at trial?

7 A No.

8 Q Okay. Then moving on to Trump  
9 v. Boockvar, who were you retained by in  
10 that case?

11 A I was retained by a law firm for  
12 the president.

13 Q Referring to Mr. Trump?

14 A Yes.

15 Q And what was the subject of your  
16 consulting in that case?

17 A Looking at drop boxes and  
18 signature assessment.

19 Q Okay. And did you find --

20 A -- and --

21 Q Apologies.

22 A My apologies, too.

23 THE REPORTER: I'm sorry. I didn't  
24 catch the end of what you said there,  
25 Dr. Lockerbie.

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1 B. LOCKERBIE

2 THE WITNESS: Oh, I said I was  
3 retained to comment on the provision of  
4 additional drop boxes and the canceling of  
5 the signature matching assessment on  
6 absentee ballots.

7 BY MR. DAVIS:

8 Q I'll try and follow my own rule.  
9 Did you file an expert report in that  
10 case?

11 A I can't recall if it was an  
12 expert report or just a report to the  
13 attorney's office.

14 Q The attorneys who retained you;  
15 correct?

16 A Correct.

17 Q Were you deposed?

18 A I don't believe so.

19 Q And did you testify at trial?

20 A No.

21 Q Okay. Who were you retained by  
22 in North Carolina Alliance for Retired  
23 Persons v. State Board of Elections?

24 A The defendants.

25 Q The State Board of Elections?

1 B. LOCKERBIE

2 A The attorneys representing --  
3 the attorneys representing the defendants.

4 Q Okay. And what was the subject  
5 of your consulting in that case?

6 A I believe, though I'm not  
7 certain, that it was looking at absentee  
8 ballot regulations.

9 Q Did you file an expert report?

10 A I don't think I did.

11 Q Were you deposed?

12 A No.

13 Q Did you testify at trial?

14 A No.

15 Q Okay. I think we mentioned  
16 the -- or we discussed the Arkansas case,  
17 which I'll represent was Arkansas NAACP v.  
18 Arkansas Board of Apportionment. Do you  
19 recall who you were retained by in that  
20 case?

21 A That was the State.

22 Q The State of Arkansas?

23 A Yes.

24 Q And what was the subject of your  
25 consulting in that case?

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1 B. LOCKERBIE

2 A An examination of racial  
3 polarization and crossover voting.

4 Q And did you file an expert  
5 report in that case?

6 A Yes.

7 Q Were you deposed?

8 A I believe so.

9 Q Did you testify at trial?

10 A Yes.

11 Q Okay. And then in the Kansas  
12 case, the Faith Rivera case, who were you  
13 retained by there?

14 A A law firm that was hired to  
15 represent the State of Kansas.

16 Q And what was the subject of your  
17 consulting there?

18 A Looking at racial polarization.

19 Q Okay. And did you file an  
20 expert report?

21 A Yes.

22 Q Were you deposed?

23 A I don't recall.

24 Q And did you testify at trial?

25 A Yes.



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1 B. LOCKERBIE

2 Q Okay. I think this is the last  
3 one. Who were you retained by in Coads v.  
4 Nassau County, the Nassau County case?

5 A Law firm representing the  
6 County, as I recall.

7 Q Who are the defendants in that  
8 case; correct?

9 A Yes.

10 Q And what was the subject of your  
11 consulting in that case?

12 A To review reports and do  
13 analysis on racial polarization.

14 Q Did you file an expert report?

15 A Yes.

16 Q Were you deposed?

17 A No. I will be shortly.

18 Q And I take it, then, there  
19 hasn't been a trial yet. Is that correct?

20 A That is correct.

21 Q Did you conduct an ecological  
22 regression analysis in that case?

23 A Yes.

24 Q Which method did you use?

25 A The one you just specified,

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1 B. LOCKERBIE

2 ecological regression.

3 Q So you did not do ecological  
4 inference technique -- other ecological  
5 inference techniques in that case?

6 A That is correct.

7 Q Did you write the code for --  
8 oh, strike that. Did you use a software  
9 program to conduct your ecological  
10 regression analysis in that case?

11 A Did I use a statistical  
12 regression -- or statistical program?  
13 Yes.

14 Q Which program?

15 A "R."

16 Q Did you write the code for that  
17 "R" software?

18 A No. I -- make certain we're  
19 clear here. I did write the -- if we're  
20 calling "code" basically asking the  
21 computer to run the regression, yes. And  
22 the recodes, yes. Did I write the code  
23 for regression itself? No, that's baked  
24 into the system.

25 Q Thank you for that

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2 clarification. What do you mean when you  
3 say "baked into the system"?

4 A There is a pre-existing package  
5 to run regression analysis.

6 Q Okay. Do you recall what  
7 package you used for the ecological  
8 regression?

9 A I believe it was "lm."

10 Q Okay. Do you know the  
11 difference between ecological regression  
12 and ecological inference?

13 A Yes.

14 Q What's the difference?

15 A The main difference is that  
16 ecological inference makes assumptions  
17 about the individual precincts and uses  
18 the method of bounds.

19 Ecological regression is a  
20 technique in which you take the dependent  
21 variable, vote share, and regress it upon  
22 race or any other aggregate data that you  
23 wish to.

24 Q Why did you choose to use  
25 ecological regression in the Nassau County

1 B. LOCKERBIE

2 case rather than ecological inference?

3 A One, it is easier to understand  
4 and run that analysis. Two, the  
5 ecological inference technique from  
6 Gary King was not available on the CRAN  
7 server, as it had been deemed in -- I  
8 forget the exact wording -- but not in  
9 compliance.

10 Q Do you know how to run an  
11 ecological inference analysis?

12 A Yes. With my code book, or with  
13 my book at hand.

14 Q Fair enough. You may have  
15 referred to this previously, but are you  
16 familiar with the method of ecological  
17 inference called "R by C"?

18 A Yes.

19 Q What is the R by C method?

20 A Rows and columns. It allows for  
21 multiple candidates and multiple ethnic  
22 groups.

23 Q So is it fair to say that R by C  
24 would allow for an analysis of an election  
25 with multiple candidates rather than an

1 B. LOCKERBIE

2 election with just two candidates?

3 A Multiple -- yes. It would work  
4 that way. Under -- I assume you're asking  
5 about a single race with multiple  
6 candidates.

7 Q Correct. Yes. Yes.

8 A And a single winner?

9 Q To your knowledge, has a court  
10 ever relied on your testimony in reaching  
11 conclusions about a case?

12 A I don't know.

13 Q Have you ever used the  
14 .eiCompare R. package?

15 A No.

16 Q Okay. Besides the cases we've  
17 discussed, have you served as an expert in  
18 any other legal proceeding?

19 A No.

20 Q Have you ever worked with a  
21 state legislature to draw a legislative  
22 redistricting plan?

23 A No.

24 Q Have you ever worked with a  
25 local government to draw a redistricting

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1 B. LOCKERBIE

2 plan?

3 A No.

4 Q Excuse me. Have you ever worked  
5 with an independent commission to draw a  
6 redistricting plan?

7 A No.

8 Q Have you ever been appointed by  
9 a court to draw a redistricting plan?

10 A No.

11 Q Have you ever drawn a district  
12 that's been adopted by a court to remedy a  
13 redistricting violation?

14 A No.

15 Q How did you first learn about  
16 this case?

17 A From the attorneys.

18 Q Do you mean --

19 A Troutman Pepper.

20 Q When did they contact you about  
21 serving as an expert?

22 A I believe it was originally over  
23 a year ago, and then they didn't know if  
24 the case was going to go forward. So it  
25 was in hiatus for -- for lack of a better

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2 word. And then, more recently, in the  
3 last few months.

4 Q So they initially contacted you  
5 to just explain what the case was. Is  
6 that correct?

7 A To mention there would be -- or  
8 may be a case coming up, and would I be  
9 available.

10 Q And then more recently, they  
11 reached back out to say your services were  
12 needed?

13 A Yes.

14 Q Is that when you were retained  
15 as an expert witness?

16 A I believe so.

17 Q Do you know why you were  
18 approached to serve as an expert in this  
19 case?

20 A Yes.

21 Q Why was that?

22 A I believe I was recommended by  
23 others.

24 Q Do you know who recommended you?

25 A I'm not certain.

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1 B. LOCKERBIE

2 Q You have a guess?

3 MS. WEEKS: Object to the --

4 THE WITNESS: Excuse me?

5 MS. WEEKS: Object to the form, for  
6 the record.

7 THE WITNESS: Should I still answer?

8 MS. WEEKS: Yes.

9 THE WITNESS: I believe Adam Kincaid  
10 and/or Sean Trende, but I'm not certain of  
11 either of those.

12 BY MR. DAVIS:

13 Q Have you worked with Mr. Kincaid  
14 or Mr. Trende previously?

15 A Yes.

16 Q In what context?

17 A Mr. Trende and I were experts in  
18 the case in Michigan. I don't know if we  
19 were both experts on any other cases or  
20 not. With Mr. Kincaid, I worked with him  
21 when he was a student of mine at the  
22 University of Georgia.

23 Q Do you know --

24 A On academic matters, not  
25 consulting matters.



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1 B. LOCKERBIE

2 Q Do you know if the attorneys  
3 from Troutman Pepper contacted anyone else  
4 to serve as an expert in this case?

5 A I believe so.

6 Q Do you know who those  
7 individuals were?

8 A No.

9 Q Do you know what the Gingles  
10 Prongs are?

11 A Yes.

12 Q Did you discuss the Gingles  
13 Prongs with anyone in relation to this  
14 case?

15 A No.

16 Q Did you sign a retainer  
17 regarding your work in this case?

18 A I don't know if I would call it  
19 a retainer, but I signed an agreement.

20 Q An agreement to retain you to  
21 provide expert --

22 A An agreement for me to provide  
23 services to them, yes. Forgive me if I'm  
24 trying to be specific here. I just want  
25 to make certain the terms are mutually

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1 B. LOCKERBIE

2 understood.

3 Q Specific is good if -- feel free  
4 to ask for clarification. What is your  
5 scope of work in this case?

6 A I report.

7 Q Anything else?

8 A Not that I recall.

9 Q So is it fair to say that your  
10 report reflects the totality of your work  
11 in this case?

12 A Yes.

13 Q Have you submitted any invoices  
14 regarding your work in this case?

15 A Yes.

16 Q Who did you submit those  
17 invoices to?

18 A Troutman Pepper.

19 Q Roughly how many invoices have  
20 you submitted so far?

21 A One or two.

22 Q And I assume those were over the  
23 last couple months, after you were  
24 retained?

25 A Yes.

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1 B. LOCKERBIE

2 Q Have your invoices been paid?

3 A One is outstanding. One has  
4 been paid.

5 Q Your rate is \$600 per hour in  
6 this case; correct?

7 A Correct.

8 Q Will you be billing for your  
9 time spent in this deposition?

10 A Yes.

11 Q Will that be at the same rate as  
12 for all of your time, \$600 per hour?

13 A Yes.

14 Q Is there a cap on your fees in  
15 this case?

16 A No.

17 Q Roughly how many hours have you  
18 spent working on this case so far?

19 A Approximately 10 to 20.

20 Q Who was the attorney who  
21 initially reached out to you about this  
22 case?

23 A I believe it was Misha, and I  
24 can't pronounce his last name, Tseytlin.

25 Q From Troutman Pepper?

1 B. LOCKERBIE

2 A Yes.

3 Q I think we know who you were  
4 referring to. Roughly when was that  
5 outreach, as you recall?

6 A The original outreach was maybe  
7 a year ago, but I'm not certain as to  
8 that.

9 Q So maybe August, September of  
10 last year?

11 A I think so, but I'm not positive  
12 on that by any stretch of the imagination.

13 Q Understood. Have you ever  
14 spoken with members of the Newburgh Town  
15 Council?

16 A Not that I'm aware of.

17 Q Have you ever spoken with any of  
18 the other experts in this case?

19 A I don't know who the other  
20 experts are, but I haven't talked with any  
21 other experts about this case.

22 Q Have you spoken with  
23 Dr. Barreto?

24 A No.

25 Q Have you spoken with

1 B. LOCKERBIE

2 Professor Critchlow?

3 A No.

4 Q Have you spoken with

5 Professor Sandoval-Strausz?

6 A No.

7 Q Okay. I'd like to turn back to

8 Exhibit 1, to your report. Do you have

9 that in front of you?

10 A Yes, it's still here.

11 Q Did you provide any code or data

12 that you relied on in preparing this

13 report to defendants' counsel?

14 A I don't believe so.

15 Q So I'll represent to you that

16 counsel said you did not provide any code

17 or data. Is that a fair statement?

18 A That's a fair statement.

19 Q So is it fair to say that all of

20 the citations you relied on are

21 included -- or strike that. All of the

22 sources that you relied on are included in

23 citations within the report itself?

24 A Yes.

25 Q And there is nothing else you

1 B. LOCKERBIE

2 relied on to prepare your report?

3 A Other than my expertise and  
4 general knowledge, no.

5 Q No other sources or publications  
6 or data, anything like that?

7 A That is correct.

8 Q Did you write any code as part  
9 of preparing this report?

10 A I don't believe so. If any, it  
11 would've been in Excel files, to basically  
12 do calculations.

13 Q So we previously talked about  
14 "R." You didn't use "R" in preparing this  
15 report?

16 A I used "R" in the sense that I  
17 used the program Quarto originally, to  
18 type it up, but ...

19 Q And did you rely on any code as  
20 part of your preparation for this report?  
21 Excuse me.

22 A Could you clarify the question?

23 Q So I had initially asked did you  
24 write any code. Did you rely on any  
25 analyses performed using code as part of

1 B. LOCKERBIE

2 your report?

3 A I think I know what you're  
4 asking, and I'll do my best to address it.  
5 I made use of the program Excel, which has  
6 code built into it, and I used it to  
7 calculate averages or total up votes.

8 Q No other sources like that,  
9 though?

10 A No other software packages other  
11 than, like I said, the use of Quarto  
12 within "R" Studio and Excel, as I recall.

13 Q Thank you. Did you write this  
14 report?

15 A Yes.

16 Q Every word of it?

17 A No.

18 Q What portions didn't you write?

19 A Some of the typos were corrected  
20 by the law firm, and some of the legal  
21 citations were corrected.

22 Q Besides correcting typos and  
23 correcting citations, did anyone else  
24 write any other portion of this report?

25 A I don't believe so, no.

1 B. LOCKERBIE

2 Q It sounds like --

3 A I might have been asked for -- I  
4 might have been asked for clarifications,  
5 and then I rephrased some things.

6 Q Who asked you for  
7 clarifications?

8 A I believe it would have been  
9 Misha.

10 Q Did you review Dr. Barreto's  
11 report before you started writing your  
12 report?

13 A Yes.

14 Q Okay. I'm going to mark -- or  
15 try to mark Dr. Barreto's report as an  
16 exhibit so that we can refer back to it  
17 later. Give me one second. And I'll  
18 refer to that as Exhibit 2.

19 Did you review the report  
20 prepared by Dr. Sandoval-Strausz before  
21 you started writing your report?

22 A No.

23 Q Are you aware that Dr. Barreto  
24 produced the code and data he relied on in  
25 his report to defendants' counsel?



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1 B. LOCKERBIE

2 A I don't recall.

3 Q I will represent to you that he  
4 did. Do you have any reason to dispute  
5 that?

6 A No. I think --

7 Q Have you --

8 A -- one thing that might help  
9 clarify is when you keep referring to  
10 "code," it sometimes can be unclear as to  
11 whether you're talking about just to go  
12 into the -- the software package and  
13 asking it to do things, or writing the  
14 actual internal code of the program, or  
15 the program that was used.

16 Q I will try to be more precise  
17 going forward. But if I'm not, please  
18 feel free to keep correcting me.

19 A Not a correction, but more just  
20 a clarification.

21 Q Absolutely. Can you pull up  
22 what I marked as Exhibit 2? Let me know  
23 when you have it.

24 A Yes, I will let you know. I  
25 believe it is up now.

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1 B. LOCKERBIE

2 Q Do you recognize this document?

3 (Exhibit 2 was marked for  
4 identification.)

5 A It appears to be the report of  
6 Dr. Barreto.

7 Q And is this the report you  
8 reviewed in preparing your report?

9 A I believe so.

10 Q Have you seen a copy of any of  
11 the files identified as material that  
12 Dr. Barreto relied on in producing his  
13 report?

14 A I don't think so, other than  
15 what I also found independently.

16 Q So you didn't review the actual  
17 files that Dr. Barreto relied on; correct?

18 A I don't know. Some of them may  
19 have been the -- duplicates of what he  
20 had, and I got the same thing from a --  
21 the same source independently, if that  
22 makes sense.

23 Q So -- yeah. So what you're --  
24 to clarify, what you're saying is it's  
25 possible in you doing your research in

1 B. LOCKERBIE

2 preparation for the report you came across  
3 the same sources that Dr. Barreto relied  
4 on, but you did not look at the files that  
5 Dr. Barreto produced to defendants'  
6 counsel?

7 A I don't believe so. Point of  
8 clarification, unless they provided them  
9 to me, and I was unaware that they came  
10 from Dr. Barreto.

11 Q Understood. And if you reviewed  
12 something, it would appear in your  
13 footnotes or citations; correct?

14 A I believe so, yes.

15 Q Okay. I am going to mark  
16 another exhibit, if you'll just give me  
17 one second. And I believe this will be  
18 Exhibit 3. And if you'll just let me know  
19 when you are able to access the exhibit.

20 A I believe I have it up and  
21 running.

22 Q Do you recognize this document?  
23 (Exhibit 3 was marked for  
24 identification.)

25 A It looks similar to data that I

1 B. LOCKERBIE

2 was able to obtain.

3 Q What do you mean by that?

4 A I see what looks to be files  
5 labeled as PDFs that have official  
6 election returns, and I looked at similar  
7 information, perhaps identical.

8 Q You're referring to the PDF file  
9 names that appear in the third column;  
10 correct?

11 A Yes.

12 Q And so you believe you may have  
13 reviewed some of those files, because  
14 they're the same sources that you relied  
15 on in your report; correct?

16 A I believe so, yes.

17 Q But you did not --

18 A I apologize for the overlap.

19 Q That's okay. But you did not  
20 receive this list of files from  
21 defendants' counsel, as far as you recall?

22 A I don't believe so.

23 Q Can we scroll down to the second  
24 page? Let me know when you're there.

25 A Would it be the very short page

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1 B. LOCKERBIE

2 labeled "Barreto Data"?

3 Q Yes.

4 A Then I'm there.

5 Q Okay. And you see it's the blue  
6 highlighting on "Name Dictionaries;"  
7 correct?

8 A Yes.

9 Q And then two RDS files in the  
10 third column?

11 A Yes.

12 Q Did you review these files in  
13 preparing your report?

14 A I don't believe so.

15 Q Okay. And then, on I guess what  
16 we will call page 3, the other small  
17 screenshot on page 3?

18 A Yes.

19 Q And it has blue highlighting  
20 around the folder called "Voter Files"?

21 A Maybe if I switch the screens  
22 around. I'm using a laptop as opposed to  
23 a bigger monitor today in the midst of the  
24 move. I believe I see what you're  
25 referring to.

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1 B. LOCKERBIE

2 One caveat I will put on it,  
3 when you refer to it by color, I have to  
4 sometimes make guesses, as I am somewhat  
5 colorblind. Blue and purple are the same  
6 color, as far as I'm concerned.

7 Q Fair enough. I will distinguish  
8 if we get into blue purples. But the  
9 highlighted folder, "Voter Files," you see  
10 that?

11 A Yes.

12 Q And then, in the third column,  
13 there are various files that end with  
14 ".csv;" correct?

15 A Correct.

16 Q Did you review those files while  
17 you were preparing your report?

18 A I don't believe so.

19 Q Okay. And then, do you see --  
20 it's on both page 2 -- well, I guess on  
21 each page there is a file called  
22 "Newburgh.R"?

23 A I see that.

24 Q And have you previously reviewed  
25 that file?

1 B. LOCKERBIE

2 A I don't believe so.

3 Q And why didn't you review that?

4 A I don't recall having them made  
5 available to me.

6 Q Okay. Before writing your  
7 report, did you discuss Dr. Barreto's  
8 report with anyone?

9 A I don't believe so.

10 Q Did you get any assistance in  
11 creating your report?

12 A Other than having the -- the law  
13 offices look at what I had done, no.

14 Q But no research assistance?

15 A That is correct.

16 Q Did anyone review your  
17 calculations or conclusions?

18 A I can't recall if it was from  
19 this case or another case, but somebody  
20 did check my calculations -- with the law  
21 firm, I believe.

22 Q Someone at the law firm checked  
23 your calculations, either in this case or  
24 in a different case?

25 A Correct.

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1 B. LOCKERBIE

2 Q But none of your colleagues or  
3 students checked your calculations;  
4 correct?

5 A That is correct.

6 Q And you said the attorneys from  
7 Troutman Pepper reviewed your report  
8 before you submitted it; correct?

9 A Yes.

10 Q Do you recall -- going back to  
11 the last question, do you recall, whether  
12 it was on this case or another case, who  
13 it was that reviewed your calculations?

14 MS. WEEKS: Object to the form.

15 A I don't recall the name of the  
16 person who did that.

17 Q Okay. And this report, which is  
18 marked as Exhibit 1 and dated July 9,  
19 2024, does that contain a complete  
20 statement of your opinions in this case?

21 A Yes.

22 Q We're about an hour in. I'm at  
23 a breaking point, if you want to take a  
24 five-minute break?

25 A Okay.



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1 B. LOCKERBIE

2 MR. DAVIS: Counsel, is that okay?

3 THE REPORTER: Okay.

4 MR. DAVIS: Sorry. I --

5 THE REPORTER: Oh --

6 MR. DAVIS: That's okay.

7 THE REPORTER: I'm sorry. Go ahead.

8 MS. WEEKS: That's okay.

9 THE REPORTER: Then we can go off the  
10 record now at 12:07 p.m.

11 (Off the record.)

12 THE REPORTER: Okay. We're back on  
13 the record now, 12:14 p.m.

14 BY MR. DAVIS:

15 Q Dr. Lockerbie, you understand  
16 that you're still under oath; correct?

17 A Correct. Yes.

18 Q You said previously that you  
19 were retained by defendants' counsel  
20 lawyers from Troutman Pepper to prepare a  
21 report. Is that correct?

22 A Yes.

23 Q What were you asked to do by the  
24 attorneys?

25 A To --

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1 B. LOCKERBIE

2 MS. WEEKS: I would just object to  
3 the extent that it goes to invading the  
4 privilege.

5 MR. DAVIS: Understood. Yeah.

6 THE WITNESS: I was asked to review  
7 the report of Dr. Barreto.

8 BY MR. DAVIS:

9 Q Were you asked to determine  
10 whether racially polarized voting exists  
11 in Newburgh Town Council elections?

12 A No.

13 Q Did you draw any conclusions  
14 about whether racially polarized voting  
15 exists in Newburgh Town elections while  
16 you were preparing your report?

17 A I reviewed what Dr. Barreto said  
18 about it, and I assume that his  
19 calculations are accurate. But I have not  
20 reviewed his data analysis there.

21 Q So, just to confirm, you did not  
22 draw any independent conclusions about  
23 whether racially polarized voting exists  
24 in Newburgh Town elections?

25 A That is correct.

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2 Q Okay. I want to turn to  
3 paragraph 11 on page 2 of your report.  
4 Can you let me know when you have that in  
5 front of you?

6 A I am there.

7 Q Okay. And in paragraph 11 on  
8 page 2, you state: "I examined elections  
9 in the Town of Newburgh to determine  
10 whether minorities have a reasonable  
11 opportunity to elect candidates of their  
12 choice.

13 "That is, are minority  
14 candidates usually defeated? Regardless  
15 of whether minority-preferred candidates  
16 are defeated, are the races competitive?"  
17 Did I read that correctly?

18 A Yes.

19 Q What do you mean by the term  
20 "minorities" as you use it in this  
21 paragraph?

22 A Racial and ethnic minorities.  
23 African Americans and Hispanics.

24 Q So when you refer to the term  
25 "minorities," you mean Blacks and Latinos

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2 in the Town of Newburgh or generally;  
3 correct?

4 A Correct.

5 Q And you are not including other  
6 minorities, such as Asian Americans;  
7 correct?

8 A I don't recall that I  
9 specifically looked at them, no.

10 Q Why did you decide to determine  
11 whether minorities have a reasonable  
12 opportunity to elect candidates of their  
13 choice?

14 A I'm confused by the question.  
15 Could you rephrase it or repeat it?

16 Q Yeah. So in this paragraph you  
17 say "I examined elections in the Town of  
18 Newburgh to determine whether minorities  
19 have a reasonable opportunity to elect  
20 candidates of their choice." Correct?

21 A Correct.

22 Q Why did you do that in your  
23 report?

24 A To assess whether -- at least  
25 one prong of the test, to see if there is

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2 election law that is discriminatory or has  
3 a discriminatory effect.

4 Q And when you say "the test," are  
5 you referring to -- strike that. When you  
6 say "the test," what are you referring to?

7 A The Gingles test. The Senate  
8 factors.

9 Q Okay. And --

10 THE REPORTER: Could -- could you  
11 rephrase that? I'm sorry. "The Gingles  
12 test" or the what?

13 THE WITNESS: Senate factors.

14 BY MR. DAVIS:

15 Q Okay. Then you state next "That  
16 is, are minority candidates usually  
17 defeated?" Correct?

18 A Yes.

19 Q So why did you assess whether  
20 minority candidates are usually defeated?

21 A Two points. That should read  
22 "minority-favored candidates." Second, to  
23 look at -- again, if trying to ascertain  
24 whether minority-favored candidates have a  
25 chance of victory, or are they out of

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2 luck, have no chance of victory.

3 Q Okay. I just want to clarify.

4 So you -- when in paragraph 11 you say

5 "Are minority candidates usually

6 defeated," you actually mean "are

7 minority-preferred candidates usually

8 defeated?"

9 A Correct.

10 Q Is there a difference between

11 minority candidates and minority-preferred

12 candidates?

13 A Yes.

14 Q What's the difference?

15 A Well, minority candidates would

16 be those candidates who are one of the

17 aforementioned minorities. Minority-

18 favored candidates are those, regardless

19 of their race or ethnicity, that may or

20 may not be favored by a minority group.

21 Q Okay. So to confirm, you did

22 not specifically assess the performance of

23 candidates who themselves are minorities;

24 correct?

25 A That is correct.

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2 Q The sole way of answering that  
3 question was by looking at minority-  
4 preferred candidates?

5 A Yes.

6 Q And so the reference to  
7 "minority candidates" is a typo?

8 A That is a charitable way of  
9 putting it, yes.

10 Q Okay. Okay. Then, still in  
11 paragraph 11, you state "Regardless of  
12 whether minority-preferred candidates are  
13 defeated, are the races competitive?" Did  
14 I read that correctly?

15 A Yes.

16 Q What do you mean by the term  
17 "competitive"?

18 A Whether it is plausible for  
19 either side to have won the race, given  
20 the conditions.

21 Q What conditions are you  
22 referring to?

23 A The current electoral conditions  
24 in that political community.

25 Q And what did you mean by -- I

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2 think you said "if it's plausible" to win  
3 the race? What did you mean by  
4 "plausible?"

5 A If it is considered plausible  
6 that a candidate could -- basically, if  
7 the fight, the race is competitive. If  
8 either candidate is spending their time  
9 wisely by campaigning.

10 Q And why is the competitiveness  
11 of a race relevant to the question of  
12 whether minorities have a reasonable  
13 opportunity to elect candidates of their  
14 choice?

15 A Reasonable opportunity would  
16 imply that they don't -- the minority-  
17 favored candidates don't have to win, but  
18 they have to have a plausible chance of  
19 victory.

20 Q Is there any peer-reviewed  
21 literature you can point to that uses  
22 competitiveness to answer the question of  
23 whether a minority community can elect  
24 candidates of their choice?

25 A Not of which I'm aware.



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2 Q Are you aware of any court cases  
3 or court decisions where a court answers  
4 the question of whether minority  
5 communities can elect candidates of their  
6 choice by looking at competitiveness?

7 A Not of which I'm aware.

8 Q Did someone instruct you to look  
9 at whether races were competitive?

10 A No.

11 Q That was your methodological  
12 choice; correct?

13 A Correct.

14 Q Okay. Moving to paragraph 12,  
15 you write: "I have also examined the data  
16 to see if the Town of Newburgh is likely  
17 to vote for the candidate favored by  
18 minorities.

19 "I employed the same assumption  
20 as Barreto that the candidate favored by  
21 minorities is the Democratic candidate, as  
22 we know that African Americans typically  
23 vote for the Democratic candidate." Did I  
24 read that correctly?

25 A Yes.

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2 Q And is it safe to assume that  
3 when you say "minorities," you're using it  
4 in the same way you used it in the  
5 preceding paragraph?

6 A In the way I meant to use it in  
7 the preceding paragraph, yes.

8 Q Understood. Understood. What  
9 did you mean when you wrote that you  
10 looked to "see if the Town of Newburgh is  
11 likely to vote for a minority-preferred  
12 candidate"?

13 A Could you repeat the question?  
14 I didn't hear you clearly.

15 Q What did you mean when you said  
16 you "looked to see if the Town of Newburgh  
17 is likely to vote for a minority-preferred  
18 candidate"?

19 A I meant that I would look at the  
20 election data to see if candidates favored  
21 by minorities either were victorious or  
22 were in competitive races.

23 Q And why did you decide to look  
24 at the performance of minority-favored  
25 candidates?

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2 A Because I assumed that's what  
3 this case was all about.

4 Q Did someone instruct you to look  
5 at the performance of minority-favored  
6 candidates?

7 A If I understand your question  
8 correctly, that was part of the reason I  
9 was hired was to look at this.

10 Q But did anyone explicitly  
11 instruct you to look at the performance of  
12 minority-favored candidates?

13 A I don't recall if those words  
14 were specifically used. But when I  
15 review -- I was asked to review  
16 Dr. Barreto's report, and that informed  
17 the choices that I made.

18 Q Understood. You write that you  
19 "employed the same assumption as Barreto,  
20 that the candidate favored by minorities  
21 is the Democratic candidate." Is that  
22 correct?

23 A Yes.

24 Q I'd like to go back to the  
25 Barreto report for a second, which I

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2 believe is marked Exhibit 2. Can you just  
3 let me know when that's up?

4 A Okay.

5 Q You have it in front of you?

6 A I do.

7 Q Can you show me where in  
8 Dr. Barreto's report he states that he  
9 assumes that the candidate favored by  
10 minorities is the Democratic candidate?

11 A No.

12 Q Does he state that in his  
13 report?

14 A Explicitly, I don't recall.

15 Q Is there a difference between  
16 assuming that minorities support a  
17 Democratic candidate and conducting an  
18 analysis to determine what candidates a  
19 minority community supports?

20 A That is plausible, yes.

21 Q Okay. Let's turn back to your  
22 report. In paragraph 11, you write that  
23 you "examined elections in the Town of  
24 Newburgh to determine whether minorities  
25 have a reasonable opportunity to elect

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2 candidates of their choice." Did I read  
3 that correctly?

4 A I hadn't had the report pulled  
5 up when you started reading there.

6 Q I apologize.

7 A Paragraph 11, you said?

8 Q Paragraph 11. I'll do my best  
9 to check to make sure you have it in front  
10 of you. Apologies. I'll read it again.  
11 So do you have the report in front of you?

12 A I do have it.

13 Q Okay. So then, in paragraph 11,  
14 you state, quote -- or do you state that  
15 you "examined elections in the Town of  
16 Newburgh to determine whether minorities  
17 have a reasonable opportunity to elect  
18 candidates of their choice"? Did I read  
19 that correctly?

20 A Yes, I believe so.

21 Q How did you do that?

22 A I looked at the election returns  
23 from the Town of Newburgh -- or the voting  
24 behavior in the Town of Newburgh and  
25 assessed whether minority-preferred

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2 candidates, as I assumed the Democratic  
3 candidate, given my knowledge of American  
4 politics, to see how often they would win  
5 and how often the races were indeed  
6 competitive.

7 Q So, essentially, you looked at  
8 whether who you assumed to be the  
9 minority-preferred candidate prevailed and  
10 then whether the elections were  
11 competitive. Is that correct?

12 A Correct.

13 Q Did you do anything else to  
14 reach your conclusions as to whether  
15 minorities had a reasonable opportunity to  
16 elect candidates of their choice?

17 A I don't believe so.

18 Q Did you conduct any analysis to  
19 determine which candidates Black and  
20 Latino voters actually preferred in  
21 Newburgh elections?

22 A I don't believe so.

23 Q I want to go back to the concept  
24 of competitiveness. Can you explain why  
25 in a competitive race minorities have a

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2 reasonable opportunity to elect candidates  
3 of their choice?

4 A It is more of a comparative  
5 situation, in that if a race is close,  
6 everybody running has a plausible or  
7 reasonable chance of victory.

8 If a race is 90 percent for one  
9 candidate, 10 percent for the other  
10 candidate, the candidate at 10 percent  
11 probably doesn't have a plausible chance  
12 of victory.

13 Q Or some other conditions that  
14 diminish that candidate's vote share that  
15 are not reflected in the vote share but  
16 are out there, presumably?

17 A My point is that the candidate  
18 who's at 10 percent is not competitive for  
19 a variety of reasons of which I'm unaware.

20 Q Understood. So is it fair to  
21 say, you know, a candidate -- let's say a  
22 candidate wins 10 percent in five straight  
23 elections. It's fair to say that  
24 candidate doesn't have a plausible  
25 opportunity to win that election; correct?

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2 A That is reasonable, yes.

3 Q And it doesn't matter --

4 A Barring -- excuse me. Barring  
5 any changes in the political environment.

6 Q So competitiveness might not be  
7 static from year to year; correct?

8 A That is correct.

9 Q And so, in the circumstance  
10 where there's a candidate who's  
11 consistently winning 10 percent, would you  
12 say it's fair that it doesn't matter if  
13 that candidate runs a really good campaign  
14 or does a lot of get-out-the-vote, that  
15 candidate probably doesn't have a chance  
16 of success?

17 A That would be reasonable, yes.

18 Q I want to give you a different  
19 example. So imagine that we have ten  
20 years of elections, and in those  
21 elections, the minority-preferred  
22 candidate always garners 48 percent of the  
23 vote, but in every one of those elections,  
24 the White preferred candidate wins with 52  
25 percent of the vote.



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2 Do you understand that

3 hypothetical?

4 A If I hear you clearly, several  
5 elections, 48-to-52, consistently across  
6 the board?

7 Q Correct. Would you describe  
8 that as competitive?

9 A Yes.

10 Q Would you describe those  
11 elections as one -- strike that. Would  
12 you say that minority-preferred candidates  
13 have a reasonable opportunity to get  
14 elected in those elections?

15 A Assuming they're the ones at 48  
16 percent, yes.

17 Q Even if they are persistently  
18 losing at 48 percent?

19 A Yes.

20 Q Let's turn back to paragraph 12.  
21 Do you have that in front of you?

22 A I have that.

23 Q You state that "We know that  
24 African Americans typically vote for the  
25 Democratic candidate." Did I read that

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2 correctly?

3 A Yes, sir.

4 Q Who is the "we" in that  
5 statement?

6 A Observers of American politics.  
7 Political scientists, newspaper reporters.  
8 It is a truism.

9 Q Did you review any facts or data  
10 to support that conclusion?

11 A To specifically go in and  
12 reference that conclusion, no. It came  
13 from my long-term understanding of  
14 American politics.

15 Q Do you know of any peer-reviewed  
16 publications that support that conclusion?

17 A The exact citations, off the top  
18 of my head, no. But I have read  
19 innumerable peer-reviewed articles that  
20 state that African Americans vote for  
21 Democrats.

22 Q Is that true everywhere in the  
23 United States?

24 A I don't know.

25 Q Is that true in every election?

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2 A I don't know about every  
3 election.

4 Q Is it fair to say that you did  
5 not analyze the actual voting patterns of  
6 Black or Latino voters in Newburgh to  
7 determine which candidates they preferred  
8 in a given election?

9 A That is correct.

10 Q You looked at whether Democrats  
11 were able to get elected; correct?

12 A Correct.

13 Q And then you assumed that the  
14 minority-preferred candidate was the  
15 Democratic candidate in every one of those  
16 elections; correct?

17 A Yes.

18 Q And then you looked at whether  
19 races in which Democrats ran were  
20 competitive, as you've defined that;  
21 correct?

22 A Yes.

23 Q Is that the extent of your  
24 analysis with respect to the performance  
25 of minority-preferred candidates or what

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2 you deemed to be minority-preferred

3 candidates in the Town of Newburgh?

4 A I believe I looked at both  
5 whether they were competitive races and  
6 whether minority-preferred candidates were  
7 victorious.

8 Q The election results generally?

9 A Yes.

10 Q Understood. And just to  
11 confirm, in paragraph 12, you state, as  
12 we've discussed, that you have an  
13 assumption that African Americans  
14 typically vote for the Democratic  
15 candidate.

16 I don't see anything in  
17 paragraph 12 about how Latinos vote. Is  
18 that correct?

19 A That is correct.

20 Q Did you conduct any analysis of  
21 how Latinos vote in the Town of Newburgh?

22 A No.

23 Q Did you conduct any analysis of  
24 how Latinos vote in general in the United  
25 States?

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2 A For this report, no.

3 Q So it's fair to say you did not  
4 analyze the actual voting patterns of  
5 Latino voters for this case, specifically?

6 A That is correct.

7 Q And did you also assume that  
8 Latinos prefer the Democratic candidate?

9 A I believe so.

10 Q And what is that assumption  
11 based on?

12 A Historical voting patterns.

13 Q From where?

14 A The nation, the United States.

15 Q So it's fair to say you assumed  
16 that the Democratic candidate in every  
17 election was the preferred candidate of  
18 both Latinos and Black voters in the Town  
19 of Newburgh?

20 A Correct.

21 Q Okay. Moving to paragraph 13,  
22 do you have that in front of you?

23 A I do.

24 Q You state that you "included  
25 those elections where one Democrat and one

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2 Republican contested the office." Did I  
3 read that correctly?

4 A Yes.

5 Q So, to confirm, that means you  
6 did not analyze any primary elections for  
7 your report here; correct?

8 A Correct.

9 Q And that also means you did not  
10 analyze elections for the Town Council in  
11 the Town of Newburgh; correct?

12 A I've referenced them, but I did  
13 not analyze them.

14 Q And that is because they are not  
15 elections where there is one Democrat and  
16 one Republican contesting one seat;  
17 correct?

18 A Correct.

19 Q So, in your report, do you offer  
20 any opinions about voting patterns by race  
21 or ethnicity in local Town Council  
22 elections in Newburgh?

23 A No.

24 Q And why did you choose not to  
25 include an analysis of town or primary

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2 elections in your report?

3 A I did not include the Town  
4 Council races where there were multiple  
5 candidates vying for multiple seats  
6 simultaneously, because I found it  
7 difficult, if not impossible, to say, if  
8 we have four candidates contesting for two  
9 seats, did Candidate A compete -- let's  
10 say A and B win. Did A compete against  
11 loser C or loser D?

12 Q Okay. I'm going to -- we'll  
13 address primaries, and then we'll address  
14 kind of the multi-candidate issue. So  
15 with respect to primaries, is it possible  
16 that minority voters prefer different  
17 candidates than White voters in primary  
18 elections?

19 A Yes.

20 Q If the question is whether  
21 minorities are able to elect their  
22 candidate of choice, isn't it relevant  
23 whether minority voters' preferred  
24 candidates prevail in primaries?

25 A That would be one thing to look

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2 at.

3 Q Okay. And then is it possible  
4 that minority voters prefer different  
5 candidates than White voters in town  
6 elections?

7 A Could you repeat the question,  
8 please?

9 Q Apologies. Is it possible that  
10 minority voters prefer different  
11 candidates than White voters in Town  
12 Council elections?

13 A It is possible, yes.

14 Q And again, if the question is  
15 whether minorities are able to elect their  
16 candidate of choice, isn't it relevant  
17 whether their preferred candidates prevail  
18 in Town Council elections?

19 A It is relevant.

20 Q Is it possible to analyze which  
21 candidate in a multi-candidate race is the  
22 candidate of choice of voters from a  
23 racial or ethnic group?

24 A I imagine it is.

25 Q Do you know how to do it



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2 yourself?

3 A Off the top of my head, no,  
4 other than doing a survey of minority  
5 voters and asking them who was their  
6 preferred candidate.

7 Q You did not do such a survey in  
8 this case; correct?

9 A [No audible response.]

10 Q And you did not perform any  
11 other kind of analysis that could answer  
12 that question; correct?

13 A That is correct.

14 Q We discussed earlier the RXC  
15 method of ecological inference. Do you  
16 recall?

17 A I recall talking about it, yes.

18 Q Are you aware that you can use  
19 that methodology to analyze multi-  
20 candidate races?

21 A Yes.

22 Q Did you consider doing that in  
23 this case?

24 A No.

25 Q Why not?

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2 A In part, because I was not  
3 looking at levels of racial polarization  
4 in my report.

5 Q So the question that an R by C  
6 analysis would answer was outside the  
7 scope of your report. Is that fair?

8 A Yes.

9 Q Okay. And moving down then to  
10 paragraph 14, you wrote that you "excluded  
11 candidates where the voter was allowed to  
12 vote for more than one candidate, because  
13 such contests are not one-on-one." Did I  
14 read that correctly?

15 A Other than the first word  
16 where -- or the second -- or third word,  
17 where you said "candidates," I have  
18 "contests" --

19 Q I have "contests."

20 A -- your --

21 Q I have "contests," too. I'll  
22 read it again just for -- we're on the  
23 same page. "Excluded contests where the  
24 voter was allowed to vote for more than  
25 one candidate, because such contests are

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2 not one-on-one." Did I get that right?

3 A Yes.

4 Q And what did you mean by that?

5 A That there is a race with a  
6 single victor, and there is not a major  
7 party candidate for both parties on the  
8 ballot.

9 Q And the question in this case  
10 was whether minority voters have a  
11 reasonable opportunity to elect candidates  
12 for Town Council in Newburgh. Is that  
13 correct?

14 A I don't know that it's limited  
15 to Town Council, but yes.

16 Q As you understood the -- strike  
17 that. Okay. Would you agree that the  
18 most probative elections to look at to  
19 determine if Black and Latino voters are  
20 able to elect candidates of their choice  
21 to Town Council would be Town Council  
22 elections?

23 A "Most probative," I would be  
24 uncertain as to whether I'd make that  
25 stipulation.

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2 Q You would agree that they are  
3 probative; correct?

4 A Yes.

5 Q Okay. In paragraph 14, you also  
6 state "It is difficult, if not impossible,  
7 to match up two candidates as opposing  
8 each other" in a multi-candidate election.  
9 Is that correct?

10 A Yes.

11 Q What did you mean by that?

12 A As I said a minute ago, if we  
13 have candidates A, B, C, and D vying for  
14 two seats, A and B win in this  
15 hypothetical. Did A oppose C or D?

16 We don't know the answer to that  
17 question. It's not available to us. We  
18 just know that the four candidates were  
19 vying for the two seats.

20 Q But you are aware that there are  
21 methods for conducting that analysis;  
22 correct?

23 A To ascertain who's opposing who,  
24 no.

25 Q But to ascertain who the

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2 minority-preferred candidate is?

3 A Yes.

4 Q Okay. Let's move on to  
5 paragraph 15. Do you have that in front  
6 of you?

7 A Yes, I do.

8 Q Okay. In paragraph 15, you  
9 refer to Orange County 2019 election  
10 results; correct?

11 A Yes.

12 Q Excuse me. Strike that. Let's  
13 start with 2021. So in Footnote 2, you  
14 refer to the Orange County 2021 election  
15 results. Is that correct?

16 A Yes, I believe so.

17 Q Okay. I'm going to mark an  
18 exhibit. Bear with me. I believe this is  
19 marked Exhibit 4. Dr. Lockerbie, if you  
20 can just let me know when you're able to  
21 view this exhibit?

22 A I view -. I have it up.

23 (Exhibit 4 was marked for  
24 identification.)

25 Q Do you recognize this document?

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2 A I don't recall if I saw it in  
3 this form, but ...

4 Q Can you tell me what it is?

5 A It looks like the results of  
6 elections from the County -- or the Town.

7 Q Okay. If we can scroll down to  
8 paragraph -- excuse me, page 45. I'll  
9 give you a second because that's pretty  
10 far down there. Just let me know when  
11 you're there?

12 A I believe I'm on page 45.

13 Q Do you see where it says --  
14 there's a little star, and then it says  
15 "Newburgh Town Councilman (Vote for Two)"?

16 A Yes.

17 Q And then it shows that the two  
18 Republican candidates won that election;  
19 correct?

20 A Yes, I believe so.

21 Q Okay. And then, where I jumped  
22 to initially, if we go back to your  
23 report, paragraph 15, Footnote 3, you  
24 refer to Orange County 2019 election  
25 results; correct?

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2 A Correct.

3 Q Okay. I'm going to mark another  
4 exhibit. Let me know when you can see  
5 that. I believe it's marked as Exhibit 5.

6 A I believe it is up.

7 Q Do you recognize this document?  
8 (Exhibit 5 was marked for  
9 identification.)

10 A It appears to be election  
11 returns from the Town of Newburgh.  
12 Whether it's one I reviewed before -- the  
13 specific format I've reviewed, I don't  
14 know.

15 Q In paragraph 15, you state that  
16 in 2019 there were three candidates for  
17 these two positions, referring to the  
18 Newburgh Town Council election. Is that  
19 correct?

20 A Yes.

21 Q Okay. Could you scroll down to  
22 page 27 of Exhibit 5 and just let me know  
23 when you get there?

24 A I am there.

25 Q You beat me. Okay. And on page

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2 27, you see a star, and then it says  
3 "Newburgh Town Councilman (Vote for any  
4 two), Vote for Two." Do you see that?

5 A Yes.

6 Q And it reflects that two  
7 Republican candidates won those seats;  
8 correct?

9 A Correct.

10 Q Okay. Then, in paragraph 15,  
11 Footnote 4, you reference Orange County's  
12 2013 election results; correct?

13 A I believe so, yes.

14 Q Okay. Bear with me. I'm going  
15 to introduce another exhibit. This will  
16 be marked Exhibit 6. If you can just let  
17 me know when you see it?

18 A I believe I have it up.

19 (Exhibit 6 was marked for  
20 identification.)

21 Q Thank you. And if you could  
22 scroll down to what is marked in the  
23 bottom right corner page 37?

24 A I believe I have that up, though  
25 it's mice type right here.



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2 Q Yeah. I had to make it a little  
3 bigger. But it says at the top -- or the  
4 subheader says "General Election,  
5 Newburgh, Newburgh Town, Town Councilman."  
6 Correct?

7 A Correct.

8 Q These results indicate that the  
9 two Republican candidates won Town Council  
10 seats in this election; correct?

11 A I'm going to have to expand it a  
12 little bit here to actually see.

13 Q I'll give you a second.

14 A I believe that's what it shows.

15 Q Okay. And then, one more. In  
16 paragraph 15, Footnote 5, you refer to  
17 Orange County 2011 election results;  
18 correct?

19 A Footnote 5?

20 Q Yes.

21 A My Footnote 5 has Gary  
22 Jacobson's citation.

23 Q Are you reading off of --

24 A The hard copy I have here. I  
25 can go back and look at the one that you

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2 sent me here.

3 Q If you don't mind. There might  
4 just be a slight -- maybe it's a version  
5 discrepancy.

6 A Okay. Let me go back here.  
7 Yes, I have that there.

8 Q Okay. I will mark one more  
9 exhibit, and this will be Exhibit 7. Let  
10 me know when you are able to access  
11 Exhibit 7?

12 A I have Exhibit 7.  
13 (Exhibit 7 was marked for  
14 identification.)

15 Q Do you recognize this document?

16 A It appears to be the election  
17 results. Yes.

18 Q From Orange County, 2011;  
19 correct?

20 A Yes.

21 Q Can you scroll down to what is  
22 marked in the bottom right corner as page  
23 190?

24 A I'm there.

25 Q And do these results reflect

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2 that two Republican candidates won Town  
3 Council seats in this election?

4 A Yes.

5 Q Thank you. Is it fair to say  
6 that Republican candidates have won every  
7 election for a seat on the Newburgh Town  
8 Council since 2011?

9 A It appears to be the case.

10 Q Okay. Going back to your  
11 report, paragraph 15, you state -- or  
12 excuse me. Let me know when you have it  
13 in front of you?

14 A Let me pull up the transmitted  
15 copy here. I'm at paragraph 15.

16 Q Okay. And you write "One should  
17 note, in the 2011 election Barreto  
18 included MacEntee, who did not have a  
19 major party nomination." Did I read that  
20 correctly?

21 A Yes.

22 Q And what did you mean by that?

23 A That he was neither a Democrat  
24 nor a Republican for the purposes of the  
25 ballot, as the election returns showed.

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2 Q And why was that relevant?

3 A I was looking at major party  
4 nominations, major party candidates, and  
5 not minor party candidates.

6 Q Do you believe it is possible to  
7 analyze voter preferences for minority  
8 candidates in elections?

9 A If I understand your question,  
10 it sounds like one that might have been  
11 asked earlier. Yes, I think it's  
12 possible.

13 Q Okay. And you stated earlier  
14 you did not look at the underlying code  
15 for the ecological inference analysis that  
16 Dr. Barreto did for this election;  
17 correct?

18 A Could you explain "underlying  
19 code"?

20 Q Absolutely. So in the files and  
21 data that Dr. Barreto provided to your  
22 counsel, he included the coding for the EI  
23 analysis he did in the 2011 election. Did  
24 you review that code?

25 A No.

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2 Q Why would you exclude minor  
3 party candidates when you are analyzing  
4 voter preferences?

5 A It is a convention to include  
6 the major candidates for office, that our  
7 knowledge of minor parties is much less  
8 developed than major party candidates.

9 Q When you say a "convention," is  
10 that a convention within the field of  
11 political science?

12 A When looking at voting behavior,  
13 yes.

14 Q Do you know of any peer-reviewed  
15 literature to support that assertion?

16 A Yes.

17 Q Can you identify it?

18 A Certainly. Most of the  
19 literature of which I'm aware on  
20 forecasting elections or aggregate  
21 explanations of elections references the  
22 two-party vote.

23 If one looks at individual  
24 models of voting behavior, one sees the  
25 two-party vote with great regularity, such

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2 as, say, for example, at most -- arena  
3 that you -- hopefully I can remember  
4 exactly what I said there.

5 THE REPORTER: "For example," what?  
6 I'm sorry.

7 THE WITNESS: For example, at studies  
8 of individual level voting behavior, one  
9 sees the use of the two-party races as  
10 opposed to including minor party  
11 candidates in -- in a good -- a good bit  
12 of the literature.

13 It helps to explain -- if we're  
14 looking at the election that's coming up,  
15 I doubt we're going to spend too much time  
16 looking at Jill Green -- or Jill Stein,  
17 excuse me.

18 BY MR. DAVIS:

19 Q Jill Stein, Green Party; right?

20 A Yeah. Or Cornel West.

21 Q Cornel West. Yeah. So when  
22 you're talking about literature, do you  
23 mean presidential forecasting, generally?

24 A That and other literature  
25 looking at other voting choices that

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2 voters make -- U.S. Senate, U.S. House,  
3 state legislature, and so on. We  
4 typically look at the two-party vote.

5 Q Is there literature addressing  
6 this question in the local context that  
7 you're aware of?

8 A Not that I'm aware of.

9 Q Okay. I have maybe one more  
10 short section that's, like, probably 10 to  
11 15 minutes. Maybe we can do that and then  
12 break for lunch. Does that sound okay,  
13 Dr. Lockerbie?

14 A That works for me.

15 Q Okay. Thank you. Let's turn to  
16 page 3 of your report and look at  
17 paragraph 16. Can you let me know when  
18 you're there?

19 A I'm there.

20 Q Okay. And you state that -- or  
21 you refer to Gary Jacobson's assumption  
22 that a competitive seat is anything where  
23 a candidate wins with less than 60 percent  
24 of the vote. Is that correct?

25 A Yes. You reframed it from

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2 "safe" to "competitive," but yes.

3 Q Let me just read it so that  
4 we're on the same page. So: "Gary  
5 Jacobson argues that safe House seats are  
6 won with 60 percent or more of the vote.  
7 He uses this higher threshold, as the  
8 swings from one election year to the next  
9 have increased."

10 Did I read that correctly?

11 A Yes, you did.

12 Q And the Jacobson article you  
13 refer to in Footnote 7, that is from 1987;  
14 correct?

15 A Correct.

16 Q And that analyzes U.S. House of  
17 Representative races between 1952 and  
18 1982; correct?

19 A Yes.

20 Q Does that paper analyze local  
21 elections?

22 A None of which I'm aware.

23 Q Okay. And going back to  
24 paragraph 16, you say that Jacobson "uses  
25 this higher threshold, as the swings from



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2 one election year to the next have  
3 increased." Did I read that right?

4 A Yes.

5 Q What did you mean when you said  
6 "the swings from one election year to the  
7 next have increased"?

8 A That the vote shares won by the  
9 parties has changed -- can change  
10 dramatically from one election to the  
11 next.

12 Q And that is what I assume  
13 Professor Jacobson found when he published  
14 his article in 1987; correct?

15 A Yes.

16 Q Do you know if the same dynamic  
17 regarding partisan swings between  
18 elections holds true today?

19 A No, I do not.

20 Q Is it possible that the dynamic  
21 of how much partisan swing there is  
22 between elections might be different today  
23 than it was in 1987?

24 A I don't know how the -- or I  
25 don't know if they would be different or

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2 not.

3 Q But it's possible it could be  
4 different?

5 A Yes.

6 Q Okay. And then, in Footnote 7,  
7 still referring to Jacobson, you write  
8 that Jacobson "argues that victors with  
9 over 60 percent are not as safe as they  
10 used to be." Correct?

11 A That is correct.

12 Q And again, that's reflecting  
13 what Jacobson found when he published his  
14 article in 1987; correct?

15 A Correct.

16 Q And do you know if that same  
17 dynamic holds true today?

18 A No, I do not know.

19 Q And it's possible that dynamic  
20 has changed; correct?

21 A It is possible.

22 Q Okay. And then, looking at  
23 paragraph 18, you write "If we use the  
24 more demanding 55-percent threshold."  
25 Correct?

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2 A Correct.

3 Q And what did you mean by "the  
4 more demanding 55-percent threshold"?

5 A Meaning that you would have it  
6 be more demanding to say that a seat was  
7 safe. Or excuse me, let me rephrase.  
8 More demanding that it is competitive,  
9 that a winner with 55 percent or less  
10 would still be in a competitive race.

11 Q Okay. Let me make sure I  
12 understand. So a candidate who won with,  
13 let's say, 58 percent of the vote, that  
14 would be competitive under Jacobson but  
15 not competitive under this more modern  
16 approach; right?

17 A I would largely agree to -- I  
18 don't know that I would use the modifier  
19 "modern," in part because the 55-percent  
20 threshold had been used both before and  
21 after Jacobson.

22 Q Fair enough. Let me use your --  
23 the more demanding threshold.

24 A Yes.

25 Q Okay. And you cite two

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2 articles, and that's in Footnote 9. And  
3 those are the articles -- the first one by  
4 Carson and Roberts, and the second one by  
5 Carson, Sievert, and Williamson. Is that  
6 correct?

7 A Yes.

8 Q Do those articles address  
9 federal legislative elections?

10 A My recollection is yes.

11 Q Are you aware of any peer-  
12 reviewed scholarship indicating that a  
13 definition of competitiveness used in  
14 federal races is also relevant in local  
15 races?

16 A No.

17 Q Do you have any other facts or  
18 data to support the conclusion that  
19 federal elections would be relevant in  
20 assessing the competitiveness of local  
21 elections?

22 A If I understood you correctly --  
23 and this is your opportunity to correct me  
24 if I'm misunderstanding you -- do I have  
25 any other source to say that local races

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2 would be competitive in a similar manner  
3 as U.S. House races and such? Other than  
4 reading literature of political  
5 commentators and political analysts, no.

6 Q Okay. And then, in paragraph  
7 19, you state that in the races you  
8 analyzed "Minority-favored candidates have  
9 won 34 percent of the time." Correct?

10 A Correct.

11 Q And just to confirm, when you  
12 say "minority-favored candidates," you  
13 mean Democratic candidates; right?

14 A Correct.

15 Q Okay. And, as we discussed  
16 before, this dataset does not include Town  
17 Council elections; correct?

18 A That is correct.

19 Q Okay. And let's assume for the  
20 sake of this question that Democratic  
21 candidates are minority-favored  
22 candidates.

23 Is it fair to say that, under  
24 your definition, no minority-preferred  
25 candidate has won a Town Council election

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2 since 2011?

3 A Assuming I've got all the Town  
4 Council elections in my report, yes.

5 Q At least in all the Town Council  
6 elections that we reviewed previously;  
7 correct?

8 A Yes.

9 Q Okay. So is it fair to say  
10 that, under your definition of minority-  
11 favored, the actual success rate of the  
12 candidates preferred by Black and Latino  
13 voters in Newburgh is less than 34  
14 percent?

15 A If I heard your question  
16 correctly, yes. Their chances of -- they  
17 won less than 34 percent.

18 Q Okay. If you're up for it, we  
19 can do one more very short section and  
20 then maybe break. Is that okay? I'm  
21 happy to break down --

22 A One more short section would be  
23 okay.

24 Q Okay. I got -- it's still on  
25 paragraph 19. That's the only reason.

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2 Okay. So then, looking at paragraph 19 --  
3 so we just discussed that 34 percent  
4 statistic.

5 You then write "In even years,  
6 the minority-favored candidates win almost  
7 50 percent of the time." Is that -- did I  
8 get that right?

9 A Yes.

10 Q Why did you look at the win rate  
11 of Democratic candidates in even years?

12 A I had been informed that the law  
13 had changed in New York to move these  
14 elections to even years.

15 Q Are you aware that groups have  
16 challenged the constitutionality of that  
17 law requiring jurisdictions to conduct  
18 even-year elections?

19 A I'm aware that there were  
20 challenges to it. Whether they were  
21 constitutional challenges or not, I don't  
22 know.

23 Q Fair enough. But there are  
24 challenges that could lead to the  
25 invalidation of that law?

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2 A As I understand it, that

3 challenges are pending.

4 Q Okay. So let's say,

5 hypothetically, one of those challenges is

6 successful, and the Town of Newburgh

7 continues conducting odd-year elections.

8 In that circumstance, based on

9 your analysis, would you expect minority-

10 preferred candidates to win in odd-year

11 Town elections going forward?

12 MS. WEEKS: Object to the form.

13 A I would argue that if they

14 returned to odd-year elections that the

15 success rate would not be the 50 percent

16 in general for minority-favored candidates

17 across all these elections.

18 Q It's fair to say that the

19 success rate for minority-preferred

20 candidates is lower in odd-year elections

21 than it is in even-year elections;

22 correct?

23 A Yes.

24 Q Okay. Are you aware that, even

25 if the law you referred to requiring towns



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2 to conduct even-year elections is upheld,  
3 there will still be odd-year Town  
4 elections in Newburgh in 2025 and 2027?

5 A No.

6 Q Okay. Well, I'll represent to  
7 you that, based on the way the law is  
8 being implemented, there will still be  
9 odd-year elections in 2025 and 2027.

10 Based on your analysis, would  
11 you expect a minority-preferred candidate  
12 to win in either of those races?

13 MS. WEEKS: Object to the form.

14 A I would expect that, given what  
15 I report here, that they have a better  
16 chance at even years, if that addresses  
17 your question.

18 Q But just to confirm, under your  
19 definition of minority-preferred, no  
20 minority-preferred candidate has won an  
21 odd-year Town Council election in  
22 Newburgh, at least since 2011?

23 A That's my understanding.

24 Q Do you have any reason to  
25 believe that that pattern would not hold

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2 true in 2025 or 2027?

3 A No reason to assume, either way.

4 Q You just can't make a  
5 prediction, either way?

6 A Well, we can always make  
7 predictions. But I would argue that there  
8 are probably other factors out there that  
9 might be influencing elections in the near  
10 term, as we are in, as you well know, a  
11 tumultuous time.

12 Q Fair enough. If we look at your  
13 report, on pages 3 through 6, you list  
14 various elections that you analyzed for  
15 your report. Is that correct?

16 A Yes.

17 Q And is this the full set of  
18 elections that you analyzed for your  
19 report?

20 A Yes. Well --

21 Q And --

22 A -- let me reframe. The Town  
23 Council elections, I referenced outside of  
24 this.

25 Q Right. Those were not included

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2 in this, but you referred to them

3 elsewhere in your report?

4 A Correct.

5 Q Okay. Okay. So looking through

6 this dataset, I see that in 2013, which is

7 on page 5, a Democratic candidate

8 prevailed in a race for the Leg 6 office.

9 A Yes.

10 Q Do you see that?

11 A Yes, I do.

12 Q Do you know if a Democratic

13 candidate won in any other odd-year

14 election in your dataset?

15 A I would have to go back and look

16 at each of those elections. So I don't

17 know, off the top of my head.

18 Q Well, I'll give you a moment.

19 Can you look through the odd-year

20 elections and see if there's any other

21 Democratic candidate who prevails?

22 A It appears to be no others.

23 Q Okay. So I'll represent to you

24 that there are 25 odd-year elections in

25 your dataset. Does that sound right?

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2 A I don't have the count in front  
3 of me. I will accept your  
4 characterization. I'm not going to try to  
5 count on the fly here.

6 Q Fair enough. I will represent  
7 that I counted them, one by one, and there  
8 were 25 elections in odd-year -- 25  
9 elections in odd years in your dataset.

10 So Democrats won -- or  
11 Democratic candidate won in 1 of 25 odd-  
12 year elections in your dataset. Is that  
13 correct?

14 A Based on your representation,  
15 yes.

16 Q And you have no reason to  
17 dispute those representations?

18 A No. I have not counted them up  
19 today.

20 Q Okay. So I'll just ask again,  
21 based on this data, which indicates that  
22 Democratic candidates win in 4 percent of  
23 odd-year elections, do you believe that  
24 minority-preferred candidates have a  
25 reasonable opportunity to be elected in

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2 Town elections in 2025 or 2027?

3 MS. WEEKS: Object to the form.

4 A I would say the odds are not  
5 good, if that addresses your question.

6 Q It does. Thank you. Why don't  
7 we break there, and we can take a lunch  
8 break.

9 MR. DAVIS: So we can go off the  
10 record.

11 THE REPORTER: Okay. Off the record  
12 now, 1:14 p.m.

13 (Off the record.)

14 THE REPORTER: Okay. We are back on  
15 the record now at 2:02 p.m.

16 BY MR. DAVIS:

17 Q Hi, Dr. Lockerbie. Were you  
18 able to get some lunch?

19 A Yes, the microwave was handy.

20 Q Glad you have the microwave.  
21 You understand you're still under oath?

22 A Yes.

23 Q Great. Okay. So we'll go back  
24 to Exhibit 1, which is your report. Can  
25 you let me know when you have that up?

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2 A I have it available.

3 Q Okay. And then, can you go to  
4 paragraph 19? I think there's two  
5 paragraph 19s.

6 A Yeah. I was about to say, first  
7 or second 19? I realized that yesterday.

8 Q Let's go -- second paragraph 19.  
9 I think it's on page 6.

10 A The one that starts "Barreto  
11 states"?

12 Q Correct.

13 A Yes, I'm there.

14 Q Okay. In the second paragraph  
15 19, you talk about a statistical  
16 methodology called Bayesian Improved  
17 Surname Geocoding, or BISG. Is that  
18 correct?

19 A Yes.

20 Q What is a BISG analysis?

21 A It is an attempt to assess the  
22 racial makeup of a community making use of  
23 location and surname.

24 Q Okay. And in general terms, how  
25 would one perform a BISG analysis?

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2 A In general terms, as I  
3 understand it, one would look at the  
4 location and the people around you when  
5 they're assessing your race, as well as  
6 your name, to see if it fits with  
7 stereotypical White, Black, Hispanic,  
8 Asian, whatever.

9 Q Okay. Have you ever yourself  
10 conducted a BISG analysis?

11 A No.

12 Q Okay. In paragraph 19, towards  
13 the end, I'll read. You state "We should  
14 note that it is by no means 100 percent  
15 accurate," referring to BISG. Is that  
16 correct?

17 A That is correct.

18 Q And what did you mean by that?

19 A I was highlighting the fact that  
20 it is not a completely accurate technique,  
21 that there are errors associated with it.

22 Q Okay. And what did you base  
23 that statement on?

24 A I reviewed some of the works  
25 that Barreto cited in his report --

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2 Q Okay. And then --

3 A -- as justifying it.

4 Q Okay. And then I see in

5 Footnote 14, you reference the -- I'm not

6 going to pronounce it correctly -- Imai,

7 I-M-A-I, that study. Is that correct?

8 A That is correct.

9 Q Okay. So you reviewed that  
10 study, presumably, for --

11 A Yes.

12 Q Okay. Were there any other  
13 specific studies that you recall that you  
14 reviewed?

15 A Not on the -- off the top of my  
16 head, no.

17 Q Okay. Then, in paragraph 20,  
18 you identify some error rates that are  
19 identified --

20 A Yes.

21 Q -- in the Imai paper. Is that  
22 correct?

23 A Yes.

24 Q Could you explain to me what  
25 those error rates mean?



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2 A They mean that they -- the --  
3 using that procedure for assessing  
4 somebody's race is inaccurate that  
5 percentage of the times.

6 And I've got -- from reading the  
7 article that Barreto cited, I cite the  
8 false positive and the false negative  
9 rates.

10 Q Okay. And the Imai paper, just  
11 to clarify, is not about the Town of  
12 Newburgh; correct?

13 A That is correct.

14 Q So those are error rates based  
15 on a general analysis using the ISG -- or  
16 strike that. Those error rates are not  
17 specific to the Town of Newburgh; correct?

18 A That is correct.

19 Q Based on those error rates, can  
20 you draw any conclusions about the  
21 accuracy of a BISG analysis in the Town of  
22 Newburgh?

23 A No more than Barreto did when he  
24 used that as the justification for using  
25 that technique in Newburgh.

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2 Q So what you can say is,  
3 generally, BISG analysis has these error  
4 rates, but you can't say for sure what the  
5 error rates are in the Town of Newburgh,  
6 specifically?

7 A Nobody can, as far as I'm -- as  
8 far as I'm aware.

9 Q Okay. I'm going to try and mark  
10 an exhibit. Just give me one second.  
11 Okay. This will be marked as Exhibit 8, I  
12 believe. And, Professor -- Dr. Lockerbie,  
13 let me know --

14 A Either one is acceptable.

15 Q Let me know when it's up on your  
16 screen?

17 A Going to make it so I can see  
18 the screen. Forgive me for the delay.

19 Q That's okay.

20 A I see that.

21 (Exhibit 8 was marked for  
22 identification.)

23 Q Okay. Are you familiar with  
24 this document?

25 A I can't recall if this is one of

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2 the ones I referenced in my report or not.

3 Q Okay. I will represent to you  
4 that this is the Imai report that you cite  
5 in Footnote 14.

6 A Okay.

7 Q Do you have any reason to  
8 dispute that?

9 A No.

10 Q Okay. So if you look at the  
11 abstract, on the top, I'm reading here,  
12 beginning of the first line --

13 A Let me expand the size of it a  
14 little bit here.

15 Q Absolutely. I did the same.  
16 Let me know when you're ready?

17 A Okay. I can see it.

18 Q All right. So Imai writes  
19 "Bayesian Improved Surname Geocoding  
20 (BISG), which relies on detailed census  
21 information, has emerged as a leading  
22 methodology for this prediction task."  
23 Did I read that correctly?

24 A Yes, I believe so.

25 Q Do you agree with that

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2 statement?

3 A I have no reason to dispute it.

4 Q Okay. And then, later on, Imai  
5 and co-authors discuss two potential  
6 limitations of a BISG analysis. Is that  
7 correct?

8 A I believe so, if you're reading  
9 from the next sentence that starts  
10 "Unfortunately."

11 Q Yes. So one of those problems  
12 is the census zero count problem; right?

13 A Yes.

14 Q And the other problem is the  
15 missing surnames problem; correct?

16 A Correct.

17 Q Do you know whether either of  
18 these limitations are present in  
19 Dr. Barreto's BISG analysis in the Town of  
20 Newburgh?

21 A No, I do not.

22 Q Do you know if there are any  
23 zero counts of minorities in blocks where  
24 minorities do in fact reside in the Town  
25 of Newburgh?

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2 A No, I do not.

3 Q Did you inspect Dr. Barreto's  
4 code to assess whether he used the updated  
5 census surname and first name lists?

6 A No, I did not.

7 Q Have you downloaded and run the  
8 version of fBISG that Imai refers to in  
9 this article?

10 A No, I have not.

11 Q Can you explain how the fBISG  
12 methodology works?

13 A Other than to say it takes into  
14 account more information than the original  
15 BISG, no.

16 Q And did you use fBISG to analyze  
17 election results in the Town of Newburgh?

18 A No.

19 Q Is it fair to say that you are  
20 aware of the general limitations of BISG  
21 raised in Imai's article, but you cannot  
22 say, one way or the other, how accurate  
23 BISG is when used in the Town of Newburgh?

24 A I don't know that anybody can  
25 assess the accuracy in the Town of

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2 Newburgh.

3 Q But you have no basis --

4 A That's why we don't use BISG is  
5 because we don't know the information. If  
6 we had the information, we would actually  
7 use it.

8 Q Understood. Let me rephrase,  
9 then. You do not know whether the  
10 limitations identified in the Imai article  
11 are also present in Dr. Barreto's  
12 analysis?

13 A I don't know if the problems  
14 that -- that Imai refers to are present  
15 there. All I can tell you is that Imai,  
16 who is cited by Barreto, says .Here are  
17 the limitations..

18 Q Right. Yes. There are -- those  
19 are the general limitations. Yes. Okay.  
20 I get what you're saying. Does a  
21 statistical method need to be 100 percent  
22 accurate to be considered reliable within  
23 the field of political science?

24 A No.

25 Q Is the ecological regression --

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2 strike that. Let's turn to paragraph 21  
3 of your report. I think that's on page 7.  
4 Let me know when you're there?

5 A I'm there.

6 Q Okay. And I'll read, just so  
7 we're on the same page. "Overall, the  
8 error rate indicates a high level of  
9 accuracy, but one should note that the  
10 errors are not randomly distributed." Did  
11 I read that correctly?

12 A Yes.

13 Q What did you mean when you said  
14 "the error rate indicates a high level of  
15 accuracy"?

16 A That despite the fact that there  
17 are errors with it, which Imai, or however  
18 one pronounces his name -- I apologize to  
19 him if he's listening in or hears this --  
20 that I said it has a high level of  
21 accuracy 'cause it's better than a flip of  
22 a coin, much better than a flip of a coin,  
23 I would think.

24 Q And then you said "the errors  
25 are not randomly distributed." What did

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2 you mean by that?

3 A That some races are predicted  
4 more accurately than others.  
5 Race/ethnicity, not electoral contests.

6 Q Can you explain to me, why would  
7 that matter when you're conducting a BISG  
8 analysis?

9 A I would argue that if you're  
10 doing analysis such as this, and your  
11 error rate for one group is different than  
12 another, that would lend me -- or lead me  
13 to doubt the results for the groups that  
14 are forecast more inaccurately.

15 Q Do you recall which groups have  
16 higher error rates?

17 A I believe that is referenced in  
18 paragraph 20 of my report.

19 Q All right. I see that now.  
20 Okay. Okay. I'm going to introduce  
21 another exhibit. Give me one second.  
22 Okay. This should be marked Exhibit 9.  
23 Will you let me know when it comes up on  
24 your screen?

25 A I have to refresh every time we



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2 add an exhibit.

3 Q Yes.

4 MS. WEEKS: Sam, I want to go ahead  
5 and note an objection by the named  
6 defendants on this.

7 It is our position that this was --  
8 and I know you've been made aware of our  
9 position -- that this was produced later  
10 in time and is inappropriately before the  
11 court or this witness at this time.

12 MR. DAVIS: Noted.

13 THE WITNESS: I have it available.

14 (Exhibit 9 was marked for  
15 identification.)

16 Q Great. Are you -- have you seen  
17 this document before?

18 A No.

19 Q Okay. It was not provided to  
20 you by defendants' counsel?

21 A I don't recall ever seeing it.

22 MS. WEEKS: Again, I will just say,  
23 you know, consistent with our objection,  
24 it was not provided to Dr. Lockerbie.

25 MR. DAVIS: Understood. Thank you.

1 B. LOCKERBIE

2 BY MR. DAVIS:

3 Q Okay. Okay. I'm going to go  
4 through a couple questions. I apologize  
5 in advance if I repeat something. Okay.

6 So in your report, do you offer  
7 an opinion regarding the presence or  
8 absence of racially polarized voting in  
9 the Town of Newburgh?

10 A I believe I did not dispute  
11 Dr. Barreto's characterization.

12 Q Okay. And you are not offering  
13 an opinion on whether it's possible to  
14 draw a single-member district for the Town  
15 of Newburgh -- a single-member district  
16 plan for the Town of Newburgh that allows  
17 minority voters to elect at least one  
18 candidate of choice; correct?

19 A I was not asked to evaluate  
20 that.

21 Q Do you know --

22 A So I have no opinion.

23 Q Understood. Do you know what  
24 rank choice voting is?

25 A Yes.

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1 B. LOCKERBIE

2 Q Are you offering an opinion on  
3 whether an election system that uses rank  
4 choice voting would allow minority voters  
5 to elect candidates of choice in the Town  
6 of Newburgh?

7 A I'm not offering an opinion on  
8 that.

9 Q Do you know what cumulative  
10 voting is?

11 A Yes.

12 Q Are you offering an opinion as  
13 to whether an election system using  
14 cumulative voting would allow Black and  
15 Latino voters to elect their candidates of  
16 choice?

17 A I'm offering no such opinion.

18 Q Do you know what limited voting  
19 is?

20 A That term eludes me.

21 Q I will represent that that is  
22 another alternative method of election.

23 You are not offering an opinion  
24 on whether an election system that uses  
25 limited voting would allow minority voters

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1 B. LOCKERBIE  
2 to elect their candidates of choice;  
3 correct?

4 A No --

5 MS. WEEKS: Object to the form.

6 -- I think I --

7 THE REPORTER: What was your --

8 THE WITNESS: I think I --

9 THE REPORTER: -- Dr. Lockerbie?

10 THE WITNESS: We're all talking at  
11 once. While I think I know what limited  
12 voting is, I am not offering an opinion on  
13 whether it has any relation to the outcome  
14 of elections with regard to the Town of  
15 Newburgh.

16 BY MR. DAVIS:

17 Q Thank you. You are not offering  
18 an opinion as to whether there's a history  
19 of discrimination in the Town of Newburgh;  
20 correct?

21 A That is correct.

22 Q You are not offering an opinion  
23 as to whether Black or Hispanic candidates  
24 have been elected to office in the Town of  
25 Newburgh; correct?

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1 B. LOCKERBIE

2 A That is correct.

3 Q You are not offering an opinion  
4 as to whether there are any voting  
5 qualifications, laws, ordinances, or  
6 policies that may enhance the allegedly  
7 dilutive effects of at-large elections in  
8 the Town of Newburgh; correct?

9 A I'm not offering any opinions  
10 with regard to that.

11 Q You are not offering an opinion  
12 as to whether Black or Latino voters or  
13 candidates lack access to the processes  
14 determining which candidates receive  
15 access to the ballot in the Town of  
16 Newburgh; correct?

17 A Not offering, as it's not in my  
18 report.

19 Q Is it fair to say you're not  
20 offering an opinion on anything that's not  
21 specifically included in your report?

22 A That is fair.

23 MR. DAVIS: Okay. Let's maybe go off  
24 the -- if we could take a five-minute  
25 break, just go off the record quickly, and

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1 B. LOCKERBIE

2 then --

3 THE REPORTER: Okay. Off the record,  
4 2:20.

5 (Off the record.)

6 THE REPORTER: Okay. We are back on  
7 the record now, 2:25 p.m.

8 MR. DAVIS: Great. Dr. Lockerbie,  
9 thank you for your time. We have no  
10 further questions.

11 THE REPORTER: Is there any cross  
12 or --

13 MS. WEEKS: No. Nothing further from  
14 the named defendants.

15 THE REPORTER: Okay. Then before we  
16 go off the record, I just want to confirm,  
17 Mr. Davis, you're ordering the transcript?

18 MR. DAVIS: I believe Mr. Imamura is  
19 going to handle --

20 MR. IMAMURA: Yes. We are. By  
21 Monday --

22 THE REPORTER: Oh, right.

23 MR. IMAMURA: -- if possible.

24 THE REPORTER: Expedite.

25 MR. IMAMURA: Yeah. So by Monday, if

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possible.

THE REPORTER: Okay. Okay. Then we  
can go off the record now at 2:26 p.m.

(Signature reserved.)

(Whereupon, at 2:26 p.m., the  
proceeding was concluded.)

---

DR. BRAD LOCKERBIE

Subscribed and sworn to before me

this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

---

Notary Public

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## CERTIFICATE OF DEPOSITION OFFICER

I, THEA POPKO, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



THEA POPKO

Notary Public in and for the  
State of New York

☒ [X] Review of the transcript was requested.



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## CERTIFICATE OF TRANSCRIBER

I, PENNIE M. HAHN, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



PENNIE M. HAHN

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CASE NAME: Clarke v. Town Of Newburgh, Et Al.  
DATE OF DEPOSITION: September 11, 2024  
WITNESS' NAME: Dr. Brad Lockerbie

[illegible]

DR. BRAD LOCKERBIE

Subscribed and Sworn To  
Before Me This \_\_\_\_\_ Day  
of \_\_\_\_\_, 20\_\_.

-----  
Notary Public  
My Commission Expires

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[analysis - attorneys]

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[attorneys - believe]

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## New York Code

## Civil Practice Law and Rules

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(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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