

Exhibit Q

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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.

TOWN OF NEWBURGH and TOWN BOARD

OF THE TOWN OF NEWBURGH,

Defendants.

Index No.

EF002460-

2024

DEPOSITION OF

DONALD T. CRITCHLOW

DATE: Thursday, September 12, 2024

TIME: 12:14 p.m.

LOCATION: Remote Proceeding

New York, NY 10001

REPORTED BY: Chanyri Figueroa Monsanto

JOB NO.: 6903405

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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)

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A P P E A R A N C E S

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

MARY MARTIN WEEKS, ESQUIRE (by videoconference)

Troutman Pepper Hamilton Sanders LLP

600 Peachtree Street

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ALSO PRESENT:

Veniece Miller, Program Coordinator, Election
Law Clinic, Harvard Law School (by
videoconference)

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NO. DESCRIPTION PAGE

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Exhibit 2 Mr. Critchlow's Expert Report 25

Exhibit 3 Summary of Democratic
National Convention, et al.,
v. Reagan, et al. 30

Exhibit 4 Mr. Sandoval-Strauz's Expert
Report and CV 42

Exhibit 5 Article Regarding Latino
Voter Participation 81

Exhibit 6 Article Regarding Racial and
Geographic Disparities in
Voting Turnout 164

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2 THE REPORTER: Good afternoon. My
3 name is Chanyri Figueroa; I am a reporter
4 assigned by Veritext to take the record of
5 this proceeding. We are now on the record
6 at 12:14 p.m.

7 This is the deposition of Peter [sic]
8 Critchlow taken in the matter of Oral
9 Clarke vs. the Town of Newburgh and others
10 on September 12, 2024, at -- the
11 deposition's being taken via Teams
12 virtual. Parties agree that I'll swear in
13 the witness remotely.

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

20 - is intended for all uses permitted
21 under applicable procedural and
22 evidentiary rules and laws in the same
23 manner as a deposition recorded by
24 stenographic means; and

25 - shall constitute written

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2 stipulation of such.

3 At this time, will everyone in
4 attendance please identify yourself for
5 the record. We'll begin with Plaintiff
6 attorneys, and we'll go in the order of
7 the -- of the caption.

8 MR. DAVIS: This is Samuel Davis.
9 I'm an attorney for the plaintiffs from
10 the Harvard Election Law Clinic.

11 MR. HESSEL: This is Daniel Hessel.
12 I'm also an attorney for the plaintiffs
13 with the Harvard Election Law Clinic.

14 MR. IMAMURA: David Imamura, attorney
15 for the plaintiffs. I'm at Abrams
16 Fensterman, LLP. Fensterman,
17 F-E-N-S-T-E-R-M-A-N.

18 MR. CRITCHLOW: Don Critchlow,
19 professor at Arizona State University,
20 being deposed.

21 MS. WEEKS: Mary Weeks of Troutman
22 Pepper. I represent the named defendants.

23 THE REPORTER: Thank you. Hearing no
24 objection, I will now swear in the
25 witness.

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2 WHEREUPON,

3 DONALD T. CRITCHLOW,
4 called as a witness and having been first
5 duly sworn to tell the truth, the whole
6 truth, and nothing but the truth, was
7 examined and testified as follows:

8 THE REPORTER: Thank you.

9 You may begin.

10 EXAMINATION

11 BY MR. DAVIS:

12 Q Good morning, Professor
13 Critchlow. We just met, but for the
14 record, my name is Samuel Davis, and I
15 represent the Clarke Plaintiffs in this
16 case. I'm going to be asking you some
17 questions today.

18 A Okay.

19 Q Have you ever been deposed
20 before?

21 A Yes.

22 Q Okay. So you may already know
23 most of this, but I'm just going to go
24 over some ground rules so that we all have
25 the same understanding of how this is

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2 going to go. So I will be asking
3 questions, and the court reporter will be
4 transcribing everything that we say.

5 So that the court reporter can
6 get everything on the record, I'll just
7 ask that you wait for me to finish my
8 question before you give an answer. And
9 I'll try to do the same thing so that
10 we're not speaking over each other. Does
11 that that make sense?

12 A Yes.

13 Q The court reporter can only
14 record verbal responses, so it's important
15 that you answer out loud with words rather
16 than nodding or saying "Uh-huh" as you
17 might do in an ordinary conversation.
18 Does that make sense?

19 A Yes.

20 Q I'm going to try and speak
21 clearly, but sometimes I do not. If you
22 don't understand a question for any
23 reason, just tell me, and I'll try to
24 clarify it. But if you answer the
25 question, I'll assume that you've

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2 understood what I was asking. Does that
3 make sense?

4 A Yes.

5 Q And then, finally, we can take a
6 break at any time you feel that you need
7 one. My only request would be that you
8 don't ask for a break while a question is
9 pending, and you just wait until after
10 you've answered the question. Does that
11 sound okay?

12 A Yes.

13 Q Great. Thank you. Do you
14 understand that you're under oath today?

15 A Yes.

16 Q Is there any reason why you
17 cannot give truthful answers to my
18 questions?

19 A No.

20 Q Are you taking any medications
21 or do you have any condition that impairs
22 your memory?

23 A I don't think so.

24 Q Part of the oath that you took
25 was to tell the whole truth, which means

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2 providing full and complete answers to my
3 questions. Do you understand that?

4 A Yes.

5 Q Is there any reason why you
6 cannot give full, complete, and accurate
7 testimony today?

8 A No.

9 Q Okay. In today's deposition,
10 I'll be using the terms Hispanic and
11 Latino interchangeably. Do you understand
12 that if I refer to Hispanic voters or
13 Latino voters, I'm referring to the same
14 group?

15 A Yes.

16 Q And when I refer to White
17 residents, I'm referring to White
18 residents or White voters who do not
19 identify as Hispanic or Latino. Does that
20 make sense?

21 A Yes.

22 Q I'll also be using the terms
23 Black and African American
24 interchangeably. Do you understand that
25 if I refer to Black voters or African

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2 American voters, I'm referring to the same
3 group?

4 A Yes.

5 Q Thank you. Is there anyone in
6 the room with you currently?

7 A No.

8 Q Okay. And I know we discussed
9 your grandson is around for technical
10 support. I would just ask that you let us
11 know if you need him to come in and just
12 let us know when he is present and then
13 when he leaves. Is that okay?

14 A Okay. Okay. I'm sorry. I --
15 he was in the corner, so I'm going to ask
16 him to -- I didn't see him, so I'll ask
17 him to leave, and then he will stick
18 around once we start sharing the documents
19 to make sure that we're all seeing the
20 same thing.

21 Q That's perfect. Thank you. And
22 thank you to your grandson. It's a good
23 service. Do you have any documents or
24 papers in front of you currently?

25 A No.

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2 Q Besides the Veritext folder that
3 we just discussed, do you have any other
4 windows or tabs open on your computer?

5 A I have my mail up. I can close
6 it if you want.

7 Q I would ask that you close that.
8 Thank you. Just let me know when you've
9 been able to do that.

10 A I'm just getting -- I've -- I've
11 done that, but now I've lost you. Sorry.

12 Q That's okay. Can you hear me?

13 A I can hear. Let me see if I
14 could get --

15 Q If you need your grandson, this
16 definitely falls within the ambit of
17 technical assistance.

18 A Okay. I apologize for this.

19 Q That's okay.

20 A Okay. I'll be right back.

21 Sorry.

22 THE WITNESS: I -- I can't -- I'm not
23 on -- I'm not on the camera. Not sure.
24 There we go. Thanks, David. It was --
25 that was an easy solution.

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2 BY MR. DAVIS:

3 Q All right. Can you see me now?

4 A Yeah, I can.

5 Q And you can still hear me?

6 A Yes, I -- I can.

7 Q Perfect. Okay. What did you do
8 to prepare for this deposition?

9 A I undertook extensive research.

10 Q Did you have any meetings to
11 prepare for this deposition?

12 A Only with -- only with those
13 helping me with the research.

14 Q And who were those people?

15 A Paula Baker.

16 Q Could you say that name again?

17 A Professor Paula Baker.

18 Q And I take it from your
19 statement, is that a professor that you
20 know?

21 A She's a professor.

22 Q Okay. And that was in
23 preparation for writing your report;
24 correct?

25 A And helping with -- with some

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2 aspects of the research.

3 Q Okay. And did you have any
4 meetings to prepare for this deposition
5 after you wrote your report?

6 A Do you mean with the -- with the
7 attorney?

8 Q With anyone.

9 A Yes. I met with Paula Baker to
10 go over the -- to go over the report.

11 Q Okay. And did you meet with any
12 attorneys from Troutman Pepper in
13 preparation for this deposition?

14 A Yes.

15 Q And when did that meeting occur?

16 A I think it was Sunday.

17 Q And was that meeting by Zoom or
18 videoconferencing?

19 A It was through
20 videoconferencing.

21 Q Okay. And about how long was
22 that meeting?

23 A I don't -- I don't fully recall.
24 About a couple hours.

25 Q Estimate is fine. Thank you.

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2 Do you recall which attorneys were on that
3 meeting?

4 A Yes. Mary Weeks and Mackenzie
5 Jessup.

6 Q Anyone else?

7 A No.

8 Q And did you review any documents
9 either during that meeting or in
10 preparation for this deposition?

11 A Most of the time was spent going
12 over deposition rules. And then we didn't
13 refer to any document or look at any --
14 any document or the witness -- or my
15 expert witness report.

16 Q Okay. So is it fair to say you
17 reviewed your own expert witness report
18 before today's deposition?

19 A Yes, I did review it.

20 Q Okay. Did you review the expert
21 report prepared by Professor
22 Sandoval-Strauz in this case?

23 A I didn't spend as much time on
24 that report, but I looked at it earlier.

25 Q Have you reviewed the expert

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2 report prepared by Dr. Lockaby in this
3 case?

4 A No.

5 Q What about the report prepared
6 by Matt Barreto?

7 A I didn't report -- I only
8 reviewed my report and Professor
9 Sanchez -- I mean Strauz. Sorry.

10 Q That's okay. Have you reviewed
11 any of the court filings in this case?

12 A No, not -- not extensively.

13 Q Did you look at the complaint at
14 some point?

15 A Yeah, I thought that's what you
16 were referring to. I -- I looked at the
17 complaint.

18 Q Okay. Thank you. Besides what
19 we've just discussed, did you do anything
20 else to prepare for this deposition?

21 A I tried to get a good night's
22 sleep.

23 Q That can be hard sometimes. And
24 so about how long do you think you spent
25 preparing for this deposition?

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2 A I -- I'm not -- I guess I'm --
3 I'm a little flustered by the question,
4 because I don't know what would -- what
5 would be included in preparing. So I
6 tried to prepare as well as I could. I --
7 I don't think I was keeping track of all
8 of my hours in my -- in my head, I guess.

9 Q That's okay. And you can always
10 ask for clarification. So it sounds like
11 you had a meeting with your attorneys that
12 was about two hours; correct?

13 A Yeah, a couple hours.

14 Q And then maybe you spent a few
15 more hours reviewing your report and
16 looking at Professor Sandoval-Strauz's
17 report. Is that about right?

18 A Yeah, I spent more time on -- on
19 my report. I've -- you know, I -- I read
20 it over a -- I read my report a couple
21 times over and tried to take key points
22 out of it.

23 Q Okay. Thank you. I am going to
24 try and introduce the first exhibit. So
25 let's see how this goes.

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2 A I'll have to bring my grandson
3 back in again.

4 Q Okay. Did something pop up in
5 your folder?

6 A Yes, Critchlow deposition.

7 Q Great. And can you open that
8 document?

9 A I'll try. Can you hear me?

10 Q Yes.

11 A I'm going to have to get my
12 grandson. I tried to click on the folder.
13 It didn't come up.

14 MR. DAVIS: Okay. Maybe we can go
15 off the record for a minute.

16 THE REPORTER: We're now off the
17 record, 12:30 p.m.

18 (Off the record.)

19 THE REPORTER: We're now back on the
20 record, 12:33 p.m.

21 BY MR. DAVIS:

22 Q Okay. Professor Critchlow, are
23 you able to see the document marked
24 Exhibit 1 with the header Appendix A on
25 top?

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2 (Exhibit 1 was marked for
3 identification.)

4 A Yes.

5 Q Are you familiar with this
6 document?

7 A It's my resume.

8 Q Okay. There is no date on the
9 resume. Do you know roughly when it is
10 from?

11 A Probably 2022.

12 Q Okay. Is there anything missing
13 from it that you'd like to add to your
14 resume?

15 A I don't -- I don't think so.

16 Q Okay. You are a professor in
17 the department of history at Arizona State
18 University; correct?

19 A I'm -- I'm in the faculty of
20 history. We don't have departments.

21 Q What courses do you teach?

22 A I teach a variety of courses.
23 This semester, I'm teaching -- co-teaching
24 debating the Constitution. I've also
25 taught an introductory course for

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2 undergraduate certificate program I
3 direct -- that I'm lead -- called -- it's
4 called "Foundations of Democracy." It's
5 political science history 112.

6 I teach a leadership seminar,
7 which is a capstone course, history
8 political science 414. And I teach other
9 courses including "History of Modern
10 Political Conservatism." I have taught a
11 course on conspiracy -- conspiracies in --
12 in American political history.

13 Q Okay. So is it fair to say that
14 you do not teach courses devoted to the
15 history of race relations in the United
16 States?

17 A Many of the -- I don't teach a
18 specific course on that, but many of my
19 courses obviously include racial
20 relations, because they can't be excluded
21 in American history.

22 Q Is it fair to say you touch on
23 race relations in every course about
24 American history that you teach?

25 A Yes.

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2 Q Do you ever teach critical race
3 theory in any of your courses?

4 A I -- I don't think we have a
5 course in that at Arizona State, so I
6 wouldn't have taught it.

7 Q Would you say you're an expert
8 in the history of race relations in the
9 United States?

10 A That is not my specialty, but
11 I -- I've written extensively about it in
12 my own publications.

13 Q Which publications most directly
14 address race relations?

15 A Well, I think all -- all of them
16 do.

17 Q Have you written any
18 publications that address the history of
19 racial or ethnic discrimination in New
20 York State specifically?

21 A Not that I recall.

22 Q Is it fair to say that most of
23 your work focuses on the history of
24 conservative movements and conservative
25 political figures?

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A No.

Q How would you describe what your work focuses on?

A My -- my work has been quite extensive, and the subject matter quite extensive, including my -- my first book on "The Brookings Institution: Expertise in Democracy." My second book was a major book in which I tried to write a definitive history of family planning and abortion federal policy. And that -- that book has an entire chapter on -- on African Americans and abortion.

That was followed by a book, I think, on Studebaker, which was basically on -- on corporate culture. And then I wrote a -- a book on Phyllis -- Phyllis Schlafly and grassroots conservatism. That was published by Princeton. And I followed that with a book, well, on -- on the conservative ascendancy that was published by Harvard University.

In fact, someone in the law school I know was on the board and helped

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2 publish that book. So given that you have
3 law professors there from Harvard, I
4 should give you a thanks. And that was
5 followed by a number of other books. We
6 don't need to go through my -- I think
7 I've published about 25 books, so we don't
8 need to go through them all.

9 Q Is it fair to say you've often
10 published books or other publications
11 about conservative movements and
12 conservative political figures?

13 A I have a number of books. I --
14 I have three books on conservatism. Yes.

15 Q Have you ever -- oh, excuse me.

16 A I -- I interrupted you. And I
17 was -- you instructed me earlier not to,
18 so I apologize for that.

19 Q No, that's okay. It goes for
20 both of us. Okay. So I'm going to try
21 and introduce another exhibit. And so it
22 should pop up in just the same way that it
23 did before. So just give me one second
24 and I'll see if that works.

25 A Okay. Is it up?

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2 Q It should have just arrived in
3 that folder.

4 A I'm sorry. I'm going to -- I'm
5 going to go get my grandson again so I --
6 I can keep -- I apologize for this, but I
7 don't want to mess up here. I'm adding a
8 little difficulty figuring out this
9 platform.

10 MS. WEEKS: Don --

11 THE WITNESS: Excuse me?

12 MS. WEEKS: Professor, if you would
13 press the refresh button, that may help.
14 Do you see where you can refresh the page
15 every time that a new exhibit comes? I
16 don't know if that would allow you to see
17 multiple exhibits.

18 THE WITNESS: Let me go -- this will
19 take just a second. It would be a lot --
20 I don't see the refresh button.

21 BY MR. DAVIS:

22 Q That's okay. And we're happy --

23 A Okay. I apologize for this.

24 Q No, that's okay. And if your
25 grandson wants to hang out in the room, we

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2 don't have an objection to that.

3 A Okay.

4 Q And can --

5 A I'll be right back.

6 MR. DAVIS: Can we go off the record?

7 Thank you.

8 THE REPORTER: We're now off the

9 record, 12:41 p.m.

10 (Off the record.)

11 THE REPORTER: We're now back on the

12 record, 12:43 p.m.

13 BY MR. DAVIS:

14 Q Okay. Professor Critchlow, are
15 you able to see the exhibit marked Number
16 2 with the header "Expert Report of Donald
17 T. Critchlow, Ph.D. M.A."?

18 (Exhibit 2 was marked for
19 identification.)

20 A Yes.

21 Q Do you recognize this document?

22 A Yes.

23 Q What is it?

24 A It was my expert witness report.

25 Q Okay. On page 1 in the second

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2 paragraph, you write that you have
3 previously been retained as an expert, and
4 then you list four court cases. Is that
5 correct?

6 A Yes.

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

9 A Yes, it is.

10 Q Okay. Let's go through these
11 cases first. Who were you retained by in
12 the case Feldman v. Reagan?

13 A The State of Arizona.

14 Q And what was the subject of your
15 opinion in that case?

16 A I was -- the -- the case
17 involved access to voting and
18 discrimination. And I argued that -- that
19 the State of Arizona -- the history of
20 Arizona from a territory to as a state had
21 made progress on racial relations, that
22 the story that their eyewitness -- their
23 eyewitness told was not -- was not
24 complete.

25 Q Okay. And who were you retained

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2 by in Yazzie v. Hobbs?

3 A That was also the -- that was
4 the Arizona legislature and the State of
5 Arizona.

6 Q And what was the subject of your
7 opinion in that case?

8 A If I recall correctly, it had to
9 do with a suit in -- a complaint by Yaqui
10 Indians and -- at the reservation saying
11 that they -- claiming that they needed
12 additional mail-in ballot boxes.

13 Q Okay. And who have you been
14 retained by in New York Communities for
15 Change v. County of Nassau?

16 A The -- the law firm Mary Weeks
17 is representing. Is it called Troutman?

18 Q I believe that is correct. And
19 who were you retained by in the case
20 Serratto v. Town of Mount Pleasant?

21 A That's also a Troutman case.

22 Q Okay. Has a court ever relied
23 on your testimony in reaching its
24 conclusions about a case?

25 A I believe so.

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2 Q Do you remember what case that
3 was in?

4 A I believe the Feldman case
5 reached the supreme -- U.S. Supreme Court,
6 and my testimony, I believe, was cited. I
7 didn't read the -- that's what I
8 understand. And the -- and this case went
9 through -- was a -- I believe was a --
10 went to the district courts and worked its
11 way up. And I know my opinion was -- was
12 discussed in the decisions, I believe. I
13 didn't read the decisions, but that's what
14 I heard.

15 Q Do you recall whether the court
16 credited your opinion, or did they reject
17 your opinion?

18 A Well, I didn't read the
19 decisions, so I really can't answer that.

20 Q Okay. Is the case Feldman v.
21 Reagan the same as Democratic National
22 Committee v. Reagan?

23 A That, I'm not sure of.

24 Q Okay. I am going to introduce
25 another exhibit. Give me one second.

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2 A Okay.

3 Q Okay. So if you press refresh,
4 it should pop up in your folder.

5 A Well, there's a way of -- I'm
6 going to have to get my grandson. He left
7 the room. Sorry.

8 Q That's okay.

9 A He showed me how to do it, but
10 I'm -- I usually use a mouse, and this is
11 the keypad -- keypad, and I'm just not
12 very good on the keypad. I -- I really do
13 apologize for this folks.

14 Q I understand.

15 A So off the record. We'll go get
16 my grandson.

17 THE REPORTER: Off the record.

18 (Off the record.)

19 THE REPORTER: We're now back on the
20 record at 12:50 p.m.

21 BY MR. DAVIS:

22 Q Professor Critchlow, are you
23 able to see a document marked Exhibit 3
24 that has a header, "329 Federal
25 Supplement, 3d Series"?

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2 (Exhibit 3 was marked for
3 identification.)

4 A Yes.

5 Q Okay. Are you familiar with
6 this document?

7 A No.

8 Q Okay. I will represent to you
9 that this is a decision by the United
10 States District Court for the District of
11 Arizona in a case called Democratic
12 National Committee v. Reagan. Do you
13 recall -- strike that. Can you scroll
14 down to page 13 of the PDF and let me know
15 when you get there.

16 A Page -- what's the page?

17 Q It is the 13th page of the PDF.
18 It will say 836 in the top left corner.

19 A Yeah. Okay. Yes, I see it.

20 Q Okay. And I'm going to read
21 from the bottom right paragraph. And this
22 is under the header, "Dr. Donald
23 Critchlow." And then the court says with
24 reference to you, quote, "In many
25 respects, he offered one-sided opinions of

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2 Arizona's history, ignored incidents of
3 discrimination, and failed to address the
4 key political shift between the Democratic
5 and Republican parties during the civil
6 rights movement."

7 And then further on it states,
8 "Additionally, although Dr. Critchlow
9 acknowledged that Arizona has a history of
10 discrimination, his report appears to
11 attribute past racial discrimination in
12 Arizona only to the Democratic party and
13 claims that discrimination has not existed
14 since the 1960s in the Republican era.
15 For these reasons, the court affords
16 little weight to Dr. Critchlow's
17 opinions." Did I read that correctly?

18 A Yes.

19 Q Do you agree with that
20 characterization of your opinion in this
21 case?

22 A No.

23 Q Why don't you agree with it?

24 A For many reasons. We could
25 begin with, I spent a good deal of time

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2 discussing racial discrimination. So
3 the -- in fact, the two paragraphs I would
4 suggest to you are contradictory. He
5 said -- the first paragraph which you
6 quoted as I read it, "So he ignored
7 incidents of discrimination."

8 And then the second paragraph,
9 it says I attribute racial discrimination
10 in Arizona to the Democrats. So either I
11 mentioned racial discrimination or I
12 didn't. So the -- so that -- the two
13 paragraphs, I think, are contradictory.

14 Q Okay. And did you change
15 anything about how you conduct your
16 research based on the critique in this
17 court document?

18 A There's standard -- there's
19 standard research methods that would be
20 used that -- that I use in all of my
21 research. So I didn't change my research
22 in -- in that regard because of this --
23 because of that decision. And, in fact,
24 as you know, I hadn't read this, so -- so
25 obviously I will have an -- after reading

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2 it, if I read it, I wouldn't have changed
3 my -- my research methods in any case.

4 Q So is it fair to say you used
5 the same research methods in the current
6 case as you used in DNC v. Reagan?

7 A Well, I extended -- the research
8 sources were extended in -- in the case
9 that we're discussing now in Newburgh.

10 Q What do you mean by that?

11 A Well, there's many more
12 opportunities for data collection now on
13 internet. And, for example and
14 specifically, I used extensively U.S.
15 Census Bureau records as well as Orange
16 County and -- and Newburgh town websites,
17 and public information, which -- which
18 were useful.

19 Q So you included some different
20 sources in this opinion as compared to
21 your prior opinions. Is that correct?

22 A Well, I would say many more
23 actually.

24 Q Okay. And do all of the sources
25 of information that you relied on appear

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2 in your report, either in the body or in
3 the footnotes?

4 A I -- I believe so.

5 Q Okay. Is it fair to say that in
6 the opinion I just read, or the portion of
7 the opinion I just read, the court found
8 that you had acknowledged discrimination
9 occurring before 1960 in Arizona, but you
10 claimed that discrimination had not
11 existed in Arizona after 1960s. Is that a
12 fair summary of what the court said?

13 MS. WEEKS: Object to the form.

14 You can proceed with answering,
15 Dr. Critchlow.

16 THE WITNESS: Oh, could you repeat
17 the question?

18 BY MR. DAVIS:

19 Q So the court -- strike that. Is
20 it fair to say that the court found that
21 you acknowledged discrimination before the
22 1960s, but you claimed that discrimination
23 did not exist after the 1960s in Arizona?

24 MS. WEEKS: Object to the form.

25 A I -- you're asking me whether I

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2 think it was fair that they said that? I
3 mean, I think that is -- that borders on
4 being absurd, quite frankly.

5 Q So I'm not asking if you agree
6 with the characterization. I'm just
7 asking if that's what the court said.

8 A As -- as read in the text,
9 that's what they said. Yes.

10 Q In this case, do you believe
11 there was discrimination in the Town of
12 Newburgh after the 1960s?

13 A There were -- there was a -- an
14 agreement that they needed -- Orange
15 County and Newburgh needed to provide
16 bilingual ballots. So that was considered
17 discrimination. Yes.

18 Q So you --

19 A As an example.

20 Q So you would agree that there
21 were incidents of discrimination in
22 Newburgh after the 1960s?

23 A Yes.

24 Q Okay. How did you first learn
25 about this case? And now I'm talking

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2 about the Newburgh case.

3 A I was approached by a -- I
4 believe, an attorney from Troutman who
5 asked if I would be interested in serving
6 as expert witness in this case.

7 Q And do you recall which attorney
8 that was?

9 MS. WEEKS: I would just object on
10 the grounds of it getting into privilege.

11 A Actually, I don't remember.

12 Q And when were you first retained
13 as an expert witness in this case?

14 A I'm not exactly sure. And I
15 want to -- I also want to assure you I'm
16 not trying to avoid questions, but I'm not
17 quite sure when -- exactly when I was
18 retained. Maybe three months ago.

19 Q Okay. And just to be clear, if
20 you don't know the answer to the question,
21 I'm not asking you to make something up.

22 A Okay.

23 Q Do you know what the Gingles
24 prongs are?

25 A The Gingles? No, I guess I

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2 don't.

3 Q What is your understanding of
4 the scope of your work in this case?

5 A The scope of my work was to
6 rebut -- rebut the -- your expert witness
7 report.

8 Q Anything else?

9 A No.

10 Q Do you know why you were
11 approached to serve as an expert in this
12 case?

13 A No.

14 Q Did you sign a retention
15 agreement regarding your work in this
16 case?

17 A I'm not sure if a -- if an
18 agreement was signed or not. I know that
19 I started work, and maybe later I asked
20 for a retention agreement. But I'm not
21 exactly sure of this since I'm -- I'm
22 actually working on three other cases. So
23 those kinds of details weren't of primary
24 importance to me.

25 Q Are you being paid for your work

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2 in this case?

3 A I -- I hope so.

4 Q Have you been paid so far?

5 A Yes.

6 Q What is your hourly rate?

7 A \$350 an hour.

8 Q Will you be billing for the time
9 you spend in this deposition?

10 A Yes.

11 Q And would that be at \$350 per
12 hour?

13 A For trial, it's \$450 an hour.

14 Q But for depositions, it's 350?

15 A My -- my understanding, once it
16 goes to deposition, it's \$450. But I
17 guess that's to be -- that was my
18 understanding, but I may be mistaken on
19 that.

20 Q And roughly how many hours do
21 you think you've spent working on this
22 case so far?

23 A Again, I'm not sure about that.
24 And to be honest with you, I've -- I know
25 at -- at times, I haven't even submitted a

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2 bill, although I've kept track of my
3 hours. But let's make an approximation
4 maybe of 30 hours. It may be more.

5 Q Okay. And is there any kind of
6 cap on the fees you can earn in this case?

7 A I don't -- I don't think so.

8 Q Okay. Have you ever
9 communicated with any member of the
10 Newburgh Town Council?

11 A No.

12 Q Have you ever communicated with
13 any of the other experts who have been
14 retained in this case?

15 A No.

16 Q Okay. I'd like to go back to
17 your report. Are you able to -- is it
18 still open on your computer? Are you able
19 to click on the report?

20 A Let me -- I'm on the report.

21 Q Great. Did you write this
22 report?

23 A Yes.

24 Q Did you write every word of this
25 report?

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2 A Part of the report was -- I
3 believe some of it was -- initial drafts
4 were done -- sections of the -- of the
5 report, I believe, were -- were done by
6 Professor Baker. And then I revised what
7 she had written in terms of wording.
8 So -- but I -- I'm the primary author.
9 I -- I'm the author of this report.

10 Q Do you recall which sections
11 Professor Baker wrote?

12 MS. WEEKS: Object to the form.

13 A I would have to go through the
14 report. I think she did -- I think she
15 contributed initial articles, and she may
16 not have -- I'm sorry -- I should say that
17 she -- I don't think she wrote any part of
18 the report. I -- I'm going to -- now that
19 I -- I want to clarify that. She provided
20 a research assistance and gave me -- and
21 gave me -- provided links for documents,
22 primarily having to do with racial appeals
23 responses.

24 Q Did you instruct her on what
25 research methods she should use?

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2 A No, she's a full professor with
3 an established publication record. I
4 wouldn't to be so presumptuous to do that.

5 Q Did you review her research
6 methods before including them in your
7 report?

8 A We discussed what she was going
9 to look at, and we discussed how to find
10 the information.

11 Q Did you review which -- oh,
12 excuse me. Please finish.

13 A I -- I interrupted you again,
14 please -- please proceed. I apologize
15 once again.

16 Q We'll do our best. That's all
17 we can do. Did you review the primary
18 sources she provided to you to include in
19 your report?

20 A Absolutely.

21 Q Did you review the report
22 prepared by Dr. Sandoval-Strauz before you
23 started writing your report?

24 A Yes.

25 Q Okay. I'm going to introduce

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2 Dr. Sandoval-Strauz's report.

3 (Exhibit 4 was marked for
4 identification.)

5 I don't need you to click over
6 to it right now, but I'm going to mark it
7 so that we can refer to it later. Does
8 that sound okay?

9 A Okay.

10 Q Just give me one second. Did
11 you discuss Professor Sandoval-Strauz's
12 report with anyone while you were
13 preparing your report?

14 A No.

15 Q You did not discuss his report
16 with Professor Baker?

17 A Well, I discussed the report
18 with Professor Baker. You just asked
19 that. So I was assuming you meant with
20 other people.

21 Q Okay. Does your report, which
22 is dated July 26, 2024, contain a complete
23 statement of your opinions in this case?

24 A Yes.

25 Q Okay. On page 1, you write,

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2 quote, "I was asked to analyze whether the
3 evidence cited in the Sandoval-Strauz
4 report supports the claim that under the
5 totality of the circumstances, the ability
6 of Hispanics within the town to elect
7 representatives of their choice to public
8 office or the town board is impaired."

9 A I'm -- I'm sorry. For some
10 reason I lost you.

11 Q Oh, that's okay. You know what,
12 we can strike that. I'd like to turn to
13 the section that starts at the bottom of
14 page 2 with the header, "Summary of Expert
15 Opinions." Do you see that?

16 A Yes. Yes, I do.

17 Q Okay. And then I'm going to
18 read from the bottom of page 2 into the
19 top of page 3. You write that Professor
20 Sandoval-Strauz's, quote, "Description of
21 past and current racial disparities is
22 problematic and deficient." Did I read
23 that correctly?

24 A I'm not sure where you -- are
25 you -- did you start at the bottom of page

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2 2?

3 Q Yes. So it's the bottom of page
4 2, and it says, quote, "His description of
5 past and," and then moving into page 3,
6 "Current racial disparities is problematic
7 and deficient."

8 A Yes, I see it now. I'm sorry.

9 Q That's okay. What did you mean
10 by problematic?

11 A Problematic in -- in that in
12 many ways, beginning with the concept of
13 totality of circumstances, which I
14 understand is a legal concept, it's not a
15 standard historical concept. But given
16 the totality of the circumstances that he
17 was -- that he wanted to include,
18 actually, he excluded quite a bit of other
19 historical evidence that showed that there
20 was resistance and -- resistance to -- to
21 slavery, to racial discrimination.

22 And that there was various -- at
23 various points, progress being made and
24 remedying these -- these -- this racism
25 and racial discrimination toward -- toward

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2 Blacks as well as Spanish language
3 speakers.

4 Q Okay. And what did you mean by
5 deficient?

6 A Well, there wasn't -- he didn't
7 include -- he didn't include examples or
8 events in New York history that -- that
9 would've provided a -- a greater nuance to
10 the narrative that he was creating. But
11 more importantly was, if you're going to
12 argue for totality -- totality of -- of
13 circumstances, that totality should
14 include other -- other -- it should have
15 included anti-racist and anti-slavery
16 activities and legislation.

17 Q Okay. So then on page 3 in
18 paragraph A, you ask, "Why is the history
19 of opposition to slavery and post World
20 War II civil rights activism not
21 included?" Is that an example of what you
22 found deficient in Professor
23 Sandoval-Strauz's report?

24 A Yes, that would be one example.

25 Q Can you explain to me why the

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2 fact that some people opposed slavery in
3 the 18th century is relevant to the
4 present day experience of Black people in
5 New York?

6 A The -- actually -- actually, the
7 argument, just to clarify, is that
8 Professor Sandoval-Strauz argued that --
9 that the long history of racism, as -- as
10 he recounted it, beginning with slavery in
11 colonial New York, all the way up to the
12 present was -- excuse me -- up to -- up
13 through the early 20th century and mid-
14 20th century was irrelevant to -- to
15 Orange County, the State of New York, and
16 Newburgh -- and the Town of Newburgh.

17 So that's what he was positing.
18 This -- this jumped from what occurred 100
19 and -- over 200 years ago to the
20 present -- present relevance to racial
21 disparities in various forms: housing,
22 education, and voting, and -- and so
23 forth. So that was his argument.

24 Q Right. I'm not asking about
25 Professor Sandoval-Strauz's argument. I'm

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2 just asking you to explain to me why you
3 believe it is relevant that the fact that
4 there were people opposed to slavery in
5 the 18th century -- what that has to do
6 with the present day experience of Black
7 people in New York and the Town of
8 Newburgh?

9 MS. WEEKS: Object to the form.

10 A I -- I apologize for not making
11 myself clear. My point was that if he
12 wanted to include in the totality --
13 totality of circumstances, then he should
14 have included this -- this opposition. In
15 other words, if he's arguing that -- that
16 what occurred a hundred -- 200 years ago
17 or a hundred years ago was relevant to
18 today, that is the past history, then he
19 should have included this. And I just
20 asked -- I was asking the question, well,
21 why wasn't it included?

22 Q Are you familiar with the
23 concept of the racial wealth gap?

24 A Of the racial wealth gap?

25 Q Yes.

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2 A Yes.

3 Q What is your understanding of
4 the racial wealth gap?

5 A That there's a -- a wealth gap
6 and income gap between races.

7 Q Can you identify any of the
8 causes of the racial wealth gap?

9 A I think there -- I think there
10 are multiple, but this -- this was not
11 part of my report, so I'm not quite sure
12 of the relevancy. And I'm not an
13 economic -- I'm not an economist.

14 Q Would you agree that the fact
15 that Black people were previously enslaved
16 in this country contributes to the racial
17 wealth gap?

18 A You're -- you're asking me, do I
19 think that it contributed? That's a vague
20 question. I'm -- you're -- I'm not sure
21 how much it -- it would've contributed,
22 that there was racial discrimination and
23 segregation in the 1960s. I think that
24 contributed to that. So, I mean,
25 you're -- you're asking a very complex

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2 question, one of contribution, and that's
3 better left to economists who can give a
4 specific weight to that factor.

5 Q Are you familiar with the
6 extensive literature documenting the
7 connection between slavery and present day
8 racial disparities?

9 A Yes, it's a good deal of the
10 contemporary historical scholarship.

11 Q And do you disagree with that
12 scholarship?

13 A You are asking me if I -- if I
14 disagree with that -- the general
15 scholarship. There are parts of it I -- I
16 disagree with, and -- and -- but I don't
17 disagree with the -- with the topic itself
18 or don't believe that people should not be
19 looking at -- looking at it.

20 Q Do you disagree --

21 A At the relationship --

22 Q Do you disagree --

23 A Excuse me. I'm --

24 Q That's okay. Do you disagree
25 with the scholarship that has concluded

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2 that slavery contributes to the racial
3 wealth gap today?

4 A Actually, this is a really quite
5 involved question, which I don't think
6 you're -- I think there's actually a
7 contrary scholarship on -- on this, but
8 this is not my area of expertise. There's
9 a -- yeah, there's -- there's major
10 economic historians who wrote on the
11 economics of -- of slavery. So you're
12 asking me quite complex questions, asking
13 me, you know, what the contribution is
14 in -- in a really extensive historical
15 leadership -- literature.

16 Q Okay. So you don't know one way
17 or the other whether slavery contributed
18 to the racial wealth gap?

19 MS. WEEKS: Object to the form.

20 A I didn't say that.

21 Q So did slavery contribute to the
22 racial wealth gap?

23 A You're asking me -- you're
24 asking me to -- what the meaning of
25 contributed -- look at -- there was --

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there were Black people that were enslaved and then -- and then later they were discriminated against in -- in severe ways. So I -- if you're asking me if that contributed to the wealth gap today, it -- it contributed to the degree that other contributing factors that are involved in the wealth gap are relevant.

That's -- I think that's a more complex question. There's actually, if you -- I don't want to expound here, but there's actually a great wealth gap within the -- within the White -- within White -- White community, too. So -- so there's wealth gaps.

Q Okay. I just want to clarify something. Do you agree that discrimination in the 1960s against Black people contributed to modern day disparities on various socioeconomic indicators?

A If I may just point you back to your expert witness report to take one example, he mentions housing. And he said

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2 that probably the -- probably, and that
3 was his word, may have contributed to --
4 to housing. So he doesn't know the
5 exact -- he was unwilling to make that
6 exact link between discrimination and
7 housing in, let's say, 1960 with today.

8 Q So I'm not asking about
9 Professor Sandoval-Strauz's report right
10 now. I'm just asking for your opinion.
11 So in your opinion, did racial
12 discrimination in the middle of the 20th
13 century contribute to modern day
14 disparities between Black and White
15 residents of New York?

16 A The -- his answer was he wasn't
17 sure --

18 Q Again, I apologize for cutting
19 you off, but I'm not asking about
20 Professor Sandoval-Strauz's report. I'm
21 asking about your opinion.

22 A Well, the exact relationship is
23 not clear -- is not clear. We know there
24 was housing discrimination. Housing
25 patterns tend to get set. Whether it

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2 contributed to housing disparities in
3 Newburgh, I don't think is fully clear.

4 Newburgh, if I may add this, and
5 I don't want to go on at length, but
6 Newburgh was a very small town, a rural
7 community, and then had exponential
8 growth -- population growth really in the
9 last two decades. So -- and -- and much
10 of that was Hispanic. So what the
11 relationship today with housing
12 disparities and what occurred in 1960 in
13 Newburgh, a small rural, mostly dairy town
14 with some industry brick is a link that
15 is -- that I think is not -- is not fully
16 clear.

17 Q So you have no opinion as to
18 whether racial discrimination in the 1950s
19 and '60s contributed to modern day
20 disparities between Black and White
21 residents of New York?

22 MS. WEEKS: Object to the form.

23 A I -- I appreciate your
24 questions, but they're putting words in my
25 mouth. And as a -- and so as a result,

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2 I -- I end up having to repeat myself, so
3 we could go around and around about this.
4 I said that it may have -- it -- it
5 contributed, to the degree we're not
6 exactly clear.

7 Q Okay. I want to get to
8 something you just said. You said that
9 Professor Sandoval-Strauz uses the word
10 probably to describe the link between past
11 housing discrimination and present day
12 disparities. Is that an accurate
13 summation of what you wrote?

14 A That's -- of what I wrote?

15 Q Or what you said.

16 A That's what I -- yes, that's
17 what I recall him saying. I think this is
18 in my report, actually.

19 Q Okay. Let's turn to page 4 of
20 your report.

21 A Yes.

22 Q Oh, excuse me. Give me one
23 second. Okay. Yes, page 4 of your
24 report. And then paragraph I. Do you see
25 that? It's at the bottom of the page.

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2 A Yes.

3 Q And then on the top of page 6 --
4 or I'll just read from paragraph I. You
5 write, quote, "In housing disparity, he,"
6 Professor Sandoval-Strauz, "Writes, 'In
7 the category of housing, conditions in
8 Newburgh also differ meaningfully by race,
9 probably,'" italics added, "'Due both to
10 past patterns of discrimination and home
11 ownership and disparities in employment.'
12 This wording probably is conjecture, not
13 analysis." Did I read that correctly?

14 A Yes.

15 Q What did you mean by that?

16 A What did I mean by the word
17 probably?

18 Q Specifically, that last
19 sentence, "This wording probably is
20 conjecture, not analysis." What did you
21 mean by that?

22 A I mean, it -- it means that it
23 was -- it wasn't -- it wasn't analysis.
24 If you have a probability and you're a
25 social scientist, you should look at what

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2 that probability -- probability is, and he
3 didn't look at it. So it -- it's
4 conjecture.

5 So he put in the word probably.
6 Conjecture -- conjecture means exactly
7 that; he was -- he was thinking there
8 might be a possibility, but he didn't
9 analyze that possibility.

10 Q Have you ever made claims based
11 on probability?

12 A Have I made claims where?

13 Q In your career as a historian.

14 A I -- I avoid the word probably.

15 Q So you are certain of the
16 veracity of every claim you make about
17 history?

18 MS. WEEKS: Object to the form.

19 A Am I -- no.

20 Q In the field of history, is
21 certainty a prerequisite for conducting a
22 reliable analysis?

23 A The -- the historical method is
24 not a social science. It's not a social
25 science, in which social scientists have a

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2 hypothesis and test it. The historical
3 method generally tends to rely on -- on
4 narrative. And -- and I think -- and
5 there -- there's a selection of -- of
6 facts.

7 And -- and then the scholarly
8 community and the larger general public
9 decides on how solid a narrative and a
10 persuasive case that you -- that one makes
11 by your -- by the construction of the
12 narrative and the -- the selection of
13 facts. I think good history provides
14 nuance.

15 And I think, quite frankly,
16 without meaning to sound pretentious, that
17 my scholarly work is seen as quite solid.
18 My research is -- has passed peer review.
19 So, you know, the -- the -- I -- I think
20 that my research is -- is quite good, and
21 I try not to conjecture about intention
22 and relationships sometimes between -- and
23 I try not to conjecture based on
24 probabilities.

25 Q Can a historian say with

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2 certainty whether past discrimination
3 contributed to present day disparities?

4 A There's some historians who do
5 argue this. Yes.

6 Q Is that an appropriate claim for
7 historians to make, that they are certain
8 that past discrimination contributed to
9 present day disparities?

10 A I'm not sure how many -- yeah,
11 I'm not sure about their claim for
12 certainty, but I think it's an argument
13 that could be made, and then -- then
14 should be -- then should be explored. And
15 a lot of historical work scholarship is
16 tested over time.

17 Q Is it fair to say that
18 historians are often forced to draw
19 conclusions from a historical record that
20 is contradictory or incomplete?

21 A Sometimes historians do, and I
22 don't think they're very good historians.
23 One of the first things that we were
24 taught at -- that we were taught at
25 University of California Berkeley in the

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history -- graduate history program was to avoid those kinds of conjectures. That was something that was emphasized over and over again in our -- in our writing.

So I think that was -- that was something that was really bore into us, as well as good writing, so something I learned early in my historical career.

And I think some of that -- I think there's -- without going on at length, I think there's degrees of conjecture. Some of it's good, healthy, based on empirical facts.

And some of it is -- is just that, very broad and not very substantiate conjecture. So I think in terms of looking at historians who've written about the relationship with slavery to present day, I think there -- I think there's varying degrees of good scholarship and poor scholarship. Are you there?

Q Yeah. Yes. So I guess what I'm trying to understand then is why the fact that Professor Sandoval-Strauz chose to

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2 acknowledge that there is some uncertainty
3 in the historical record, why that
4 converts his analysis into conjecture.

5 A Again, we were -- he was
6 making -- I'm sorry. But he was making
7 the argument about totality of
8 circumstances, and then when he comes to a
9 specific point of disparities which he
10 found in housing, then he -- then he --
11 puts in probably -- probably, but, you
12 know, at this point he's -- you know, he's
13 conjecturing, which actually was kind of
14 strange given the whole thrust of his --
15 of his report.

16 Q So to be clear, the fact that
17 Professor Sandoval-Strauz acknowledges
18 uncertainty means that his conclusions are
19 conjecture?

20 A If you want to posit that his
21 report was conjecture and not based on
22 specific analysis, I would agree to that.

23 Q So I didn't say that. I'm just
24 asking why the fact that Professor
25 Sandoval-Strauz acknowledged that the

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historical record is complex and he cannot say certainly that something happened, why that is not a valid form of historical analysis.

A We're beginning -- I appreciate your questions, but we're beginning to circle around and around. He's the one who was arguing for totality of circumstances, making the -- making the link. And so he comes to a specific point, and there's a -- there's kind of a -- you know, he puts in a probably.

Why didn't he do this with his entire argument with the totality of circumstances? I mean, he excluded -- he excluded many of the -- much of the totality of the circumstances, didn't include it. And -- and so he could have said -- he could have made an argument that there may have been a probability of totality of circumstances, but he wasn't sure of it related to today.

Q So in paragraph I, you refer to Professor Sandoval-Strauz's findings

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2 regarding disparity in housing in

3 Newburgh. Is that correct?

4 A I'm sorry. I have to go back to

5 I. So can you repeat the question? I'm

6 sorry. I had to --

7 Q Do you acknowledge --

8 A I thought we --

9 Q That's okay. That's okay.

10 A I thought we were moving on past

11 I. I started scanning down. So we're --

12 okay. Let's stay on I. Okay.

13 Q That's okay. Just briefly. Do

14 you acknowledge that Professor

15 Sandoval-Strauz presents evidence of

16 disparities in housing in Newburgh today?

17 A Yes. He presents alleged

18 disparities in home ownership and -- and

19 employment.

20 Q Why do you say alleged?

21 A Because it's alleged.

22 Q Do you disagree with the

23 statistics that he presents?

24 A He doesn't -- you mean the

25 figures he presents. He doesn't present

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2 any statistics.

3 Q Do you disagree with the figures
4 he presents regarding disparities in
5 housing and employment in the Town of
6 Newburgh?

7 A And you've asked two questions.
8 One is home ownership. One is in
9 disparities in employment. Am I correct?

10 Q Sure. Let's start with home
11 ownership. Do you dispute Professor
12 Sandoval-Strauz's finding that there are
13 disparities in home ownership between
14 minority and White individuals in the Town
15 of Newburgh?

16 A In -- in terms of measuring
17 positive housing, there are differences,
18 great differences, between what appeared
19 and -- and -- yes. So I would say that
20 there's disparity in -- in exactly what
21 people own. That is Whites and Blacks and
22 Hispanics. So there's disparities. The
23 cause of that, I think, is -- is a much
24 more complex question, however.

25 Q Do you dispute Professor

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2 Sandoval-Strauz's finding that there are
3 disparities with respect to employment
4 between Black and Latino residents of
5 Newburgh and White residents of Newburgh.

6 A The -- there are disparities
7 in -- in income between Blacks and
8 Hispanics and Whites.

9 Q Do you dispute that Professor
10 Sandoval-Strauz has presented evidence of
11 historical discrimination in the housing
12 market?

13 A In -- in the housing market
14 where?

15 Q In the State of New York.

16 A There was discriminatory
17 practices in the State of New York.

18 Q And is it your opinion that that
19 discrimination did not in any way
20 contribute to present day disparities in
21 home ownership between Black and White
22 residents of the Town of Newburgh?

23 A Could you repeat that question
24 so I fully understand it?

25 Q So you acknowledge that there

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2 are present day disparities in home
3 ownership and employment between Black and
4 White residents of the Town of Newburgh;
5 correct?

6 A Yes.

7 Q And you acknowledge that there
8 is evidence of prior discrimination in the
9 areas of housing and employment against
10 Black people in the State of New York. Is
11 that correct?

12 A Yes.

13 Q And you criticize Professor
14 Sandoval-Strauz for saying he believes
15 there is a link between those two things,
16 but he is not 100 percent certain. Is
17 that correct?

18 A In the city of -- in the Town of
19 Newburgh. Yes.

20 Q Is it your opinion that past
21 discrimination in the housing market and
22 employment did not contribute to present
23 day disparities in the Town of Newburgh?

24 A I would argue that I think the
25 housing disparities are -- are

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2 exceptionally complex in -- in the State
3 of New York and the state of -- and in the
4 Town of Newburgh. And let me provide an
5 example for you so you could get this
6 perhaps clear, and then we can move on
7 from the -- discussing what probability
8 means.

9 If you have an older population
10 that's been in the area for a long time
11 and housing prices tend to go up because
12 there's a shortage of housing, people who
13 have been long time residents are going to
14 benefit from that. In the Town of
15 Newburgh, which was a very, very small
16 town, which began to grow, it's still -- a
17 small town by most standards, housing
18 prices would rise.

19 So if you were mostly in a White
20 community, and now you have an older White
21 community, although a number of --
22 although the -- I think there's -- the
23 poverty rate is high for older Whites in
24 Newburgh. Nonetheless, if you're a
25 homeowner, your prices are going to go --

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2 are going to go up.

3 So in other words, it's not --
4 so if there was past discriminatory
5 housing in Newburgh -- in the Town of
6 Newburgh, which actually is not -- is not
7 very clear, given its small population,
8 housing prices would've gone -- gone up,
9 and it wouldn't have much relationship for
10 discrimination.

11 If you were a Black homeowner
12 there and a longtime resident, and a few
13 Hispanics were, their housing prices
14 were -- would've gone up. So in order to
15 explore this question, you would've had to
16 look in a more detailed way at housing
17 prices and who owned the home and who home
18 ownership was. So sorry to conjecture,
19 but I didn't want to get back to the word
20 conjecture again.

21 Q Did you conduct that kind of
22 analysis to determine whether there's --

23 A No.

24 Q Okay. I just ask that you let
25 me finish, and I'll try and do the same.

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2 A I'm sorry. I didn't hear the
3 last comment.

4 Q I would just ask that you let me
5 finish my question, and I'll try to do the
6 same.

7 A I apologize most sincerely. I
8 really do.

9 Q That's okay. I'll ask one more
10 time for the record. Did you conduct an
11 analysis that would allow you to determine
12 whether there is a link between past
13 discrimination and present day disparities
14 in the housing market in Newburgh?

15 A No.

16 Q Okay. I'm going to ask maybe
17 one more set of quick questions and then
18 we can take a break. Are you 100 percent
19 certain of the veracity of every claim
20 that you make in your report?

21 A I am at this point. If there's
22 something that was challenged, I -- I
23 might -- I would change my -- and I agreed
24 with that, I would change my opinion. But
25 if you're asking me that -- if my

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2 intention was to be truthful and I stated
3 what I thought was the truth, I would
4 agree to that.

5 Q So that's not exactly what I'm
6 asking. What I'm asking is, are you 100
7 percent certain of the veracity of every
8 claim you make in your report?

9 A No.

10 Q So for the claims that you are
11 not a hundred percent certain about, are
12 those conjecture?

13 A No.

14 Q Why not?

15 A I believe the claims that I
16 made, my -- my intention was to be -- to
17 be truthful, so that, I'm a hundred
18 percent certain about. Am I open to
19 discovery that -- that one of my claims
20 was not true? The answer is yes.

21 Q Do you think Professor
22 Sandoval-Strauz's intention was to be
23 truthful?

24 A I have no idea what his
25 intention was. We already discussed the

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2 nature of conjecture. It would only be
3 conjecture on my part. I don't know of --
4 I don't know Professor Sandoval-Strauz, so
5 I don't know what his intention -- I -- I
6 don't even know if it's a he or she, but I
7 presume -- but I'm not going to presume
8 what his intention was.

9 Q Can we turn quickly to page 16
10 of your report, to the last sentence of
11 page 16?

12 A Yes.

13 Q Let me know when you get there.

14 A I am. Thank you.

15 Q Great. And it says in the last
16 sentence, quote --

17 A I'm -- excuse me. I'm not quite
18 there.

19 Q I misinterpreted. My apologies.

20 A Yeah. I'm getting there. Okay.
21 Please proceed.

22 Q So you say, quote, "Furthermore,
23 as tables 4 and 5 show based on surveys
24 from City University of New York, Spanish
25 speaking voters are increasingly involved

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2 in politics." Is that correct?

3 A Yes.

4 Q Are you certain that Spanish
5 speaking voters are increasingly involved
6 in politics?

7 A Based on what these officials --
8 and what these officials, the National
9 Association of Latino Elected and
10 Appointed Officials, argue, what the table
11 suggests, and what scholars at City
12 University of New York found, as well as
13 turnout figures both nationally in the
14 state of Hispanic -- Hispanic registration
15 and -- and voting, yes.

16 Q Great. We'll come back to the
17 statistics later. I just want to turn now
18 to page 17 and table 3. Do you see that?

19 A Yes.

20 Q And in the first column it says,
21 "Projected Latino Vote 2024." Is that
22 correct?

23 A Are we looking at table 3?

24 Q Yes.

25 A Oh, yeah. I see. Yes. Okay.

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2 Q And is it fair to say you based
3 your conclusion that Spanish speaking
4 voters are increasingly involved in
5 politics in part on this table?

6 A The -- only a very small part.

7 Q Has the 2024 election happened
8 yet?

9 A You're -- you're asking me to
10 conjecture?

11 Q I'm asking you if the 2024
12 election has happened yet.

13 A I'm -- I'm sorry. I -- no,
14 the -- no, the -- the election has not
15 occurred.

16 Q So are you certain that the
17 Latino vote in 2024 will be 992,900 voters
18 as reflected in table 3?

19 A Every Hispanic registration is
20 up nationally, except in New York State,
21 and considerably. So registration is --
22 is indication, as it often is, of turnout.
23 Not an exact relationship, but it does
24 suggest that we're going to have a very --
25 nationally and in the New York State and

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2 Orange County and other counties in New
3 York with heavy Hispanic population, that
4 there's going to be a sizable turnout of
5 Hispanics. Yes.

6 Q Right. So that wasn't quite my
7 question. My question is, are you certain
8 that Hispanic turnout in 2024 will
9 increase; yes or no?

10 A No.

11 Q So what you're saying is
12 Hispanic turnout will probably increase in
13 2024. Is that correct?

14 MS. WEEKS: Objection to the form.

15 A Yes. Because your probability
16 is -- is projecting to the -- to a future
17 event that hasn't -- that hasn't happened.
18 If you're going back to the
19 Sandoval-Strauz's point on probability of
20 housing, that -- that probability was --
21 he was conjecturing at a -- at something
22 that was present day. You can -- one can
23 conjecture based on -- on empirical
24 evidence. You can suggest a higher
25 probability or -- or probability.

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2 Q So is it fair to say that your
3 conclusion that Spanish speaking voters
4 are increasingly involved in politics is
5 based on conjecture rather than analysis?

6 A Absolutely not.

7 MS. WEEKS: Objection.

8 THE WITNESS: I'm sorry.

9 MS. WEEKS: Objection to the form for
10 the record.

11 Go ahead.

12 THE WITNESS: Absolutely not.

13 BY MR. DAVIS:

14 Q Okay. So when Professor
15 Sandoval-Strauz makes conclusions based on
16 probabilities, that's conjecture, but when
17 you do it, it's appropriate analysis?

18 A The -- again, he was putting a
19 probability on something that was present.
20 You're asking me if -- you asked me two
21 questions. One is probability --
22 probability of -- of Hispanic turnout in
23 2024 election, which hasn't occurred. In
24 terms of Hispanic voting and turnout and
25 participation, we know that -- that it's

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2 increased. Hispanic -- Hispanics, and
3 it's a very broad term, have become very
4 involved in politics.

5 And moreover, we see an increase
6 in Hispanic -- Hispanic turnout from 2012
7 to 2020. If I recall correctly, in fact,
8 there's a 13.1 increase in turnout. So
9 that suggests participation. So that's
10 not probability. That is actual -- based
11 on empirical evidence. A 13.1 percent
12 increase in Hispanic turnout in the State
13 of New York, 13.1 increase suggests
14 greater participation.

15 Q And to be clear, you're
16 referring to, on table 3, that last
17 column, which says there's a 13.1 percent
18 increase. Is that correct?

19 A That -- that was off the top of
20 my head, but yes.

21 Q And can you read the words that
22 appear above 13.1 percent on that table?

23 A "Data shows presidential turnout
24 change, table 4" --

25 Q Excuse me. I misstated. I'm

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2 sorry. So in the table, you see there is
3 the line that says these numbers, and then
4 that last number is 13.1 percent.

5 Correct?

6 A If -- are -- are you finished?

7 Q Yes.

8 A I'm sorry. I wanted to make
9 sure. Yeah. Change between 2016, I think
10 it says, and 2024. I think the figures
11 from 2012 to 2020, which you're drawing
12 from other sources, was 13 -- 13 -- over
13 13 percent. Anyway, go --

14 Q I guess you said specifically
15 13.1 percent, which in this table is the
16 difference between 2016 and the vote
17 rejected in 2024. Is that correct?

18 A Yes, but I think -- yes. Okay.
19 Go on.

20 Q Okay. We can stop there and
21 take a break.

22 A Okay. How long will the break
23 be?

24 THE REPORTER: Off the record, 1:53

25 p.m.

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2 (Off the record.)

3 THE REPORTER: Back on the record,
4 2:05 p.m.

5 BY MR. DAVIS:

6 Q All right. Professor Critchlow,
7 before the break we were talking about
8 Latino turnout in elections. Is that
9 correct?

10 A Yes.

11 Q And you concluded in your report
12 on page 16 that Spanish speaking voters
13 are increasingly involved in politics. Is
14 that correct?

15 A Yes.

16 Q And I pointed out that some of
17 that was based on future projections, but
18 you informed me that your conclusion was
19 also based on past statistics. Is that
20 correct?

21 A Yes.

22 Q What statistics were you
23 referring to?

24 A Just in general, national --
25 national Hispanic turnout as well as New

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2 York State turnout.

3 Q Okay. And was the source of
4 that information what you cite in
5 paragraph 17, the Center for Latin
6 American, Caribbean, and Latino Studies
7 report?

8 A Not totally.

9 Q What other sources did you rely
10 on?

11 A There are many sources that --
12 that show increase in Hispanic turnout,
13 especially in 2020 --

14 Q Do you cite any of them in your
15 report?

16 A I'm not sure.

17 Q Okay. Is it fair to say that
18 you rely on a report from the center for
19 Latin American, Caribbean, and Latino
20 Studies in discussing Latino turnout in
21 elections?

22 A Yeah. Specifically in -- in New
23 York, I wanted to use Hispanic -- Hispanic
24 and scholarly sources. But if you look
25 at -- if you look at state websites in

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2 U.S. and other surveys, Hispanic --
3 Hispanics have increased in voting in --
4 in large numbers, actually.

5 Q Did you cite any of those other
6 surveys in this section of your report?

7 A I'm not sure, but I think that
8 would be generally understood.

9 Q Generally understood by whom?

10 A By anyone who looks at American
11 political voting patterns over the last
12 two decades or three.

13 Q Okay. Well, I will represent to
14 you that in this section, the only source
15 that you include is the report from the
16 Center for Latin American, Caribbean and
17 Latino Studies. Do you disagree with
18 that?

19 A No.

20 Q Okay. I'm going to mark an
21 exhibit. You give me one second. Okay.
22 It should just pop up.

23 A Yeah. My grandson's not here,
24 so --

25 Q If you highlight the text in the

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2 URL and hit "enter," it should refresh.

3 A I know. I'm having some
4 problems here. I'm sorry about this.
5 I'm --

6 Q That's okay.

7 A I'm sorry. Okay. I am --

8 Q Are you able to see the folder
9 with the exhibits?

10 A Yeah, I see it, but I'm -- I'm
11 having a hard time getting into it.
12 Shoot. Okay. I've gotten that then. I
13 think I may --

14 Q Great. Is there an exhibit in
15 there that says, "CUNY Report Latino
16 Voter"?

17 A Oh, yeah. Okay.

18 Q Okay. Can you click on that?

19 A Yeah, I got it.

20 Q Great. So you see --

21 A Well, no, I -- I see where it
22 is. That doesn't mean I've gotten it.

23 Q Okay. I apologize.

24 A I see it, but I can't get into
25 it.

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2 Q Can you try clicking on the
3 text?

4 A Yeah, I can't. That's what I'm
5 having problems with. I'm sorry. I'm
6 having problems with the keyboard 'cause I
7 don't usually use it.

8 Q Okay. Can we go off the record
9 for a moment?

10 A Yes.

11 THE REPORTER: Off the record, 2:11
12 p.m.

13 (Off the record.)

14 THE REPORTER: Back on the record,
15 2:15 p.m.

16 BY MR. DAVIS:

17 Q Professor Critchlow, can you see
18 on my screen the exhibit marked Number 5?

19 (Exhibit 5 was marked for
20 identification.)

21 A Latino voter participation?

22 Q Yes, that one.

23 A Yes.

24 Q Are you familiar with this
25 document?

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2 A Yes.

3 Q What is it?

4 A It -- I'm not sure what question
5 you're asking. What is it?

6 Q Yes.

7 A It's a document from Caribbean
8 and Latino Studies at -- at CUNY.

9 Q And is this the report you
10 relied on in your report to provide Latino
11 turnout figures?

12 A That's the report that was
13 cited. Yes.

14 Q So you relied on this report?

15 A I relied on this report.

16 Q Great. I'm going to scroll down
17 here to what is page 4 figure 1. Do you
18 see that?

19 A Yes.

20 Q Okay. And now I'm going to go
21 back to your report and I'm going to
22 scroll down to what is table 4. Do you
23 see that?

24 A Yes.

25 Q Are these the same tables?

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2 A They appear to be.

3 Q I will zoom in a little. Okay.
4 And do you see here what is figure 1 in
5 the CUNY report?

6 A Yeah --

7 Q It lists the percentage of the
8 electorate registered and the percent of
9 electorate voted. Is that correct?

10 A Yes.

11 Q And then this is for the midterm
12 elections of 2018. Is that correct?

13 A Yes.

14 Q And the yellow bar represents
15 Latino voters. Is that correct?

16 A Yes.

17 Q And it says that 40.4 percent of
18 the electorate was Latino -- excuse me.
19 Strike that. It says 40.4 percent of the
20 Latino electorate voted in the midterm
21 elections in 2018. Is that correct?

22 A Yes.

23 Q Okay. I'm going to scroll down
24 to figure 2. And this is midterm
25 elections in 2022. Is that correct?

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2 A Yes.

3 Q And it has the same two columns:
4 percent of electorate registered and of
5 electorate voted. Is that correct?

6 A Yes.

7 Q And it says that the percent of
8 the Latino electorate that voted in 2022
9 was 37.9 percent. Is that correct?

10 A Yes.

11 Q So Latino turnout decreased as a
12 percentage of the electorate from 2018 to
13 2022. Is that correct?

14 A Yes, in that midterm election,
15 it decreased.

16 Q Okay. And then in the paragraph
17 below figure 2, I'm going to read. It
18 says, quote, "Because of lower voter
19 turnout rates, Latinos did not exercise
20 their latent political power and influence
21 over political power structures in the
22 U.S." Is that an accurate reading?

23 A Yes.

24 Q So this report finds that
25 turnout by Latinos actually decreased from

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2 2018 to 2022. Is that correct?

3 A Yes.

4 Q But you concluded the opposite.

5 A I -- I concluded the opposite,
6 that it didn't decrease.

7 Q You told me earlier, we can go
8 back to your report, that Spanish speaking
9 voters are increasingly involved in
10 politics, and then you relied on this
11 report to support that conclusion. Is
12 that right?

13 A Yes.

14 Q Does this report support the
15 conclusion that Latino voters are
16 increasingly involved in politics?

17 A Does this report or -- or table
18 are you referring to?

19 Q Do the tables we just reviewed
20 support the conclusion that Latino turnout
21 is increasing in politics?

22 A You asked -- if I recall
23 correctly, you asked a different question
24 prior to this at -- in repeating it. You
25 asked if -- you asked if there was an

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increase in voter participation. And I argued that it -- that there has been an increase in voter participation nationally and in the state as well as within Orange County.

Now you're asking if -- if there was a turnout -- if there was a decline in turnout in -- from comparing two midterm elections. And the answer to that is there has been a decline -- there was a decline from registration to turnout comparing those two midterm elections.

Q Great. Let's turn to page 6. Do you see this table

A Figure 3?

Q Yes.

A Yes.

Q And do you see where it says Latinos? Do you see the blue bar?

A Yes, 13.4.

Q And that reflects the percentage of the electorate that is Latino; correct?

A Yes.

Q And then the next bar says 9.7

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2 percent. Is that right?

3 A Yes.

4 Q And that reflects the percentage
5 of total voters who are Latino. Is that
6 correct?

7 A Yes.

8 Q So this would indicate that
9 Latinos are disproportionately less likely
10 to turn out amongst the electorate. Is
11 that correct?

12 A In that -- in that midterm
13 election.

14 Q Okay. And then below it says,
15 and I'm reading from page 6, quote: "The
16 percentage of the Latino electorate which
17 went to the polls declined between the
18 2018 and 2022 midterms in every single age
19 category as indicated in figure 4. This
20 was true of both male and female Latino
21 voters." Did I read that accurately?

22 A Yes. Between the midterm
23 election in 2018 and '22 -- 2022, there
24 was a decline in Hispanic voters. But,
25 overall, the Hispanic turnout on national

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2 and state elections in New York, there's
3 been a sizable increase both in turnout
4 and registration.

5 Q Over what time period?

6 A Really from -- we could take
7 2020. That's -- that's a good dating --
8 excuse me -- excuse me. 2022 --

9 Q Do you have any facts or
10 evidence -- oh, excuse me.

11 A Yeah, I'm -- I'm sorry. You
12 could start at twenty -- 2020 or 2000, and
13 you could look at many surveys and -- and
14 reports on the increase in Hispanic
15 turnout nationally and in the State of New
16 York. And -- and we should have provided
17 a table on this or -- or some
18 documentation, but I thought this was
19 generally understood.

20 Q Okay. So based on data that you
21 say you reviewed that you do not include
22 in your report, your opinion is that
23 Latino turnout is increasing?

24 MS. WEEKS: Object to the form.

25 A Yes.

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2 Q Could you repeat your answer?

3 A Yes.

4 Q Okay. And then I'll go to page
5 8. I'll read from the third paragraph.

6 "In New York and Wisconsin, there were
7 decreases in the total number of Latino
8 voters between 2018 and 2022 and in their
9 percentage of total votes." Is that
10 correct?

11 A Did you read that -- I'm -- I'm
12 not sure I'm seeing it on my screen.

13 Q Here, I'll try and highlight it.

14 A Okay. Good. That helps. Thank
15 you.

16 Q Yes. And I'll read it again so
17 you can hear the whole quote. Quote, "In
18 New York and Wisconsin, there were
19 decreases in total numbers of Latino
20 voters between 2018 and 2022 and in their
21 percentages of total votes." Did I read
22 that correctly?

23 A Yes.

24 Q Do you have any reason to
25 dispute this conclusion?

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2 A No.

3 Q Do you have any reason to
4 dispute any of the conclusions in this
5 report?

6 A No.

7 Q And then if we go back to what
8 is page 19 of your report, you say, quote,
9 "A report by CUNY Center of for Latin
10 American, Caribbean, and Latino Studies
11 concludes that Hispanic voters are
12 registering and voting more nationally and
13 in the State of New York more than ever
14 before." Did I read that correctly?

15 A Yes.

16 Q And then you cite to the report
17 from the Center for Latin American,
18 Caribbean, and Latino Studies that we just
19 discussed. Is that correct?

20 A Yes.

21 Q Do you still agree that the
22 report by CUNY Center for Latin American,
23 Caribbean, and Latino Studies supports
24 your conclusion that Latino participation
25 in voting is increasing?

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1

2

A Yes.

3

Q How so?

4

A May I refer you to the footnote
that's below the -- on 27 -- footnote --

6

Q Yeah.

7

A So if you see the -- so if you
see a -- the presidential election based
on Orange County, there was an increase
in -- in Hispanic voting.

10

11

Q Right. We'll get to that.

12

We'll get to that. But my question was,
do you still believe that the CUNY report
supports your conclusion that Hispanic
voters are registering and voting more
nationally and in the State of New York?

16

17

A Yes.

18

Q And what is the basis for your
statement?

19

20

A The -- I'm citing -- I'm citing
a specific report, and that's what they
concluded.

22

23

Q But that's not what they
concluded.

24

25

A The -- the sentence -- I'm sorry

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2 if I interrupted you.

3 Q No, but that's not what they
4 concluded. We just reviewed the report;
5 didn't we?

6 A The report concludes that
7 Hispanic voters are registering and voting
8 more nationally and in the state than ever
9 before. Yes, that's what the report
10 showed.

11 Q What statistics from -- oh,
12 excuse me.

13 A Except in -- in a 2018 and 2022
14 midterm.

15 Q So your position is that there
16 are statistics in the CUNY report that
17 show Latino turnout increasing. Is that
18 correct

19 A Overall, yes.

20 Q Okay. But you would agree that
21 the statistic we reviewed from the report
22 showed that turnout is decreasing. Is
23 that correct?

24 A It -- it decreased in those two
25 midterms.

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2 Q The two most recent midterms.

3 Is that correct?

4 A Yes.

5 Q Okay. Let's move on. Let's go
6 back to your report. Apologies. I need
7 to find it. Okay. Can you still see my
8 screen?

9 A Yes.

10 Q Okay. Let's go back to page 3.
11 And in paragraph B, you write, quote,
12 "Professor Sandoval-Strauz's examination
13 of the election of minority members to
14 public office in the Town of Newburgh
15 distorts the history of a small
16 municipality that did not have a large
17 minority population and still does not."
18 Did I read that correctly?

19 A Yes.

20 Q What did you mean by Professor
21 Sandoval-Strauz's examination of the
22 election of minority members?

23 A Yes. It was a -- it was a very
24 small town. It's still a -- a small town,
25 but the minority population has grown in

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2 the last two decades.

3 Q And what did you mean by
4 minority members?

5 A Minority protected class
6 members.

7 Q So you meant --

8 A That's what I meant by minority.

9 Q So you meant candidates for
10 office who were themselves minorities. Is
11 that correct?

12 A Yes.

13 Q So is it fair to say that you're
14 offering no opinion about the reasons for
15 lack of success of candidates of choice of
16 Black and Latino voters in Newburgh?

17 A Could you repeat that question
18 so I make sure I fully understand it?

19 Q Maybe I'll step back for a
20 second. Do you understand the difference
21 between minority candidates and minority
22 preferred candidates?

23 A I think so.

24 Q What do you think the difference
25 is?

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2 A A minority candidate would be a
3 member of a protected class who was -- who
4 was elected or -- or decided to run, and a
5 preferred candidate would be one that was
6 preferred by minority members of a
7 community.

8 Q So a minority preferred
9 candidate might not himself or herself be
10 a minority. Is that correct?

11 A Yes. Sorry.

12 Q That's okay.

13 A I was trying to adjust my mic.
14 I -- sorry to freak everybody out.

15 Q That's okay. I have definitely
16 done that before, so don't worry. Okay.
17 So then in paragraph B, you refer to the
18 election of minority members; right?

19 A Yes.

20 Q And you do not discuss the
21 election of minority preferred candidates.
22 Is that correct?

23 A That is correct.

24 Q And is your argument that the
25 reason minority members have not been

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2 elected in Newburgh is because of the

3 small size of the town's population?

4 A No.

5 Q What is your argument?

6 A I think the argument is a
7 complex one, in that when you have a -- a
8 new population of an ethnic or language
9 protected group, it takes time for them to
10 develop political organizations and,
11 particularly in their respective parties,
12 to get their candidates nominated and to
13 get representation.

14 And I can -- and I base this on
15 historical pattern that was found in,
16 let's say, the Italian vote, which --
17 which Italians were excluded generally
18 from both political parties. And it took
19 a while for them to develop political legs
20 to get -- to get elected. Similarly with
21 the Irish. And so you have a newly
22 arrived -- fairly newly arrived
23 Hispanic -- Hispanic community in
24 Newburgh, and it will take time for
25 political organization to occur and to

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2 develop to get elected representatives.

3 Q How much time?

4 A I -- I don't think we could put
5 a timeframe on it.

6 Q Well, how long did it take
7 Italian American immigrants to organize to
8 get political representation?

9 A It -- it didn't take very long,
10 actually. It depends on -- it depends on
11 where you're looking at, where the Italian
12 vote is. So San Francisco, it developed
13 pretty early with their large Italian
14 population in various areas. New York,
15 it -- it developed in, you know, maybe two
16 decades or less.

17 Q When did the Latino population
18 of Newburgh start growing?

19 A It started in the 1950s, '60s,
20 with a small Mexican population, and then
21 it grew exponentially within the last
22 decade or so.

23 Q So there's been a Latino
24 community in the Town of Newburgh for over
25 50 years. Is that correct?

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2 A A small one.

3 Q So there's been a Latino
4 community in the Town of Newburgh for at
5 least 50 years. Is that correct?

6 MS. WEEKS: Object to the form.

7 A A very small one.

8 Q Okay. Have you studied whether
9 there are Latino political organizations
10 in the Town of Newburgh?

11 A I know that there's a political
12 representation in -- in both the Town of
13 Newburgh and the City of Newburgh. And we
14 have major Hispanic voices in the Town of
15 Newburgh that have been involved in
16 political activities as well as suits --
17 lawsuits to ensure bilingual ballots in
18 Orange County and -- and Newburgh. And
19 both the Orange County and Newburgh -- the
20 Town of Newburgh have very extensive
21 bilingual programs and -- and for voter
22 participation, early ballots and so forth.

23 Q Has there ever been a Latino
24 member of the Newburgh Town Council?

25 A I don't think so.

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2 Q Okay. And you're not -- strike
3 that. Let's move on. Okay. I want to
4 turn on page 3 still, in paragraph C, you
5 write, and this is in the second line.
6 I'll try and highlight it. Oh, I will not
7 try and highlight it because that is a
8 disaster. Quote, "In his report, he,"
9 meaning Professor Sandoval-Strauz,
10 "Misinterprets the history and use of
11 literacy tests for voting by failing to
12 note that this test was aimed against
13 machine politics by good government
14 forces, including immigrant groups." Did
15 I read that correctly?

16 A Yes.

17 Q What did you mean by this?

18 A I meant a lot by it. I meant
19 that the literacy test, as it was
20 developed in New York State first by
21 passing in -- in 1921 and then amended in
22 1923, was a complex story that -- that
23 Professor Sandoval-Strauz didn't really
24 note. And the -- the amendment ensured
25 that the test was going to be simplified

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2 for the average voter.

3 And that extensive literacy
4 programs were undertaken by the board of
5 regents. And -- and those efforts paid
6 off, because we saw a -- a very sharp
7 decline in failure rates of the literacy
8 test. If you're asking what good
9 government forces and immigrant groups
10 were involved -- involved in, that's a
11 different question that you -- that --
12 that we could explore, if you -- if you
13 wish.

14 Q Could you tell me about the
15 relationship between literacy tests and
16 immigrant groups that you referred to?

17 A Could you repeat the question?
18 I'm -- I want to make sure I fully
19 understand.

20 Q In this sentence about literacy
21 tests, you refer to immigrant groups. Is
22 that correct?

23 A Yes.

24 Q What was the relationship
25 between literacy tests and immigrant

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2 groups as you understand it?

3 A I think you were asking two
4 questions. But specifically what that
5 sentence is referring to, when they --
6 when -- when they began to develop the
7 literacy test itself, they had a -- a
8 large meeting led by primarily social
9 scientists at Columbia University. But
10 there was very, very -- very, very active
11 involvement from a variety of groups.

12 And they ensure that immigrant
13 groups would be represented in these
14 meetings to devise the -- the literacy
15 tests itself. So settlement workers were
16 there, YMCA were there, as well as
17 representatives from minority immigrant
18 organizations to draft the literacy tests
19 that would be passable.

20 Q Why was a literacy test imposed?

21 A There -- actually, the literacy
22 tests go further back in New York history,
23 which is -- which I didn't include. But
24 the -- but the 1921 literacy test was
25 primarily passed to make sure that voters

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2 could understand the -- could read the
3 ballot.

4 Q Why is it important that voters
5 are able to read the ballot?

6 A So they're properly informed
7 on -- on what they're voting for.

8 Q What about voters who don't
9 speak English but are otherwise qualified
10 to vote? Should they be able to vote?

11 A I think two points should be
12 made in this regard. First of all, the
13 Supreme Court in Lassiter vs. Northampton,
14 the North Carolina case, ruled in, I
15 think, 1959, I could be corrected on this,
16 that literacy tests were constitutional as
17 long as they didn't exclude -- weren't
18 named in any specific group. So the
19 literacy test was -- that -- that New York
20 imposed was constitutional.

21 The second question was
22 primarily concerned about ensuring that
23 there is literacy. And out of that -- out
24 of that test, the State of New York
25 conducted really a very extensive

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2 literacy -- literacy program. Now all of
3 this occurred before 1965 Civil Rights Act
4 and the -- and the Voting Rights Act,
5 which -- which made literacy tests in
6 any -- in any type unconstitutional.

7 Q So I think my question was
8 whether otherwise qualified voters who do
9 not speak English should be permitted to
10 vote.

11 A They -- under our Constitution
12 and Supreme Court ruling, they cannot
13 be -- they cannot be excluded from voting
14 because of -- of language.

15 Q Was that true when literacy
16 tests were imposed in the 1920s?

17 A The -- at that point, the -- the
18 thinking was that voters should be --
19 should be literate in English language.

20 Q So is it your opinion that it
21 was okay for the State of New York to bar
22 non-English speaking citizens from voting
23 in the 1920s?

24 MS. WEEKS: Object to the form.

25 A Was it -- I'm not sure what you

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2 mean by, "Was it okay."

3 Q I can reframe the question. Was
4 it an example of discrimination against
5 non-English speaking voters?

6 A It was -- it was discriminatory
7 against non-English speaking voters.

8 Q Okay. I'd like to scroll down
9 to page 10 of your report. You state in
10 that middle paragraph, "Professor
11 Sandoval-Strauz finds that literacy tests
12 were used as instruments of
13 discrimination." Did I read that
14 correctly?

15 A I'm not going to ask you to
16 highlight it, but let me take a look here.
17 I think that's correct. Yes.

18 Q Do you agree with Professor
19 Sandoval-Strauz that literacy tests were
20 used as instruments of discrimination?

21 A I hate to use this word again,
22 but I think it was a complex story. I
23 think it was primarily promoted, literacy
24 test, generally in the north were ways of
25 ensuring better -- better government.

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Primarily, literacy tests were promoted by what was called good government people, progressives, to try to ensure that elections became more representative of the general public.

And it was a way of trying to counter corruption and municipal governments by large political machines, Democrat and Republican by the way, that relied on ethnic voters and boards. So in general, the good government progressives in that period were trying to strengthen executives.

Some -- in some cities, they developed and imposed city managers. They increased executive power. They also insisted on municipal budgets that would be transparent. So the move was for -- for better government. And in the case of New York, I think that was the major impetus.

Surprising that it actually passed, given the strength of some of the machines in the cities. But it was -- it

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2 was generally designed to -- to bring
3 better government to the -- to the state
4 and to municipalities. And it wasn't
5 specifically targeted toward -- toward
6 ethnic groups.

7 Q So is it your opinion that
8 literacy tests are not discriminatory?

9 A There -- there we -- we've ruled
10 on that. The Supreme Court has ruled on
11 that. We passed legislation, which I
12 agree with, that we shouldn't have -- that
13 literacy tests, whatever form, are
14 unconstitutional.

15 Q So before the United States
16 Supreme Court ruled literacy tests
17 unconstitutional, literacy tests were not
18 discriminatory. Is that your opinion?

19 A No. I said primarily in the
20 North and in the case of North -- excuse
21 me -- New York, they had a discriminatory
22 effect on non-language speaking voters.
23 But in the -- in the South, I think it was
24 specifically targeted to one minority
25 group. In the case of New York, what --

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2 what was primarily being looked at were --
3 in terms of literacy, would've been
4 Southern Europeans, Italians, as well as
5 people from eastern, central -- primarily
6 Eastern Europe. And that would be Poles
7 and -- and Jews.

8 Q Okay. I want to move to
9 something else quickly, and then I think
10 we're probably getting close to a break.

11 A Oh, I was hoping you were going
12 to say end.

13 Q I can't promise you that, but I
14 can promise you a break. Okay.

15 A We just had one -- we just had
16 one 45 minutes ago, but go on, please.

17 Q We can keep going. I'm happy
18 to. Just let me know if you need a break.

19 A Okay. Okay.

20 Q Okay. On the bottom of page 9,
21 you write, quote, "Professor
22 Sandoval-Strauz's evidence, however,
23 demonstrates that relatively few people
24 attended the neo-Nazi rally," end quote.
25 Did I read that correctly?

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2 A Yes.

3 Q What is that in reference to?
4 I'm sorry. You froze there for a moment,
5 Professor Critchlow.

6 A I'm sorry. Yeah, it's to -- it
7 was to a neo-Nazi rally held in the -- in
8 the Town of Newburgh.

9 Q Okay. And is the fact that
10 there was -- strike that. What year was
11 the neo-Nazi rally in?

12 A That's what I was trying to
13 think of. It's 1992.

14 Q Okay. And is the fact that
15 there was a neo-Nazi rally in 1992 in the
16 Town of Newburgh evidence of a history of
17 discrimination in the Town of Newburgh?

18 A The 1992 rally was attended by a
19 hundred -- a hundred people in the town --
20 in the City of Newburgh. There were 3,000
21 counter-demonstrators. So I consider this
22 a -- a pretty small event. And I don't
23 mean to dismiss neo-Nazis as -- as not
24 racist. They were White supremacists.

25 But I mean, in 1992, you had a

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1 rally by neo-Nazis who came from New York
2 City with one -- one businessman
3 supporting them, a small businessman, in
4 the -- in the Town of Newburgh. And this
5 is -- by seizing upon this, it looks,
6 it's -- I'm not denying the significance
7 of it, but it really expands it into a
8 greater event in terms of showing kind of
9 White supremacy in the town -- small town
10 of Newburgh in 1992.
11

12 Q So is your opinion that the fact
13 that there was a neo-Nazi rally in 1992
14 does not indicate that there was White
15 supremacy in the Town of Newburgh at that
16 time?

17 A What I'm arguing is that you
18 cannot take this event and suggest that
19 the entire town was full of White
20 supremacists. It was very small. Had
21 very, very small attendance. Many of
22 those that -- as we know from newspaper
23 reports or as indicated by newspaper
24 reports, there weren't very many town folk
25 there.

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2 Q What do you mean by relatively
3 few people attended the neo-Nazi rally?

4 A Reports had a hundred people
5 attending.

6 Q And so because there were only a
7 hundred people in attendance, this wasn't
8 a big deal?

9 A I'm not -- I'm not saying that.

10 Q Okay. But you're saying it's
11 not relevant to the history of
12 discrimination in the Town of Newburgh?

13 A I didn't say that either.

14 Q So it is relevant to the history
15 of discrimination in the Town of Newburgh?

16 A It occurred in Newburgh -- in
17 the town -- in the Town of Newburgh in
18 1992. So it's a historical fact that it
19 occurred.

20 Q How many people would've needed
21 to be at the rally in 1992 for you to
22 believe that this is evidence of
23 discrimination in the Town of of Newburgh?

24 A The -- it was an expression
25 of -- of White -- White supremacy.

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2 Q Okay. I want to go back to page
3 3, paragraph C. Do you see that on your
4 screen?

5 A Yes. We were just there.

6 Q Great. Do you see it on your
7 screen currently?

8 A Oh, please. I'm sorry. Yes.

9 Q Great. So I'm going to read
10 from that. And you say at the top, quote,
11 "Professor Sandoval-Strauz maintains that
12 protected classes were structurally
13 prevented from voting, yet presents little
14 evidence for this assertion." Is that
15 correct? Excuse me. Did I read that
16 correctly?

17 A Yes.

18 Q And then at the bottom, you say,
19 quote, "Furthermore, the enactment of the
20 Voting Rights Act of 1975 that made
21 Spanish speakers a protected class and
22 outlawed literacy tests was a result of
23 Hispanic political activism and was
24 overwhelmingly passed by Congress and
25 signed into law by President Gerald Ford."

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2 Did I read that correctly?

3 A Yes, you did.

4 Q What's the relevance of making
5 Spanish speakers a protected class under
6 the Voting Rights Act in 1975?

7 A The -- the -- what I was
8 pointing to in that sentence is that --
9 that this Hispanic, primarily Mexican
10 American and Puerto Rican, involvement in
11 the passage of the Voting Rights Act of
12 1975 showed and supported my conclusion
13 that we see greater Hispanic political
14 participation. Mexican Americans
15 organizations, many, and Puerto Rican
16 organizations were very heavily involved
17 in the passage of the Voting Rights Act of
18 1919 -- in the Voting Rights Act.

19 And they -- they testified. And
20 by the way, I've read the testimony not
21 indicated in this report. And they were
22 very involved in challenging the -- the
23 literacy test as -- literacy test even
24 prior to that in New York City. That
25 is -- when I say they, Puerto Rican

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2 activist organizations.

3 Q Are you finished?

4 A I'm sorry. I --

5 Q No, no. No apologies. That's
6 okay. Does the fact that there was a
7 political movement that led to the
8 enactment of the Voting Rights Act in 1975
9 or the extension to Spanish speaking
10 voters, does that indicate that
11 discrimination against Spanish speaking
12 voters was a problem up to 1975?

13 A Yes.

14 Q Is it your opinion that
15 discrimination against Spanish speaking
16 voters went away after the passage of this
17 provision of the Voting Rights Act in
18 1975?

19 A No.

20 Q Are you aware that as recently
21 as 2012, the Department of Justice filed a
22 complaint under section 203 of the Voting
23 Rights Act alleging that Orange County was
24 discriminating against Spanish speaking
25 voters?

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2 A Yes, I wrote about that in the
3 report.

4 Q Is that evidence of ongoing
5 discrimination against Spanish speaking
6 voters?

7 A Yes.

8 Q Let's go down to paragraph H,
9 and that's on page 4. Do you see that on
10 your screen?

11 A Yes.

12 Q Okay. In paragraph H, you
13 write, quote, "He," Professor
14 Sandoval-Strauz, "Finds, contrary to his
15 claim of employment disparity, that the
16 rate of unemployment in the town remains
17 below state and county rates." Did I read
18 that correctly?

19 A Yes.

20 Q What did you mean by that?

21 A I meant that unemployment -- the
22 City of Newburgh, as reported in -- in
23 their reports and -- and in New York State
24 employment figures, is -- remains below
25 the state and county rates.

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2 Q And why is the overall
3 unemployment rate in the Town of Newburgh
4 relative to the question of whether there
5 are racial disparities in employment in
6 the Town of Newburgh?

7 A It indicates -- he was making an
8 argument that you could look at
9 unemployment as -- as racial disparity,
10 but it's -- it's not -- relatively, it's
11 lower in the Town of Newburgh than below
12 the state or county rates.

13 Q Is the rate of unemployment
14 around -- excuse me. Strike that. Is the
15 rate of unemployment among Black residents
16 of the Town of Newburgh higher than the
17 rate of unemployment among White residents
18 of the Town of Newburgh?

19 A I'm not sure about that, but I
20 would -- I would presume so.

21 Q And is the rate of unemployment
22 among Latino residents of the Town of
23 Newburgh higher than the rate of
24 unemployment among White residents in the
25 Town of Newburgh?

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2 A I would presume that would be
3 the case, but we don't have -- we don't
4 have exact figures on -- on -- in a lot of
5 the official reports breaking out
6 racial -- racial groups.

7 Q Does the census data break out
8 employment rates by racial groups?

9 A I'm not sure about -- I'm not
10 sure about that on the -- for the -- for
11 the Town of Newburgh.

12 Q Do you have any basis to dispute
13 Dr. Sandoval-Strauz's finding that there
14 are disparities in employment between
15 White and Black residents of Newburgh?

16 A Not necessarily.

17 Q Is that a no?

18 A It was a not necessarily.

19 Q Do you dispute -- strike that.
20 Do you have any basis to dispute
21 Dr. Sandoval-Strauz's finding that there
22 are disparities in employment between
23 White and Latino residents of Newburgh?

24 A In terms of -- how are you
25 measuring this?

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2 Q The unemployment rate among
3 Latino residents compared to the
4 unemployment rate among White residents.

5 A No.

6 Q Okay. I want to return to the
7 question that I just asked. Apologies for
8 being repetitive. But do you have any
9 basis to dispute Dr. Sandoval-Strauz's
10 finding that there are disparities in
11 unemployment rates between White and Black
12 residents of the Town of Newburgh?

13 A No.

14 Q Okay. Let's go to paragraph J
15 on page 5. Do you see that on your
16 screen?

17 A Paragraph J?

18 Q Yes.

19 A Yes.

20 Q Okay. You write, quote, "It is
21 far from clear that Blacks and Latinos are
22 against the power plant, as the plant
23 could provide more jobs." Did I read that
24 correctly?

25 A Yes.

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2 Q What did you mean by that?

3 A I meant that there were -- there
4 were arguments made at the time in
5 shutting down -- or converting that power
6 plant to natural gas, that representatives
7 in the state legislature were concerned
8 about the losing of jobs as -- as well as
9 tax revenue for the -- for the town.

10 Q Is it fair to say that Professor
11 Sandoval-Strauz cites to evidence that
12 racial justice groups were opposed to this
13 plan?

14 MS. WEEKS: Object to the form.

15 A Could you repeat it?

16 Q Let me restate. Apologies. Let
17 me restate. Does Professor
18 Sandoval-Strauz cite to evidence that
19 racial justice groups opposed this plan?

20 A The plan for conversion?

21 Q Correct.

22 A Yes. There were groups that --
23 that -- environmental groups that -- that
24 were -- described themselves as racial
25 justice for a better environment that were

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2 actively involved in opposing -- opposing
3 the conversion of this plant.

4 Q Are you aware of any groups that
5 represent Black and Latino residents in
6 the Town of Newburgh who supported this
7 plan?

8 A No.

9 Q Are you aware of any Black or
10 Latino residents in the Town of Newburgh
11 who supported this plan?

12 A No.

13 Q So what is the basis for your
14 belief that Black and Latino people wanted
15 the power plant because it could provide
16 jobs?

17 A We -- we looked at
18 representatives from the districts who
19 were concerned about and representing
20 Black and Latino and low income people,
21 working people, who thought that -- that
22 this was going to be a loss of jobs.

23 Q What do you mean they were
24 representing Black and Latino --

25 A They were -- I'm sorry.

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2 Q That's okay.

3 A They were -- they were elected
4 officials.

5 Q Were they the candidates of
6 choice for Black and Latinos in the Town
7 of Newburgh?

8 A I don't know what -- I don't
9 know if they were the candidates of choice
10 for Black or Hispanic voters.

11 Q Okay. Staying on page 5, you
12 talk about, in paragraph L, Professor
13 Sandoval-Strauz's discussion of what he
14 characterized as a racial appeal. Is that
15 correct?

16 A Yes.

17 Q And you state, quote, "Professor
18 Sandoval-Strauz concludes" -- oh, I
19 apologize. I skipped ahead. Let's stay
20 on paragraph L for a moment. Okay. So
21 you note in this paragraph that the woman
22 who communicated what Dr. Sandoval-Strauz
23 characterizes as a racial appeal was
24 herself Black. Is that correct?

25 A May I -- may I just step and

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2 close my -- the door. My dogs hear the
3 doorbell and they're barking. It would
4 take one second.

5 Q All right. Yeah. No problem.
6 Okay. What kind of dogs do you have?

7 A Is this off the record?

8 Q Well, you don't have to answer
9 that. We're still on the record. That's
10 fine.

11 A They're -- they're Terriers;
12 one's a Wire Hair and one's a Welsh
13 Terrier.

14 Q Very nice. Okay. So we were
15 talking about paragraph L. And you
16 described -- sorry. Strike that.
17 Discussing the racial appeal, you noted
18 that the woman who communicated what
19 Dr. Sandoval-Strauz characterizes as a
20 racial appeal was herself Black. Is that
21 correct?

22 A Yes. That was important for
23 the -- for the entire story. I didn't --
24 I didn't point out that she was Black just
25 to try to show that a Black was involved,

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2 but the -- but that she was African
3 American was important to the entire
4 story.

5 Q Why was it important to the
6 entire story?

7 A She -- she proved to be a fraud.
8 She was having -- she claimed to be a
9 veteran who had served in combat, and she
10 created a foundation that was supposed to
11 help veterans. And because she was a
12 Black military veteran that she claimed, I
13 think that gave her opportunity -- that --
14 that provided her opportunities for her
15 fraudulent foundation to actually grow.
16 It was basically the foundation was a
17 scam, and -- and then she misled city and
18 county officials on this hoax story that
19 she created.

20 Q So you're saying that she had
21 more opportunities because she was Black?

22 A I think that helped her
23 messaging.

24 Q Is it your position that only
25 White people can be racist?

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2 A Is it my position that only

3 White people could be racist?

4 Q Yes.

5 A I'm -- I'm sorry. I don't even

6 understand the question.

7 Q Can a Black person communicate a
8 racial appeal?

9 A Can a -- can a Black person --

10 Q Communicate a racial appeal?

11 A Yes.

12 Q Can a Latino person communicate
13 a racial appeal?

14 A Yes.

15 Q Does the fact that this woman
16 was Black change the fact that she
17 communicated a racial appeal?

18 A No, but it -- it gave -- it gave
19 her foundation -- I think it gained
20 support because she was a Black -- a Black
21 veteran trying to help other Black
22 veterans. I think it was -- it was a -- I
23 think that it was a persona she projected
24 that -- that -- it was a persona she
25 projected that she was a Black veteran.

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2 Q Okay. Turning to paragraph M,
3 you write, quote, "Professor
4 Sandoval-Strauz concludes his report with
5 the claim that voter redistricting in the
6 small town of Newburgh is called for by
7 this alleged record of racism." Did I
8 read that correctly?

9 A Yes.

10 Q Is it your opinion that
11 Professor Sandoval-Strauz, in the
12 conclusion of his report, claimed that
13 voter redistricting in the small town of
14 Newburgh is called for by this alleged
15 record of racism?

16 A I understand that's what the
17 case is about.

18 Q But you didn't write that that's
19 what the case is about. You wrote that
20 Professor Sandoval-Strauz concludes his
21 report with this claim. Is that correct?

22 A That's what I wrote.

23 Q Did Professor Sandoval-Strauz
24 conclude his report with that claim?

25 A I would -- I would have to look

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2 at the report.

3 Q Okay. Let's return to Professor
4 Sandoval-Strauz's report. So I marked
5 this as Exhibit 4, but I don't think we've
6 discussed it. Do you see this on your
7 screen?

8 A Yes.

9 Q And do you recognize this
10 report?

11 A Yes.

12 Q What is it?

13 A It's his -- Professor
14 Sandoval-Strauz's report of June 2024.

15 Q Okay. Let's scroll down. You
16 see here it says, "Table of contents," and
17 then the last section is a conclusion?

18 A Yes.

19 Q Okay. Let's scroll down to the
20 conclusion. Okay. Do you see this
21 conclusion on your screen?

22 A Yes.

23 Q Is there somewhere in this
24 conclusion where -- strike that. Can you
25 identify where in this conclusion

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2 Professor Sandoval-Strauz makes a claim
3 that redistricting is required in the Town
4 of Newburgh?

5 A No, but he makes an argument
6 against at-large voting, in which he
7 describes it as -- as the impetus for that
8 is racist. So it would -- it seemed like
9 an obvious conclusion that he is arguing
10 for at least expanding the at-large voting
11 system for the town -- city -- town
12 council, and that he was -- that would
13 call for districting plans.

14 Q Can you identify anywhere in
15 this conclusion where Professor
16 Sandoval-Strauz says that the Town of
17 Newburgh should change its at-large
18 election system?

19 A No, not in this conclusion.

20 Q Does he say it elsewhere in his
21 report?

22 A He -- he attacks the current --
23 the current system of voting for city
24 council.

25 Q What do you mean?

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2 A So it's making an argument for
3 changing that system, which would suggest
4 that -- that there's a call for district
5 voting.

6 Q Okay. So you implied, based on
7 Professor Sandoval-Strauz's description of
8 the voting system, that he was arguing for
9 a change to the voting system. Is that
10 correct?

11 A I concluded that. Yes.

12 Q But to be clear, nowhere in
13 Professor Sandoval-Strauz's report does he
14 make that claim. Is that correct?

15 A Not that I recall.

16 Q Okay. Are you familiar with the
17 term straw man argument?

18 A If I said -- if I said no, that
19 would probably mean a longer discourse on
20 straw man argument. Yes, I understand the
21 term straw man argument.

22 Q And what --

23 A And I'm sorry -- sorry to joke
24 around by the way. I apologize.

25 Q No, no. We're here for a long

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2 time together. We might as well make it
3 as enjoyable as possible. What is a straw
4 man argument?

5 A A straw man is when you erect --
6 you -- you create an argument that -- that
7 doesn't naturally exist.

8 Q Would you agree that your
9 critique of a claim that Professor
10 Sandoval-Strauz did not make is an example
11 of a straw man argument?

12 MS. WEEKS: Object to the form.

13 A No.

14 Q Okay. I would like to take a
15 short break. We've been going for quite
16 some time. Professor Critchlow, I would
17 invite you, if you'd like, to have a
18 longer break for lunch. That's great. Or
19 otherwise, we can have a short break and
20 continue on.

21 A Since you're offering me my --
22 my preference, I would like a very short
23 break, but I don't want to deprive you of
24 lunch either. But I usually -- I usually
25 don't eat lunch, so I'm at some advantage

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2 that I can go longer.

3 I would just -- I -- if -- I
4 appreciate the -- this deposition and the
5 questioning, but I would -- and -- and
6 although I'm enjoying myself greatly, I
7 would like to get -- I would like to get
8 this over so I have other work to do, and
9 I know all the students listening in on
10 this and your attorneys do, too, so -- but
11 if we have a shorter break, that would be
12 my preference.

13 Q I appreciate that. Why don't we
14 take ten minutes and then we can come
15 back. Does that sound okay?

16 A Okay. Thank you.

17 THE REPORTER: We are now off the
18 record at 3:17 p.m.

19 (Off the record.)

20 THE REPORTER: We are now back on the
21 record at 3:29 p.m.

22 BY MR. DAVIS:

23 Q Okay, Professor Critchlow. Do
24 you understand that you're still under
25 oath?

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2 A Yes, I do.

3 Q Okay. Can you still see my
4 screen and your report up on it?

5 A Yes, I can.

6 Q Okay. I am going to scroll down
7 to page 7. You talk about the New York
8 Manumission Society in the late 18th
9 century. Is that correct?

10 A Yes.

11 Q And you state that one of the
12 goals for the group was to remove, quote,
13 "The cloud of prejudice that hung over
14 Whites about the capabilities of Blacks
15 for citizenship and providing education to
16 Blacks to equip them for citizenship." Is
17 that correct?

18 A Yes.

19 Q So you'll agree that at least in
20 the late 18th century, there was a cloud
21 of prejudice regarding how White people
22 viewed Black people in New York. Is that
23 correct?

24 A Yes.

25 Q Do you think this cloud of

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2 prejudice still exists?

3 A I don't think there's very many
4 people arguing for the slavery of -- of
5 any group.

6 Q So did the cloud of prejudice
7 get lifted when slavery was abolished?

8 A No.

9 Q When did it get lifted?

10 A The -- that's a very good
11 question. I would say that things --
12 attitudes toward Blacks, Jews, Catholics
13 really began to significantly change --
14 although there were earlier and intensive
15 efforts to overcome prejudice toward all
16 these groups earlier. But the real change
17 began -- the most significant change is
18 what I should say, not real, began during
19 World War II.

20 It was a fight for democracy,
21 and we began to see powerful civil rights
22 groups arguing for Black employment in
23 northern industrial cities. But more to
24 the point, surveys showed from
25 longitudinal -- longitudinal studies based

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2 at social science research at the
3 University of Michigan, that prejudice
4 toward Jews, Catholics, and Blacks began
5 to decrease quite significantly --
6 quite -- quite extraordinarily, actually.

7 Q Around World War II era. Is
8 that what you're saying?

9 A Excuse me?

10 Q The cloud of prejudice started
11 to lift more significantly in the World
12 War II era. Is that accurate?

13 A Yeah. So -- and it was evident
14 in surveys taken in 1947, 1948 on
15 attitudes toward Catholics, Jews, as well
16 as Blacks.

17 Q Racial discrimination persisted
18 beyond that time. Is that correct?

19 A Yes.

20 Q Is it your opinion that racial
21 discrimination persists to the present
22 day?

23 A In what form?

24 Q Is there racial discrimination
25 in society against Black people?

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2 A In which ways?

3 Q Is there racial discrimination
4 in voting against Black people today?

5 A Are you -- I can't hear you.

6 Q Oh, apologies. Is there any
7 form of racial discrimination against
8 Black people in society today?

9 A If there is, it's unlawful and
10 unconstitutional.

11 Q Does the fact that racial
12 discrimination is unlawful mean that it
13 doesn't exist?

14 A No.

15 Q Is there a racial discrimination
16 against Latinos in present day America?

17 A If you're asking if there's
18 systematic discrimination against
19 Hispanics and Blacks, systemic, then I
20 think that's -- that's -- and it's
21 unlawful, and it could be challenged in
22 the -- in the courts as well as federal
23 employment agencies. And that's a sign of
24 what I would consider great progress that
25 we've -- we've made in our society and

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2 nation.

3 Q I agree with that, but I guess
4 what I'm asking is, do you think there is
5 discrimination against Black and Latino
6 people in America today?

7 A Can you -- I cannot hear the
8 question.

9 Q I apologize. You froze there
10 for a second. I said I guess what I'm
11 asking is, is there racial discrimination
12 against Black and Latino residents of the
13 United States today, regardless of whether
14 that discrimination is unlawful?

15 A Yes. On an individual basis, we
16 have -- we actually have suits. Are you
17 there?

18 Q Yeah. To clarify, you're
19 saying, yes, there is racial
20 discrimination?

21 A Yes.

22 Q Okay. I want to turn now to
23 page 11, and it is a section B, "The Town
24 of Newburgh Today." Do you see that

25 A "Today in the Town of Newburgh,"

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2 is that what you're reading?

3 Q "The Town of Newburgh Today,"
4 yes.

5 A Okay.

6 Q Can you tell me what this
7 section is about?

8 A History of population growth in
9 the Town of Newburgh.

10 Q I apologize. You froze for a
11 second. Could you repeat that answer?

12 A The description as I'm reading
13 it in the first paragraph of section B,
14 "The Town of Newburgh Today," is a very
15 brief history of the growth of -- of
16 Newburgh and its history.

17 Q How did you conduct your
18 research for this section of your report?

19 A I looked at the -- the
20 Newburgh -- Newburgh's website, in which
21 it had a -- in which it had the Town of
22 Newburgh, its history.

23 Q Did you --

24 A -- section on the history.

25 Q Did you do anything else?

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2 A No.

3 Q Okay. Turning to page 13, you
4 talk here in section C about factors
5 relevant to minority political
6 participation and Hispanic attainment. Is
7 that correct?

8 A Yes.

9 Q And you discussed some of the
10 history of Puerto Rican political activism
11 in New York; correct?

12 A Yes.

13 Q And then you say in the second
14 paragraph under subsection C, "The
15 historical context is important." Did I
16 read that correctly?

17 A Yes.

18 Q What did you mean by that?

19 A I meant that -- that one could
20 see the growth of Puerto Rican population
21 growth and political activism.

22 Q Why was that important to
23 include in your report?

24 A We were -- the point I was
25 making is increased Hispanic, in this

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2 case, Puerto Rican, political
3 participation in the political process.

4 Q And is the historical context of
5 discrimination against Puerto Ricans in
6 New York also important?

7 A Yes.

8 Q Okay. I want to go to the
9 bottom of page 14, and I believe this is
10 in the same section. So on the bottom of
11 page 14, I'm quoting from the first
12 sentence of the last paragraph. You
13 write, quote, "Orange County similarly
14 ensures proper resources for and
15 participation from Spanish speakers in
16 other areas."

17 A Uh-huh. Sorry. Yes.

18 Q What did you mean by that?

19 A I meant that if you look at
20 efforts -- civic reach out to -- virtual
21 connectivity interruption --

22 THE REPORTER: You froze. Can you
23 repeat that answer?

24 THE WITNESS: Did I break?

25 THE REPORTER: Yes, you did. Just

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2 repeat that last part.

3 THE WITNESS: Okay. What I meant
4 by -- by discussing efforts by Orange
5 County to ensure civic participation and
6 voting by Hispanics was -- is quite --
7 quite involved.

8 BY MR. DAVIS:

9 Q What does a jurisdiction do to
10 ensure proper resources for and
11 participation from Spanish speakers in the
12 electoral process?

13 A They provide bilingual ballots.
14 They've -- Orange County, as well as
15 Newburgh, has -- is very involved in
16 Hispanic outreach and encouragement and
17 involvement in -- in meetings -- agency
18 meetings on housing as well as efforts to
19 reach out to Spanish speaking voters. So
20 if you look at Orange County's website and
21 look at agencies that are involved in
22 minority outreach, Hispanic, Black, Asian,
23 it's -- it's extensive.

24 Q What did you do to -- strike
25 that. Did you do anything to assess the

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2 effectiveness of those outreach

3 strategies?

4 A Only related to voter turnout.

5 There's a -- I would say there's probably

6 a correlation.

7 Q Did you assess whether Black and
8 Latino citizens in the Town of Newburgh
9 vote at similar rates as White residents
10 of the Town of Newburgh?

11 A No, because the -- the data does
12 not break down racial voting for the Town
13 of Newburgh.

14 Q So you are unable to analyze
15 whether Black and Latino citizens in the
16 Town of Newburgh vote at similar rates as
17 White citizens of the Town of Newburgh.
18 Is that correct?

19 A Nor was your expert witness able
20 to do so.

21 Q I was just asking about your
22 capability.

23 A There wasn't data, so I couldn't
24 analyze it or look at it even.

25 Q So you did not do that analysis?

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2 A It didn't -- the data was not
3 there, so I did not do the analysis.

4 Q Okay. I'd like to turn quickly
5 to page 19, and it says, "Examination of
6 Turnout Rates in Newburgh." Do you see
7 that?

8 A Yes.

9 Q And then towards the end of that
10 paragraph, you write, quote, "While these
11 official figures do not include racial or
12 ethnic characteristics, such turnout
13 numbers display that democratic
14 participation is alive and well in the
15 Town of Newburgh." Did I read that
16 correctly?

17 A Yes.

18 Q You do not know whether Latino
19 and Black citizens in Newburgh vote at
20 similar rates as White citizens. Is that
21 correct?

22 A That's correct.

23 Q Hypothetically, let's say that
24 Black and Latino citizens of Newburgh vote
25 at significantly lower rates than White

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2 citizens. Would you, under those
3 circumstances, still say that Democratic
4 participation is alive and well in the
5 Town of Newburgh?

6 A I think there are many ways to
7 answer that question. I would -- I would
8 say that the encouragement of Hispanic
9 language -- Spanish speaking people to
10 vote has been quite significant through
11 actions that the Orange County and the
12 City of Newburgh have undertaken. So
13 you're asking a -- you're asking a -- a
14 question of whether it's alive and well,
15 and I would say that the -- the
16 opportunities for participation of Spanish
17 speaking people is alive and well.

18 Q So it doesn't matter whether or
19 not they actually vote; it's just whether
20 they have the legal ability to vote. Is
21 that correct?

22 A Your -- your question is -- is
23 whether I place an importance on having
24 the right to vote? The answer is yes. Do
25 I believe that -- that there should be

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2 greater participation for all groups in
3 the electoral process and elections -- and
4 elections? I would say yes to that.

5 Q So is it important to a healthy
6 democracy, as you define it, that minority
7 citizens vote at similar rates as White
8 citizens?

9 A No, they don't.

10 Q I'm asking if it's important for
11 you. So you said that there's a healthy
12 democracy in Newburgh; correct?

13 A [No audible response.]

14 Q But you do not know whether
15 Latino and Black --

16 THE REPORTER: I'm sorry. I --

17 MR. DAVIS: Oh.

18 THE REPORTER: I didn't hear the
19 answer.

20 BY MR. DAVIS:

21 Q I'll ask the question again. So
22 I guess what I'm getting at is, you
23 said that there's a healthy democracy in
24 the Town of Newburgh. Is that correct?

25 A Yes.

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2 Q But you do not know whether
3 Latino and Black citizens in the Town of
4 Newburgh voted at similar rates as White
5 citizens. Is that correct?

6 A Yes. The data is not there.

7 Q And I guess what I'm asking is,
8 does the answer to that question matter
9 for your conclusion that there is a
10 healthy democracy in the Town of Newburgh?

11 A The voter turnout in Newburgh in
12 2020 was 70 percent, above -- above the
13 national level. We hope in that turnout,
14 which we don't have data for, that there
15 was significant Hispanic voter turnout.
16 It's been increasing nationally on the --
17 and in New York State and in -- and the
18 county level. So that makes for a healthy
19 democracy, generally, when people vote.

20 Q So you are comfortable standing
21 by your conclusion that Newburgh has a
22 healthy democracy without knowing anything
23 about the rates of participation of
24 minority voters. Is that a fair
25 statement?

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2 A Two parts to this -- to your
3 answer. I think it's healthy in terms of
4 outreach to Hispanic voters, having
5 bilingual -- bilingual ballots,
6 encouraging Hispanic involvement in civic
7 affairs both on the county and city level.
8 Do I think it could be healthier? Yes,
9 democracy can always be healthier.

10 Q Okay. So based on the
11 information you have currently, you are
12 comfortable saying that the Town of
13 Newburgh has a healthy democracy?

14 A Yes, based on voter turnout,
15 which is higher -- if you're measuring a
16 healthy democracy in terms of voter
17 turnout, Newburgh is healthier in terms of
18 its turnout. It has a higher turnout than
19 the -- than the national -- than
20 nationally.

21 Q Okay. I want to go back to page
22 15 and there's a graph here. Do you see
23 that?

24 A Yes.

25 Q Can you describe to me what is

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2 reflected in this graph?

3 A Yes. This is a graph -- from a
4 measure from the U.S. Census Bureau, and
5 it measures what's called racial --

6 THE REPORTER: I didn't hear the
7 answer. You're breaking up.

8 THE WITNESS: Sorry about that. I'm
9 not sure what's going on on my end. Can
10 you hear me now?

11 THE REPORTER: Yes

12 BY MR. DAVIS:

13 Q Yes.

14 A So the measure is -- is called
15 index of racial dissimilarity. It's a
16 standard measure used by the U.S. Census
17 Bureau measuring basically racial
18 relations between non-Whites and Whites.

19 Q And what do you think this graph
20 shows with respect to the progress of
21 non-White citizens?

22 A It shows that there's been ups
23 and downs, but there's been a decline
24 in -- in this index, which suggests that
25 progress is uneven, but there has been

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2 progress.

3 Q So I'm going to zoom in a little
4 here. And it looks like this graph
5 starts -- it doesn't say, but can we agree
6 that that's probably 2009, the beginning
7 of the graph?

8 A Uh-huh.

9 Q Okay. Could you just say yes or
10 no? I apologize.

11 A Oh, I'm sorry. Yes.

12 Q That's okay. So you would agree
13 that this graph starts in 2009; correct?

14 A Yes.

15 Q And it appears that the blue
16 line, which reflects the dissimilarity
17 index is between 37.5 and 38 percent. Is
18 that correct?

19 A Yes.

20 Q Okay. And then in the last
21 year, which is 2022, I'll have to zoom out
22 a little bit, the line appears to be
23 between about 37.5 percent and 38.0
24 percent. Is that correct?

25 A Yes.

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2 Q So is it fair to say that
3 dissimilarity index has not changed
4 between 2009 and 2022?

5 A Yes, it was -- it was lower
6 and -- lower, then rose, and now has
7 declined again.

8 Q But it is about the same in 2022
9 as it was in 2009. Is that correct?

10 A Yes.

11 Q Okay. You note up here that
12 this index does not separate Hispanics in
13 the category of non-Whites. What did you
14 mean by that?

15 A That this -- this measure was
16 not -- didn't separate Hispanics.

17 Q And then you relied on this
18 measure for your conclusion that there has
19 been general racial progress in terms of
20 racial distribution in Orange County. Is
21 that correct?

22 A Yes.

23 Q Do you know whether Hispanics
24 are similar to other minority groups that
25 are included in the dissimilarity index?

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2 A I'm not sure quite what the
3 question is.

4 Q Does this dissimilarity index
5 tell us anything about Latinos in Orange
6 County?

7 A It -- it shows the index between
8 non-Whites and Whites, specifically
9 Hispanics.

10 Q So can you draw any conclusions
11 about the status of Latinos in Orange
12 County based on this graph?

13 A Non-Whites in the category
14 included Hispanics and -- and Blacks and
15 other minority groups. So, overall, we
16 see that there's -- that there -- there
17 was uneven progress being made in this --
18 in this index.

19 Q But to confirm, this index tells
20 us nothing specifically about Black or
21 Latino residents of Orange County. Is
22 that correct?

23 A Could you repeat the question so
24 I make sure that I fully understand it?

25 Q Actually, let's strike that. Is

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2 it your opinion that the characteristics
3 of Latinos and Blacks are similar to the
4 characteristics of other minority groups
5 included in this dissimilarity index?

6 A Are you asking -- you're asking
7 me, are there -- the -- I'm still not sure
8 of the question. The -- so you're --
9 you're asking me about similarity of
10 Blacks and Hispanics?

11 Q I guess what I'm asking is, as
12 we discussed, this index includes many
13 racial groups; right?

14 A Included in the non-Whites, yes.

15 Q Correct. And you are using that
16 to draw a conclusion about Black and
17 Latino residents in Orange County. Is
18 that correct?

19 A Yes.

20 Q But you don't know one way or
21 the other whether all of the groups that
22 are included in the non-White category are
23 similar on the characteristics that make
24 up that index; correct?

25 A That is correct.

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2 Q So how can you make a conclusion
3 about Black and Latino residents of Orange
4 County based on this graph?

5 A The graphs includes non-Whites;
6 that include Hispanics, Blacks, and
7 Asians.

8 Q Is it fair to say that Blacks
9 and Latinos are probably similar to other
10 non-White groups that are included in this
11 dissimilarity index?

12 MS. WEEKS: Object to the form.

13 A The -- the index isn't -- I
14 think you -- I'm not sure you understand
15 what the index is measuring --

16 Q Why don't you explain it to me?

17 A Yes. Okay. Thank you. What
18 it's measuring is -- basically, it's a
19 measure for integration and racial
20 encounters and kind of -- and so it --
21 what it's measuring is segregation. So
22 this index, which looked at Orange County,
23 was looking at overall racial relations
24 between non-Whites and Whites.

25 Q And you used that general index

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2 to draw a conclusion about specific
3 communities in the Town of Newburgh. Is
4 that correct?

5 A I was using this index looking
6 at general racial relations in Orange
7 County.

8 Q Okay. And you would agree that
9 since 2009, general racial relations have
10 not really improved in Orange County?

11 A They have improved, if you look
12 at the graph. What you're -- what you --
13 sorry to --

14 Q No, no. I'm --

15 A I'm sorry to clarify your
16 question, but you mean from 2009 to today?

17 Q Correct.

18 A So -- right. So they've --
19 they've actually bettered from those
20 two -- two time periods, but there has
21 been improvement from -- from earlier --
22 earlier periods, as you could see clearly
23 on the graph. In fact, it's been a
24 precipitous decline. It was gradual. And
25 then if you look at the last few years,

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2 it's declined rapidly.

3 Q If you start the graph in 2012;
4 right?

5 A Yeah. I'm sorry. Yes.

6 Q Do you have any reason to start
7 your analysis in 2012 as opposed to 2009?

8 A The -- I didn't create the
9 index, and that was what the -- that's
10 what the -- that measure was. So that's
11 why I started it there.

12 Q But to be clear, as we just
13 discussed, the graph starts in 2009;
14 correct?

15 A Yes. That's what they -- that's
16 where they began the graph -- that's when
17 they began the measure.

18 Q Right. But when you say that
19 there's been significant progress, you
20 mean there's been significant progress
21 since 2012; correct?

22 A Yes.

23 Q Why is it appropriate to start
24 in 2012 as opposed to 2009 when you're
25 analyzing racial dissimilarity in Orange

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2 County?

3 A Because the graph shows that
4 there's -- that there's been progress made
5 after -- after -- significant decline in
6 racial dissimilarity as seen in the graph.

7 Q But based on this graph,
8 non-White communities in the County of
9 Orange are in about the same position in
10 2022 as they were in 2009; correct?

11 A Yes.

12 Q Is that significant progress?

13 A Actually, it was -- it was -- if
14 you compare those two measures, it was
15 actually -- it was actually low, and for
16 both those time periods. And so we see
17 that there's been -- there's been
18 progress, and as I state in the -- and try
19 to articulate in the report, in showing
20 Orange County and Newburgh public
21 government outreach, I would suggest that
22 this is why there -- that's why there has
23 been progress.

24 Q What evidence do you have to
25 connect efforts by the Town of Newburgh or

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2 the County of Orange to what you describe
3 as progress on the racial dissimilarity
4 index?

5 A There's no -- there's no
6 statistical correlation. We show -- we
7 show that there's -- just in this one
8 measure, and there are other measures by
9 the way, that one could look at, that I --
10 in the report. But this shows that
11 there's a decline in -- that there's been
12 great progress on -- on -- measured
13 through this instrument.

14 The next question is to ask why.
15 And as I showed, there's been great public
16 governmental outreach, so one could
17 conclude, perhaps not statistically
18 conclusive, that there's actually a
19 relationship between the two.

20 Q And you think that's a reliable
21 mode of analysis as a historian?

22 A I think it's -- I think it's
23 historically informed, that is, a -- a
24 conclusion that could be reached by
25 historian. But I do think that -- that it

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2 could be challenged with greater survey
3 data -- data or more -- greater
4 statistical analysis.

5 Q Okay. I want to unpack that a
6 little bit. So you acknowledge that you
7 do not have direct evidence linking
8 efforts by the County of Orange to what
9 you describe as a decline in the
10 dissimilarity index over the last 15 years
11 or so. Is that an accurate statement of
12 your position?

13 A Yes. That's why I also looked
14 at turnout figures and other -- and other
15 measures.

16 Q And to reiterate, you don't
17 actually know the rate of turnout for
18 Latino or Black residents in the county;
19 correct?

20 A Not for the -- that's right.

21 Q Okay. And so what you're
22 telling me is there were two things
23 happening around the same time. The
24 County of Orange was increasing its
25 engagement of Hispanic citizens from 2012,

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2 let's say, onto the present day. Is that
3 about right?

4 A Yes.

5 Q And at the same time, the
6 dissimilarity index declined, as reflected
7 on this graph, between 2012 and 2022. Is
8 that correct?

9 A That's right.

10 Q And you do not have evidence
11 directly linking those two things;
12 correct?

13 A That's right.

14 Q But you are able to conclude --
15 or strike that. You are able to offer an
16 opinion that those two things are linked.
17 Is that correct?

18 A No.

19 Q Okay. So you don't know one way
20 or the other whether the County of Orange
21 or the Town of Newburgh has successfully
22 engaged Hispanic residents in the
23 political process; correct?

24 A The argument that was being made
25 in the report is that there's progress --

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2 significant progress in Hispanic and other
3 protected classes in Orange County and
4 Newburgh. This was one measure of it.
5 Turnout might be another measure, but
6 there are other indications as well that
7 might indicate progress. The argument is
8 that there was progress being made.

9 Q Right. But you just made a
10 causal assertion. You just asserted that
11 one of the causes of that progress was the
12 town and county's efforts as you described
13 them; correct?

14 A The report does -- the report
15 does not make that conclusion. You asked
16 me my opinion right now in this deposition
17 outside the report's conclusion, which was
18 arguing about progress being made in the
19 City of Newburgh and Orange County, and
20 that's what the report was about.

21 You asked me a question
22 whether -- about this index to
23 dissimilarity, and I said it showed
24 advancement. And then you suggested
25 that -- then I said that perhaps, as I was

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2 thinking out loud, because it's not in the
3 report, that this -- this may reflect
4 community outreach as well as
5 residential -- residential and employment
6 patterns, by the way, which the measure --
7 which the index measures.

8 Q Would you say that that's
9 conjecture?

10 A Would I -- yes, I would say that
11 was conjecture at this moment, but that
12 conjecture was not found in the report.

13 Q Okay. So in the report, you
14 make no conclusions and offer no opinion
15 about why there has been progress, as you
16 say, on the dissimilarity index between
17 2012 and 2022; correct?

18 A Not on that specific index. But
19 I do -- I do look at Hispanic political
20 participation as indicated by turnout
21 and -- and other areas, would show that
22 there's progress being made.

23 Q Well, we covered that, and the
24 statistics actually don't show that. The
25 CUNY report, which is the one thing you

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2 rely on, shows that turnout has decreased;
3 right?

4 MS. WEEKS: Object to the form.

5 A No.

6 Q No, it doesn't show turnout
7 declining?

8 A It shows decline -- it shows the
9 decline between two midterm elections.

10 Q Okay. So you don't have any
11 other evidence to support the assertion
12 that Latino voter participation has
13 increased. Is that correct?

14 A Is that correct? No.

15 Q You don't have any other
16 evidence that you cite in the report. Is
17 that correct?

18 A I do give figures on national
19 Hispanic turnout.

20 Q From the CUNY report; correct?

21 A We could -- we could agree to
22 this at the -- at this time. But
23 there's -- but there's overwhelming
24 evidence, that I didn't think that was
25 necessary to report, of increased Hispanic

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2 turnout.

3 Q Is it a common practice as a
4 historian to make assertions without
5 citing evidence?

6 A Upon certain agreed upon things,
7 I think there -- there is.

8 Q So you think it is so
9 universally well understood that minority
10 political participation has been
11 increasing recently that you don't even
12 need to provide a citation for it?

13 MS. WEEKS: Object to the form.

14 A Well, I didn't, and I may have
15 been remiss in doing so.

16 Q Okay. And the one report you
17 did include actually shows a decline in
18 participation; right?

19 A You -- you asked that
20 previously. I answered previously. I'll
21 repeat it. It -- the decline occurred
22 between two midterm elections.

23 Q Okay. I'd like to turn to page
24 28. I'm going to scroll down. And I
25 apologize if I'm jumping around a little

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2 bit. I'm just trying to move things
3 along. So bear with me. Page 28. Let's
4 see.

5 You write in the second
6 paragraph, quote, "American voting
7 behavior is a complex topic, an entire
8 field in the political science discipline,
9 but there is universal agreement that
10 voter turnout is determined by economic
11 status and educational attainment, not
12 ethnicity or race." Did I read that
13 correctly?

14 A Yes.

15 Q What did you mean by universal
16 agreement?

17 A There's scholarly agreement
18 among those who study voter turnout that
19 there's a direct relationship determining
20 factor in turnout related to education --
21 educational attainment.

22 Q But you said there's universal
23 agreement that voter turnout is not
24 determined by ethnicity or race; correct?

25 A That's right.

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2 Q I don't see a citation in that
3 paragraph. Is there a citation for that
4 assertion?

5 A There should have been.

6 Q As we're sitting here now, can
7 you identify any peer-reviewed
8 publications that say that voter turnout
9 is not determined by ethnicity or race?

10 A Yes.

11 Q What are those publications?

12 A Major textbook that's been a
13 long-time use called "The American Voter."

14 Q And where in "The American
15 Voter" does it state that?

16 A I don't have a copy in front of
17 me. It's -- it's in the textbook,
18 however. There -- I know you're not a
19 political scientist, but there's
20 overwhelming scholarly and surveyed data
21 that -- that shows, shows this. This
22 is -- this is not a highly disputed
23 scholarly area.

24 Q What does the word universal
25 mean?

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2 A I should have said universal
3 scholarly and survey agreement.

4 Q That wasn't my question. What
5 does the word universal mean?

6 A It means commonly agreed upon.

7 Q It means commonly agreed upon.
8 Is that correct?

9 A That was how it was being used.
10 I should -- yeah, I wasn't -- when I was
11 speaking of universal, I wasn't speaking
12 of the gods in heaven.

13 Q I understand that, but am I --
14 strike that. Does universal mean that
15 there are no scholars who disagree with
16 your conclusion?

17 A I think it's pretty conclusive,
18 the scholarly literature on this.

19 Q So you do not know of any
20 scholar that disagrees with the conclusion
21 that race and ethnicity has no influence
22 on voting turnout?

23 A One doesn't come to mind right
24 now.

25 Q Do you know if one exists.

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1 D. CRITCHLOW

2 A I -- I just answered that
3 question. One doesn't come to mind right
4 now.

5 Q Okay. I'd like to introduce an
6 exhibit.

7 MS. WEEKS: Sam, we can see all of
8 your --

9 MR. DAVIS: I know. I don't know --
10 yeah, it's okay. I guess I'll stop
11 sharing for a second and then share. I
12 appreciate that, Mary. Give me one
13 second. Mary, will you just let me know
14 when you're able to see the exhibit come
15 through in Veritext?

16 MS. WEEKS: Yes.

17 MR. DAVIS: Thank you.

18 MS. WEEKS: Exhibit 6, we have it.
19 (Exhibit 6 was marked for
20 identification.)

21 MR. DAVIS: Okay. I'm going to go
22 back to sharing my screen for a second.

23 BY MR. DAVIS:

24 Q Okay. Professor Critchlow, can
25 you see the document on my screen that

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2 starts with "Research article"?

3 A Yes.

4 Q Can you read the title of that
5 article?

6 A "400 million voting records show
7 profound racial and geographic disparities
8 in voter turnout."

9 Q Can you finish the quote?

10 A "In the United States."

11 Q Would you still say there's
12 universal agreement that race and
13 ethnicity has nothing to do with voter
14 turnout?

15 A I said what turnout is
16 determined by is -- is educational
17 attainment. That doesn't mean that --
18 that doesn't mean that there aren't --
19 that there isn't lower turnout for racial
20 groups and lower turnout over geographic
21 areas.

22 Q But you think those differences
23 are completely ascribable to differences
24 in education or income; correct?

25 A I shared a commonly held opinion

1 D. CRITCHLOW

2 of people who work in this field.

3 Q But you didn't cite that;
4 correct?

5 A Yes, I -- I did not have a
6 citation to "The American Voter" and to
7 other extensive literature.

8 Q Okay. I'm going to go to
9 Professor Sandoval-Strauz's report for a
10 moment. And, again, I apologize if I
11 click on the wrong thing. Okay. I'm
12 going to go to page 34. Do you see this
13 on my screen?

14 A I do.

15 Q Okay. And I'm going to quote
16 from the first sentence of the second
17 paragraph. "Across the Town of Newburgh,
18 there are large ethno-racial gaps in
19 income and housing and smaller ones in
20 education and employment." Did I read
21 that correctly?

22 A Yes.

23 Q Do you agree with that
24 statement?

25 A No.

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2 Q What is the basis for your
3 disagreement?

4 A Because he doesn't -- Sandoval
5 doesn't look at ethno-racial gaps in
6 median household income, for example.

7 Q Okay. Do you see here in the
8 third paragraph where it says, "At the
9 basic level of annual per capita income,
10 the average among Newburgh's non-Hispanic
11 Whites is 50,839, with Black people
12 earning on average more than one-third
13 less at \$33,870 per capita, and Hispanics
14 earning just under one-third less at
15 35,022 individually"? Did I read that
16 correctly?

17 A Yes.

18 Q Do you have any basis to dispute
19 those numbers?

20 A He isn't looking at median
21 household income.

22 Q That was not my question. Do
23 you have any basis --

24 A I -- I'm sorry to interrupt you.

25 Q Do you have any basis to dispute

1 D. CRITCHLOW

2 Professor Sandoval-Strauz's statistics
3 with respect to average income among
4 different racial groups in the Town of
5 Newburgh?

6 A Yeah, these aren't -- these
7 aren't statistics. They're figures. But
8 I have no reason to dispute the figures.
9 I do think there are other measures,
10 however, that he didn't look at.

11 Q What other measures are those?

12 A Median household income is a --
13 is a common way of measuring wealth
14 disparity.

15 Q Did you assess the median
16 household income of Latino, Black, and
17 White residents of the Town of Newburgh?

18 A I think he should have.

19 Q That was not my question. Did
20 you assess the median household income of
21 Black, White, and Hispanic residents of
22 the Town of Newburgh?

23 A Not for this report.

24 Q Have you done it for another
25 report?

1 D. CRITCHLOW

2 A For household income for

3 other -- for other counties, yes.

4 Q That was, again, not my

5 question.

6 A I'm sorry.

7 Q My question was, have you ever

8 assessed the median income for Black,

9 White, and Hispanic residents of the Town

10 of Newburgh?

11 A Not in this report.

12 Q Have you ever conducted that

13 analysis outside the context of this

14 report?

15 A It's not expressed in a report

16 that I've written.

17 Q Have you ever performed that

18 analysis, either for this report or in any

19 other context?

20 A I have not performed an analysis

21 of median income household.

22 Q So are you aware of any

23 differences in what the median figures

24 would show as opposed to the average

25 figures that Professor Sandoval-Strauz

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1 D. CRITCHLOW

2 reports?

3 A I think it's something that he
4 should have looked -- looked at. It's a
5 common measure.

6 Q Again, just that was not my
7 question. I apologize. My question was,
8 do you have any basis for believing that
9 the median figures would show a different
10 pattern than the average figures in the
11 Town of Newburgh?

12 A Yes. In looking at median
13 household income compared to per capita
14 income in -- in other reports that I've
15 written. But in general, when you're
16 doing this kind of analysis, you would
17 look at median household income.

18 And I did not look at this
19 median household income for this report,
20 but I think it -- it should have -- it
21 should have been looked at by your expert
22 witness, because per capita income is --
23 can distort what -- what's claimed of
24 economic disparities. Would you like for
25 me to explain why, or should we move on?

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2 Q Please explain why.

3 A Median -- thank you for asking,
4 and I'll try not to go on at length about
5 this. And I'm not expert in the field
6 either, I want to say. But if you're
7 breaking down per -- annual per capita
8 income, you're looking at different
9 demographics in terms of -- particularly
10 in terms of age. So if you -- so you want
11 to look at -- you want to look at per
12 capita income by household, along with --
13 with looking at individual per capita.

14 So if you have a -- a new
15 population, for example, a younger
16 population perhaps enter into the
17 workforce, then -- then you might get a
18 change in per capita. You might not get
19 accurate member -- accurate measure of
20 economic disparities. And you get a
21 better measure in terms of median
22 household income.

23 Q Got it. Thank you for that
24 explanation. But just to confirm, you
25 don't know one way or the other whether

1 D. CRITCHLOW

2 there are disparities with respect to
3 median income for Black, Hispanic, and
4 White residents of the Town of Newburgh.
5 Is that fair?

6 A I would say for this report it
7 was not in there.

8 Q And you have no basis for that
9 knowledge; correct?

10 A That's -- that's right.

11 Q Okay. And then I want to scroll
12 down a little bit more. Still in page 34,
13 Professor Sandoval-Strauz reports, quote:
14 "The unemployment rate among the towns
15 Latinos, 5.9 percent, was almost twice as
16 high as for non-Hispanic Whites, 3.1
17 percent. And for the towns Black people,
18 their rate was almost 75 percent higher at
19 5.4 percent." Did I read that correctly?

20 A Yes, you did, sir.

21 Q Do you have any basis for
22 disputing the accuracy of those figures?

23 A No.

24 Q Okay. And then scrolling down,
25 I'm now on page 35. Professor

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2 Sandoval-Strauz writes, quote: "Across
3 the town of Newburgh, there are unequal
4 rates of home ownership versus renting.
5 By race, non-Hispanic Whites are less
6 likely to rent their homes. Across the
7 entire town, only 14 percent of them are
8 renters as compared with 25.7 percent of
9 Latinos and 24.9 percent of Blacks." Did
10 I read that correctly?

11 A Yes.

12 Q Do you have any basis for
13 disputing the figures that Professor
14 Sandoval-Strauz reports?

15 A No.

16 Q Okay. And then at the bottom,
17 he reports, "In the Town of Newburgh, not
18 a single non-Hispanic White family was
19 enumerated as living in an overcrowded
20 household, while 4.4 percent of Black
21 families and 2.9 percent of Hispanic
22 families were." Did I read that
23 correctly?

24 A Yes.

25 Q Do you have any basis for

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2 disputing that conclusion?

3 A If -- if we could backtrack --
4 go back. I don't -- you asked me if I
5 disputed the figures cited in this report.

6 Q Correct.

7 A I don't dispute the figures. I
8 would -- I did dispute the interpretation
9 of these figures. I -- I do dispute the
10 interpretation of these.

11 Q What do you dispute about the
12 interpretation?

13 A In -- in terms of what it's
14 measuring. If you have a newer
15 population, such as Hispanics, especially
16 in an environment with high pricing of
17 homes, you're going to get greater -- a
18 greater proportion of renters. And so
19 it's an indication, particularly for
20 Hispanic people newly arrived, that
21 they're -- that they're renting more than
22 being able to buy houses in a very high
23 priced area with an influx of population
24 with a shortage of housing.

25 And in terms of overcrowding, I

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2 did wonder about this, and I'll -- I'll
3 say this in the deposition, that I found
4 the overcrowding as defined as living in a
5 dwelling with more than one person per
6 room. I found that a rather strange
7 measure, if you think about it.

8 Q Okay. So is it your opinion
9 that there are not socioeconomic
10 disparities between White, Black, and
11 Hispanic residents of the Town of Newburgh
12 with respect to employment?

13 A If I may go back to the renters,
14 when I said, "If you think about it," I
15 paused. If you think of a household where
16 you have children sharing a room -- a
17 bedroom, and you're -- and you have a
18 living room. So you have three children,
19 two are sharing a room, and that would be
20 counted as overcrowding. So I thought
21 that was strange.

22 I pointed that out for this --
23 for this deposition. So, anyway, in terms
24 of employment, again, if you have a new
25 newly arrived population, especially

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2 Hispanics, they're not -- in general,
3 they're not going to start off with high-
4 paying jobs. So you're going to find
5 economic disparities in terms of wage --
6 wage earnings.

7 Q So you agree that there are
8 disparities?

9 A Yes. The question is what --
10 what that's measuring.

11 Q Okay. You keep -- strike that.
12 You've referred to Hispanics as newly
13 arrived a couple times. What did you mean
14 by that?

15 A I meant that -- as I explained
16 earlier in the deposition, that you had an
17 early population in Newburgh of Puerto
18 Ricans and Mexicans, and now you have
19 arrival of large numbers of people from
20 Central America.

21 Q And you think --

22 A That's what I meant by -- by
23 newly arrived. If you looked at
24 population growth of Newburgh, it's --
25 it's still a quite small town, but it's

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2 grown significantly, nearly double.

3 Q And you think the reason that
4 there are disparities in employment and
5 other factors is because Latino residents
6 are newly arrived in the Town of Newburgh;
7 correct?

8 A I think many of them are newly
9 arrived, yes.

10 Q Do you have any facts or data to
11 support that conclusion?

12 A For Newburgh, no. But it's --
13 it's generally agreed upon that if -- that
14 there's going to be income and wealth
15 disparities based on age when you're
16 entering the workforce.

17 Q Do you know if young White
18 people who enter the workforce in the Town
19 of Newburgh are worse off than young
20 Hispanic people who enter the workforce?

21 A No.

22 Q Do you know if young White
23 people who enter the workforce in Newburgh
24 are worse off than young Black people who
25 enter the workforce?

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2 A No.

3 Q So you're just speculating that
4 it's possible that that's the reason?

5 A I was talking about youth in
6 general. So we were looking at
7 specifically what was -- what your expert
8 witness was arguing. And, again, we don't
9 find it putting -- this is citation for
10 citation's sake without understanding --
11 without deep understanding of -- or any
12 understanding of the nature of income and
13 employment disparities that might occur.

14 Q Okay. Let's go back to your
15 report. I want to -- virtual connectivity
16 interruption -- I want to read the first
17 sentence from this paragraph. Quote:

18 "Professor Sandoval-Strauz finds a
19 remarkable figure on computers found in
20 minority households: 99.1 percent of
21 Latino families had a computer while 98.1
22 percent of Black families has a computer
23 in their household. Near parity, but
24 still lower, 97.1 percent of White
25 households had a computer." Did I read

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2 that correctly?

3 A Yes.

4 Q And what's the relevance of this
5 statistic or this figure?

6 A I think it had -- I thought -- I
7 thought it was quite remarkable and quite
8 surprising for me. And I -- I think it
9 had implications as I suggested earlier
10 for education, since a lot of our
11 education is now conducted online in
12 various -- through various programs from
13 high -- from high -- from grade school,
14 middle school, and college.

15 And it's also interesting
16 that -- that Blacks and Latino families
17 had such great access to the computer,
18 because I think that's important for voter
19 information and civic involvement.

20 Q Does the fact that Latino,
21 Black, and White families all have access
22 to computers at a similar rate negate
23 other socioeconomic disparities in the
24 Town of Newburgh?

25 A No.

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2 Q Okay. And then on page 24, you
3 write -- or let's back up. This is within
4 the section called "Disadvantages in
5 Housing, Education, and Environmental
6 Protection." Do you see that?

7 A Yes.

8 Q Okay. And then scrolling down
9 to page 24, you write, quote, "In
10 addition, according to the Newburgh
11 Expanded School District (NESD) 2023
12 accomplishments report, there is a great
13 deal of attention paid to Black history in
14 the school district." What did you mean
15 by that?

16 A I was -- I was referring to the
17 many activities these school districts
18 have around Black history.

19 Q And why is that relevant to your
20 report?

21 A If you're -- if you have Black
22 students, and you're celebrating their
23 history, it encourages greater
24 participation in -- in the -- the
25 democracy. And it also shows further

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2 outreach by the Town of Newburgh as well
3 as Orange County to -- to ensure that --
4 that there's an inclusive history.

5 Q Do you know who started the
6 Newburgh Free Academy Black History Club?

7 A The -- I don't recall right now.
8 I -- I did read about the founder,
9 however, but I don't recall the details at
10 this point.

11 Q As you recall, was the founder a
12 student?

13 A No, I don't -- I don't recall
14 any of the details. I remember reading
15 about the founding of it, I believe.

16 Q Okay. And so the conclusion you
17 draw here is that there is a great deal of
18 attention paid to Black history in the
19 school district. Is that correct?

20 A It's indicated by the -- by the
21 many reports on the -- on their websites.

22 Q So I only see one report cited
23 here, and it's from one school in
24 Newburgh. Are there other reports that
25 you relied on?

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2 A I looked -- I relied on this
3 report, primarily.

4 Q And so the sole basis for your
5 conclusion that there is a great deal of
6 attention paid to Black history in the
7 school district is a single report put out
8 by one school in the district. Is that
9 correct?

10 A No, I looked at Newburgh City
11 School websites. I only -- I only brought
12 this report out because it was so
13 extensive.

14 Q Okay. And did you rely on any
15 sources except those sources that were
16 published by the school district itself?

17 A I think I primarily relied on
18 what was published and reported by the
19 school district.

20 Q Okay. So as a historian, if
21 you're studying an institution, is it
22 appropriate to rely on materials published
23 by that institution alone?

24 A I think it depends on the
25 institution, quite frankly, so --

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2 Q So you think you can reliably
3 make conclusions about the experience of
4 Black students in Newburgh schools based
5 on a single report issued by one school in
6 Newburgh? Is that fair?

7 A I wasn't writing about the
8 experience of Black students. Actually,
9 it doesn't discuss the exact experience.
10 It was an indication of efforts by the
11 Newburgh Expanded School District to have
12 inclusion of -- of a significant minority
13 group, a Black population.

14 Q If you were writing a history of
15 the Democratic Party in the United States,
16 would you be able to draw reliable
17 conclusions based on press releases issued
18 by the party?

19 MS. WEEKS: Object to the form.

20 A Yeah, that -- that would be one
21 source I would use.

22 Q Would it be the only source that
23 you'd use?

24 A You're asking a comparative
25 question, writing a large history of a

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2 Democratic Party that -- that has a long,
3 long history. The purpose of the report
4 wasn't to -- my report, a rebuttal report,
5 was to show that -- that there's been
6 great progress made in racial relations.
7 So I used a number of indications of this,
8 including this -- this report. I was not
9 writing an encyclopedia article or a
10 monograph on Newburgh Expanded School
11 District. That wasn't the point.

12 Q But you think that you reviewed
13 enough sources to make a conclusion that
14 schools in Newburgh pay a great deal of
15 attention to Black history?

16 A I think they're paying -- I
17 think this -- these reports suggests that
18 they're -- they're paying great attention
19 to Black history and celebrating it.

20 Q Okay. Why don't we take a five-
21 minute break and then we can come back.
22 Does that sound okay?

23 A Okay. Thank you.

24 MR. DAVIS: Okay.

25 THE REPORTER: We are now off the

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2 record, 4:45 p.m.

3 (Off the record.)

4 THE REPORTER: We are now back on the
5 record at 4:52 p.m.

6 MR. DAVIS: Great. Thank you.

7 BY MR. DAVIS:

8 Q Professor Critchlow, you
9 understand you're still under oath?

10 A Yes.

11 Q Have you ever worked with the
12 state legislature to draw a legislative
13 redistricting plan?

14 A No.

15 Q Have you ever worked with a
16 local government to draw a redistricting
17 plan?

18 A No.

19 Q Have you ever worked with a
20 commission to draw a redistricting plan?

21 A No.

22 Q Have you ever been appointed by
23 a court to draw a redistricting plan?

24 A No. I'm sorry. I have to
25 laugh.

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2 Q You are not offering an opinion
3 regarding racially polarized voting in the
4 Town of Newburgh. Is that correct?

5 A Yes. I think. I'm not sure
6 what the question is.

7 Q You do not state in your report
8 that there is racially polarized voting in
9 the Town of Newburgh; correct?

10 A We don't have data on racial
11 backgrounds on -- on voting. Voting which
12 would be indicated by who -- who voted.

13 Q So you do not reach any
14 conclusions regarding racially polarized
15 voting in the Town of Newburgh; correct?

16 A That's correct.

17 Q You are not offering an opinion
18 on whether it is possible to draw a single
19 member district plan for the Town of
20 Newburgh that would allow Black and Latino
21 voters to elect a candidate of their
22 choice. Is that correct?

23 A I'm not offering an opinion
24 on -- on districting and how it could
25 be -- how it could be district.

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2 Q Okay. Are you familiar with the
3 term rank choice voting?

4 A Yes.

5 Q Are you offering any opinion as
6 to whether an election system that uses
7 rank choice voting would be appropriate in
8 the Town of Newburgh?

9 A I didn't discuss this in my
10 report.

11 Q Do you know what cumulative
12 voting is?

13 A That would be total votes.

14 Q Do you know what the election
15 system called cumulative voting is?

16 A No.

17 Q Okay. So you do not offer any
18 opinions regarding the cumulative voting
19 election system; correct?

20 A Well, I don't -- is that the
21 total votes?

22 Q That is a form of voting
23 different from single -- strike that. It
24 is an alternative election system. I'm
25 referring to a way of voting as opposed to

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2 figures about voting. So my understanding
3 is that you do not offer any opinions in
4 your report about whether alternative
5 voting systems would allow Black and
6 Latino candidates to elect a candidate of
7 their choice. Is that correct?

8 A I think that would be a fair
9 statement at this point.

10 MR. DAVIS: Okay. I have no further
11 questions.

12 THE WITNESS: What? Thank you very
13 much then.

14 THE REPORTER: Okay. The order for
15 the transcript, would that be regular
16 delivery or do you need --

17 MR. DAVIS: Sorry. Mary, could you
18 just confirm. Do you have --

19 MS. WEEKS: Yeah. No questions.

20 MR. DAVIS: Thank you.

21 MR. IMAMURA: Monday delivery, if
22 possible.

23 THE REPORTER: Okay. Noted. We're
24 now off the record at 4:56 p.m.

25

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1

D. CRITCHLOW

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(Whereupon, at 4:56 p.m., the

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proceeding was concluded.)

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A C K N O W L E D G E M E N T

I, DONALD T. CRITCHLOW, certify
that I have read the transcript of my
testimony taken under oath on September 12,
2024, and that the transcript is a
true, complete and correct record of
what was asked, answered and said
during this deposition, and that the
answers on the record as given by me
are true and correct.

DONALD T. CRITCHLOW


Signed and subscribed to
before me, this day
of , 20 .

Notary Public

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CERTIFICATE OF DEPOSITION OFFICER

I, CHANYRI FIGUEROA MONSANTO, 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.



CHANYRI FIGUEROA MONSANTO

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, RONALD MOORE, 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.



RONALD MOORE

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ERRATA SHEET

2

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3

CASE NAME: Oral Clarke, Et Al. v. Town Of Newburgh, Et Al.

4

DATE OF DEPOSITION: 9/12/2024

5

WITNESSES' NAME: Donald T. Critchlow

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Donald T. Critchlow

22

SUBSCRIBED AND SWORN TO BEFORE ME

23

THIS ____ DAY OF _____, 20__.

24

25

(NOTARY PUBLIC)_____
MY COMMISSION EXPIRES:

[02138 - 30]

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New York Code

Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(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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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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