

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

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2
3 TIMOTHY BORDERS, et al,)
4)
5 Petitioners,) No. 05-2-00027-3
6 v.)
7)
8 KING COUNTY, et al,)
9)
10 Respondents,)
11 and)
12 Washington State Democratic Central)
13 Committee,)
14)
15 Intervenor Respondent,)
16)
17 and)
18)
19 Libertarian Party of Washington)
20 State, et al,)
21)
22 Intervenor Respondents.)
23)

DEPOSITION UPON ORAL EXAMINATION OF
CHRISTOPHER ADOLPH

Friday, May 20, 2005
9:15 a.m.
Davis Wright Tremaine
1501 Fourth Avenue, Suite 2600
Seattle, Washington

Laurie E. Heckel, CSR, RPR
Court Reporter
CSR License No. HE-CK-EL-E386DM

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Friday, May 20, 2005
Seattle, Washington

A P P E A R A N C E S

For the Petitioners: E. MARK BRADEN
Attorney at Law
Davis Wright Tremaine
1501 Fourth Avenue, Suite 2600
Seattle, Washington 98101-1688

For the Respondents: KATHLEEN O'SULLIVAN
Attorney at Law
Perkins Coie
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099

For the Secretary of State: THOMAS F. AHEARNE
Attorney at Law
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle, Washington 98101-3299

Also present: DAVID McDONALD
Washington State Democratic Central
Committee Representative

1 Friday, May 20, 2005
2 Seattle, Washington

3 I N D E X

4 Witness: CHRISTOPHER ADOLPH Page

5 Examination by Mr. Braden 4/76/80
6 Examination by Ahearne 57/79

7 E X H I B I T S

8 No. Description Marked/ID'd

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10 1 Report on the 2004 Washington Gubernatorial Election 4
11 2 Variable definitions for data set 31
12 3 WSDCC_Overlap 40
13 4 GOP_Overlap 41
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15 5A GMail data field definitions for expert files 45
16 5B GMail Election contest 47
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1 CHRISTOPHER ADOLPH

2 having been called as a witness, was duly sworn and testified
3 as follows:

4 E X A M I N A T I O N

5 BY MR. BRADEN:

6 Q And for the record, can you provide us with your name and
7 address?

8 A I am Christopher Alan Adolph. I live at 3426 Meridian Avenue
9 North, Unit A, Seattle, Washington, 98103.

10 Q And, Dr. Adolph, what do you do for a living?

11 A I am assistant professor at the University of Washington. I
12 have appointments in the Department of Political Science, and
13 I'm am also a core member of the faculty at the Center for
14 Statistics and Social Sciences.

15 Q And how long have you been at the University?

16 A I joined the faculty in August.

17 Q And is that a tenured position?

18 A It's a tenure-track position.

19 Q Tenure-track, but you don't have tenure?

20 A I do not have tenure.

21 MR. BRADEN: If you could mark this as Exhibit 1.

22 (Exhibit 1 marked for identification.)

23 Q And can you identify this document?

24 A This document is the report I submitted to the Court.

25 Q And are there any earlier versions of this document?

1 A Not that I have.

2 Q Were there any earlier versions of this document?

3 A No. I had one document. I typed it up, and this is it.

4 Q So you didn't provide any earlier drafts to anyone else?

5 A There was a draft that I gave to the attorneys which had a
6 few typos that I corrected, but no substantive changes.

7 Q Oh, okay. Do you know whether your counsel provided us with
8 that earlier draft?

9 A I'm not aware.

10 Q Does your counsel know whether we got that earlier draft?

11 MS. O'SULLIVAN: I don't know. Mr. Burman would
12 certainly know.

13 MR. BRADEN: I don't know either, which is the reason
14 why I asked the question. I don't seem to have it, so --

15 MR. AHEARNE: I have not seen it.

16 MR. BRADEN: I think the two of us will then, based upon
17 that overwhelming evidence, conclude you didn't provide it to
18 us. So if you could provide it to us, we'd appreciate it.

19 Are you aware of anything between the two drafts other
20 than typographical errors?

21 THE WITNESS: Nothing substantive. I may have clarified
22 things that were unclear to people who read it, but I made no
23 substantive changes.

24 Q (By Mr. Braden) So there were changes other than
25 typographical?

1 MS. O'SULLIVAN: Objection to the form of the question.

2 Q (By Mr. Braden) Were there changes other than typographical?

3 A They were points of clarification.

4 Q Points of clarification. Okay. If we can turn to just your
5 CV, starting at Page 29.

6 A Uh-huh. Okay.

7 Q Most certainly this is gender discrimination, but I'll go
8 ahead and ask you because you're male. How old are you?

9 A I'm 28 years old.

10 Q And how long have you been at the University?

11 A Since August.

12 Q Since August?

13 A As I mentioned before.

14 Q And prior to that, where did you teach, or did you teach?

15 A Prior that, I was a Ph.D. candidate at Harvard University.

16 Q Okay. Let's go to the first page of your report.

17 A Uh-huh.

18 Q And start on the second paragraph.

19 A Uh-huh.

20 Q And it says: I have extensive background assisting
21 consultants and expert witnesses in conducting statistical
22 analysis of voting behavior relevant to numerous legal
23 proceedings on legislative and redistricting challenges.

24 A Yes.

25 Q Have you ever been an expert witness in any state

1 redistricting case?

2 A No, I have not.

3 Q Have you ever been an expert witness in any federal
4 redistricting case?

5 A No, I have not.

6 Q Have you ever been a witness in any type of litigation?

7 A No, I have not.

8 Q Have you ever been deposed before?

9 A No, I have not.

10 Q I'm assuming your counsel told you this, but since you
11 haven't been deposed before, I'll -- if for any reason you
12 need to take a break, please just tell us, and we'll just
13 take a break then and you can --

14 A No problem.

15 Q You know, preferably, you'll answer the question before you
16 take the break, but it's not an endurance test.

17 A Sure.

18 Q And if I confuse you with a question, I won't be surprised
19 that I confuse you with a question, and if I do, please just
20 say, I didn't understand the question, and I'll be happy to
21 repeat it or try to clarify it, if the problem just isn't
22 repeating it, it's just that I'm confusing.

23 So which particular expert witnesses have you assisted
24 in preparation for their testimony?

25 A Gary King and Jonathan Katz.

1 Q Okay. And is -- would it be safe to say that you were a
2 graduate assistant assisting them?

3 A Yes.

4 Q And what particular cases did you help Gary on, if you
5 remember?

6 A As an expert witness?

7 Q Gary King, yes, that he was either consulting on or being an
8 expert witness on.

9 A There are actually quite a few, so I don't know if I can
10 remember them all of them offhand, about a dozen different
11 cases. Cases in Ohio, California, Pennsylvania, Georgia,
12 Illinois, Michigan, Wisconsin, Oklahoma, Maryland.

13 Q Do you remember, were there any of them cases in which I
14 employed Dr. King?

15 A I'm pretty sure that some of them were. I looked last night
16 to see if I could find any record of that, but I wasn't able
17 to. But I'm fairly confident that at least one or two of
18 those cases, you were employing Dr. King, and he was
19 employing me.

20 Q And Jonathan Katz, can you tell me when you were doing
21 graduate assistant work for Dr. Katz, what case -- do you
22 know what cases he was working on?

23 A That was in Texas, the 2001 redistricting case in Texas. The
24 one before the infamous one.

25 Q Let me skip down here. Your report makes reference, and you

1 use the term, invalid voters, in the 2004 Washington
2 gubernatorial election.

3 A Uh-huh, yes.

4 Q Is that term synonymous with illegal voters?

5 A I use that term generically to refer to all the votes which
6 petitioners have identified as alleged illegal voters. So
7 this would include voters who petitioners have identified as
8 felons, voters who may have voted in multiple states or in
9 multiple locations within Washington, deceased voters, and
10 any other votes that petitioners in their expert witnesses
11 reports identified.

12 Q And in addition to petitioners, did you not also -- am I
13 correct that you also included alleged illegal votes that
14 were provided to you by the Washington Democratic Party?

15 A I did, and when I did so, I indicate so in my report.

16 Q The next paragraph begins with the sentence talking about the
17 extraordinary closeness of the gubernatorial race. Are you
18 aware of any races in the country for governor that were
19 closer than this?

20 A No, I am not.

21 Q Are you aware of any races in the country for governor in the
22 history of the United States that were closer than this?

23 A No, I am not.

24 Q So to the best of your knowledge, this would be the closest
25 gubernatorial race in the history of the United States?

1 A I have not done an exhaustive survey, but I am not aware of
2 one that is closer.

3 Q Let me skip down here: Petitioners claim invalid ballots
4 consists of those cast by disenfranchised felons, the
5 deceased -- I think we can safely assume that the deceased
6 actually didn't cast any ballots, correct?

7 A They are ballots with names of deceased persons on them.

8 MS. O'SULLIVAN: Allegedly.

9 THE WITNESS: Allegedly.

10 MR. BRADEN: Allegedly. Okay.

11 THE WITNESS: As I indicate.

12 Q (By Mr. Braden) In the last sentence it says: It's important
13 to remember that invalid ballots comprise a very small
14 fraction of the total ballots cast. Is the -- what's the
15 invalid universe of ballots you're talking about in that
16 sentence?

17 A As I indicate in the parenthetical phrase, that is referring
18 specifically to the petitioners 1,183 invalid ballots
19 discussed in the reports of Gill and Katz.

20 Q So that particular set of invalid ballots is a fairly
21 small --

22 A That is correct.

23 Q -- fraction of the total?

24 A Yes.

25 Q Okay. The second bullet on the next page, would it be

1 correct to -- and please correct my incorrect description of
2 it. Are you -- is this the statement that it's your view
3 that it is not possible to do any analysis that would reach
4 the conclusion that Gill and Katz reached on the data that
5 they used?

6 A I'm afraid that's a vague question. I'd ask you to clarify
7 that so I could give you a --

8 Q Okay. What does point 2 mean?

9 A Point 2 suggests -- actually, point 2 says that applying
10 currently accepted methods of ecological inference, any of
11 the currently accepted methods I am aware of to the aggregate
12 data that Katz and Gill present would not allow us to make
13 inferences about the behavior of invalid voters in this
14 election. And any of these methods would tell us that it is
15 not possible in this case to make such inferences reliable.

16 Q What additional data would permit you to make inferences?

17 A If we had individual data on the -- the actual invalid voters
18 in this case or a random sample of them, we could then make
19 some inferences about their behavior.

20 Q The individualized data, which data individualized would you
21 want? What --

22 A Individual data.

23 Q Individual data. What --

24 A Survey data, for example, if you were to ask them --

25 Q Survey data would be informative?

1 A Survey data of these individual invalid voters, or a random
2 sample or representative sample of them.

3 Q Would a survey data -- as an example, would a survey data of
4 felons who had their rights restored and voted in this
5 election be informative?

6 A Not necessarily. They may be systematically different from
7 felons whose right to vote has not been restored, and may
8 also be systematically different from felons who chose to
9 vote. In this case, we have felons who chose to attempt to
10 vote, even though they were not allowed to do so.

11 Q So that additional data would not help you form in any way an
12 additional opinion on the results?

13 A It would still --

14 MS. O'SULLIVAN: Objection to the form of the question.
15 It's vague. And I just ask you, Professor Adolph and
16 Mr. Braden, to make sure you're not speaking over each other,
17 so we can have a clean record.

18 MR. BRADEN: Sure.

19 THE WITNESS: I'd appreciate it if you clarify what data
20 you're speaking of.

21 Q (By Mr. Braden) Let's start out with the notion, is there any
22 data obtainable from a survey, any data obtainable from a
23 survey of felons who had their rights restored and voted in
24 this election that would be useful to inform you on how
25 individuals who illegally cast their ballot, felons who

1 illegally cast their ballot may have voted?

2 A Well, I believe I answered that question in stating that we
3 would not be able to infer that felons who had their rights
4 restored are the same as felons who have not had their rights
5 restored from that data, nor am I aware of such data.

6 Q Would a survey of individuals of like demographic
7 characteristics of the illegal felons be useful for informing
8 you on how the illegal felons may have voted?

9 MS. O'SULLIVAN: Objection to the form of the question
10 as assuming a legal conclusion, but you may go ahead and
11 answer.

12 THE WITNESS: I actually have a different question to
13 ask to clarify. A survey of voters where and in what
14 election? What is the survey question, and where is it being
15 administered?

16 Q (By Mr. Braden) Is there any survey question that could be
17 administered that would be informative to you of that
18 universe?

19 MS. O'SULLIVAN: Objection, vague.

20 THE WITNESS: I do not believe that there would be.

21 Q (By Mr. Braden) So are we concluding then that no types of
22 surveys can be constructed that would inform our views that
23 did not include specific questions to the specific illegal
24 voters?

25 MS. O'SULLIVAN: Objection to the form of the question.

1 THE WITNESS: I would argue that in this case if we want
2 to make inferences about the behavior of invalid voters, and
3 we want to be sure that we are not falling pray to a fallacy
4 in making inferences from people who are systematically
5 different, we would need a sample of invalid voters, and the
6 question would have to bear on this election. So it is not
7 that there is no survey, but that there are parameters on
8 what sort of survey would allow us to make valid inferences.

9 Q (By Mr. Braden) You have listed on Page 2 three independent
10 problems in the Gill and Katz report. The first one is
11 number one. What's a sample?

12 A A sample is a selection from a universe of data.

13 Q What's an incomplete sample?

14 A In this context, I mean that the sample does not include
15 every element in the universe. In other words, we do not
16 have all of the invalid votes accounted for in the sample of
17 Gill and Katz.

18 Q Uh-huh.

19 A It is not a census.

20 Q Okay. Do you know whether a census of all invalid votes is
21 available?

22 A I am not aware of one.

23 Q Do you have any methodology on which you could construct a
24 census of all invalid votes in this last election?

25 MS. O'SULLIVAN: Objection to the form of the question.

1 THE WITNESS: Given enough resources, I or other social
2 scientists could collect that data and do so systematically
3 by going across the state, by actually looking at every
4 precinct, looking through all the records. I have not done
5 so, and I am not aware of anyone who has done so.

6 Q (By Mr. Braden) And you believe that that would be practical
7 to do?

8 A It's not for me to say.

9 Q I just asked your opinion as to whether or not you believed
10 it was practical to do that task.

11 A I believe it is --

12 MS. O'SULLIVAN: Objection to the form of the question.
13 I believe that what he's -- his report indicates he's here to
14 opine on, but you may certainly answer his question.

15 THE WITNESS: I cannot assess what the standard of
16 practicality is. I believe it is possible to do it.

17 Q (By Mr. Braden) If the Gill and Katz reports were not based
18 upon a sample, but a complete census of invalid votes, your
19 Point 1 criticism would be irrelevant to the Court's
20 consideration; am I correct?

21 A Since my Point 1 is that they do not have a sample or a
22 representative -- I'm sorry -- they don't have a census or a
23 representative or random sample, naturally, if they actually
24 had a census, this point would no longer be operative.

25 Q And 3 talks about the combination of flawed methods in

1 unrepresentative data, correct?

2 A That is correct.

3 Q And what's meant by the unrepresentative data?

4 A Unrepresentative data here refers to the sample selected by
5 petitioners of invalid votes that does not appear to be
6 random or representative of the invalid votes in the state.

7 Q So is that similar to or same as the criticism of the
8 incomplete sample of invalid voters?

9 A No, it is not.

10 Q How is it different?

11 A So the first point generically points out that any
12 statistical method will generally require a representative
13 sample to make inferences to a population. So that would
14 apply broadly to a variety of methods that petitioners might
15 bring forth. Point 3 refers to the specific methods used in
16 this case, and the fact that if one applies the methods used
17 by Katz and Gill to a sample including both petitioners' and
18 respondents' data, the results change and no longer support
19 Katz's and Gill's conclusions.

20 Q On the next page where you make reference to a random sample,
21 what's a random sample?

22 A A random sample is one that is chosen using some, for
23 example, random number generator such that the resulting
24 sample is not systemically related to any of the variables we
25 are interested in.

1 Q And since we're interested in invalid ballots cast in this
2 election, can you explain to me how one would create a random
3 sample of invalid ballots created -- cast in this election?

4 A I would have to give more thought to doing this precisely,
5 but I can give a general idea. One would want to choose
6 randomly locations across the state, perhaps precincts, and
7 then randomly investigate ballots in those precincts.
8 Alternatively, one would take all the precincts in the state
9 and randomly select and investigate ballots from all the
10 precincts. One would have to be very careful that the
11 selection of ballots so drawn would not be correlated with
12 any of the variables that one might think would explain
13 voting behavior.

14 Q And would it be reasonable to use a random sample if you had
15 available alternatively a full census of invalid ballots on
16 which to do your analysis?

17 A If one had a full census, one would use the full census. The
18 point of a random sample would be try to get a representative
19 measure of that census. If you have the census, use it.

20 Q On Page 3, below 3.1 in the middle of that first paragraph,
21 there is a sentence that says: Unless the petitioners can
22 make and support the claim that these data are a
23 representative sample of invalid ballots across the whole
24 state, it's impossible to make even minimally valid
25 scientific claims.

1 Did I read that correctly, or I stopped in mid-sentence,
2 but that is roughly what it says?

3 A I would continue to the end, and say --

4 Q Sure.

5 A -- regarding the likely effect of these alleged ballots on
6 the election outcome.

7 Q Okay.

8 A It's important to evaluate scientific claims specific to what
9 the quantity of interest is.

10 Q But if the petitioners were to claim that they had a complete
11 census of invalid ballots before of the whole state, then
12 this criticism wouldn't be correct?

13 A If they could demonstrate that they had a complete census.
14 For example, other people would thus not be able to find any
15 missing invalid ballots.

16 Q Okay.

17 A And that's not the only example in which one could disprove
18 that it were a census. But if it were a census, this would
19 no longer be relevant.

20 Q And if the Court were only to consider the invalid ballots
21 before in its analysis, then this criticism of petitioners
22 wouldn't be valid?

23 A I disagree. This criticism is about the scientific validity
24 of these claims. Whatever the Court decides, the scientific
25 validity of these claims would remain in great doubt.

1 Q Down in the last full paragraph on the page, you make
2 reference -- you got a phrase there called cherry picking. I
3 assume that doesn't mean picking cherries from trees, even
4 though we're going to be in Wenatchee, but can you tell me
5 what you mean by that?

6 A I simply mean that the -- well, by cherry picking, I mean
7 choosing observations, choosing in this case invalid votes,
8 not randomly, but based on some characteristics which
9 actually might correlate with things that we're interested
10 in. So the example here is it's possible that these votes
11 were selected primarily in counties where -- or in precincts
12 where Christine Gregoire won the overall vote in that
13 precinct, which under the methods adopted by Katz and Gill
14 would tend to produce results that favor Rossi winning after
15 those votes are discarded. And if that were done either
16 intentionally or unintentionally, but nonetheless
17 systematically, we would have a cherry pick data set.

18 Q In the next paragraph, you say: Legal counsel provided me
19 with 443 felons --

20 A 743.

21 Q -- 743 felons, omitted from the petitioners' list.

22 What do you know about the 743 felons that you received
23 from your legal counsel?

24 A Could you be more specific?

25 Q Do you know how the list was prepared?

1 A I asked counsel how the list was prepared. I specifically
2 asked whether it was a random sample, and I was told it was
3 not. I was told that there was a concentration on trying to
4 fill in the holes that were perceived in the Rossi selection,
5 and thus most of these come actually from counties where the
6 Rossi data collectors claim to find very little or no invalid
7 votes.

8 Q What does fill in the holes mean?

9 A In this case, it would mean looking in places where no votes
10 were found, and checking to see whether that is actually
11 representative of the number of invalid votes in those areas,
12 or if in fact there has been a systematic omission of votes.

13 Q And where did you hear that the Rossi people claimed that
14 they'd looked and not found ballots?

15 MS. O'SULLIVAN: Objection to the form of the question.

16 THE WITNESS: I did not. I have not heard any
17 representation from the Rossi campaign as to how they
18 searched for ballots. So they either did not look or they
19 did not find.

20 MR. BRADEN: Can we go back to the answer to the prior
21 question?

22 (Answer at Page 20/Line 1 read.)

23 MR. BRADEN: That's enough.

24 Where did you hear the Rossis made those claims?

25 THE WITNESS: I didn't. I misspoke. I meant that it

1 was perceived that they made that claim. They have in fact
2 not made any claims as to how they have searched for votes.

3 Q (By Mr. Braden) On Page 4 at the top of the page, can you
4 explain that table to me?

5 A This table takes all of the precincts in Washington, and it
6 lists them in -- first, we take the data. We list them in
7 order by the margin of victory in favor of Gregoire down to
8 the margin of victory in favor of Rossi. I have grouped the
9 counties roughly into -- into four groups that roughly
10 correspond to quartiles. In each of these quartiles, I sum
11 up the number of invalid ballots found by petitioners. That
12 forms the second numerical column. And in the final
13 numerical column, I list the ballots which were found by the
14 respondents that apparently were overlooked or omitted by
15 petitioners.

16 Q Why roughly the quartiles?

17 A Simply because I wanted the table to be readable. If you
18 look at the first column, you'll notice that we have nice
19 round numbers. So Gregoire by 23 percent or more; Gregoire
20 by less than 23 percent. If I made them exactly quartiles,
21 they would have been 23 point and then a very long decimal.
22 It would also have not been possible to break these evenly
23 around the zero point where we have precincts that are
24 exactly divided. It would not make much difference in the
25 presentation if I had chosen to do it differently, but either

1 way, it will require the reader to think a little bit about
2 what the numbers mean.

3 Q If you take a step back and I were to provide you with the
4 743 felon list, would that choice of the particular precincts
5 and this data analysis lead you to conclude that those might
6 have been cherry picked?

7 A I'm afraid I don't understand the question. Could you please
8 rephrase it.

9 MR. BRADEN: Can you read it back?

10 MS. O'SULLIVAN: And I'll object to the question as
11 vague.

12 (Last question read.)

13 THE WITNESS: So I'll just ask you to clarify
14 specifically what I'm unclear about.

15 MR. BRADEN: Sure.

16 THE WITNESS: Which ballots are you talking about being
17 cherry picked?

18 Q (By Mr. Braden) Let's walk through it real clear, and I'm
19 sorry I've confused you. You received a list from Democratic
20 counsel of 743 felons.

21 A Correct.

22 Q And they were assigned to precincts across the state?

23 A Right.

24 Q Looking at those and their distribution based upon percentage
25 of votes for the two candidates, would that appear to be a

1 cherry picked list as you appear to believe the Gill and Katz
2 list were?

3 A Actually not, because their list fills in the missing data
4 from the petitioners. I do not know whether it is systematic
5 sample or representative sample, and I would not claim it
6 is. But they can't list the ballots that have already been
7 found to be invalid. So if I were to ask myself, does it
8 superficially appear to be cherry picked, I would have to add
9 together both columns in this table, right, because one set
10 of data were collected first, and the second set of data
11 can't reproduce any of that data.

12 Q Why couldn't they provide you a list that included both?

13 A They did. They were both in the same data set.

14 Q Okay.

15 A The list of interest here are the new ballots, which are
16 added to those found by petitioners.

17 Q And how many new -- of the 743 felons, how many of those
18 felons lived in precincts or voted in precincts which
19 Mr. Rossi carried, the actual number?

20 A I'm not -- oh, actually, I can calculate it from this table.

21 Q Uh-huh.

22 A It's the sum of these lower two numbers.

23 Q Uh-huh.

24 A So all but nine of them.

25 Q All but nine of them.

1 A That's right.

2 Q And the reverse from the data set that was provided by the
3 Rossi lawyers, how many precincts did Mr. Rossi carry in that
4 data set?

5 A How many precincts? I don't know the number of precincts
6 that anyone carried offhand. Are you talking about the
7 number of votes?

8 Q Number of votes then.

9 A Okay. So the number of votes that came from precincts which
10 Rossi carried in the petitioners' initial data would be
11 apparently 334.

12 Q So the Rossi sample does include numerous precincts which
13 Mr. Rossi carried in the election, received more votes than
14 Gregoire?

15 A That's fair to say.

16 Q But in the sample provided to you by the Gregoire campaign,
17 there are only nine?

18 A That could merely be a function of the Rossi campaign being
19 thorough in collecting everything they could from the
20 Gregoire counties.

21 Q Other than that, what else might it be a function of?

22 A It could be a function of the respondents, and I do not know
23 whether this is true or not, not looking very hard in those
24 counties. I simply don't know.

25 Q Do you know how many felons were found by the Gregoire

1 campaign having voted in the City of Seattle?

2 A I do not know that offhand. The data sets that I have don't
3 have city boundaries.

4 Q Do you know how many were found in King County?

5 A I have not checked.

6 Q On Page 6 -- ask some preparatory. Have you ever worked on a
7 political campaign?

8 A No, I have not.

9 Q Have you ever worked for a political polling firm?

10 A No, I have not.

11 Q Have you ever worked for any market research firms?

12 A No, I have not.

13 Q Have you ever volunteered in a campaign?

14 A I did volunteer to door bell one day in the 2004 election.

15 Q On behalf of who?

16 A I believe it was John Kerry.

17 Q You believe or you remember?

18 A No, it was -- it was for John Kerry, but it was organized
19 through a state house office, and so I was trying to be
20 certain which it was actually organized on behalf of.

21 Q I just -- sorry. I thought maybe you had forgotten.

22 A Oh, no.

23 Q You could have been door belling for George Bush, and we
24 missed that.

25 A No, no, I just wanted to make sure I was correct about the

1 logistics.

2 Q But other than that, you haven't had any -- have you ever
3 advised any candidate as a volunteer?

4 A No, I have not.

5 Q Have you done any targeting for any candidate?

6 A I'm not sure what that would mean.

7 Q You've never heard the word, political targeting, the phrase?

8 A It sounds a bit vague to me.

9 Q So you're not familiar that political campaigns might target
10 particular geographic areas to turn out the vote?

11 A Oh, certainly. I just haven't heard that term used.

12 Q The term, political targeting, you never heard used?

13 A No.

14 Q But you are familiar that political campaigns target
15 particular geographic areas in a sense to increase turn-out?

16 A Yes, of course.

17 Q Okay. On Page 6, you have: the vote choices of any
18 political sub-population within a voting precinct can be
19 assumed to be the same as the average vote choice in the
20 precinct as a whole. This assumption is strong, implausible,
21 and unwarranted.

22 So it's unwarranted to assume that there is a
23 correlation between where people live and how they vote?

24 A That's not what this statement says.

25 Q Okay.

1 A This statement says --

2 Q Well, let me ask other than that statement. Is that
3 unreasonable to assume that this correlation between how
4 people vote and where they live?

5 A It is reasonable to hypothesize that.

6 Q Is it reasonable to assume that?

7 A Not necessarily.

8 Q Okay. Why not?

9 A Because we don't -- within the absence of actual evidence, it
10 is possible that there is a correlation. It is possible that
11 there is not. It's an interesting hypothesis that a social
12 scientist would want to investigate with actual data.

13 Q Is this something that people have actually studied? You
14 teach political science. Is there a lot of literature in
15 political science about this?

16 A About correlation between where people live and how they
17 vote?

18 Q Yes.

19 A Certainly. Though it turns out it in most cases that can be
20 explained by a variety of other factors.

21 Q So if a political campaign were to target a particular area
22 to turn out the vote, they would be doing that on assumption
23 that was implausible and unwarranted?

24 A No, that's a mistaken inference.

25 Q Okay. Please explain why it's mistaken.

1 A Certainly. So to assume that people -- let me actually
2 re-read this entire sentence, because I think it's important
3 to get this clearly, and it wasn't even started at the
4 beginning of the sentence. The sentence in the report --

5 Q We don't need to go back to the sentence. Why don't we just
6 answer the question that's on the table.

7 A All right. The --

8 MS. O'SULLIVAN: I want to make sure you remember the
9 question on the table.

10 THE WITNESS: Why don't we have it read back.

11 MR. BRADEN: Go back and read it.

12 (Question at Page 27/Line 21 read.)

13 THE WITNESS: Okay. That is not a correct statement. A
14 political campaign might use locations as a proxy for a
15 variety of variables, and are only interested in getting some
16 increase in number of people turned out to vote, right? And
17 so they might think, well, in this area we might win some or
18 lose some, but lacking better information, this is how we
19 will use our resources. It does not mean that they can
20 conclude anything about the particular behavior of those
21 voters. It's not an inference about their behavior. It's a
22 strategy.

23 Q (By Mr. Braden) So your testimony -- your belief is that they
24 don't infer that these people are more likely to vote for
25 their candidate?

1 A My belief is that they cannot infer that scientifically.

2 What they actually believe is not for me to say.

3 Q You don't know. Is that the answer?

4 A That's right.

5 Q Page 17, 4.7, This is a hopeless case. What does that mean?

6 A It means that given the known data, the percentage of people
7 in each precinct who are alleged to be invalid, the number of
8 people in each precinct who voted for each of the candidates,
9 it is not possible with any modern accepted techniques of
10 ecological inference to make inferences from the aggregate
11 data to the behavior of the invalid voters, and those methods
12 actually show us that's not possible.

13 Q So if you were asked to provide a best estimate of how these
14 individuals voted, you could not answer that question?

15 A I would provide the deterministic bounds which range from
16 zero to 100 percent, and I would say that any answer between
17 zero and 100 percent voting for Gregoire or Rossi is
18 possible.

19 Q So you can provide no analysis that if the decision-maker had
20 to make a decision on this, you could provide nothing that
21 would assist them?

22 MS. O'SULLIVAN: Objection to the form question.

23 THE WITNESS: Actually, I believe this would assist the
24 decision-maker. This is actually the result of the state of
25 the art analysis which tells us from the case we cannot make

1 that inference.

2 Q (By Mr. Braden) The case is hopeless; is that correct?

3 A Making this inference from aggregate data is not possible.

4 Q And your former mentor or teacher, Dr. Katz, is just wrong?

5 A I have a great deal of respect for Jonathan Katz, but that
6 doesn't mean I always agree with everything he or any other
7 political scientist writes.

8 Q Page 22, 6.2, the first sentence under that, am I correct to
9 conclude from that that you don't believe that this paper
10 provides any evidence that felons tend to vote Democratic?

11 A That is correct.

12 Q Isn't the conclusion of the paper that if felons voted, that
13 John Kerry would be president of the United States now?

14 MS. O'SULLIVAN: Objection to the form of the question.

15 THE WITNESS: The paper assumes that felons vote
16 Democratic and then comes to that conclusion. It does not
17 provide evidence on whether felons vote Democratic.

18 Q (By Mr. Braden) Isn't there a conclusion that the Democrat
19 party would control the United States Senate if felons voted?

20 A The same answer to my previous question applies. The paper
21 assumes that felons vote Democratic and concludes, based on
22 that assumption, that if felons voted, the Democrats would
23 control the Senate.

24 Q I can't remember. Does their paper also include the
25 conclusion the Democrats would control the House of

1 Representatives?

2 A I do not remember them investigating the House. I do not
3 believe they did.

4 Q My memory is a little hazy on that. So do you remember the
5 estimates that they made as to the percentage of probable
6 felon vote -- their conclusions as to what they believe the
7 probable percentage of felon votes would be in varied,
8 different states?

9 A I do not recall them making state-level analysis.

10 Q They didn't provide any range of, say, 75 to 85 percent,
11 something? That number jog any memory?

12 A I don't recall the exact number. If you'd provide me with
13 the article, I'd be happy to point it out.

14 Q But you don't remember?

15 A I would prefer not to guess based on my vague recollection.

16 MR. BRADEN: Let's go off the record for just a second.

17 (Off the record.)

18 (Exhibit 2 marked for identification.)

19 Q Let me represent to you that I provided you with a document I
20 received from your counsel. At the bottom, it has in the
21 left corner xls/definitions.xls/Sheet 1. Does that look --
22 can you identify that document?

23 A This is the variable definitions for the data set I was
24 provided by respondents.

25 Q What do you call that? A data dictionary? Would that be

1 correct, or --

2 A That would be fair. I call it variable definitions, but
3 everyone seems to have a different term for this.

4 Q Yes, since I've now found out. You're correct. And this
5 reflects the whole universe, and I know it's a document you
6 might want to take a little time to look at this, but does
7 this appear to reflect the whole universe of the data sets
8 that you received?

9 A I don't have a photographic memory. It looks very familiar.
10 It looks very much like the complete list of variables.

11 Q Okay. Is there any other data that you used which you did
12 not receive from counsel?

13 A None pertaining to this case. I have examples in my report
14 from other cases, for example, data from -- you know, the
15 Seattle Mariners or, you know, graphics from a paper from
16 Gelman and an example from Pennsylvania, but other than that,
17 no.

18 Q And are there anything else that you relied on other than
19 sort of general text?

20 A I'm sorry. I don't understand the question.

21 Q For your report, did you consult with any other academic?

22 A I discussed my report with members of my department and my
23 research center.

24 Q Okay. And who were they?

25 A Discussed it with Thomas Richardson, Martina Morris. I also

1 discussed it with the other expert witness in this case, Mark
2 Handcock. And I mentioned that I was doing this report to a
3 number of other people, but didn't have in-depth discussions.

4 Q And the discussions you had with the other expert, were those
5 prior to the drafting of the report, or during the drafting
6 of the report, or after the drafting of the report, or all of
7 the above?

8 A All of the above.

9 Q And so did you and any other experts to some degree
10 collaborate on your reports?

11 A We checked our answers against each other, but we worked
12 independently, and actually wrote separate computer code, did
13 separate results, and made sure that we hadn't made any
14 computer errors in doing so.

15 Q And of the individuals that you discussed this with, did any
16 of them criticize your report in any way?

17 A No, actually.

18 Q And did any of them provide any suggestions to your report
19 that changed your report in any way?

20 A Not that I can think of.

21 Q And did any of them provide any -- prior to the drafting of
22 the report, provide you any specific advice that informed the
23 report?

24 A No, actually, I was mainly checking my intuition on what
25 everyone that I've talked to seems to agree is a very clear

1 case. I was also concerned with making sure that I was
2 clearly communicating with my ideas, and so to the extent
3 that anyone influenced, it was merely to make sure that
4 people were understanding what I was saying.

5 Q Other than individuals you talked about, are you aware of any
6 other individuals and in the academic community that were
7 contacted about expert testimony in this case?

8 A I am not certain. I suspect that Gary King might have been.

9 Q And do you know who contacted Gary?

10 A I have no knowledge of that.

11 Q And why do you suspect that?

12 A Because he was the one who recommended me for the job. So
13 someone must have contacted him, but I do not know who.

14 Q You do not know who? How did you get hired to do this?

15 A Gary King was contacted by someone who was interested in
16 hiring someone to be an expert witness, and he recommended
17 me.

18 Q But you don't know the who?

19 A It may have -- I mean, I know who contacted me. I did not
20 ask Gary who talked to him.

21 Q Okay. Who contacted you?

22 A David McDonald.

23 Q And Mr. McDonald, what did he say to you when he contacted
24 you?

25 A He said that Gary King had recommended me as someone with a

1 great deal of experience in relevant cases dealing with
2 redistricting and racial polarized voting, and asked whether
3 I was interested in serving as an expert witness in this
4 case.

5 Q And how did he describe what he wanted you to do?

6 A He described to me what was in the reports provided by
7 petitioners' experts and asked what my reaction was.

8 Q So he provided them to you. And did he indicate to you what
9 his reaction to the reports were?

10 MS. O'SULLIVAN: Objection to the form of the question
11 as compound.

12 THE WITNESS: He did not at that time provide me the
13 reports. He let me look at them, later after I had -- after
14 I'd agreed to do this, he actually provided the physical
15 reports later that day.

16 Q (By Mr. Braden) I guess I don't understand. How did he
17 permit you to look at them and not give them to you?

18 A He didn't have copy for me. He simply let me look them over.

19 Q Oh, so he -- so this was a meeting?

20 A Yeah, it was just a meeting.

21 Q Okay. And where did you meet?

22 A In my office.

23 Q So he came to visit you?

24 A That's right.

25 Q Did he call you up and arrange an appointment?

1 A He e-mailed me to arrange the appointment.

2 Q And you don't know of anyone else who might have been
3 contacted regarding this case in the academic community?

4 A I believe that many other people in the Center for Statistics
5 and Social Sciences were contacted.

6 Q And why do you believe that?

7 A Because people have told me they'd been asked.

8 Q Okay.

9 A I know Mark Handcock, obviously, who was another expert
10 witness. Martina Morris was asked. I believe Adrian Raftery
11 was asked. There may have been others I'm not aware of.

12 Q Do you know why they're not expert witnesses in the case
13 right now?

14 A They're very busy people.

15 MS. O'SULLIVAN: Objection, foundation.

16 THE WITNESS: I do not know for certain why. I have not
17 asked them. I can't read their minds, but they are very busy
18 people. So I wouldn't be surprised if they have other things
19 to do.

20 Q (By Mr. Braden) Do you know whether anybody contacted
21 individuals, Mr. Manza or his co-author?

22 A I believe that Martina Morris has contacted them.

23 Q And do you know anything about her conversation with them?

24 A I believe that she has asked them for their data in order to
25 replicate their findings.

1 Q Do you know if she had any other conversation?

2 A I know that she knows them actually personally, and I presume
3 that they've had conversations, but I don't know the content
4 of them.

5 Q Do you know whether they were requested to potentially
6 testify in this case?

7 A I don't know.

8 Q So have I exhausted the universe of people that you know who
9 were contacted in regards to potential testimony or
10 statistical analysis in this case?

11 A That I'm aware of, yes.

12 Q That you're aware of. Okay.

13 A It's a small world. So I might know other people and not
14 realize they had been asked.

15 Q On the data set, Exhibit 2 here --

16 A Uh-huh.

17 Q -- the ones that there is a -- down starting at the bottom
18 and going over to Page 2, there is some G04, and then a
19 series of data.

20 A Yes.

21 Q Do you know what those are?

22 A If we start, for example, at G040 underscore DV, that would
23 be as indicated, the votes received by the Democratic
24 Candidate Gregoire in a manual recount by precinct.

25 Q And do you know where these came from?

1 A These I believe came from petitioners' data.

2 Q And is this the data that you used to do your analysis?

3 A That is right.

4 Q Was that data sufficient for your analysis?

5 A Since my analysis was primarily interested in replicating and
6 showing how different methods would change the results from
7 the petitioners' reports, by definition, what I want is the
8 data they used, and my concern is not necessarily with
9 whether that data is perfect.

10 Q Are any data sets ever perfect?

11 A They can be, a small data set.

12 Q How often in large data sets of millions of votes are they
13 perfect?

14 A I am not aware.

15 Q Of any ever, right?

16 A I am not aware.

17 Q Not aware -- are you aware of any perfect data -- election
18 data sets in your experience working as an --

19 A I (inaudible) or imperfect --

20 THE COURT REPORTER: Whoa, whoa, whoa. Let's finish the
21 question and the answer.

22 Are you aware of any perfect -- election data sets in
23 your experience working as an --

24 MR. BRADEN: -- expert witness in redistricting voting
25 rights cases where the data has been perfect.

1 MS. O'SULLIVAN: Objection to the form of the question.

2 THE WITNESS: I'm not aware of which data sets are
3 perfect or imperfect.

4 Q (By Mr. Braden) How many election data sets have you worked
5 with assisting people who were expert witnesses?

6 A Hundreds.

7 Q And in those hundreds, were there any that you could identify
8 as perfect data sets?

9 A I'm not able to identify whether they're perfect or
10 imperfect. I don't gather the data.

11 Q Were those various data sets that you used here from G04R
12 through the other ones, did you see any obvious problems with
13 those data sets?

14 A My one concern is that I am not clear how the residual votes
15 have been calculated. In Katz's second supplemental report,
16 he alludes to a new calculation for residual votes, meaning
17 votes that were for write-ins, under-votes, over-votes,
18 spoiled ballots for counties other than King County. And I'm
19 not certain how he calculated it, and in some precincts, it
20 has negative values. Other than that, I have not noticed
21 anything that set off any alarms.

22 Q And would these data sets appear to be sufficient to have
23 been used in other expert testimony that you've been involved
24 in for redistricting cases or voting rights cases?

25 A There is an interesting difference between these data sets

1 and those data sets. In general -- in fact, without any
2 exceptions I can think of, in those other cases, data were
3 official election data or official census data, whereas in
4 this case, the invalid votes that have been collected are not
5 in any sense official.

6 Q The election data --

7 A The election data appear to me to be as normal election data
8 is with the exception of this residual votes. However, I
9 have not been told explicitly that this is exactly the same
10 as what, for example, the county officials that produced this
11 data produce.

12 Q Other than the residual vote issued, did you see any
13 anomalies in these data sets that would lead you to believe
14 that they have any problem?

15 A No.

16 MS. O'SULLIVAN: Objection, vague.

17 (Exhibit 3 marked for identification.)

18 Q (By Mr. Braden) Let me represent to you this is a printout of
19 an electronic message received from your counsel. At the top
20 of it it says WSDCC underscore Overlap. Do you know what
21 this is?

22 A I have not actually looked at this.

23 Q Do you know what the WSDCC slash Overlap -- the term,
24 overlap, might mean?

25 A I am not entirely certain. So I won't speculate.

1 Q If you look on this document, there is a line that has
2 gender. In the data sets you received, do you know how
3 gender was decided?

4 A I believe it was decided from voter registration. In this
5 data set, I don't know.

6 (Exhibit 4 marked for identification.)

7 Q This document was received from your counsel as GOP dash
8 Overlap. Have you ever seen this document before?

9 A I have not looked at it.

10 Q Have you looked at any files -- do you have any files that
11 would resemble this document?

12 A I believe that such a document may have been attached to an
13 e-mail. I would have to check to be certain, but I have not
14 looked at it.

15 Q Does the first line, Perkins ID, mean anything to you?

16 A No.

17 Q Does the third line, Debunked, mean anything to you?

18 A I am not certain what that means.

19 Q When you were discussing various felon lists, did anybody
20 discuss which ones had been debunked or not debunked?

21 A I was told that there were efforts to investigate whether
22 felons were actually allowed to vote or not in particular
23 cases, but in no more detail than that.

24 (Exhibit 5 marked for identification.)

25 Q Let me represent to you that what's been marked as Deposition

1 Exhibit 5 is a copy of what appears to be a copies of
2 communications between the experts and counsel. E-mails --

3 A Uh-huh.

4 Q -- which I've received from your counsel.

5 A Yes.

6 MR. AHEARNE: Can we go off the record for a second?

7 MR. BRADEN: Sure.

8 (Off the record.)

9 Q (By Mr. Braden) Could you just take a -- I know it's a
10 lengthy document.

11 A Right.

12 Q But could you just take a few minutes to glance through it
13 and tell me whether these communications look familiar to
14 you?

15 A They do.

16 Q And what does it appear to you to be?

17 A These appear to be communications that were received in my
18 in-box from people participating in the case, from legal
19 counsel, and from Mark Handcock, the other expert witness.

20 Q Do you know whether this represents all the communications
21 between you and counsel?

22 A Since this has just been stapled and handed to me, I am not
23 sure, but I provided all such things.

24 Q You provided all the communications?

25 A Right. So I can't look through 50 pages and tell you whether

1 they're all here.

2 Q Sure, absolutely. Has counsel indicated to you that there
3 were any documents he was not going to provide?

4 A No.

5 Q So you understood that counsel was going to provide all
6 documents?

7 A I wasn't told anything about what e-mail was provided
8 actually.

9 Q Okay. If we can go to -- unfortunately, they're not
10 numbered.

11 A It's going to be difficult.

12 Q Yes. It is going to be difficult here. But if you go down
13 about, what would you say, about an inch here?

14 A If you could describe the page.

15 Q Sure. It's got --

16 A Is there a heading? What does this say?

17 Q It's the next page following that.

18 A I'll have to find that page.

19 MR. AHEARNE: What's the date on it?

20 MR. BRADEN: Yes, identify it by day here. April 30th
21 or so.

22 THE WITNESS: I don't know if they're by date.

23 MR. BRADEN: Yes, I don't know either.

24 THE WITNESS: Is it --

25 MR. BRADEN: If that helps.

1 THE WITNESS: Yes, okay.

2 MR. BRADEN: Okay. Great. Flip over to the next page.

3 THE WITNESS: All right.

4 MS. O'SULLIVAN: I want to make sure I can find it

5 MR. AHEARNE: I don't have the right page.

6 MS. O'SULLIVAN: And I believe for the record, that
7 these e-mails were produced in reverse chronological order,
8 but the nature of e-mails containing multiple prior e-mails,
9 it can be tricky to find those.

10 THE WITNESS: The way GMail stores its e-mails is not
11 necessarily conducive to this format.

12 MR. AHEARNE: 5/17/2005 1:57 PM at the bottom?

13 MR. BRADEN: Yes.

14 MR. AHEARNE: Got it.

15 MR. BRADEN: And so we can identify it for the record
16 here, since I think one inch down is probably going to be a
17 little vague for the record, this is a document that in the
18 right-hand bottom corner, it has 5/17/2005 1:57 PM. It
19 starts out at the top in bold type, data field definitions
20 for expert files. And it appears to be a document that at
21 the bottom left has one of four.

22 MR. AHEARNE: Would it be possible just to mark this one
23 page as a sub exhibit?

24 MR. BRADEN: Sure. Why don't we mark it --

25 MR. AHEARNE: So the record is clear what page we're

1 talking about.

2 MR. BRADEN: That probably does make sense. We should
3 mark it 1A

4 MR. AHEARNE: 5A, you mean.

5 MR. BRADEN: Or, I mean, 5A.

6 MR. AHEARNE: Sure.

7 MR. BRADEN: That might help.

8 MS. O'SULLIVAN: And are we to understand that 5A would
9 be this page, or 1 through 4.?

10 MR. BRADEN: 1 through 4.

11 (Exhibit 5A marked for identification.)

12 Q (By Mr. Braden) And at the bottom of 5A, which is a document
13 that is -- has four pages it would appear.

14 A Uh-huh.

15 Q At the bottom of 5A, Page 1, can you identify what appears to
16 be an e-mail message? Am I correct?

17 A Bottom of 5A, Page 1?

18 Q Page 1, yes.

19 A The --

20 Q From you?

21 A Yes.

22 Q To Dave Burman?

23 A Uh-huh.

24 Q And am I correct that same message skips over to Page 2?

25 A Yes.

1 Q Okay.

2 A Appears to be.

3 Q Can you just -- what's the purpose of this e-mail? Can you
4 explain to me?

5 A I'll have to review it.

6 Q Okay.

7 A Since this was a couple weeks ago, I don't remember entirely
8 the e-mail conversation this was connected with. But from
9 what I'm reading here, it appears that I was trying to figure
10 out the variable definitions of the data set.

11 Q "I need to know: What your researchers consider the complete
12 list of invalid voters." Did you get an answer to that?

13 A Yes, actually.

14 Q And what is that?

15 A Well, the answer I got was that I should not presume that
16 there is a complete list, but simply do an analysis based on
17 the totality of the ballots produced by petitioners and
18 respondents.

19 Q Okay.

20 A I was told that what would consist of an illegal ballot was
21 going to continue to evolve as the trial went on.

22 Q And you did receive -- in response to 2, did you receive a
23 response to that -- to different data sets requested there?

24 A I'm sorry. Which No. 2?

25 MS. O'SULLIVAN: Objection, vague.

1 Q (By Mr. Braden) No. 2, in that e-mail, there is two points.
2 One is your researchers consider a complete list of invalid
3 voters, and below that, I think there is a 2, The gender by
4 precinct, of alleged felons, total felons, total invalid
5 voters. Did you --

6 A I received the gender by precinct of alleged felons.

7 Q And total felons?

8 A I'm not sure what I even meant by the distinction at this
9 point. I was still trying to figure out how felons were
10 being counted.

11 Q And then I guess we'll make this 5B and go down -- see if we
12 can find this one. It says 1 of 7 and it's 5/17/05 2:00 PM.

13 A All right.

14 (Exhibit 5B marked for identification.)

15 MR. AHEARNE: And heading is Election contest.

16 MR. BRADEN: You got it.

17 MS. O'SULLIVAN: I'm not there yet, unfortunately.

18 MR. AHEARNE: Look in the lower left-hand column for
19 seven pages.

20 MR. BRADEN: Yes. For 1 of 7.

21 MR. AHEARNE: Or just 7 -- something of 7.

22 MS. O'SULLIVAN: Got it.

23 Q (By Mr. Braden) Okay. And can you just generally tell us
24 what this document is?

25 A Once again I'll have to re-read it.

1 Q Okay. Sure.

2 And while he's reading it, maybe it will help the record
3 to further identify the marks on it. This is going to be
4 5B. It has Election contest at the top, and it's apparently
5 seven pages long, 1 through 7 at the bottom left corner.

6 A All right.

7 Q Okay.

8 A Could you repeat your question?

9 Q Can you just generally tell me what this document is?

10 A This document, this first e-mail is an e-mail from David
11 Burman to myself and Mark Handcock regarding a variety of
12 issues in the election contest.

13 Q Okay. And can you take a look specifically at the second
14 paragraph?

15 A Okay.

16 Q And it says, "We will be disclosing this afternoon we have
17 found 400 plus ex-felon voters in precincts --

18 Let me first ask you a question. Do you know what a
19 ex-felon is?

20 A I presume someone who is no longer in prison.

21 Q Okay. -- in precincts where they apparently didn't look
22 (because the precinct favored Rossi by 54 percent, or more)."

23 Did you conclude from this that this list that you were
24 provided of 400 ex-felons only came from precincts that were
25 favored by Rossi by more than 54 percent?

1 A I can't conclude from this that they only came from those
2 precincts. Merely that some of them did, or that in those
3 precincts it appeared to David Burman that they weren't found
4 because no search was instigated in his view.

5 Q Did he provide you any reason to believe that no search was
6 instigated there?

7 A No. I'm merely interpreting the sentence that you asked me
8 to interpret.

9 Q No, I was asking whether he had discussed that issue with
10 you.

11 A No, no.

12 Q So you don't have any knowledge as to how they decided which
13 precincts to --

14 A Who is they?

15 Q Counsel.

16 A My counsel.

17 Q Yes. Do you have any idea how they looked for these 400
18 ex-felons?

19 A As I -- I actually answered this question earlier in the
20 deposition, and stated that I believed that they were trying
21 to fill in holes, but I did not know if they only were
22 looking in counties or precincts that Rossi won.

23 Q Okay. If one only looked for felons in precincts that were
24 Rossi plus 54 percent, would I be incorrect to characterize
25 that, using your definition of cherry picking, as cherry

1 picking?

2 A It would depend on what previous search had been done.

3 Q What if no previous search had been done?

4 A If no previous search had been done, then I would agree that
5 that was cherry picking.

6 Q And if a previous search had been done by someone else?

7 A If the previous search had been cherry pick --

8 MS. O'SULLIVAN: Objection, vague.

9 THE WITNESS: If the previous search had been cherry
10 picked, any attempt to check whether it had been cherry
11 picked or fill in the votes could itself be called cherry
12 picked simply because it couldn't find votes or they had
13 already been systematically taken out of the population.

14 Q (By Mr. Braden) Do you know whether there is -- do you have
15 any knowledge as to the regimes by which different counties
16 remove ineligible felon voters from the roles?

17 A No, I do not.

18 Q So you would not know whether or not it was a more vigorous
19 program in one county versus another?

20 A No, I would not.

21 Q Do you have any knowledge about that process whatsoever?

22 A No, I do not.

23 Q Anyone discuss that with you?

24 A Not at any length.

25 Q And not at any length.

1 A Meaning I don't remember anything about that. I mean,
2 someone may have mentioned it, but I honestly have no
3 recollection.

4 Q Okay. You have no recollection of it. Okay. And let's skip
5 over on Document 5B to Page 3 of the 7. And if you go down
6 one, two, three, four, it's always a little tricky in e-mails
7 to determine whether those are paragraphs or not, but we've
8 got what looks to be a paragraph starting, We don't know how
9 many more -- how many 100 more. Do you see that?

10 A Yes.

11 Q Okay. And is this part we've come to now, is that an e-mail
12 to you from Dave Burman?

13 A I'll have to check. This is actually an e-mail from me to
14 David Burman.

15 Q Okay.

16 MS. O'SULLIVAN: For the --

17 THE WITNESS: We talking about --

18 MS. O'SULLIVAN: -- purpose of the record, it looks to
19 me like the first page of Exhibit 5B that you were previously
20 asking about, 1 of 7 has this paragraph that you're asking
21 about, Mr. Braden.

22 MR. BRADEN: Okay.

23 THE WITNESS: This is quoted from the previous e-mail.

24 Q (By Mr. Braden) Okay. So this -- I'm just trying -- this
25 particular paragraph, does this appear to be a reprint then?

1 I'm just trying to say is that from David Burman to you?

2 A Oh, this paragraph?

3 Q Yes.

4 A Yes.

5 Q Okay. And it says: Keep in mind, though, we are using
6 approach to verification that is more rigorous than what the
7 petitioners used.

8 Do you know how it was more rigorous?

9 A I have subsequently heard something to do with various
10 different kinds of bureaucratic documentation. I'm not an
11 expert on verifying felons, so -- and verifying whether
12 felons are allowed to vote or not vote has not been part of
13 any of my duties as an expert.

14 Q So what have you heard about the verification?

15 A Nothing that I can remember with enough precision to be
16 willing to state it. I can tell you my vague recollections
17 if that's really what you want, but it doesn't form any part
18 of my analysis.

19 Q Sure, you can tell your vague recollections of what was told
20 to you.

21 A I believe I was told that some records of whether a felon was
22 discharged may actually indicate that they have their right
23 to vote restored, and others may not. And both sides have
24 been trying to find appropriate records.

25 Q Do you know whether any county officials have actually

1 removed any individuals --

2 A No.

3 Q -- who voted illegal?

4 A No, I don't.

5 Q You have no knowledge of that? Haven't seen any newspaper
6 reports?

7 A I'm not following what's happening in every county in the
8 state.

9 Q How about in King County?

10 A Not even following that very closely.

11 Q You live in King County, but you missed the newspaper
12 accounts?

13 MS. O'SULLIVAN: Objection to the form of the question.

14 Q (By Mr. Braden) Did you miss the newspaper accounts about the
15 county prosecutor removing various felons from the list in
16 King County?

17 A Apparently I did.

18 Q I don't see in your analysis the use of age data.

19 A I never received any age data.

20 Q But you did receive birth dates.

21 A Are we referring to -- would you actually point out which
22 exhibit we're referring to?

23 Q I'm asking you, you didn't receive any birth dates?

24 A I haven't looked at any birth dates.

25 Q Did you receive by birth dates?

1 A If I received them, they are in a file I haven't even looked
2 at.

3 Q You have not looked at any file that have birth dates on
4 them?

5 A Not that I recall, and I haven't used age data.

6 Q Would a age be of any use to you informing you on any of the
7 matters under consideration here?

8 A It's awfully vague. Age would not be of any use to me in
9 making inferences about the behavior of invalid voters.

10 Q Do you know whether there is any correlation in age and
11 voting behavior?

12 A It's actually a very complicated correlation. There are a
13 variety of different kinds of effects of age on voting
14 preference.

15 Q And can you tell me what they are?

16 A There could be effects of the generation you're born in.
17 There could be effects of age, regardless of which generation
18 you're born in. These are actually quite difficult to
19 disentangle.

20 Q Is there literature or survey data that would show some
21 degree of correlation between age and voting behavior?

22 MS. O'SULLIVAN: Objection, compound.

23 THE WITNESS: Could you restate the question.

24 MR. BRADEN: Could you read back the question.

25 (Last question read.)

1 THE WITNESS: I'm sure there is.

2 Q (By Mr. Braden) Do you know whether there is any data like
3 that regarding the gubernatorial race for governor in 2004 in
4 the State of Washington?

5 A I am not certain.

6 Q Did you look at any of the exit poll data that was used in
7 Mr. Handcock's report?

8 A I have not looked at Mark Handcock's exit poll data. I have
9 looked at different exit poll data. I have not looked at any
10 exit poll data on age.

11 Q Is any available?

12 A I am not aware.

13 Q Okay. Not too many more tests here of our ability to move
14 down by the inches. We'll now mark this as 5C. This at the
15 top has Election contest. It's 1 of 2 in the left corner and
16 at the bottom right corner it's 5/17/2002 1:55 PM.

17 A Okay.

18 (Exhibit 5C marked for identification.)

19 Q Can you identify what that document is? This is 5C.

20 A This is an e-mail from David Burman to me.

21 Q And what does -- can you just generalize -- provide us as to
22 what this e-mail was intended to do?

23 MS. O'SULLIVAN: Objection to the form of the question
24 and foundation.

25 Q (By Mr. Braden) Did you receive this e-mail?

1 A Yes.

2 Q And what do you believe this e-mail was meant to -- what do
3 you perceive this e-mail telling you?

4 A I can tell you how I read this e-mail. I can't speak for the
5 intent of anyone else.

6 Q You could, but you don't have to.

7 A I won't. This e-mail provides --

8 Q It's not in Greek though, is it?

9 A No.

10 Q Okay.

11 A This e-mail provides --

12 Q So can you normally make some guess, reasonable guess, as to
13 what somebody intends by what they tell you in an e-mail?

14 A I can make a guess. I'm not sure how reliable that guess
15 is. I wouldn't necessarily want to be quoted on that guess.

16 Q Okay. We won't quote you. What is this telling you when you
17 read it?

18 A This is informing me what the standards for scientific
19 testimony in Washington courts are.

20 Q And did you receive this in advance of doing your report?

21 A Yes.

22 Q And did you use this to do your report?

23 MS. O'SULLIVAN: Objection, vague.

24 THE WITNESS: I'm not sure what that would mean.

25 Q (By Mr. Braden) Did this information inform you in the

1 drafting of your expert report?

2 A This information did not affect the content of my report.

3 Q So you used nothing from this -- this item was simply
4 irrelevant to the drafting of your report?

5 A This item helps me know what it is that Washington courts
6 consider scientific.

7 Q Okay.

8 A My opinions of any scientific issues, any of the data in the
9 case were not affected by this.

10 Q Did you use any language from this e-mail or definitions in
11 this e-mail and put them into your report?

12 A There may be similar language, but I don't believe I
13 referenced this or copy and pasted or even looked back at it.

14 Q Do you have any opinion as to why this was sent to you then?

15 A I believe I asked what counts as scientific evidence in
16 Washington courts.

17 Q So this to the best of your recollection is in response to a
18 specific inquiry?

19 A Yes.

20 Q Do we have a copy of the e-mail making that inquiry?

21 A The inquiry was actually in-person if I recall.

22 MR. BRADEN: Be my guest.

23 E X A M I N A T I O N

24 BY MR. AHEARNE:

25 Q Good morning. My name is Tom Ahearne. I represent the

1 respondent, Secretary of State. Actually, since we're on
2 Exhibit 5, we'll just keep that in front of you.

3 A All right.

4 Q First, I'm going to actually ask you to look through this. I
5 thought I understood your testimony that this Exhibit 5
6 appears to be a printout of e-mails in your in-box.

7 A Right. It includes -- the way Gmail is stored, that includes
8 e-mails I've sent and received.

9 Q Right. I'm just trying to make sure that these are the
10 Professor Adolph e-mails as opposed to a compilation of
11 Professor Adolf e-mails and then whatever Mr. Handcock had in
12 his e-mail system.

13 A This is -- these are mine.

14 Q Okay.

15 MS. O'SULLIVAN: And I believe, Mr. Ahearne, that
16 Mr. Burman could certainly answer that question. But my
17 understanding is it is both, and certainly in review of
18 these --

19 THE WITNESS: Oh, my apologies. If I'm incorrect it's
20 because, as I said before --

21 MR. AHEARNE: Okay. I will ask counsel for the
22 Democrats to confirm for me. I know you can't, but you have
23 to confirm whether Exhibit 5 is both Mr. Handcock's e-mails
24 and Mr. Adolf's e-mails, or just Mr. Adolph's e-mails.

25 MS. O'SULLIVAN: And my understanding for the record is

1 that they consist of both, and the very first page of Exhibit
2 5 would certainly suggest that e-mail between Professor
3 Handcock and David Burman to which Professor Adolf was
4 neither a recipient --

5 MR. AHEARNE: I'm not trying to trap anyone one way or
6 another.

7 THE WITNESS: Oh, yeah, no, I --

8 MR. AHEARNE: I just want to know what it is. Because
9 if it's both, fine, and if it's not, Mr. Handcock's were
10 deleted, I would be entitled to have Mr. Handcock's.

11 If I can ask you just to flip through some pages, first,
12 second, third, fourth page, and I'm not going to mark it as
13 an exhibit, but it's e-mail for -- it says: The case you
14 were asking about is cited Perry v. Del Rio.

15 Do you see that?

16 THE WITNESS: Yes.

17 Q (By Mr. Ahearne) Can you explain why you were asking about
18 it, or why you wanted to see the case?

19 A Oh, I had worked as an expert witness for Jonathan Katz in
20 that case, and I wanted someone to look it up so that I could
21 properly cite it.

22 Q And that would be the one case that when Mr. Braden was
23 asking you about your resume, you went through a laundry list
24 of cases you worked with Professor King on, and you said
25 there was one in Texas with Professor Katz?

1 A That is correct.

2 Q And this would be this Del Rio case?

3 A That is correct.

4 Q Could you going through the various cases you worked with
5 Professor King on, you mentioned Ohio, Pennsylvania, Georgia,
6 Oklahoma, Maryland. What other ones off the top of your
7 head?

8 A There is quite a long list, and if I didn't have it in front
9 of me, I couldn't necessarily get it completely. Let's see,
10 I'm just going to list states --

11 Q Right.

12 A -- and you can fill in. Ohio, Georgia, Pennsylvania,
13 Illinois, Michigan, Oklahoma, California, Arizona, Maryland.
14 I'm not sure if I'm missing any.

15 Q Okay.

16 A There were quite a few.

17 Q And were all of these redistricting cases?

18 A They were all related to redistricting, yes.

19 Q And could you just in the few -- could you briefly describe
20 what type of work you did on these redistricting cases?

21 A Yes. There were two types of work I did. One is closely
22 related to the questions in this case. Per the Voting Rights
23 Act, it's often necessary in these cases to determine whether
24 there is racially polarized voting in various elections.

25 Q Can you explain for the record what you mean by, racially

1 polarized voting?

2 A Racially polarized voting means that you have distinct racial
3 ethnic groups that vote as blocks for different candidates,
4 and there is some significant difference between their
5 presences. So for example you might have a much larger
6 fraction of black voters voting Democratic than white
7 voters. So the question in these cases is how we can figure
8 out how black voters voted. Did they choose to vote
9 Democratic, or did they choose to vote for another party.
10 And since the ballot is secret, this is an ecological
11 inference problem. In fact, it's the same ecological
12 inference problem in all statistical respects as the problem
13 in this case with invalid voters.

14 The other thing I did in these cases was evaluate the
15 likely impact of different redistricting plans on the
16 allocation of votes indices in various states using a method
17 developed by Gary King.

18 Q And when you say, The allocation of votes, do you mean the
19 allocation of votes between Democrats and Republicans, or --

20 A Meaning how changes in the vote share gained by either party
21 would translate into changes in the portion of seats held by
22 each party in a legislature or in congress.

23 Q And when you talk about racially polarized voting,
24 over-simplified would be African Americans tend to vote for
25 the Democrat, and the -- let's say there is two races in one

1 district.

2 A Sure.

3 Q And Caucasians vote -- tend to vote for the Republican?

4 A Or you could simply talk about the difference between the two
5 votes, right. So you could say that -- say blacks voted on
6 average 70 percent Democratic and whites voted 40 percent
7 Democratic, so there was a polarization of 30 percent.

8 Q But you can have polarization on other things other than
9 race. Would that be correct?

10 A You could have different voting preferences on other things
11 than race, yes.

12 Q And is there evidence of there being polarization between,
13 for example, blacks and whites in their voting?

14 MS. O'SULLIVAN: Objection, vague.

15 Q (By Mr. Ahearne) In the work that you've done in these
16 redistricting cases, is part of the work premised on there
17 being a distinction between -- or polarization between the
18 way black voters tended to vote and white voters tended to
19 vote?

20 A The work is not premised on that. It's actually an attempt
21 to discover evidence for that, and in most cases, yes, we
22 find a difference. So the amount of difference varies.

23 Q And in this case, have you done any similar type of analysis
24 to determine whether there was a polarization between the way
25 felons vote and the way non-felons vote?

1 A I did an analysis to see whether there is a difference
2 between the way valid and invalid voters vote as defined in
3 my report, and I found that it is not possible to make
4 conclusions on that because of the extremely small number of
5 felons in each precinct.

6 Q The work you did with Professor Katz in the Del Rio case, was
7 it similar to this redistricting work you described with
8 Professor King?

9 A The exact same methods.

10 Q Okay. Going back to Exhibit 5 -- well, actually, let me ask
11 you another question. You've seen Professor Adolph's
12 report?

13 A I have seen --

14 Q Or Professor Handcock's report. I marked this up from
15 Professor Handcock's deposition, so I --

16 A Yes, I have seen Professor Handcock's report.

17 Q And did you see a draft before it went out?

18 A I saw a draft very shortly before it went out.

19 Q And you saw a draft of your report before yours went out as
20 well?

21 A Very shortly before it went out.

22 Q I can find the exact page in those if you want, but there is
23 an e-mail from Mr. Burman that says -- to you: I'm afraid I
24 botched the insufficient reason riff.

25 Do you have a recollection as to what he was referring

1 to by that?

2 A I actually asked him to clarify that, and he wasn't really
3 able to clarify what happened, so --

4 Q What is the insufficient reason point that --

5 A There is an argument in Jonathan Katz' first report that the
6 principle of insufficient reason can be used to justify
7 inferences about the behavior of valid and invalid voters in
8 this case, and as I explain in my report, it actually does
9 not help us in this case.

10 Q That's your opinion.

11 A I've given the reasons in the report why this does not work.

12 Q If I can ask you to please turn to what's been marked as 5B.
13 It's that seven-page document.

14 A Thankfully, I have the marked copy.

15 Q Page 3 of 7. Mr. Braden had asked you some questions about
16 the paragraph that begins: We don't know how many 100
17 more --

18 A Yes.

19 Q Do you see that? And then there is a follow-up paragraph
20 that says: Good. A precise description --

21 Do you see that?

22 A Yes.

23 Q I'm just trying to make sure I understand how this fits
24 together. Is there a difference as to why some paragraphs
25 begin with the more than sign, and other paragraphs don't?

1 A This is a convention in e-mail to mark quotations from
2 previous e-mails.

3 Q So it would be that the ones with the greater than sign in
4 front of it would be a quote from some other e-mail, and the
5 paragraphs that do not have that would be your --

6 A That's right.

7 Q -- text?

8 A This is done automatically by many e-mail programs.

9 Q Okay. And then Page 6 of 7, about a third of the way down
10 the page, there is a statement: Using this new data, I've
11 exactly replicated Katz, so we can now show how each
12 improvement in his method and data we suggest changes the
13 result.

14 Do you see that?

15 A Yes.

16 Q Do you have an electronic or a computer spreadsheet or
17 something that does that? So once you adjust the numbers,
18 you push a -- you know, a calculate button or something,
19 and --

20 A It's actually a program.

21 Q A program?

22 A Yes.

23 MR. AHEARNE: Counsel, I would ask that you provide that
24 to us in electronic form as well. I know you're filling in,
25 so you can't speak for David, but --

1 MS. O'SULLIVAN: And my understanding is it has been.

2 MR. AHEARNE: Okay. And if it has been, that's great,
3 but I don't recall. Mark do you recall it?

4 MR. BRADEN: I'm not sure that it has been.

5 MR. AHEARNE: Okay. I would like it, and I'm sure that
6 you can double-check with David whether we have it, and you
7 can send it via e-mail, and we'll all be happy.

8 I'm going to ask you to look at Exhibit 2, please.

9 THE WITNESS: Which was Exhibit 2? Is that the data
10 set?

11 Q (By Mr. Ahearne) Yes. And Mr. Braden had asked you a
12 question about the G04 data starting at the bottom of
13 Page 1 --

14 A Yes.

15 Q -- and going to the top of Page 2. And if my notes are
16 correct, you said something along the lines of, other than
17 the residual issue, you didn't see any anomalies that
18 indicated any problem with this data set.

19 A Right.

20 Q And my question is what did you mean by, problem?

21 A Nothing that led me to believe something serious had happened
22 in the translation of this data set from wherever it had come
23 from. It originally came, I think, from probably the
24 Secretary of State's office, and had been filtered through
25 various other people on the petitioners' side that I am not

1 fully aware of, and it was provided to respondents.

2 Q I guess more specifically my question is was your reference
3 to the completeness and the accuracy of the data set, or just
4 the accuracy of the transmission of the data set, or --

5 A Meaning that I've looked through and did some basic checks,
6 whether columns summed to appropriate numbers, whether merges
7 appear to have been done correctly, and things looked fine.
8 And I was able to replicate actually -- as in the last e-mail
9 you cited, I was able to replicate Katz's results, which
10 suggest that the data had been correctly transmitted.

11 Q And the data that you used for your report, both the data
12 that you understand came through the petitioners and the data
13 that was provided directly to you from the Democrats, did you
14 do any independent work to verify whether or not that data
15 set was complete?

16 A I did basic checks that I always do as a researcher to make
17 sure that no goofs had been made in compiling data or merging
18 things together. But as I am not part of the data collection
19 at all, there is a limit of how much I can do to vouch for
20 the veracity of the data.

21 Q So you didn't do anything to determine that the data you had
22 was a complete set of all invalid votes in the State of
23 Washington, correct?

24 A No, definitely not.

25 Q And did you do any research or investigation to determine

1 whether the votes listed in that data set actually were
2 invalid votes?

3 A No, I certainly did not.

4 Q You were simply relying on the data that was given to you?

5 A That's right.

6 Q If I can ask you to please turn to Exhibit 1, which is your
7 report, Page 2, please, second bullet.

8 A Yes.

9 Q Where you state: Application of currently accepted methods
10 of ecological inference would inform us that the behavior of
11 invalid voters in this election cannot be inferred from the
12 aggregate data Katz and Gill use, or from any data currently
13 available.

14 Do you see that? Is the aggregate data that you're
15 referring to the precinct data?

16 (Mr. McDonald enters the room.)

17 A Yes.

18 Q Is there anything else that is in that aggregate data set or
19 that it refers to?

20 A So the aggregate data that Katz and Gill use refers to this
21 data set provided by petitioners.

22 Q And your comment about the behavior of invalid voters in this
23 election cannot be inferred from any data currently
24 available. Do you see that?

25 A Yes.

1 Q Would that include data such as gender?

2 A It means that we don't have data on how invalid voters
3 behave.

4 Q What about how voters behave by gender?

5 A We could make inferences about voters in general, just not
6 about specific -- specifically invalid voters.

7 Q So would it be your testimony that the gender of the
8 allegedly invalid voters is not relevant to determining how
9 they voted?

10 A My testimony is that we would need to use an accepted method
11 of ecological inference, and any of those accepted methods
12 would tell us from the aggregate data we do not know how
13 invalid voters voted. If we had individual level data on the
14 invalid voters, then we could draw conclusions about the
15 invalid voters' behavior as a population.

16 Q And what kind of individual data are you referring to?

17 A I actually answered this question earlier. I don't know if
18 you were here when this question was answered. But I
19 answered this question. If we had a survey, a random sample
20 of invalid voters, or a census of invalid voters, we could
21 make that determination.

22 Q Well, my question specifically is what kind of information
23 would be on that survey that's individual information that
24 you need to make your analysis?

25 A You would ask what was your vote choice. A standard survey

1 question is who do you prefer to vote for in a gubernatorial
2 election.

3 Q I just want to make sure I'm clear. So the individualized
4 data you're referring to is doing a sample survey of the
5 invalid voters to determine who they voted for as opposed to
6 information on their gender, their income level, things like
7 that?

8 A That's right. We're not able to -- right, right.

9 Q Okay. That's what I wanted to clarify.

10 A Sure.

11 Q Next bullet, you begin: Even if one accepts the (flawed and
12 non-standard) methods used by Gill and Katz --

13 My question simply is other than what you testified
14 about today and what you put in your report, is there
15 anything else that's in your opinion flawed and non-standard
16 about Professor Gill or Professor Katz's approach?

17 A I think that I've stated in fair detail actually the ways in
18 which these are non-standard. So I think I'll stand on the
19 report as it is.

20 Q My approach is, so you understand, I don't want to be
21 surprised at trial with you coming up with something else.

22 A No, I mean, I -- if there were some other great flaw, I would
23 have mentioned it.

24 Q How about some just material flaws?

25 A I am not aware of any at this point.

1 Q Is it your anticipation that you'll be providing any
2 supplemental or additional reports in this case?

3 A That would depend on whether new data comes to light. I can
4 imagine a couple of instances in which that would be
5 possible. One is, as I mentioned several times during this
6 deposition, it's not clear from Katz's second supplemental
7 how residual votes were calculated. If that calculation is
8 provided us and we need to make revisions to exactly
9 replicate that, a supplemental report might be necessary. If
10 a new determination were made about which ballots actually
11 count as invalid, I could easily re-run any analyses in this
12 report and show how the results reflect those changes. And
13 if any new reports were submitted by petitioners, I certainly
14 could replicate this analysis or apply the same techniques to
15 show how anything that they bring out would be reflected.

16 Q Page 6 of your report. Mr. Braden had asked you about the
17 second full paragraph down. This is the part about the
18 assumption that vote choices of any sub-population within a
19 voting precinct can be assumed to be the same as the average
20 vote choice in the precinct as a whole. And he asked you
21 some questions about your statement that this assumption is
22 strong, implausible and unwarranted. Do you see that?

23 A Yes.

24 Q Is my understanding correct that your testimony is that it is
25 implausible and unwarranted because there is an absence of

1 evidence to support that assumption?

2 A It is unwarranted because there is an absence of evidence.
3 It's implausible because a great deal of work on similar
4 problems has shown that it is very easy to be misled by
5 these sorts of assumptions. And I give examples in this
6 report of cases in which that is misleading.

7 Q The examples that you give in your report are, for example,
8 the Ichiro example.

9 A Ichiro example, the gender example, the example of income and
10 voting in other states. There is also a example in a
11 footnote of illiterate voters -- sorry -- illiterate
12 immigrants, excuse me.

13 Q Okay. Page 11 of your report --

14 And actually this more goes just another request to
15 counsel. The charts on top of Page 11 indicate that there
16 are lines and boxes in color, and so if it would be possible
17 to actually get a color copy of the report? For example, the
18 top right graph, I don't have a clue which of those 5,000
19 lines is the blue one.

20 MS. O'SULLIVAN: That is something, Mr. Ahearne, that I
21 can probably help you with.

22 MR. AHEARNE: Okay. And then also on Page 11 --

23 MR. BRADEN: I got a blue pen. You want me to slide it
24 over to you and you can do it?

25 MR. AHEARNE: I'd like the real McCoy. Thank you.

1 On the top of that page is a Figure 2, right?

2 THE WITNESS: On which page?

3 MR. AHEARNE: Top of Page 11.

4 THE WITNESS: 11, yes.

5 Q (By Mr. Ahearne) Then the paragraph near the bottom that
6 begins, Although the details. Do you see that, on that same
7 Page 11?

8 A Oh, yes.

9 Q And it refers to a Figure 4.3.

10 A Oh, that is --

11 Q Do I assume that's really Figure 2?

12 A Yes.

13 Q Okay. If I can ask you to turn to Page 12 under Section
14 Heading 4.4, second line also refers to a figure 4.3?

15 A That is also Figure 2.

16 Q Figure 2?

17 A Yes.

18 Q Okay. Page 13, middle of the first full paragraph, the
19 italicized portion where you state: The bounds show it is
20 possible that every invalid vote in every precinct was cast
21 for Rossi.

22 Do you see that?

23 A Yes.

24 Q Is my understanding correct that it's your testimony that
25 determining the -- whether that's a large possibility or a

1 small possibility is impossible to determine?

2 A That is right.

3 Q Okay. Page 19, Table 4 refers to the best available data.

4 Do you see that?

5 A Yes.

6 Q Just so I'm clear, is the best available data that you're

7 referring to here the combined data set we've been

8 discussing --

9 A That is correct.

10 Q -- that is through the petitioners and from the Democrats?

11 A That is correct.

12 Q Okay. You were provided with Professor Gill's and Professor

13 Katz's deposition transcripts, correct?

14 A That is correct.

15 Q Is there anything in their testimony other than what you've

16 testified about today and put in your report that you

17 disagree with?

18 A There may well be. I haven't read them closely enough to

19 know if I agree with everything that they said. I'd rather

20 stand on the report or answer specific questions.

21 Q All right. But sitting here today, you can't think of

22 anything in those transcripts that you disagree with that you

23 haven't already testified about in the deposition today?

24 A I don't want to endorse their testimony.

25 Q Okay.

1 A I simply can't as an omnibus measure say out of 500 pages of
2 text what I agree or disagree with, especially, without
3 having reviewed it.

4 Q Right. And all I'm trying to do is make sure there is
5 nothing that jumped out at you that you're thinking about
6 or --

7 A That's new? No.

8 Q Or that you didn't put in your report or in your testimony
9 today?

10 MS. O'SULLIVAN: Objection, vague, compound.

11 THE WITNESS: I am not aware of anything, but I cannot
12 be certain, because I have not read the reports in exact
13 detail.

14 Q (By Mr. Ahearne) You mean, the transcripts?

15 A Yeah, sorry, the transcripts. Exactly.

16 Q Got it. Okay, now, Mr. Braden is the one that's supposed to
17 do the dirty work here, but I'll ask. How much are you being
18 paid for this?

19 A I'm being paid \$200 an hour.

20 Q And do you have an estimate of how much at the end of this
21 case you'll end up being paid for your expert work here?

22 A I am not certain. To this point, I have put in about a
23 hundred hours, and I don't know how long trial is going to
24 take, how long appeals will take, and since I'm in a room
25 full of lawyers who would be better able to estimate that,

1 I'm not going to estimate. But at this point I don't
2 estimate doing a whole lot more analysis. So it's primarily
3 just appearing at trial.

4 Q And do you have any understanding or anticipation as to
5 approximately the ballpark figure you're going to end up
6 being paid for your work in this case?

7 A I would assume that it's the multiplication of those two
8 numbers. So \$200 times however many hours it is. So it
9 might be 20,000, maybe 30,000, somewhere in that ballpark.

10 Q My last question. In your testimony, Mr. Braden had asked
11 you about others that had been asked to participate in this
12 case, and you mentioned Adrian Raftery.

13 A Raftery.

14 Q Raftery. Do you know which side asked him?

15 A All of the ones that I'm aware of would have been asked by --
16 by the Democratic side.

17 MR. AHEARNE: Okay. That's all I have.

18 E X A M I N A T I O N

19 BY MR. BRADEN:

20 Q I'll be very brief. The work that you've done for both Gary
21 King and Katz as their graduate assistant, did in any of
22 those cases, was the source of the data Mr. Benson?

23 A Yes.

24 Q And during that time, did you feel the quality of the data he
25 provided was sufficient for work that was being done?

1 A Yes.

2 Q What was their view of the data sets provided to them by
3 Mr. Benson?

4 A Who is they?

5 MS. O'SULLIVAN: Objection, for the same reason.

6 Q (By Mr. Braden) Dr. King and Dr. Katz.

7 A I don't know what Dr. Katz's view of Clark Benson is, but
8 Dr. King certainly respected his data collecting.

9 Q And of the data you received and reviewed from those
10 particular cases, did you see any problem with the data that
11 was provided to you for the purposes intended?

12 A No serious errors.

13 MR. AHEARNE: One follow-up -- oh, I'm sorry.

14 MR. BRADEN: No, go ahead. Well, no, let me --

15 MR. AHEARNE: I'm sorry. I thought you were closing up.

16 MR. BRADEN: No, I'm real close. I'm real close,
17 because I'm getting very hungry. Again, it's 2:00 o'clock on
18 my stomach, and I'm a growing boy.

19 Do you have any knowledge of whether -- regarding felons
20 as to whether they are younger than the general population?

21 THE WITNESS: I'm not actually certain for the
22 Washington State felons, and I'm also not certain for the
23 national felons.

24 Q (By Mr. Braden) Are you aware of whether the Washington
25 felons have a higher or lower percentage than the general

1 population as members of racial minority groups?

2 A Yes, I'm aware that Washington felons are less likely to be
3 black than nationwide based on Uggen & Manza's paper.

4 Q Interesting answer, but unless I was confused with my
5 question, I don't think it was the question. I was asking
6 you whether or not felons in the State Washington are more
7 likely to be members of racial minority groups than the
8 general population in the State of Washington.

9 A Oh, then the general population. I'm sorry. I'm not aware
10 of that.

11 Q You just don't have any knowledge about that?

12 A I just don't know what the general population of Washington
13 was in exact percentages.

14 Q Do you have any information as -- or any personal knowledge
15 regarding whether or not felons have lower incomes than the
16 general population in the State of Washington?

17 A No, I don't know about Washington felons.

18 Q Or any other group anywhere else in the country, are felons
19 lower income generally?

20 A I would suspect so, but I don't know through personal
21 knowledge.

22 Q Do you have any knowledge or have you read any literature
23 that might indicate that they have a lower education level?

24 A Again, I have not looked at any data.

25 Q And have you looked at any data that might relate to felon in

1 either the country or in State of Washington as to their
2 political ideology?

3 A I'm not aware of any data on that.

4 MR. BRADEN: I'm finished.

5 E X A M I N A T I O N

6 BY MR. AHEARNE:

7 Q I'll just follow up on the questions with respect to Clark
8 Benson providing data sets in your previous work. Do you
9 know what the source of the data Clark Benson was providing
10 to you was?

11 A In which cases?

12 Q Well, you were asked general questions about whether
13 Mr. Benson provided you data sets in your private, previous
14 work, correct?

15 A Correct.

16 Q And if there is a distinction between which cases.

17 A Oh, no, meaning -- are we talking about the current case, or
18 in prior work?

19 Q In your prior work. Well, you received data sets from
20 Mr. Benson before in your prior work, right?

21 A That's right.

22 Q And you gave testimony about those data sets?

23 A That's right.

24 Q And my question is, do you know about the source of those
25 data sets that Mr. Benson gave you?

1 A I believe they were from census and official data.

2 Q When you say, official data, what do you mean?

3 A I mean, official election returns.

4 Q When you say, census, what do you mean?

5 A I mean the census file provided by the census bureau for
6 redistricting purposes at the beginning of every
7 redistricting cycle.

8 Q The census bureau of --

9 A United States. Sorry.

10 MR. AHEARNE: That's all I have.

11 E X A M I N A T I O N

12 BY MR. BRADEN:

13 Q And just -- I promise you this will be short. And these data
14 sets that were provided to you in the other cases look rather
15 similar to the data sets that were provided to you in this
16 case?

17 A There is a key distinction, which is that these data sets
18 include variables which are not official data, and those are
19 the invalid votes.

20 Q But other than that, they appear to be the same?

21 A They appear similar in that the conventions of marking the
22 data sets are similar.

23 Q Do you see any other distinctions other than the felon
24 issue?

25 A None that I could tell.

1 MR. BRADEN: Thank you.

2 MR. AHEARNE: I'm done.

3 (Whereupon, at 11:18 a.m. the deposition was concluded.)

4 (Signature was reserved.)

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C E R T I F I C A T E

STATE OF WASHINGTON)

)

COUNTY OF KING)

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the annexed transcript of Friday, May 20, 2005 deposition of CHRISTOPHER ADOLPH was taken stenographically by me and reduced to typewriting under my direction;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, and that I am not financially interested in the said action or the outcome thereof;

I further certify that the annexed Friday, May 20, 2005 deposition of CHRISTOPHER ADOLPH is a full, true and correct transcript, including all objections, motions and exceptions of counsel, made and taken at the time of the foregoing proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my signature this 21st day of May, 2005.

Notary Public in and for the State of Washington, residing at Seatac.
My commission expires 2/14/06
CSR License No. HE-CK-EL-E386DM

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S I G N A T U R E

I, CHRISTOPHER ADOLPH, hereby certify that I have read the foregoing transcript of my deposition taken Friday, May 20, 2005, and that the corrections, if any, were noted on the enclosed correction sheet, and with those changes, the same is now a true and correct transcript of my deposition testimony.

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

Notary Public in and for the State of Washington, residing at _____
My Commission expires _____