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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PARKER BEDNASEK,
Plaintiff,

v.

Docket No. 15-9300-JAR

KRIS W. KOBACH,
Defendant.

STEVEN WAYNE FISH, et al.,
Plaintiffs,

v.

Docket No. 16-2105-JAR

KRIS W. KOBACH,
Defendant.

Kansas City, Kansas
Date: 03/09/2018

Day 4 (A.M. Session)
(Pages 913-1038)
.....

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

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(Appearances continued on next page)

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1 (9:07 a.m., proceedings commenced.)

2 THE COURT: All right. Resume with
3 Mr. Caskey.

4 Mr. Caskey, you're still under oath to tell
5 the truth, the whole truth and nothing but the truth so
6 help you God. Do you understand?

7 THE WITNESS: Yes, I do. Thank you, Your
8 Honor.

9 BRYAN CASKEY,
10 resumed the stand, having been reminded of the oath,
11 testified as follows:

12 CONSOLIDATED CROSS and DIRECT EXAMINATION
13 (Continued)

14 BY MR. ROE:

15 Q. Mr. Caskey, I just have a few more questions.
16 First off, Joint Exhibit 1027.

17 A. All of the materials that I left up here last
18 night are no longer up here.

19 Q. That's fine. It's up on the screen.

20 This is Joint Exhibit 1027. Do you
21 recognize this, Mr. Caskey?

22 A. Yes. I have seen this document before.

23 Q. What is it?

24 A. It's the agreement between the Kansas Secretary
25 of State's Office and KDHE concerning the checking of

1 the existence of birth certificates in Kansas against
2 the list of persons who have not yet provided proof of
3 citizenship.

4 Q. And do you recall testifying yesterday about
5 batches at the KDHE?

6 A. Yes, I do recall that.

7 Q. And so is this the e-mail between the Secretary
8 of State's Office and the Kansas Department of -- Kansas
9 Department of Health and Environment?

10 A. It appears to be based on what I can see in front
11 of me. If I could see the whole thing including the
12 bottom. Slow down, please. Okay. Keep going a little
13 bit. Thank you. Yes, that appears to be --

14 Q. Okay.

15 A. -- the document.

16 Q. And do you recall yesterday testifying about TDL
17 lists and matching?

18 A. Yes, I do recall that.

19 Q. Do you -- how does our office match between a TDL
20 list and a suspense list for this case?

21 A. So when we receive the list from the Division of
22 Motor Vehicles, our IT department runs a series of
23 checks or pass-throughs with the data focusing on
24 matching on Kansas driver's license. That field is in
25 common between the two, and that is a distinct data

1 element between both lists as distinct and
2 non-duplicatable between the two databases. So that is
3 the primary source.

4 On top of that, we also add first name, last
5 name, date of birth, last four Social and middle name to
6 ensure the accuracy of the matches. So that's the data
7 criteria that's generally used.

8 MR. ROE: Okay. And I have two more -- just
9 two more issues. And, Your Honor, these aren't really
10 questions; they're just basically motions.

11 Subject to Federal Rules of Evidence
12 201(b)(2), the court may take judicial notice of a fact
13 that's not subject to reasonable dispute because it --
14 you know, it can be accurately and readily determined by
15 sources whose accuracy cannot reasonably be questioned.

16 Under (c)(2), the court must take judicial
17 notice of the -- if a party requests it and the court is
18 supplied with the necessary information.

19 And under (d), the court may take judicial
20 notice at any stage of the proceeding. This includes on
21 appeal. That's *Gonzales versus City of Castlerock*, 307
22 F.Supp.3d 1258, page 1267, Footnote 2, Tenth Circuit
23 2002. And also *Territory of Alaska versus American Can*
24 *Company*, 358 U.S. 224, pages 226 to 227, 1959.

25 THE COURT: What are you asking me to take

1 judicial notice of?

2 MR. ROE: I was getting to it, Your Honor.
3 I'm sorry.

4 THE COURT: Okay.

5 MR. ROE: Okay. So the State will be
6 offering two pieces. The first is the legislative
7 history for the SAFE Act. Numerous courts have taken
8 judicial notice of legislative history, even on appeal.
9 Again, *Gonzales versus City of Castle Rock; Countryman*
10 *versus Farmers Insurance Exchange*, 545 Fed., Appendix
11 762-765, Footnote 2, Tenth Circuit 2013; *State of*
12 *Oklahoma, ex rel, State Banking Board versus Bank of*
13 *Oklahoma*, 409 F.Supp.71, page 90, Northern History of
14 Oklahoma, 1975.

15 THE COURT: Okay. So when you say
16 "legislative history," that can mean a lot of things.

17 MR. ROE: Right.

18 THE COURT: So what are you talking about?

19 MR. ROE: Okay. So --

20 MS. WALDMAN: Your Honor, could I just
21 object to the extent the legislative history contains
22 statements made outside of court and would constitute
23 hearsay if admitted here at trial.

24 THE COURT: I don't know what -- what --
25 okay. I understand your objection, but what aspect of

1 the legislative history?

2 MR. ROE: That's what I was going to bring
3 up with Your Honor. We just want a few of the pieces of
4 legislative history but we --

5 THE COURT: But what I'm saying is, as you
6 know, legislative history comprises a lot of things.

7 MR. ROE: Yes. It would include the
8 testimony that the legislature heard. We're not
9 offering it for the truth of the matter asserted. We're
10 offering -- we're offering that this was information
11 presented to the legislature during the passage of the
12 SAFE Act. And also, it's a -- it would be considered a
13 public record, which is an exception to the hearsay as
14 well.

15 MR. JOHNSON: Your Honor, the term
16 "legislative history" in Kansas is quite ambiguous.
17 There's no official designation of what constitutes
18 legislative history. We've not received a copy of what
19 the defendant would -- would ask the court -- of which
20 the defendant would ask the court to take judicial
21 notice. So I don't believe it's appropriate for us
22 to -- for the court or for there to be any examination
23 until the parties have an opportunity to examine what
24 the defendant intends to introduce.

25 THE COURT: Okay. So let -- just wait a

1 minute. Let's start this way: So you -- initially, I
2 thought you were asking me to judicially notice
3 something --

4 MR. ROE: Correct.

5 THE COURT: -- but then you -- in your
6 argument -- and you, you know, gave me some case
7 citations. I'm well aware of how judicial notice works
8 and that there's authority to do that. But then it
9 sounded like you were actually asking that it be
10 admitted into evidence because you started talking about
11 a public records exception to the hearsay rule.

12 So, first of all, I just need to know, are
13 you asking me to judicially notice it or are you asking
14 to admit something that you say comprises legislative
15 history?

16 MR. ROE: I would say either or both, Your
17 Honor. I would be okay with either one.

18 THE COURT: Okay. So if you're going to ask
19 me to -- if you're asking for admission, I mean, I need
20 to see it as an exhibit, they need to see it, et cetera.

21 If you're asking for judicial notice, again,
22 they need to see it, and I need to see it because I
23 don't know -- as again, legislative history is a very
24 ambiguous definition. I mean, it can be testimony
25 before a legislature. It can be committee reports. It

1 can be all kinds of things.

2 But the other thing is, I mean, judicial --
3 if you want me to judicially notice that there was a
4 hearing about the SAFE Act and that there were, you
5 know, reports and all that, that's fine. But the
6 content of those is not something that I then give
7 evidentiary value. I just notice that this happened
8 basically.

9 It's kind of like what I was telling you
10 yesterday about the EAC litigation. I can notice that
11 it happened, but the evidence in that case I can't
12 judicially notice and import into this case.

13 MR. ROE: Right. Yes.

14 THE COURT: Okay. So I just want to be
15 clear. Which path are we on, judicial notice or are you
16 seeking admission?

17 MR. ROE: For the moment, I'm seeking
18 judicial notice that the legislature heard testimony or
19 received testimony about non-citizens voting prior to
20 the passage of the SAFE Act.

21 THE COURT: All right. You're not asking --
22 you're not trying to get me to notice what that
23 testimony was?

24 MR. ROE: Correct, at this moment, no. I
25 could -- I may be offering at a later date. I just

1 wanted to raise the issue with Your Honor so that it
2 wasn't something that -- you know, while we had time
3 before next week that we were attempting to do this so
4 that it wasn't surprising, other than obviously right
5 now, and so that's why I wanted to raise it.

6 But, yes, I want you to take judicial notice
7 that the legislature heard testimony of non-citizens
8 voting in Kansas during the SAFE Act. And then we would
9 be later today seeking to admit the testimony of the --
10 seeking to admit a certified copy of the legislative
11 history that we are currently trying to compile from
12 Kansas --

13 MS. WALDMAN: Your Honor, I would raise some
14 additional objections in that to the extent they're
15 trying to, again, introduce new exhibits that were not
16 either previously identified on their exhibit list in
17 accordance with the detailed procedures that were set
18 out before trial, or even 24 hours before, Mr. Roe is
19 trying to -- or raising the issue of admitting them into
20 the record.

21 MR. ROE: Your Honor, the -- the pieces of
22 evidence, the testimony we're talking about is available
23 to -- these are all three marked on our -- these are
24 marked on our defense exhibit list. They're Defense
25 Exhibit 1054, 1053 and 1051.

1 THE COURT: Okay.

2 MS. WALDMAN: Your Honor --

3 THE COURT: So those particular exhibits,
4 have those been shared?

5 MR. ROE: Yes.

6 THE COURT: Have those been exchanged?

7 MR. ROE: Yes.

8 THE COURT: What are the exhibit numbers
9 again?

10 MR. ROE: Ten --

11 MR. WALDMAN: Your Honor --

12 THE COURT: Just a minute. And what are the
13 exhibit numbers again?

14 MR. ROE: 1054, 1053 and 1051.

15 THE COURT: All right. I'm not going to
16 judicially notice it at this time. I'm going to allow
17 the other side to look at these exhibits and then raise
18 any further objections.

19 But just to be clear, I will -- you know, at
20 most, I will notice that there was testimony on that
21 subject before the legislature. I won't read those
22 exhibits. I won't read the testimony because it has no
23 evidentiary value if we're talking about judicial
24 notice, just that the legislature heard testimony about
25 non-citizens voting in Kansas.

1 MS. WALDMAN: And, Your Honor, I would renew
2 my objection that based on the descriptions of these
3 documents that appeared on their exhibit list, these are
4 all out-of-court statements that are being offered into
5 the record and, therefore, they would all constitute
6 hearsay.

7 THE COURT: All right. I'm not admitting
8 them into the record. I'm not admitting these as
9 exhibits. He's asking me to judicially notice them.
10 And I'm -- I'm not going to judicially notice them at
11 this time until you have a chance to look at it. I
12 mean, you don't need to make a hearsay objection because
13 I'm not admitting 1051, 1053 and 1054 as evidence
14 anyway.

15 But I just -- I didn't want to judicially
16 notice it until you had a chance to look at those
17 exhibits. So I take that under advisement whether I'm
18 going to judicially notice these three documents.

19 Again, though, they -- all I can notice is
20 that there was testimony. I can't notice what that
21 testimony was. Do you understand the distinction?

22 MR. ROE: I do, Your Honor.

23 MS. WALDMAN: Thank you, Your Honor.

24 THE COURT: Okay.

25 All right. Go ahead. You can't ask him

1 about it either.

2 MR. ROE: I'm not going to, Your Honor.

3 THE COURT: Okay. All right.

4 MR. ROE: And I -- I want to preface that
5 I'm not trying to test the court's patience. This is
6 more for record on appeal --

7 THE COURT: Okay.

8 MR. ROE: -- when I do this next -- when I
9 offer this next piece of evidence, it's -- because when
10 we discussed it, I know it was an issue last night and,
11 you know, I want to apologize, but I just want to raise
12 the issue of judicial notice as well on numbers within
13 the ELVIS database.

14 So I'm not -- I'm not asking to -- I just
15 want to raise that -- again that I believe that this is
16 another situation where we can certify the numbers from
17 the ELVIS database, either with Mr. Caskey here or we
18 can run a new report and certify those numbers as the
19 most recent date.

20 THE COURT: Okay. Let me understand what
21 you're saying, because when you say ELVIS database,
22 there's --

23 MR. ROE: Yes.

24 THE COURT: -- a summary in evidence
25 about -- that pulls from part of the ELVIS database on

1 35 --

2 MR. ROE: Correct.

3 THE COURT: -- applications. So what are
4 you talking about?

5 MR. ROE: The most current numbers -- the
6 numbers we've been speaking about that Your Honor has,
7 you know, excluded at this point.

8 THE COURT: We're back to where we were
9 yesterday.

10 MR. ROE: Right.

11 THE COURT: You're wanting to -- I'm not
12 sure what you're wanting to do. But I've already ruled
13 that you're not going to introduce new numbers about the
14 numbers on the suspense list and the numbers on the
15 cancellation list. Is that what you're speaking to?

16 MR. ROE: And I'm -- yes. And I -- again, I
17 wanted to make sure there was a record for appeal on
18 this point as well that we would like to proffer -- or
19 just ask the court to take judicial notice of those
20 numbers. Either Mr. Caskey can certify them today, or
21 we can run a new report, and whatever Your Honor thinks
22 would be the appropriate information. As I said, under
23 201(c)(2), the court must take judicial notice --

24 THE COURT: Okay. I'm not going to take
25 judicial notice of those numbers because you're really

1 offering them -- you're wanting me to consider them as
2 evidence, and I'm not going to do that for a number of
3 reasons that I -- I articulated yesterday and I'll
4 articulate again.

5 No. 1. There's a disclosure issue. You
6 didn't disclose these numbers pursuant to the rules,
7 Rule 26, et cetera, under the Federal Rules of Civil
8 Procedure. You didn't disclose them. You didn't
9 supplement.

10 No. 2. You stipulated to what the numbers
11 are -- in the pretrial order, you stipulated to what the
12 numbers are on the suspense list and on the cancellation
13 list. And so that that -- you know, when you stipulate
14 to evidence, that's the evidence. That's the evidence
15 the court's going to consider.

16 So disclosure. More importantly, you
17 stipulated. So that's what it is. And yesterday, you
18 elicited testimony from this witness about those
19 numbers. So they're actually in the record. It was
20 15,000 and something on the suspense list. You did that
21 before plaintiff knew what was going on and objected and
22 that's when we went through all of that. So, I mean, I
23 think they're in the record to the extent you, you know,
24 want to consider that a proffer.

25 But, again, you have stipulated and -- what

1 the numbers are on the suspense list and the
2 cancellation list long before trial. So, I mean, it's
3 out of order now to want to introduce different evidence
4 about those numbers.

5 MR. ROE: Your Honor, I wanted to clarify
6 that we did stipulate as of that date. That was the
7 stipulation.

8 THE COURT: You stipulated in the pretrial
9 order. And the pretrial order governs the trial. And
10 any stipulations in the pretrial order are the evidence
11 at trial.

12 MR. ROE: I agree with that, Your Honor.
13 I'm saying the stipulation is as of that date. That was
14 the numbers as of that date.

15 THE COURT: Right.

16 MR. ROE: Okay.

17 THE COURT: And as of today, because we're
18 in trial, and we're operating under the pretrial order
19 and the factual stipulations in that document.

20 MR. ROE: The -- when I say "as of that
21 date," the pretrial order actually states as of March,
22 whatever the date is. So those -- okay. That's what I
23 was trying to clarify.

24 THE COURT: And that's the evidence in front
25 of this court. You didn't supplement your disclosures.

1 You didn't follow -- jump through the hoops to make new
2 numbers or updated numbers part of the evidentiary
3 record in this case. So, again, you -- I know you want
4 to proffer what those numbers are. Mr. Caskey, I think,
5 testified to them.

6 MR. ROE: Yes. I just know that the issue
7 of judicial notice had not been raised yesterday. I
8 wanted to raise the issue of offering them as judicial
9 notice while I have a chance.

10 THE COURT: Okay.

11 MS. WALDMAN: Your Honor, since this is a
12 new request for judicial notice as to ELVIS records, I
13 would just raise the additional objection that the court
14 can only take judicial notice of facts in the public
15 domain. And, certainly, as we've heard, I believe,
16 Mr. Kobach, Mr. Caskey and Mr. Roe say, the ELVIS
17 database contains sensitive confidential information and
18 cannot be made available to the public.

19 THE COURT: And the numbers on the suspense
20 list and the cancellation list are not in the public
21 domain. And the plaintiffs asked for updated numbers
22 repeatedly is what they told me yesterday. They asked
23 for them. They didn't have to because you had a duty to
24 supplement -- if you wanted to rely on more recent
25 numbers under the Federal Rules of Civil Procedure, you

1 had a duty to supplement. You didn't follow that duty.
2 They asked for updates. You didn't respond to those
3 requests either.

4 It's not something that I can judicially
5 notice because it's not in the -- it's not an
6 adjudicative -- not an adjudicative fact. It's not
7 something that's reasonably available to the public and
8 to me.

9 MS. WALDMAN: Your Honor, I would just like
10 to make one clarifying point so the record of certain of
11 our discovery disputes is clear. We never asked for
12 updated records out of ELVIS in terms of an updated
13 suspense list or canceled list. They were subject to
14 discovery requests. And so under Rule 26(e), there's an
15 ongoing obligation to update. But we never specifically
16 requested --

17 THE COURT: Okay.

18 MS. WALDMAN: -- data pull -- additional
19 data pulls out of ELVIS that were not responded to.

20 THE COURT: I stand corrected. But as you
21 said, there is a duty, and you didn't follow that duty
22 to supplement and update your disclosures if you want to
23 rely on them at a later date.

24 So it's not -- it's not the type of
25 information that I can judicially notice. So I deny

1 that request.

2 All right. Let's move on.

3 MR. ROE: Can I ask one more question, Your
4 Honor? I apologize. Are you -- so you're denying it
5 under both may be judicially noticed if it can be
6 accurately and readily determined from sources whose
7 accuracy cannot reasonably be questioned, as well as
8 under (c)(2), which is the court must take judicial
9 notice if a party requests it and the court is supplied
10 with the necessary information? You're denying under
11 both points?

12 THE COURT: I am denying it because it is
13 not the type of information that comes within the rule
14 on judicial notice. It doesn't meet the test of
15 judicial notice.

16 Now, if you had shown that information to
17 plaintiff and plaintiff was able to verify that the
18 numbers are accurate, because they can't figure this out
19 on their own, it comes from you, and, if -- you know,
20 and if there was no dispute that this was the type of
21 material I could judicially notice, I would judicially
22 notice it. But that does not mean I give it evidentiary
23 value.

24 When I write my decision, in other words,
25 even if I were to judicially notice those numbers, I'm

1 not relying on those numbers. Judicial notice is just,
2 yeah, those numbers exist, but they're not evidence in
3 this case. There's a distinction between judicial
4 notice and evidence. The evidence in this case,
5 frankly, is by stipulation what the numbers are. You
6 want me to judicially notice that there's different
7 numbers now. Fine.

8 But I'm not going to be incorporating those
9 numbers into my decision because judicial notice and
10 evidence are not the same thing. Just like I'm not
11 going to be incorporating the evidence from the EAC
12 litigation in this case. I'll judicially notice there
13 was that litigation and there was evidence in that case,
14 but I'm not -- I mean, we don't -- that's not the way --
15 well, I'm not going to import that evidence into this
16 case either.

17 I'm just trying to draw a distinction
18 between these two things. So you're right, I am denying
19 judicial notice. And to the extent you're asking for
20 admission of the evidence, I'm denying that as well.

21 MR. ROE: Thank you, Your Honor.

22 THE COURT: All right.

23 MS. WALDMAN: I have a few follow-up
24 questions, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. WALDMAN:

2 Q. Good morning, Mr. Caskey.

3 A. Good morning.

4 Q. I believe you testified yesterday that you
5 submitted several declarations in this case; is that
6 correct?

7 A. Yes, that is correct.

8 Q. And those were submitted under penalty of
9 perjury; correct?

10 A. Yes, that is correct.

11 Q. And before you signed them, you reviewed them to
12 confirm that they were accurate; correct?

13 A. Yes, that is correct.

14 Q. And since they were submitted, you've had the
15 opportunity to review those declarations again; correct?

16 A. Have I reviewed them after I submitted them?

17 Q. Yes.

18 A. At some point in time, probably. There are
19 several declarations, and I have not reviewed them in
20 recent -- I have not reviewed all of them recently.

21 Q. Okay. At times you identified certain mistakes
22 in those declarations; correct?

23 A. Yes, that is correct.

24 Q. And that was because you -- and you made sure
25 that those mistakes were corrected; correct?

1 A. Yes, that is also correct.

2 Q. And that was because you wanted to make sure that
3 everything was accurate; correct?

4 A. Yes, that is true.

5 Q. Now, Mr. Caskey, do you recall being asked about
6 Mr. Boynton's ELVIS file; correct?

7 A. I'm sure that I was, but I do not recall that
8 conversation or which declaration, reminding that I've
9 had, you know, lots of discussions about this under
10 oath. So, I'm sorry, I don't remember specifically, but
11 I'm sure that I have.

12 Q. Well, yesterday, Mr. Roe asked you a few
13 questions about one of the plaintiffs in this case whose
14 ELVIS file didn't reflect that he had attempted to
15 register to vote. Do you recall that?

16 A. I do recall that. I had that information in
17 front of me to review. I do remember that conversation,
18 yes.

19 Q. Okay. Now, when Mr. Boynton went to the DMV, you
20 were not there; correct?

21 A. That is correct.

22 Q. And you weren't there when he completed his
23 interaction with the DMV clerk; correct?

24 A. That is also correct.

25 Q. And if he testified that he asked to register to

1 vote at that visit, you don't have any personal
2 knowledge that would dispute that fact; correct?

3 A. I have no opinion on that.

4 Q. And if DMV made a mistake and failed to properly
5 record his attempt to register to vote, you would have
6 no personal knowledge of that fact either; correct?

7 A. Also correct.

8 Q. Now, Mr. Caskey, yesterday there was some
9 discussion about an e-mail from -- an -- some e-mail
10 correspondence involving Mr. McCullah and Mr. Gatrost.
11 Do you recall that?

12 A. Yes, I do.

13 Q. And it -- Steven, if I could ask you to pull up
14 Joint Exhibit 55, please.

15 I understand you no longer have your binder
16 of exhibits; correct?

17 A. Yes. I left it up here last night, and it is no
18 longer here.

19 Q. Okay. If you need a paper copy of the document,
20 just -- just let me know.

21 A. I think this will work for now, but thank you.

22 Q. Okay. Now, if I could ask you to -- let me give
23 you the paper copy. If I could ask you to just review
24 the e-mail correspondence in its entirety please.

25 A. Thank you. Yes, I have reviewed it.

1 Q. Now, Mr. Caskey, do you see any reference to
2 criminal prosecutions in that case -- in that document?

3 A. There is no specific reference to that -- to
4 those words within this document. However, I do
5 understand the role that Mr. McCullah plays as well as
6 the person he forwarded the e-mail thread to, who is a
7 prosecutor -- who was previously one of the attorneys
8 who worked on prosecutions within that case. And I note
9 the title of the person who responded as the special
10 agent for investigations for Homeland Security.

11 Q. But you don't see any reference in there to
12 prosecution; correct?

13 A. The words that are contained in the e-mails do
14 not say anything about the nature of the e-mail
15 exchange.

16 Q. Now, Mr. Caskey, you recalled that you -- in the
17 declarations that you've submitted in this case, you
18 have summarized some of the instances of non- --
19 non-citizen registration that have been identified by
20 the Secretary of State's Office; correct?

21 A. Yes, I have done that in the past.

22 Q. And that includes a summary of -- of the
23 non-citizens who had -- were identified through looking
24 at the jury questionnaires; correct?

25 A. Yes, that is correct.

1 Q. And that declaration -- that description of the
2 individuals who were identified by jury questionnaires
3 incorporates the information that was contained in
4 Mr. Gatrost's e-mail; correct?

5 A. Would you say that again? I'm not sure I'm
6 following your question.

7 Q. Sure. Within your declaration, there's a
8 description of the individuals who were identified as
9 non-citizens using jury questionnaires; correct?

10 A. I -- yes, I declared about the nature of it. I
11 don't recall exactly what I said about the three
12 individuals.

13 Q. Sure. So if I showed you a copy of that
14 declaration, would that refresh your recollection?

15 A. It would be helpful. Thank you.

16 Q. Sure. It's Exhibit 39. And I'm going to be
17 directing his attention to paragraph 11.

18 A. Thank you. And which page -- what are you
19 wanting me to review again?

20 Q. Paragraph 11 in your declaration, please.

21 A. Thank you.

22 MS. WALDMAN: And if you could pull up the
23 e-mail again for me.

24 THE WITNESS: Yes, I see that now.

25 BY MS. WALDMAN:

1 Q. And if we could look back at Exhibit 55. On the
2 bottom of the document -- of the first page of the
3 e-mail, there's a description of an individual. The
4 name is blacked out. And then it says, "From Tanzania.
5 Entered in 1997. Got as a F1 visa holder. No other
6 records showing adjustment. F1 expired in 1999." Do
7 you see that?

8 A. Yes, I do.

9 Q. Does that refresh your recollection that that
10 information was incorporated into your declaration
11 describing the non-citizens that were identified on the
12 jury lists?

13 A. That language is contained both in the e-mail and
14 in my declaration, yes.

15 Q. Mr. Caskey, do you recall testifying yesterday in
16 response to questions from Mr. Roe that three of the
17 plaintiffs in this matter were registered to vote --
18 currently registered to vote; correct?

19 A. Yes, I do recall that.

20 Q. Okay. And I believe that you indicated that
21 Mr. Fish, Mr. Boynton and Mr. Stricker --

22 I believe you testified that Mr. Hutchinson
23 and Mr. Boynton were fully registered to vote; is that
24 correct?

25 A. Based on what I had in front of me, assuming

1 those names are correct and -- remember, yesterday, I
2 had everything in front of me to review. So I don't
3 want to misstate something here. But I had in front of
4 me ELVIS screenshots that at the time that screenshot
5 was printed all three individuals that were mentioned
6 were actively registered to vote at that time.

7 Q. Okay.

8 A. Thank you.

9 Q. Now, you -- you testified that certain of these
10 individuals, Mr. Hutchinson and Mr. Boynton -- strike
11 that question, Your Honor.

12 Yesterday in your testimony, I understand
13 you testified that Mr. Hutchinson, Mr. Stricker and
14 Mr. Boynton were registered -- registered voters in
15 every sense of the word?

16 A. Yes, that is correct.

17 Q. Does that mean that they're entitled to receive
18 the same information that all registered voters would
19 receive?

20 A. Yes, that is correct.

21 Q. Now, I believe you also testified yesterday that
22 Mr. Fish was only testified (sic) as a result of the
23 preliminary injunction; is that correct?

24 MR. ROE: Objection. Misstates his previous
25 testimony.

1 THE COURT: Restate your question, please.

2 MS. WALDMAN: Sure.

3 BY MS. WALDMAN:

4 Q. If Mr. Fish was only a registered voter as a
5 result of the preliminary injunction, would he be
6 considered a registered voter in every sense of the
7 word?

8 A. Pursuant to the judicial instructions in this
9 case, that is correct.

10 Q. And so he would be entitled to all the same
11 information that a -- that a voter who had provided
12 documentary proof of citizenship would be entitled to;
13 correct?

14 A. He would receive the notice that's been required
15 by the court in the course of this litigation.

16 Q. But he wouldn't be entitled to receive other
17 notices that other registered voters receive?

18 A. We have been complying with all court orders when
19 it comes to notification of individuals who fall under
20 what the court has ruled in the temporary injunction
21 regarding persons in this case.

22 Q. So, Mr. Caskey, I believe you testified yesterday
23 that you're responsible for issuing instructions to all
24 the county election officials; is that correct?

25 A. Yes, that is correct.

1 Q. And have the county election officials -- have
2 the county elections officials been instructed to
3 provide the same information to individuals who are
4 registered as a result of the preliminary injunction as
5 they have been instructed to provide to individuals who
6 are registered to vote as a result of providing
7 documentary proof of citizenship?

8 A. It is my belief that we have complied with every
9 court order as regards to this class of individuals.

10 Q. Setting aside what your belief about compliance
11 is, have you instructed the county election officials to
12 provide the same information to individuals who have
13 been registered as a result of the preliminary
14 injunction order to -- as they would provide to
15 individuals who have been registered to vote as a result
16 of providing documentary proof of citizenship?

17 A. We've instructed the counties to comply with all
18 court orders as it relates to this class of individuals.

19 MS. WALDMAN: Your Honor, I'd ask you
20 instruct the witness to answer my question.

21 THE COURT: The question is are --

22 MS. WALDMAN: The question is has he
23 instructed the county election commissioners to provide
24 the same amount of information to individuals who are
25 registered to vote as a result of the preliminary

1 injunction as they would provide to individuals who have
2 been registered to vote as a result of providing
3 documentary proof of citizenship.

4 THE COURT: I think that is a yes or no
5 answer. In other words, when you say that you have
6 instructed them to provide all of the notices and
7 information that this court has ordered, is that the
8 same universe of information that other voters that were
9 not on the suspense list received from the state of
10 Kansas?

11 THE WITNESS: It is not the same
12 information. We have complied with every court order
13 that has been issued regarding this class of
14 individuals, but we have said explicitly that we have to
15 track this group of persons differently than we track
16 every other registered voter for purposes of this
17 litigation. And we have complied with every court order
18 as relates to that and no one has told me we haven't.

19 I mean, we -- there have been lots of
20 discussions about notices and -- notices on websites and
21 notices to voters and notices provided to DMV. And, to
22 the best of my knowledge, everyone's in agreement on
23 what's being sent and what hasn't so --

24 THE COURT: All right. Let me get some
25 clarification. When you say "court orders," you're

1 including oral orders, are you not?

2 THE WITNESS: Yes.

3 THE COURT: So you are sending postcards to
4 all of these people? Because I ordered Mr. Kobach to do
5 that in a status hearing that I had with him probably
6 well more than a year ago.

7 THE WITNESS: All persons receive a notice,
8 yes.

9 THE COURT: Postcards, the same postcards
10 that you and I receive, those -- the standard postcard
11 notices that tell them where to go vote and what their
12 precinct number is, et cetera, does everybody receive
13 those, all the people involved in this case on this
14 suspense list?

15 THE WITNESS: I would have to verify that.
16 Off the top of my head, I just don't want to say
17 positively for all 105 counties. I just would need to
18 check before I can say that definitively. And I can do
19 so before the end of this litigation.

20 THE COURT: Okay.

21 THE WITNESS: Before the end of this trial,
22 I can do that.

23 BY MS. WALDMAN:

24 Q. Are you aware of any other ways in which the
25 notices that are provided to individuals who were

1 registered as a result of the preliminary injunction
2 differ from the notices that are sent to individuals who
3 are registered as a result of providing documentary
4 proof of citizenship?

5 A. Yes. I believe the notices are worded slightly
6 different to remind everyone that even though they are
7 deemed fully registered to vote in every aspect of the
8 information and every aspect of the law, they still have
9 not yet provided proof of citizenship. And we ask them
10 to do so in case the outcome of the litigation ends up
11 in a way that may jeopardize what their status is down
12 the road after the litigation's been completed.

13 Those are -- that's not what's on the
14 notice, but explaining there is a slight difference in
15 the notice because of that possibility.

16 Q. I have one more question. Now, I -- you've
17 noted, Mr. Caskey, that your office is, in your view,
18 complying with the preliminary injunction order.

19 Is it -- is it correct that no individuals
20 who registered to vote at the DMV have been canceled
21 from the suspense list as a result of failure to provide
22 documentary proof of citizenship?

23 A. That is correct. On Saturday I went in and
24 verified that and there have been no records canceled
25 because someone's applied at a Division of Motor

1 Vehicles office and has not yet provided proof of
2 citizenship. I verified that myself personally on
3 Saturday.

4 MS. WALDMAN: Thank you.

5 THE WITNESS: You bet.

6 MR. STEINER: Your Honor, before Ms. Waldman
7 finishes her examination, I just want to return and make
8 sure the record is clear with one point on judicial
9 notice with respect to the records and therefore before
10 Mr. Caskey's off the stand.

11 With respect to the records, both pretrial
12 that we filed, the notice that you granted of taking
13 judicial notice of the information -- the specified
14 information from the Secretary of State's website, and
15 what we talked about yesterday and I believe filed or
16 will file this morning a request -- filed this morning
17 the request for judicial notice with respect to votes
18 cast in Sedgwick County in each of the elections --
19 because I believe that those facts that are from the
20 Secretary's website under 201(f) would be deemed
21 evidence, and I think in civil cases 201(f) talks about
22 jury trials, not bench trials, but in civil cases in
23 jury trials facts that are judicially noticed are
24 conclusive evidence of the facts -- and I just want to
25 make sure that's clear before Mr. Caskey's off. Because

1 otherwise I'd ask for a break so that Ms. Waldman can
2 just examine him on those and get him to put those
3 numbers in the record if they're not, in the court's
4 view, otherwise considered admitted conclusive facts.

5 THE COURT: Well, I look at it differently.
6 So I think you ought to offer it as an exhibit. You
7 know, I can judicially notice these numbers. But, for
8 example, the defendants on -- I forget the exhibit
9 number that they offered and I admitted yesterday on the
10 close elections, I mean, that was admitted as an
11 exhibit.

12 I'm more comfortable with you admitting --
13 you know, and it sounds like it's numbers that everyone
14 can agree to if it comes off the Secretary of State's
15 website. But I'm more comfortable in admitting those as
16 evidence in the record if you want me to use those
17 numbers in my analysis.

18 MR. STEINER: So would it be possible to
19 take a short break just so we can collect those and she
20 can -- with Mr. Caskey on the stand? I think he's the
21 person who can authenticate and put those into the
22 record if you'd prefer them admitted as evidence.

23 THE COURT: Have you conferred with
24 defendant? Is there -- do you all agree that these
25 numbers are accurate? I mean, as I've said to both of

1 you, both sides, if you want to rely on, you know,
2 records, whether you're going to judicially notice them
3 or actually offer them into evidence, you need to give
4 the other side notice so they can check and make sure it
5 is what it is; it is accurate, that's the numbers that
6 are actually part of the public record.

7 And then if everybody agrees, I'll either
8 judicially notice them or I'll take them into evidence.
9 But I think it's a better practice to take them into
10 evidence as I've just said. Mr. Roe?

11 MR. ROE: At this time, we'd have to check,
12 Your Honor.

13 THE COURT: I'm sorry?

14 MR. ROE: We would need to check to verify
15 this, Your Honor.

16 THE COURT: All right. That's fair. Again,
17 you should have given this to them yesterday if you were
18 going to rely on them so they'd have a chance to check
19 it out.

20 MS. WALDMAN: Your Honor, we have printed
21 copies of all the documents that support that. And if
22 we could take a brief break, I believe we could resolve
23 this.

24 THE COURT: All right. We'll be in recess
25 for 15 minutes.

1 MR. STEINER: Thank you, Your Honor.

2 MS. WALDMAN: Thank you, Your Honor.

3 MR. ROE: Your Honor, I had a recross of
4 Mr. Caskey.

5 MS. WALDMAN: He's not off the stand.

6 THE COURT: We're taking a recess. We're
7 going to come back. She's still examining him.

8 MR. ROE: Okay.

9 (Recess.)

10 THE COURT: Okay. Where are we at?

11 MR. STEINER: Thank you, Your Honor. I
12 think we made some progress during the break. So here's
13 where we are.

14 With respect to the statewide numbers, as to
15 which you've previously granted judicial notice, we will
16 turn that into a stipulation. The State has agreed,
17 subject to one minor change to the motion for judicial
18 notice, to stipulate to those numbers. So the numbers
19 they will stipulate to. But as opposed to being "votes
20 cast," they would like it to say "votes reported."
21 That's acceptable to us. And so over the weekend we
22 will turn that into a stipulation and file it as a
23 stipulation.

24 With respect to the numbers reported from
25 Sedgwick County that were taken from the Secretary of

1 State's website and were the subject of our motion this
2 morning, filed this morning, I believe that we will
3 reach agreement. And so what -- the tentative agreement
4 that we have is that we will work on a stipulation with
5 respect to those numbers as well.

6 And if we're unable to come to a
7 stipulation, the State has agreed, rather than go
8 through it with Mr. Caskey now, they'll bring him back
9 at some point next week if we're unable to reach a
10 stipulation for us to be able -- even if we've rested
11 our case to be able to put those numbers in. But that
12 will allow things to move forward this morning.

13 THE COURT: All right. And just to be clear
14 for the record, what you're referring to is Document 486
15 that you filed this morning on a motion to take judicial
16 notice of adjudicative facts and you set out the
17 different elections and the total votes cast, which will
18 be total votes reported?

19 MR. STEINER: Correct. So Sedgwick County's
20 486. That we'll work on on the weekend or bring
21 Mr. Caskey back. The prior motion with state totals is
22 459, and that we will turn into a stipulation with the
23 one change being that it will be "votes reported" rather
24 than "votes cast."

25 THE COURT: All right. You agree, Mr. Roe,

1 with what he said?

2 MR. ROE: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. STEINER: Thank you, Your Honor.

5 MS. WALDMAN: At this time, no further
6 questions, Your Honor.

7 THE COURT: All right. Mr. Johnson, did you
8 have any questions?

9 MR. JOHNSON: I have nothing, Your Honor.
10 Thank you.

11 THE COURT: All right. Mr. Roe.

12 CONSOLIDATED RE CROSS and REDIRECT EXAMINATION

13 BY MR. ROE:

14 Q. Mr. Caskey, I just have a few questions based on
15 what Ms. Waldman just recently asked you.

16 First, with regard Mr. Boynton and the DMV,
17 you testified yesterday that we did not receive a -- an
18 application from the DOV; correct?

19 A. I believe so. I would prefer to --

20 Q. You want to look at your -- at the ELVIS record?
21 I don't have it --

22 A. Would you be able to verify -- I mean, kind of
23 guide me where it would be in here.

24 Q. It's 829, Joint Exhibit 829.

25 A. Thank you very much. Yes, I have it in front of

1 me.

2 Q. Okay. Did we receive a voter registration
3 application from the Division of Vehicles for
4 Mr. Boynton?

5 A. Based on the information located in the activity
6 tab, there's no indication that a voter registration
7 application was submitted to the Secretary of State's
8 Office from the Division of Motor Vehicles.

9 Q. So if we're looking at Mr. Boynton's ELVIS file,
10 was Mr. Boynton placed on -- on a suspense for not --
11 for applying at the Division of Vehicles but not
12 providing proof of citizenship?

13 A. According to the information on the record, it
14 was not.

15 Q. Okay. Second question, who is Craig McCullah?

16 A. He's a former employee of the Secretary of
17 State's Office.

18 Q. And -- do you have that e-mail? Do you have the
19 e-mail?

20 A. Yes, I do.

21 Q. Do you -- is your name on that e-mail?

22 A. It is not.

23 Q. Okay. So it's correct to say you're not on this
24 e-mail chain?

25 A. I -- it is correct, I'm not on that e-mail chain.

1 That is correct.

2 Q. Do you know whether any of the 129 that appear on
3 our -- on your list were sent to DHS for possible
4 prosecution?

5 MS. WALDMAN: I object, Your Honor, to the
6 extent this exceeds the scope of my recross.

7 THE COURT: I'll overrule. You can answer
8 it if you can.

9 THE WITNESS: Would you restate the question
10 to make sure I understand what you're asking.

11 BY MR. ROE:

12 Q. Were any of the -- were any of the 109 -- 129
13 that appear -- were any of the 129 non-citizens, were
14 any of those that -- that the state has shown were --
15 were registered -- attempted to register to vote, were
16 they -- were any of those sent to DHS for possible
17 prosecution?

18 A. I did not send them. We have -- you know, we
19 have prosecuting attorneys and investigators within our
20 office.

21 Q. Okay.

22 A. It is possible they have. I do not -- do not
23 know what their conversations were.

24 Q. Last question I have is: Do you recall the last
25 question that Ms. Waldman asked you?

1 A. Yes.

2 MR. ROE: Okay. Could the court reporter
3 please read back Ms. Waldman's last question and
4 Mr. Caskey's answer.

5 THE COURT: That's going to be difficult.
6 She's going to have to skip way --

7 MR. ROE: I can summarize then if --

8 THE COURT: That would be better.

9 BY MR. ROE:

10 Q. Do you recall that Ms. Waldman asked you if any
11 of the -- if any of the individuals who had applied to
12 register to vote at the DMV and not provided proof of
13 citizenship if -- if their applications had been
14 canceled?

15 A. Yes. I do recall that, yes.

16 Q. And you responded that you looked at the system
17 on Saturday to verify that it -- they were not?

18 A. That is correct.

19 MR. ROE: Your Honor, I believe she's opened
20 the door to allow us to ask Mr. Caskey what he saw in
21 the ELVIS system when he looked into it.

22 MS. WALDMAN: Your Honor, the fact that
23 Mr. Caskey gave testimony that didn't directly respond
24 to my question -- I was simply asking him questions in
25 response to his testimony regarding compliance with the

1 protective order.

2 THE COURT: I agree. Denied.

3 MR. ROE: Okay. No further questions, Your
4 Honor.

5 THE COURT: Any more questions from
6 plaintiffs?

7 Mr. Caskey, subject to recall, if they don't
8 reach a stipulation, you understand that?

9 THE WITNESS: I do. I would be happy to
10 come back if needed.

11 THE COURT: Okay. I don't know if you would
12 be happy to come back, but you might have to come back.

13 THE WITNESS: I'll say it.

14 MS. WALDMAN: I have no more questions.

15 THE COURT: Okay. All right. You can step
16 down for now.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. You can call your
19 next witness.

20 MS. LAKIN: Good morning, Your Honor, Sophia
21 Lakin for the Fish plaintiffs. At this time, the Fish
22 Plaintiffs call Dr. Lorraine Minnite.

23 LORRAINE C. MINNITE, Ph.D.,
24 called as a witness on behalf of the Plaintiffs, having
25 first been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. LAKIN:

3 Q. Good morning, Dr. Minnite. Can you, please,
4 state and spell your full name for the record.5 A. Lorraine Carol Minnite. It's spelled
6 L-O-R-R-A-I-N-E, C-A-R-O-L, M-I-N-N-I-T-E.7 MS. LAKIN: Your Honor, I'd like to hand
8 Dr. Minnite a binder of exhibits for use during her
9 testimony. May I approach?

10 THE COURT: Yes.

11 BY MS. LAKIN:

12 Q. Dr. Minnite, thank you for your patience this
13 week. If you could turn to Tab 1 in the binder which I
14 gave you, which is marked Plaintiffs' Exhibit 140. What
15 is this document?

16 A. This is a current copy of my CV.

17 MS. LAKIN: Your Honor, at this time, I'd
18 like to offer Plaintiffs' Exhibit 140, which is
19 Dr. Minnite's updated CV into evidence.

20 MR. ROE: No objection.

21 THE COURT: 140 admitted.

22 BY MS. LAKIN:

23 Q. Dr. Minnite, are you currently employed?

24 A. Yes.

25 Q. Where are you currently employed?

1 A. Rutgers University in Camden, New Jersey.

2 Q. What is your position there?

3 A. I'm an associate professor and I am chair of the
4 Department of Public Policy and Administration.

5 Q. Are you tenured?

6 A. Yes.

7 Q. What is your educational background?

8 A. I have a undergraduate bachelor's degree in
9 history. I have a master's in political science. I
10 have an M.Phil. in political science and a Ph.D. in
11 political science.

12 Q. Did you specialize in any areas?

13 A. Yes.

14 Q. And what is that area?

15 A. In American politics and public policy,
16 specifically American elections and the study of voter
17 fraud.

18 Q. Where have you taught since you received your
19 Ph.D.?

20 A. I have taught at Barnard College, which is part
21 of Columbia University, and in my current position at
22 Rutgers University.

23 Q. What are some examples of courses that you have
24 taught?

25 A. I've taught undergraduate courses such as

1 Dynamics of American Politics, which is like an
2 introduction to American Government course. I've taught
3 graduate courses, like Foundations of Policy Analysis,
4 research workshop, research seminar in political
5 science.

6 Q. Do any of these sources cover research
7 methodologies?

8 A. Yes.

9 Q. Which ones?

10 A. Well, the research workshop is like the capstone
11 or thesis writing course in the Masters of Public
12 Administration program, and that involves some
13 instruction in research methods for students.

14 Also, the Foundations of Policy Analysis
15 course includes a good deal of research methods,
16 including statistical methodologies up through basic
17 regression analysis.

18 Q. You testified that you are currently the chair of
19 the Public Policy Department. Have you held any other
20 leadership positions at Rutgers Camden?

21 A. Yes.

22 Q. And what positions?

23 A. I was the director of the Urban Studies Program
24 for five years, six years.

25 Q. In addition to these roles, are you affiliated

1 with any centers at Rutgers Camden?

2 A. Yes.

3 Q. What centers?

4 A. The Center for Urban Research and Education,
5 Community Leadership Center, the Walter Rand Institute.

6 Q. Dr. Minnite, what is a peer-reviewed article or
7 book?

8 A. Peer review is the process whereby scholarly
9 research is reviewed for publication. And it would be
10 reviewed by colleagues, experts in the field for
11 whatever the subject matter is. It's used for academic
12 journals and also for academic books.

13 Q. Have you published any peer-reviewed books or
14 articles?

15 A. Yes.

16 Q. Approximately how many?

17 A. About 18.

18 Q. Since completing your Ph.D., has your work and
19 research focused on any particular subject matter?

20 A. Yes.

21 Q. And what is that subject matter?

22 A. It's the study of the incidence of voter fraud
23 and the politics of voter fraud allegations.

24 Q. How many years of experience do you have
25 researching and analyzing this subject?

1 A. Seventeen.

2 Q. And just to be clear, what geography is your
3 research speciality located in?

4 A. United States.

5 Q. What, if any, courses have you taught on the
6 topic of voter fraud, the incidence of voter fraud in
7 the United States?

8 A. Well, the subject of voter fraud in and of itself
9 would be too narrow for a college course, but I try to
10 incorporate, like a lot of us do, my research into my
11 teaching.

12 So I have incorporated different aspects of
13 my research on voter fraud in the different courses,
14 including the Dynamics of American Politics course where
15 I talk about the debate over the levels of fraud in the
16 late 19th century.

17 I incorporate it into my Foundations of
18 Policy Analysis course where we look at, for example,
19 voter ID laws as a policy response to a perceived
20 problem.

21 I look at it also in my Research Workshop
22 course which I taught last semester where I -- the
23 students are writing, like, a final paper, a thesis.
24 And we go through an exercise where I try to show them
25 how to develop their literature review by introducing

1 them to a very well-known debate in political science
2 that appeared in the pages of the *American Political*
3 *Science Review* in the 1970s over that debate about fraud
4 in the 19th century -- and this was between some
5 prominent political scientists -- to show them how you
6 engage the literature and how you sort of look at the
7 evidence and the arguments and how they come together
8 when you're developing a literature review for a
9 research project.

10 Q. Have you published any peer-reviewed articles or
11 books on the topic of voter fraud?

12 A. Yes.

13 Q. Can you explain to the court what those materials
14 are?

15 A. Yes. I published a book called *The Myth of Voter*
16 *Fraud* in 2010. I published an article in an edited book
17 called *Voter Identification, the Debate Over Voter ID* --
18 I'm sorry -- *Voter Fraud*. I'm looking for the exact
19 title of it. And I -- I published an article called *The*
20 *Voter Fraud Myth* in 2016 in a book called *America Votes*.

21 Q. Do these publications address allegations of
22 non-citizen voting and registration?

23 A. Yes.

24 Q. Have you received any grants or professional
25 distinctions for this work?

1 A. Yes. While I was doing research for my book, I
2 got a specialty opportunities grant for \$50,000 from the
3 Carnegie Corporation, which was to allow me -- it
4 didn't -- the money didn't go to me. It was to allow me
5 to, as we say, buy out my courses in teaching so I could
6 just focus on trying to finish the research for that
7 book.

8 And then I also -- the book also received a
9 distinction from *Choice Reviews*, which is a publication
10 of the American College and Research Librarians division
11 of the American Library Association, which is -- in our
12 field is important because this is the publication that
13 sort of signals to academic libraries what titles to
14 buy.

15 And they review about 6,000 titles a year
16 and they give a distinction of academic -- outstanding
17 academic title to books. And the -- that distinction is
18 based on their judgment from the reviews that the book
19 is an outstanding scholarly contribution and also that
20 it -- it is an excellent first treatment of a subject
21 matter, which in the case of my book was the first
22 book -- comprehensive look at the issue of voter fraud
23 in contemporary American elections.

24 Q. Dr. Minnite, could you tell us how you got
25 started researching the topic of voter fraud?

1 A. Yes. Right after the 2000 election, I was
2 approached, through a mutual friend, by Miles Rapoport,
3 who was the former Secretary of State of Connecticut;
4 and he had also been a legislator in Connecticut, a
5 state legislator. And he wanted to find a political
6 scientist to do a study of the incidence of voter fraud.
7 Because as an elected official and as a Secretary of
8 State, he was very concerned about increasing voter
9 participation.

10 So Connecticut had tried to introduce
11 same-day -- same-day registration. And the legislature
12 had passed it, but the governor had vetoed it saying we
13 can't do that because it will open the doors to voter
14 fraud.

15 So he -- Miles was sort of saying, well,
16 what do we know about that? Like, has anybody really
17 studied it? Is it really a problem? I want to find a
18 political scientist to study this. So that's how the
19 project initially came to me. And I, you know, thought
20 it would be over in six months, but here we are.

21 Q. Can you explain in general terms how you as a
22 political scientist then approached the question to the
23 extent of voter fraud?

24 A. Yes. So, like I said, it was something that I
25 knew nothing about at the time. I didn't have any

1 particular opinion about it. I thought, well, I'll just
2 look up the data and I'll answer Miles' question. And
3 as I began the research, I found -- quickly found that
4 there was no dataset. There was no database. There was
5 no one place you could go to get these statistics about,
6 say, how many -- just how many incidents there were or
7 anything like that.

8 So I had to pull back and try to design a
9 study that would allow me to investigate the problem in
10 the way I know how to do it, which is as a social
11 scientist. And that meant that I had to develop my
12 research question. I had to think about the research
13 design and what kind of evidence I would need and look
14 for, where I would go for it. I had to, you know, sort
15 of try to keep an open mind about things. But, I mean,
16 that wasn't hard because I didn't -- I didn't have any
17 particular opinion about it to begin with.

18 Q. What is the methodology that you have employed to
19 analyze the evidence and the subject?

20 A. So we call it -- in the end it's a mixed methods
21 approach, which incorporates data evidence from
22 different kinds of sources, whether they're quantitative
23 or qualitative. And -- and it's not just that you --
24 you pull this information together. The idea is that no
25 one source is going to be a complete source. And that's

1 what I found very quickly, as I said, when I first
2 started researching it.

3 So no one source is going to be a complete
4 source. So you pull all the information together, and
5 you have to triangulate the data. You have to look for
6 patterns across the different kinds of data because
7 maybe each singular source is an incomplete record for
8 you. And -- so that's the general approach that is very
9 common in the social sciences today.

10 Q. So is this method -- this mixed method approach
11 consistent with your standard research practices?

12 A. Yes.

13 Q. And I think you answered this, but is this mixed
14 method approach consistent with generally accepted
15 standards in political sciences and social sciences
16 generally?

17 A. Yes.

18 Q. Dr. Minnite, have you ever testified in court on
19 the topic of the incidence and effect of voter fraud?

20 A. Yes.

21 Q. How many times?

22 A. Nine.

23 Q. When was the first time that you have ever
24 testified on the topic in this -- at all?

25 A. 2004 or 2005.

1 Q. What was that case?

2 A. That was the case called *ACORN v. Bysiewicz*.

3 Q. In what capacity was your testimony originally
4 offered in that case?

5 A. As an expert witness.

6 Q. And in what capacity did you testify in that
7 case?

8 A. As a fact witness.

9 Q. Why did you testify as a fact witness rather than
10 as an expert, if you know?

11 A. I had been offered as an expert, and the state
12 objected -- I don't know the language -- filed the
13 motion to exclude. And I was withdrawn and then offered
14 as a fact witness.

15 Q. Have you testified as an expert on the subject of
16 voter fraud in any of the other eight cases that you
17 have testified in since then?

18 A. Yes. In every case, the question that I have
19 been asked has been basically the same, which is the
20 question about the incidence of voter fraud.

21 Q. In how many cases -- in how many of those cases
22 did you testify as an expert?

23 A. Of the nine cases, I testified as an expert in
24 eight.

25 Q. And all of those eight cases followed the

1 original *ACORN v. Bysiewicz* case?

2 A. Yes.

3 Q. Can you give us some examples of cases in which
4 you've testified as an expert?

5 A. Certainly. I testified as an expert in a case
6 called *DNC versus RNC*; in *Applewhite versus Commonwealth*
7 *of Pennsylvania*, which was a state case -- all the rest
8 were federal court -- in the what's now called *Frank v.*
9 *Walker* case; and *Veasey v. Perry*; in *North Carolina*
10 *State Conference of the NAACP versus McCrory*; in *Ohio*
11 *Democratic Party versus Husted*; in *Lee versus Virginia*
12 *State Board of Elections*; and *One Wisconsin Institute*
13 *versus Nichols*; and here I am today.

14 Q. Aside from today, was your testimony on the
15 incidence of voter fraud accepted by the court in each
16 of the cases prior to today in which you've testified as
17 an expert witness?

18 A. Yes.

19 MS. LAKIN: And now, Your Honor, the
20 plaintiffs offer Dr. Minnite as an expert on the
21 incidence and effect of voter fraud in contemporary
22 American elections.

23 MR. ROE: Your Honor, we would re-raise our
24 motion that we filed to exclude Ms. Minnite.

25 THE COURT: All right. For the reasons

1 articulated in my ruling on the *Daubert* motion, I
2 overrule and deny defendant's objection, and I recognize
3 Dr. Minnite as an expert in the -- on the -- as an
4 expert on the incidence and affect of -- or effect of
5 voter fraud in contemporary American elections.

6 MS. LAKIN: Thank you, Your Honor.

7 BY MS. LAKIN:

8 Q. Dr. Minnite, what were you asked to do in this
9 case?

10 A. I was asked to provide an opinion on the
11 incidence of voter fraud nationally but also in Kansas
12 specifically with respect to non-citizens getting on the
13 registration rolls.

14 Q. Were you asked to do anything else?

15 A. And I also was asked subsequently to review and
16 respond to expert reports from defendant's experts.

17 Q. And what -- was that on the same topic?

18 A. Yes.

19 Q. Dr. Minnite, would you, please, turn to the tab
20 marked 2, which is Plaintiffs' Exhibit 77 in the binder
21 I handed you earlier. What is this document?

22 A. This is my first expert report in this case.

23 Q. When was that dated?

24 A. It's dated -- I'm looking for the date --

25 Q. Page 33.

1 A. -- which I can't find. Okay. It's dated
2 February 25th, 2016.

3 Q. And would you look -- please turn to Tab 3, which
4 is marked as Plaintiffs' Exhibit 76.

5 A. Yes.

6 Q. And what is this document?

7 A. This is a supplemental report dated April 12th,
8 2016.

9 Q. Would you, please, turn to Tab 4, which is --
10 which is marked as Plaintiffs' Exhibit 75.

11 A. Yes.

12 Q. And what is this document?

13 A. This is a rebuttal report dated June 10th, 2016.

14 Q. Would you, please, turn to Tab 5, which is marked
15 as Plaintiffs' Exhibit 74. And what is this document?

16 A. This is also a rebuttal report or expert report
17 dated March 15th, 2017.

18 Q. Do these four reports accurately describe the
19 analyses that you have undertaken and set forth the
20 conclusions that you've reached in this case?

21 A. Yes.

22 MS. LAKIN: Your Honor, plaintiffs offer
23 Plaintiffs' Exhibit 74, 75, 76 and 77 into evidence.

24 THE COURT: Any objection?

25 MR. ROE: No, Your Honor.

1 THE COURT: I'm sorry?

2 MR. ROE: No, Your Honor.

3 THE COURT: Exhibit 74 through 77 admitted.

4 BY MS. LAKIN:

5 Q. With respect to the incidence of voter fraud and
6 non-citizen -- generally and non-citizen voting and
7 registration in Kansas specifically, what, if any,
8 opinions did you, as a political scientist, form after
9 performing your analysis of this case at a very high
10 level?

11 A. My opinions from the research that I've done in
12 this case and these reports is that the incidence of
13 voter fraud nationally is rare. And in Kansas, a
14 handful of non-citizens have gotten on the registration
15 rolls over the last 20 years. But there appear to be --
16 at least some of them can be explained by administrative
17 error and voter confusion or applicant confusion.

18 Q. Dr. Minnite, before we go in too much farther,
19 I'd like to clarify how you define the term voter fraud
20 for the purposes of your research.

21 A. So I want to remind you that when I -- what I
22 said before about when I started the research and I
23 began to look for the evidence, I first had to have a
24 definition. And I looked for a definition of voter
25 fraud in election law. I read all the state election

1 crime codes, if you will. I looked in federal law. I
2 looked in the political science literature. And because
3 this was a subject that had not been written about very
4 much in my field, I -- and because I wanted to try to
5 measure the incidence of voter fraud, it's very
6 important that you define concepts very clearly in
7 social science.

8 So I thought about how to do this. And I
9 spend, you know, a whole chapter in my book explaining
10 how I came to reason through this definition. But the
11 definition is -- is -- is essentially a simple one. The
12 definition is that voter fraud is the intentional
13 corruption of the electoral process by voters.

14 Q. And you mentioned that it is important to set
15 forth concepts clearly in the social sciences. Can you
16 explain that a little bit further?

17 A. Yes. I mean, social science is essentially
18 empirical. And so we have to try to figure out what it
19 is we're trying to measure when we're measuring things.
20 And that means that we have to clearly define categories
21 and try to think about how -- where would I -- you know,
22 what is it I'm looking for. And then when I find what
23 I'm looking for, is it -- is it valid and reliable, in
24 other words.

25 And so with respect to the voter fraud

1 issue, the way I approached it was I thought about the
2 electoral process. And we can kind of array the
3 electoral process, you know, in a linear fashion from
4 the beginning when, say, a voter first registers to
5 vote, carrying through all the steps of what has to
6 happen to effectuate an election and then all the way to
7 the end, counting the votes. So we have sort of this
8 phenomenon that's an election and it unfolds in a series
9 of stages and procedures. So that's one dimension.

10 Then a second dimension is who -- who
11 participates in an election? It's not just the voters.
12 It's the politicians, the parties, the election
13 administrators. So there are different actors.

14 So the way I thought about, well, what is
15 fraud? What is voter fraud? Well, first of all, fraud,
16 the word fraud comes from a Latin word that means
17 deceive. So fraud is an intentional deception. And
18 this is consistent with state election codes that
19 criminalize behavior that we call fraud. For example,
20 you can't vote more than once, or you must meet these
21 qualifications, and so forth. You can't do that. If
22 you do that knowingly -- you know, different words you'd
23 use, but basically knowingly, intentionally doing it, it
24 means there's -- that's what fraud means, there is an
25 intention to deceive.

1 So I kept that part of the definition. That
2 was consistent. And then I have my analysis of the
3 electoral process and who participates. And, really,
4 you can only corrupt that part of the process that you
5 have access to.

6 So voters can only corrupt the part of the
7 electoral process that they have access to. And the way
8 to think about that is, you know, voters really can't
9 corrupt the count because they don't count the ballots.

10 So what part of the process do voters have
11 access to? It's essentially their own records, their
12 own registration, their own balloting, if you will,
13 their own voting. So voters can corrupt their
14 registration records or they can vote more than once or
15 they can try to impersonate somebody, but voters can't
16 corrupt the count.

17 So once we define voter fraud that way in
18 this sort of analytical way, that reduces a little bit
19 the types of crimes that we should call voter fraud.
20 And, you know, I'm always -- I'm paying attention to the
21 words and what they mean. And if you call it voter
22 fraud, people think the voters are doing it.

23 And there's -- there's another reason why I
24 think it's important to pay attention to that, which is
25 that the voter fraud allegation is the one -- is used to

1 then justify changes in the rules that affect voters.
2 So it's all about sort of being able to properly
3 diagnose what a problem is and come up -- in public
4 policy and come up with a good solution.

5 So that's how I approached the definition of
6 voter fraud. And that then gave me a set of activities
7 or actions or, you know, types of crimes that I would be
8 looking for when I'm trying to measure how much voter
9 fraud is there.

10 Q. If the voter in question is a non-citizen, what
11 kind of conduct are you evaluating under your definition
12 of voter fraud?

13 A. That -- if a non-citizen was committing voter
14 fraud, we would be looking for people who are not
15 citizens, who, therefore, in every state are not
16 qualified to cast ballots and participate in elections,
17 who knowingly and willingly break the rules by trying to
18 get on the registration rolls, or, once they're on the
19 registration rolls, casting ballots, and knowing that
20 they're doing that and that it's wrong to do that.

21 Q. And what about illegal voter conduct that is not
22 knowing or intentional, how, if at all, does that type
23 of conduct fit into your analysis?

24 A. Well, fraud is -- is always illegal, but not all
25 illegal voting or all illegal registration is

1 fraudulent. So we can have, in a sense, technical
2 violations of the rules but -- so that means that when
3 I'm looking for voter fraud, I'm always capturing a lot
4 of what maybe we could call illegal voting or illegal
5 activity, but the intent issue is sort of what
6 distinguishes fraud from illegal.

7 Q. Now, you testified a little earlier about the
8 approach you took as a political scientist to
9 investigate the incidence of voter fraud. Can you
10 describe that work in a little more detail?

11 A. Yes. So, you know, I spent many, many years
12 working on what eventually became my book, *The Myth of*
13 *Voter Fraud*, and the reason for that was it was very
14 hard to do the research because, as I've said, sort of
15 the evidence wasn't right there. You know, it would be
16 nice, but it wasn't there. So I looked everywhere for
17 it.

18 And I began by first looking through news
19 reports, and that would be standard. I wanted to know,
20 you know, what was reported. You would think that
21 allegations of voter fraud would have -- would be
22 newsworthy. The public would want to know. So it
23 should show up there. So I did all kinds of searches
24 for many years. And an early report that was not peer
25 reviewed, but an earlier report that I did in

1 twenty-three, the first report -- 2003, excuse me, you
2 know, I went all the way back to 1992. So I did
3 thousands and thousands of news reports that I looked at
4 to see what the patterns were, what the allegations were
5 and so forth. But that was just a starting point.

6 I also then began to look at the -- as I
7 said, the academic literature. I did a sort of full
8 review of the academic literature that might bear on the
9 question.

10 And then I began to do my own research,
11 which included public records requests to every attorney
12 general, state attorney general, every secretary of
13 state, 2,700 local prosecutors I sent surveys to. I
14 did -- I looked at all kinds of government records,
15 including reports done by the GAO after the 2000
16 election. The GAO did a kind of massive study of
17 elections because we'd seen all the breakdowns in the
18 2000 elections. The Congressional Research Service, I
19 looked at hearings, testimony, state investigations. I
20 just -- everywhere I could go, I looked.

21 And then I did case studies and I went to
22 Milwaukee. I went to Seattle. I went to St. Louis. I
23 interviewed lawyers who covered a case in Florida. I
24 interviewed election officials. I interviewed maybe 25
25 to 30 people to collect this information. And I had

1 many, many contacts with many -- many more people than
2 that.

3 I looked at a federal government initiative
4 that was undertaken during President Bush's second
5 term -- I'm sorry, first term following the 2000
6 election. And this was something that the Justice
7 Department called the Ballot Access and Voting Integrity
8 Initiative where, following that election, Attorney
9 General Ashcroft announced this program and said that
10 they -- a high priority for this initiative was to find
11 voter fraud and voter intimidation.

12 But the program involved bringing together
13 attorneys from the civil division and the criminal
14 division to train them. All the U.S. attorneys were
15 brought in to train them to look for voter fraud. So it
16 was sort of a -- an intensive effort to find voter fraud
17 on the part of the federal government.

18 And I looked at those records related to
19 that. I had FOIA requests at the Justice Department for
20 two years. I finally, you know, had to get the
21 information -- I actually had to have my senator
22 intervene because I wasn't getting any response for that
23 but -- so that's just some of the kinds of records. But
24 basically all kinds of -- anywhere I could go look for
25 data information is what I did.

1 Q. Now, you mentioned the Ballot Access and Voting
2 Integrity Initiative. Can you tell us over what span of
3 time that data -- that initiative occurred throughout?

4 A. Well, it may still be going on. I don't know.
5 But what I looked at was the first three years of the
6 program. So that covered two thousand -- the fiscal
7 year 2002 to 2005, but I think it continued after that.

8 Q. And what -- what did you find when you looked
9 through the first three years of that initiative?

10 A. The first three years of that initiative, there
11 were 95 indictments brought. But, you know, here's
12 where having the definition matters. I looked at every
13 one of those cases as much as I could. I looked at --
14 through PACER records, for example, I looked at every
15 indictment, and I was able to break down the type of
16 perpetrator, if you will, whether it was a voter,
17 campaign, politician or something, somebody else, and
18 then the -- the crime, the type of crime the person was
19 being charged with. So of the 95 indictments, only 40
20 of them were actually voters.

21 Q. And of those 40 cases of voting -- committed --
22 indictments involving voters, what type of crimes were
23 charged?

24 A. There essentially were just three. One was
25 non-citizen voting, a second one was double voting, and

1 a third one was -- we call it like ineligible voting.
2 They were essentially people who had felony convictions
3 and were still on either probation or parole who had not
4 had their voting rights restored but who had cast
5 ballots.

6 Q. Were any of the cases involving non-citizen
7 voting from Kansas?

8 A. No.

9 Q. What criticisms, if any, have you seen through
10 the course of your research regarding the use of
11 prosecutions or indictments as a measure of the extent
12 of voter fraud?

13 A. Well, I mean, obviously, indictments can't
14 possibly be the full measure of the phenomenon because
15 you have to have the evidence to bring the case and so
16 forth, but that's -- that's true of all crime.

17 So one criticism, as I said, is that --
18 that, you know, well, you're just -- if you just use
19 indictments, you're going to be not really capturing
20 very well how much fraud there actually is.

21 Another criticism might be that
22 investigatory offices don't have enough resources, they
23 don't have enough attorneys doing the cases, they don't
24 have enough investigators. And so all of this, you
25 know, is going on, and it's not being detected because

1 it's not being investigated.

2 Q. And what opinions do you have with respect to
3 these criticisms, if any?

4 A. You know, they're reasonable criticisms except
5 for then, you know, you have to remain skeptical as
6 well. You know, when you look at something like the
7 Ballot Access and Voting Integrity Initiative, that was
8 an effort by the federal government to find voter fraud.
9 It was stated by the head of the public integrity
10 section in the criminal division that this was one of
11 the, you know, top three important priorities for the
12 Justice Department then. So we have an example of a --
13 of a real effort to apply the -- the -- the ability of
14 the federal government to find voter fraud. And, you
15 know, I think the results are really quite meager from
16 that.

17 With respect to resources, I think that
18 people who argue that prosecutors are not bringing the
19 cases because they don't think it's that important, it's
20 kind of a minor crime, I think that has to be supported
21 with evidence. Because in the, you know, somewhat
22 limited interviews that I had with prosecutors, they
23 deny that. They say, well, of course we don't. If
24 evidence is brought to us, we will prosecute it because
25 it's important. It's -- it's very important to maintain

1 confidence in the electoral system.

2 Q. Recognizing their limitations, how do you use
3 these crime statistics in your analysis?

4 A. Well, as I explained earlier, they are just one
5 piece of information. And what I'm trying to do is,
6 when I look at different sources, whether they're news
7 sources, interviews, results of investigations, or
8 prosecutions and indictments, I look for patterns to see
9 that -- whether things are consistent, whether the
10 patterns I'm seeing across the different types of data
11 are consistent.

12 And so with respect to the prosecutions,
13 I -- I would not -- I -- I would not say, for example,
14 that there were only 26 cases of fraud, if you will, or
15 election crimes by voters in the first part of that
16 Ballot Access and Voting Integrity Initiative program
17 that I evaluated from 2002 to 2005; there must probably
18 be some more. I would say that it's under-inclusive in
19 that respect. But every type of data has some problems.
20 It might be somewhat incomplete.

21 What's important is looking for the
22 patterns. And if you have one source of data where you
23 see something completely different than what you see
24 from other sources of data, then you have to keep
25 investigating to try to figure out why that is.

1 When the patterns are consistent, I think
2 then you can draw inferences from the evidence.

3 Q. Based on your analysis of the Ballot Access and
4 Voting Integrity Initiative and all the other sources
5 you considered, what opinions as a political scientist
6 did you reach with respect to voter fraud nationally?

7 A. I came to the conclusion that the incidence of
8 voter fraud nationally is extremely rare.

9 Q. And you mentioned that you did track some
10 allegations that were allegations of voter fraud. What
11 happened with the allegations that you tracked? Can you
12 tell us a little bit more about what you found?

13 A. Yes. So I had kind of another problem because my
14 research, my empirical research kept showing me that
15 this just was not happening very much -- very -- you
16 know, few random things here and there.

17 But at the same time, there were many, many,
18 many, many allegations. So there was this real
19 imbalance between the allegations that were being made,
20 the statements that were being made about fraud being
21 pervasive or massive or so forth, and the evidence.

22 So that also calls for explanation. You
23 don't just leave it hanging there. If people are
24 alleging voter fraud, you have to keep trying to figure
25 out what is the basis for this. And I came to the

1 pretty firm conclusion that the basis is not the
2 empirical evidence and it's not -- and it's also not
3 what's being missed in that investigation of the
4 empirical evidence. That, in fact, allegations -- you
5 know, you can -- they have political uses, and this is
6 what I write about in my book.

7 I did -- for example, trying to take this
8 very seriously, in -- after the 2004 election,
9 presidential election, a report was put out by an
10 organization that, you know, lasted for about two years.
11 It was called the American Center for Voting Rights.
12 And they claimed that their report was the most
13 comprehensive compendium of evidence of voter fraud in
14 the 2004 election.

15 So I took that report -- and I took it
16 seriously -- and I analyzed it. And I had two or three
17 students working with me for more than a summer where we
18 took every allegation in that report and we broke it
19 down. We made spreadsheets. We -- and we tried to
20 trace out every single one of those investigations to
21 find out -- you know, this report was implicating
22 something like 300,000 votes in the 2004 election could
23 have been tainted by fraud. So that's -- that's
24 worrisome.

25 So we traced every one of them down and

1 found that -- and it boiled down to very few of those
2 actually turned out to be cases of fraud at all. They
3 were mostly false allegations. They were -- or they
4 were unsubstantiated claims and -- or some -- you know,
5 sometimes a couple of cases of what I call mischief
6 where somebody says I want to test the system, I'm going
7 to register my dog. And Senator Bond here from Missouri
8 was very famously -- people in the area probably
9 remember, he very famously used to talk about a dog
10 named Ritzy Meckler who had gotten on the voter
11 registration rolls in St. Louis.

12 So there are a few cases like that. But
13 mostly these were unsubstantiated allegations, false
14 allegations or -- or error as well, administrative
15 error. For example, in Milwaukee, where I did one of my
16 cases studies, one of the problems with the election
17 administration that they had was that they had some
18 cases in polling places where the number of signatures
19 of people signing in didn't match the number of ballots.
20 And so that immediately became -- claimed to be fraud.
21 But when you looked into it, it was more a case of
22 administrative problems that they were having in that
23 particular election. And that was -- that was the
24 conclusion of multiple investigations of those issues in
25 Milwaukee.

1 Q. So let's turn to your analysis of the incidence
2 of voter fraud and non-citizen voting and registration
3 in Kansas in particular. Are all the sources that you
4 reviewed for this case described -- all the sources that
5 you reviewed in preparing your reports for this case
6 described in your reports?

7 A. Yes.

8 Q. And did you incorporate your previous research?

9 A. Yes. I -- on the portion of the report where I
10 describe, in a sense, the context -- because, I mean,
11 Kansas is part of the United States, and we've had
12 allegations of fraud all over the United States. I want
13 to be clear that I'm incorporating all of those years of
14 research that I conducted that I also published in. So
15 that's sort of part of the basis for the report.

16 But then specifically for -- for this case,
17 as I have done in all the other cases where I've been an
18 expert witness, I -- I sort of bear down on that state,
19 that particular state, and I do a more intensive
20 investigation. And there might be more -- new materials
21 that I might consider. So that was the case here
22 with -- with Kansas.

23 Q. And in Kansas specifically, did you look at news
24 reports?

25 A. Yes.

1 Q. Writings by Secretary Kobach?

2 A. Yes. I paid particular attention to everything I
3 could find by Secretary Kobach because I put some
4 deference to official sources. So government sources --
5 that's why, you know, I did -- early on, I did the
6 public records requests, so all those prosecutors and
7 the secretaries of state and all the attorneys general
8 because I -- I'm going to be relying on them for
9 official numbers.

10 Q. Did you look at court opinions?

11 A. Yes.

12 Q. Affidavits from election officials in this case?

13 A. Yes.

14 Q. Defendant's interrogatory responses?

15 A. Yes.

16 Q. Other documents produced in discovery and
17 publicly available reports?

18 A. Yes.

19 Q. Dr. Minnite, were you in the courtroom when
20 Ms. Lehman testified about a spreadsheet listing
21 non-citizens who successfully attempted -- registered or
22 attempted to register to vote in Sedgwick County dated
23 January 2018?

24 A. Yes.

25 Q. Did you review a version of that spreadsheet in

1 preparing your reports in this case? And for your
2 reference, it is previously admitted Defendant's
3 Exhibit 1133, and that's under Tab 6 of your binder.

4 A. Yes. I think over the course of the two years,
5 or whatever it's been that I've worked on this, I think
6 I've seen about six or seven versions of this
7 spreadsheet. So this one I only saw recently, the
8 twenty -- January 2018.

9 Q. Do you recall how many applicants were on the
10 latest version of the spreadsheet that you reviewed in
11 preparing your reports in this case?

12 A. It was either 31 or 32.

13 Q. And do you recall approximately when you received
14 that spreadsheet?

15 A. I'd have to check. I don't remember.

16 Q. That's fine.

17 A. But it would have been -- it would have been
18 prior -- it would have been in the process of writing
19 the report, so probably 2016 or 2017.

20 Q. And what other documents, if any, did you review
21 in connection with these various spreadsheets?

22 A. I reviewed underlying ELVIS records, registration
23 records I guess that were produced as part of the case
24 here.

25 Q. Did you look at any affidavits?

1 A. Yes. I looked at affidavits of Mr. Caskey. I
2 read Ms. Lehman's April deposition, declarations as
3 well.

4 Q. And did you use a mixed methods methodology to
5 evaluate all these sources?

6 A. Yes. I approached it in a similar way, which is
7 that I -- I started with a -- a sort of over-inclusive
8 search of news sources. Those news sources were from an
9 academic -- or I guess it's not just academic but a
10 database of newspapers that covers about 20 newspapers
11 in Kansas. And I went -- I went back as far as it goes
12 back, which is either the '90s or the -- or I think the
13 end -- the 1990s. It's in my report. I describe how I
14 did that in the report.

15 So I do that to sort of get the lay of the
16 land, if you will, and look at the -- the allegations
17 that are coming up in the press. And then I look at
18 official numbers. I tried to review everything I could
19 on the attorney general's website. I tried to look for
20 press releases. If there was mention of a report or
21 legislative hearings, I would try to find that
22 information as well.

23 Q. Is this approach consistent with the methodology
24 you used to form expert opinions on the incidence of
25 voter fraud that was offered and accepted by other

1 courts?

2 A. Yes.

3 Q. And you mentioned that you looked -- you started
4 your review with news reports. Can you describe that a
5 little bit more in detail?

6 A. Yes. So I do this -- it's sort of
7 over-inclusive, meaning that I would use the terms vote
8 fraud or voter fraud or election fraud and then --
9 confining it to newspapers in Kansas. And then the
10 results are put out like annually. You can look at how
11 many news reports, or hits, if you will, are generated
12 each year.

13 And something I thought was very interesting
14 was that there -- there were sort of not that many
15 stories before -- in Kansas before about 2010. And then
16 at -- in 2010, it sort of rocketed up, and there were
17 many more stories about voter fraud, you know, as a
18 result of the search. They had those terms in it.

19 Q. And what did the news reports reveal in 2010 --
20 in 2010 when there was an uptick?

21 A. Well, I thought it was an interesting example of
22 what we call in public policy agenda setting because
23 they coincided with Mr. Kobach's campaign for Secretary
24 of State when he became -- running for that. And the
25 press would be following him and he would say --

1 bring -- bring forth that his campaign was going to be
2 about -- in his -- if he won, his Secretary of State
3 position was going to be about cleaning up or getting
4 rid of or stopping voter fraud in Kansas.

5 Q. And can you describe the claims made a little bit
6 more in detail?

7 A. Well, in the -- in my report, I lay out the
8 allegations that I found and I try to sort of classify
9 them in terms of what they're about. So -- is that what
10 you're asking me?

11 Q. Did -- did Secretary Kobach claim that there was
12 a size associated with the claims of allegations of
13 voter fraud?

14 A. Yes. I mean, he would use this phrase going back
15 to 2009 that the little bit of fraud that had been
16 reported by the previous Secretary of State was just
17 "the tip of the iceberg," or he would say it's "massive"
18 or "it's pervasive." It's a massive problem nationwide
19 or a pervasive problem and it would -- just keep
20 asserting that it was a problem. He would say, you
21 know, we have to stop voter fraud. That means voter
22 fraud must be happening.

23 But as I looked not just through the news
24 reports -- that's just to give me a picture of what's
25 going on. But when I would look through the news

1 reports and then try to do what I said I did with my
2 book, I would triangulate these sources with all other
3 information that I could accumulate, the evidence just
4 didn't support these allegations and the use of that
5 terminology of "pervasive," for example.

6 Q. Now, you mentioned that in your initial report
7 you discussed particular -- these particular allegations
8 in more detail. I'd like to ask you a couple of
9 questions about just one of those allegations today.

10 Would you, please, turn to page 24 of your
11 initial report. That's Plaintiffs' Exhibit 77, which is
12 under Tab 2 of your binder. Can you read the heading at
13 the top of the page?

14 A. Yes. "Somali Nationals Allegedly Steal an
15 Election in Missouri."

16 Q. Is this one of the allegations of voter fraud
17 that Secretary Kobach has cited in public statements?

18 A. Yes.

19 Q. Can you tell us a little bit more about what this
20 allegation is?

21 A. So this is an allegation that Somali nationals,
22 who were not citizens, allegedly helped a candidate, who
23 was running in a Democratic primary for a Missouri house
24 seat, win an election, and that the election was stolen
25 through fraud essentially by non-citizens.

1 Q. Can you tell us how you evaluated this
2 allegation?

3 A. Well, this case turned -- because it was very
4 close -- it was a one-vote margin in this case -- it was
5 a contested election. And I should say that was one of
6 my sources as well when -- both when I was working on my
7 book, contested elections are very good for this because
8 they involve investigations of what -- what happened.

9 So there was a contested election here that
10 went to a court. And that court found that there --
11 that this was completely not true, that there was no
12 fraud in that election. And there were election judges
13 who testified at the trial, without contradiction, that
14 all persons who were given a ballot in that election
15 were registered voters who showed proper identification
16 at the check-in process. So a court found that this was
17 not fraud.

18 And consistent with how I have done all of
19 my research, I -- I took that to be what it -- what it
20 says that -- you know, what the court found, I took that
21 as a finding, if you will, for my perspective. Not as a
22 legal case, but in terms of social science, I would call
23 that a finding.

24 Q. And based on your review of these sources, what
25 conclusions did you make regarding the allegations

1 concerning Somali non-citizens voting in this election,
2 as you said as a political scientist?

3 A. So this would be an example of a false
4 allegation. It is not true. It's not substantiated by
5 the evidence.

6 Q. After the court decision in this case, what, if
7 any, public statements did Secretary Kobach make
8 concerning this incident?

9 A. So this was a 2010 race in Kansas City, Missouri.
10 And after this race in a, for example, May 23rd, 2011,
11 op-ed in the *Wall Street Journal*, Secretary Kobach
12 repeated what he stated earlier in an op-ed in 2012 in
13 the *Topeka Capital Journal* that this was a case of
14 non-citizen fraud.

15 He repeated it again on a July 8th, 2011
16 op-ed in the *Washington Post*, which, of course, has a
17 national audience; in a 2012 Syracuse law review
18 article; in a June 29th, 2013 op-ed in the *Wichita Eagle*
19 he repeated it; in testimony before a subcommittee of
20 U.S. House Committee on Oversight and Government Reform
21 on February 12th, 2015; and again in an interview with a
22 nationally syndicated radio host, John Hockenberry, in
23 October 21st, 2015, which is five years after it was
24 decided that it was not fraud.

25 Q. Now, you mentioned that you reviewed other

1 allegations in your report?

2 A. Yes.

3 Q. What patterns do you observe from your review of
4 these allegations?

5 A. They fall into the categories that I found
6 before, which is that while there are -- and what I
7 stated before was my opinion that there were a handful
8 of non-citizens who have gotten on the registration
9 rolls in Kansas over the last 20 years. But the
10 allegations that I investigated, which I think are the
11 major -- the most that we could find here in Kansas are
12 mostly either false or unsubstantiated.

13 Q. One source that you have stated that you've used
14 in your voter fraud research is prosecutions. How did
15 prosecutions inform your analysis in this case in
16 Kansas, if at all?

17 A. Well, at the time that I wrote my initial report,
18 there had been only six indictments or prosecutions by
19 Secretary Kobach, who received the authority to
20 prosecute these cases in 2015.

21 So I -- you know, I -- Secretary Kobach had
22 been in office for a number of years. And even if he
23 didn't have prosecutorial power, he would -- could -- he
24 could convene commissions to -- a commission, or he
25 could bring experts in, or he could, you know, bring

1 people in to document what he said was a pervasive
2 problem.

3 And then at the point at which he got the
4 prosecutorial power, even though there might have been a
5 statute of limitations on some of the things they might
6 have found, he could have brought more. And, you know,
7 I think it's a very small number of cases that have been
8 brought.

9 Q. How do you evaluate that information in the
10 context of what you were asked to do in this case?

11 A. Well, it's consistent with what I found in all of
12 the other kinds of data or evidence that I was able to
13 look at, which included the news reports, the other
14 government records, the -- whatever it was presented at
15 hearings and so forth, the affidavits from election
16 officials, for example. And that is that, as I said,
17 there are a handful of cases of non-citizens who appear
18 to have gotten onto the registration rolls but that most
19 of this appears to be -- not most -- at least some,
20 we'll say at least some, although some cases it looks
21 like most, are either administrative error or
22 unsubstantiated -- the allegations are unsubstantiated.

23 Q. I'd like to turn to your review of the Sedgwick
24 County spreadsheets and its various iterations and
25 underlying voter registration documents. I know that

1 you discuss many of these entries throughout your
2 reports in this case, but I'd like to ask questions
3 about just a few.

4 I'd like to publish previously admitted
5 Defendant's Exhibit 1133, the January 28th Sedgwick
6 County -- January 2018 Sedgwick County spreadsheet on
7 the screen, which is under Tab 6 of your binder. And
8 I'd like to direct your attention, Dr. Minnite, to
9 Applicant ID 5772434, which is on page 5, row 2 of
10 Defendant's Exhibit 1133. Can we publish that?

11 Now, would you, please, turn to Tab 7 of
12 your binder, which has been -- had previously been
13 admitted as Plaintiffs' Exhibit 101, redacted ELVIS
14 registrant details for GR, which is -- and can we put
15 the first page of this document on the screen alongside
16 the Sedgwick County spreadsheet.

17 And, Dr. Minnite, what is the number on the
18 first page of Plaintiffs' Exhibit 101, the redacted
19 ELVIS registrant details for GR?

20 A. 5772434.

21 Q. Are you familiar with this ELVIS registrant
22 details document?

23 A. Yes.

24 Q. And what is this document?

25 A. The ELVIS records for the case that's reported on

1 the summary sheet.

2 Q. For this particular registrant?

3 A. Yes.

4 Q. Did you -- and was this attempted registrant one
5 of the individuals on the Sedgwick spreadsheets that you
6 had reviewed?

7 A. I think so by the date.

8 Q. Can you take a look through the document and tell
9 us what the source of registration for this -- what the
10 source of registration for this applicant entry is?

11 A. Well, it says on page 4, which is the screenshot,
12 I suppose, or the record, under "source," it says "Motor
13 Vehicle offices." And it also says that on the -- as I
14 recall, on the spreadsheet, if I can find it.

15 Q. Page 4 of the PDF.

16 A. Yes. On the spreadsheet, it says "Motor Vehicle
17 Office in person."

18 Q. And page 4 of the document you were looking at
19 before, what is that document, as you understand it?

20 A. As I understand it, it's a voter registration
21 record for that person.

22 Q. Okay. And can you read what appears to be a
23 notes field at the bottom of the page, on page 4 of
24 Plaintiffs' Exhibit 101? And can we focus on that on
25 the screen?

1 A. There's a date, 3/7/16, and a name redacted "came
2 into the office with a POC notification letter and
3 stated that her registration was a mistake on the part
4 of the DMV when she renewed her license. She is not a
5 U.S. citizen. She filled out a cancellation form."

6 Q. Based on the documents in this exhibit,
7 Plaintiffs' Exhibit 101, what can you tell about whether
8 this individual signed an oath indicating that the
9 registrant was a citizen at the time of submitting a
10 registration application?

11 MR. ROE: Your Honor, I would like to
12 register an objection. This is outside the scope of her
13 expert report, and she's not an expert in reviewing
14 ELVIS files.

15 THE COURT: Overruled.

16 MR. ROE: It's beyond her designation.

17 THE WITNESS: We can't tell that from this
18 record.

19 BY MS. LAKIN:

20 Q. In the context of what you were asked to do in
21 this case, how do you evaluate this information that
22 you've reviewed?

23 A. Well, in this case, I would take its face value.
24 The note was indicating that this was a mistake. There
25 was an administrative mistake made and that the person

1 is not a citizen, and she'd followed up by cancelling
2 the registration.

3 Q. Now, turning back to Defendant's Exhibit 1133,
4 the January 2018 Sedgwick County spreadsheet, which is
5 under Tab 6 of your binder, I would now like to direct
6 your attention to Registrant ID 5660352, which is on
7 page 3, row 10 of this document. Can we publish this up
8 on the screen?

9 Now, would you, please, turn to Tab 8 of
10 your binder, which has been previously admitted as
11 Plaintiffs' Exhibit 97 redacted ELVIS registrant details
12 for BC. And can we put the first page of that document
13 on the screen?

14 Dr. Minnite, what is the number on the first
15 page of Plaintiffs' Exhibit 97, the redacted ELVIS
16 registrant details for BC?

17 A. 5660352.

18 Q. Are you familiar with this document?

19 A. Let me check. Yes.

20 Q. What is the document?

21 A. The document also appears to be registration
22 records for the -- the individual numbered 5660352.

23 Q. Was this also one of the attempted registrants on
24 the Sedgwick spreadsheets that you reviewed in preparing
25 your reports for this case?

1 A. Yes.

2 Q. I'd like to ask you to turn to page 4 of
3 Plaintiffs' Exhibit 97. And can we bring this page up
4 on the screen? We can also remove the spreadsheet.

5 Can you tell us what this page is?

6 A. This appears to be a copy of the voter
7 registration application that's attached to the ELVIS
8 records.

9 Q. Can we focus in on the top row on this page. Can
10 you tell us what you see?

11 A. Yeah. They had two questions about citizenship
12 and age, and neither one of the boxes, "yes" or "no,"
13 are checked for those questions.

14 Q. And can we bring -- can you now turn to page 3 of
15 this exhibit. And can we bring that page up on the
16 screen.

17 And what does this page appear to be?

18 A. This appears to be a continuation of the
19 registration record.

20 Q. Focusing on what appears to be the notes field,
21 again at the bottom of this page, can you tell us what
22 the first line in the notes fields say? And can we
23 focus on that up on the screen, the first line in the
24 notes field.

25 A. "Incomplete application. Need two questions."

1 Q. And can you tell us what the entry for the date
2 for -- for the date 5/23/2014 says?

3 A. "Called" name redacted "at 12:41 p.m." Name
4 redacted "informed me that she is not a citizen. I am
5 sending her a voter registration cancellation form, and
6 she will send it back to me ASAP."

7 Q. In the context of what you were asked to do in
8 this case, how do you evaluate this information?

9 A. This would fall into the category of most likely
10 a kind of mistake or confusion on the part of the
11 applicant.

12 Q. Now, turning once again back to Defendant's
13 Exhibit 1133, the January 28 Sedgwick County -- January
14 2018 Sedgwick County spreadsheet, which is, again, under
15 Tab 6 of your binder, I'd like to direct your attention
16 to Registrant ID 5642186, which is on page 4 of the
17 document, last row. Can we publish that on the screen.

18 And now would you turn to Tab 9, which has
19 been -- which has previously been admitted as
20 Plaintiffs' Exhibit 100, redacted ELVIS registrant
21 details for AF. And can we bring the first page of that
22 document on the screen alongside. Thank you.

23 Dr. Minnite, what is the number on the first
24 page of Plaintiffs' Exhibit 100?

25 A. 5642186.

1 Q. And is this another set of voter registration
2 records for a registrant on the Sedgwick County
3 spreadsheet that you've reviewed?

4 A. I -- that's -- it appears to be documents related
5 to the registration. There's also an e-mail and then
6 the registration record on -- I guess on page 7.

7 Q. Did you review these documents in preparing your
8 reports in this case?

9 A. Yes.

10 MR. ROE: Objection, Your Honor. Can I just
11 say -- clarification. When you say "reviewed your
12 reports," are you talking about the four new entries
13 that were on the spreadsheet?

14 MS. LAKIN: I'm not.

15 MR. ROE: Okay. Are you talking about the
16 most recent spreadsheet when you say "reviewing your
17 reports?"

18 MS. LAKIN: I'm talking about whether or not
19 she has reviewed these particular entries --

20 MR. ROE: Okay.

21 MS. LAKIN: -- on a spreadsheet that she had
22 reviewed in preparing her reports in this case, as well
23 as the underlying documents that were provided for those
24 particular registrants at the time.

25 MR. ROE: Okay.

1 BY MS. LAKIN:

2 Q. Can you turn to page 5 of Exhibit -- Plaintiffs'
3 Exhibit 100. Can you tell us what this page is?

4 A. This is an e-mail chain between Ms. Tabitha
5 Lehman and others, including Kris Kobach and Garrett
6 Roe.

7 Q. And can you read at the top of the page the
8 description provided for 5642186?

9 A. "I assume that" name redacted "came into our
10 office on 10/2/2015 to provide proof of citizenship but
11 gave my staff a resident alien card. When asked if he
12 was a U.S. citizen, he said no. He attempted to
13 register at the Motor Vehicle Office on 9/23/2013 but
14 was placed in suspense for proof of citizenship. He was
15 responding to our final notice that we sent last week.
16 He completed a request to cancel his registration. He
17 made no attempt" -- I think that's to vote.

18 Q. In the context of what you were asked to do in
19 this case, how do you evaluate this information?

20 A. It falls into the category of, again, voter
21 confusion, you know, possibly administrative mistake.

22 Q. Now, I know that we discussed just a few of the
23 registrants that were included on the various versions
24 of the Sedgwick County spreadsheets that you reviewed in
25 preparing your reports for this case. Do you discuss

1 more of these registrants in any of your reports?

2 A. Yes.

3 Q. And did that review include applicants on this
4 spreadsheet or on Ms. Lehman's personal spreadsheet that
5 were discussed during Ms. Lehman's testimony?

6 A. Yes.

7 Q. Can we pull up previously admitted Plaintiffs'
8 Exhibit 80, the Kansas voter registration application of
9 an applicant we have referred to as Ms. EE, registrant
10 ID 5742049. It's not in your binder. It's on the
11 screen.

12 Did you review the sources provided by the
13 defendant for Sedgwick County -- did the review of your
14 sources provided by the defendant for Sedgwick County
15 include the information here for Ms. EE?

16 A. Yes.

17 Q. And can you describe what you see on this screen?

18 A. So this person answered the citizenship question
19 "no" and then appears to have signed at the bottom.

20 Q. Can we pull up previously admitted Plaintiffs'
21 Exhibit 99, the redacted ELVIS registrant details for an
22 applicant we have referred to as Ms. AS, Registrant ID
23 5657157. And can we turn to pages 4 and 5 of this
24 exhibit on the screen and focus in on the second e-mail
25 on page 5.

1 A. Is this Tab 9?

2 Q. It's not in your binder, so you have to look on
3 your screen. I apologize.

4 A. Okay.

5 Q. Did your review of the sources provided by the
6 defendant for Sedgwick County include the information
7 for Ms. AS?

8 A. Yes.

9 Q. And can you -- can you remind us what is stated
10 on these two pages?

11 A. So the record on the left of the screen appears
12 to be a return from the request for proof of citizenship
13 notification with handwritten that says "please put on
14 your record that I am not a citizen." "Am not" is
15 underlined. "I cannot vote," which is underlined.
16 "Thank you."

17 Q. And in the e-mail?

18 A. And then the e-mail, which is from Brad Bryant to
19 Tabitha Lehman, dated March 28th, 2014 says, "I think
20 you did the right thing cancelling the registration. I
21 just wish DMV would not register people who they know to
22 be non-citizens."

23 Q. And can we turn -- can we pull up previously
24 admitted Plaintiffs' Exhibit 98, the Kansas voter
25 registration application of an applicant we have

1 referred to as Ms. MM, Registrant ID 5733764. And can
2 we turn to page 2 of this exhibit on the screen.

3 Did your review of the sources provided by
4 the defendant for Sedgwick County include the
5 information for Ms. MM?

6 A. Yes.

7 Q. And can you describe what you see on the screen?

8 A. This Kansas voter registration application, the
9 two questions at the top regarding qualifications, "are
10 you a citizen of the United States," and "will you be
11 18 years of age on or before election day" are not
12 checked.

13 Q. In the context of what you were asked to do in
14 this case, can you give us an overview of how you, as a
15 political scientist, evaluate this evidence of
16 successful and attempted registrations by non-citizens
17 in Sedgwick County?

18 A. Yes. I think that, as I said, although there
19 appear to be a handful of non-citizens who have gotten
20 registered in Sedgwick County, the cases -- there are
21 numerous cases of what appear to be administrative error
22 or voter confusion that explain some of that. And
23 that -- that is consistent with what I have found
24 elsewhere.

25 Q. And by "elsewhere," do you mean --

1 A. In other studies including in other cases, but in
2 general in my research on voter fraud that there are
3 administrative errors. I think we heard yesterday from
4 election officials in Kansas that administrative errors
5 happen, and that is normal. That happens everywhere.
6 So that's -- it's not a freak thing that there might be
7 some mistakes made at agencies, state agencies in
8 Kansas. It happens all the time everywhere.

9 So those are better explanations for how
10 ineligible people have gotten on the rolls in Sedgwick
11 County than fraud, which would be an intentional attempt
12 to deceive or to vote illegally or fraudulently.

13 Q. And with respect to this case in particular, is
14 your conclusions and observations with respect to the
15 Sedgwick County information consistent with patterns
16 that you saw from your analysis of other sources in this
17 case?

18 A. Yes.

19 Q. And I think we've mentioned --

20 You were in the courtroom when Ms. Lehman
21 testified on -- yesterday and Wednesday; is that
22 correct?

23 A. Yes.

24 Q. And you were in the courtroom when Mr. Caskey
25 testified today and yesterday as well?

1 A. Yes.

2 Q. And does their testimony change any of the
3 opinions you offer as a political scientist in this
4 case?

5 A. No. I think it actually strengthens those
6 findings because they had to admit to or to -- they
7 referred to some mistakes, administrative mistakes that
8 had happened. So I -- it doesn't change my opinion.

9 MS. LAKIN: Thank you. I have no further
10 questions for Dr. Minnite at this time.

11 MR. JOHNSON: Your Honor, I have no
12 questions.

13 CROSS EXAMINATION

14 BY MR. ROE:

15 Q. Miss Minnite, you mentioned that you reviewed the
16 ELVIS files for the underlying data; is that correct?

17 A. For what?

18 Q. For -- in your report.

19 A. I reviewed ELVIS files for the Sedgwick County
20 spreadsheet cases that I saw.

21 Q. Okay. And that was from the two thousand -- that
22 was from the previous one just before -- that was for
23 your third report, right, you saw -- you reviewed all
24 the ELVIS -- ELVIS records that you had from the -- your
25 third report, your 2017 report?

1 A. Well, I -- I reviewed the ELVIS records for the
2 cases that were on the spreadsheet that I was provided
3 when I wrote my reports.

4 Q. Okay. And do you recall approximately when you
5 wrote your third report?

6 A. The third report is dated June 10th, 2016.

7 Q. And do you recall that there were 31 names on
8 that spreadsheet -- I'm sorry -- yeah, 31 names on that
9 spreadsheet? I believe it's on page 17 of your report.

10 A. Page -- I didn't hear you.

11 Q. Seventeen.

12 A. Seventeen. The third report only has 16 pages.
13 I'm not sure which report you're looking at.

14 Q. Sorry. This is Tab 5.

15 A. Oh, that's the fourth report.

16 Q. Oh, I'm sorry. The fourth report.

17 A. So the date for the fourth report is March 15th,
18 2017.

19 Q. Okay. And it's correct that you -- you reviewed
20 31 ELVIS files for that report?

21 A. Yes.

22 Q. Okay.

23 A. It's my understanding that I had whatever ELVIS
24 records I had at that time for that report.

25 Q. Do you recall if there were any ELVIS files that

1 had -- you saw earlier on the screen -- for instance,
2 go -- go back to Tab 8. Do you see there's a cover page
3 with the number 5660352?

4 A. Yes.

5 Q. Do you recall if there were any ELVIS files that
6 had a cover page but the number was written?

7 A. You know, it's very hard for me to remember
8 exactly when I saw what. I can kind of tell you as a
9 comprehensive picture over the period of the four
10 reports what I saw, but I'm not sure I can precisely
11 identify when exactly I saw what.

12 Q. Have you ever seen any that had a handwritten
13 number on the front for a cover page, to your
14 recollection?

15 A. A handwritten number?

16 Q. Instead of a printout like that?

17 A. I don't know.

18 Q. You don't recall if you ever saw that?

19 A. I don't.

20 Q. Okay. Earlier you testified about -- let's get
21 some initial things first.

22 You do not consider yourself to be a
23 statistician; correct?

24 A. I wouldn't call myself a statistician, no. I'm
25 trained as a political scientist.

1 Q. And you've never been an election administrator?

2 A. That's correct.

3 Q. You've never worked as a DMV clerk?

4 A. Correct.

5 Q. You've never worked in an election office at all?

6 A. I've been a poll worker, but I haven't worked in
7 an election office.

8 Q. So your experience involving election
9 administration is based on your research, not any
10 particular real-world experience; correct?

11 A. That's correct.

12 Q. You've also never been a prosecutor?

13 A. Correct.

14 Q. But you're not disputing that there's evidence
15 that some non-citizens have registered to vote in
16 Kansas?

17 A. Could you say that again?

18 Q. You're not disputing that there is evidence of
19 some non-citizens having registered to vote in Kansas?

20 A. That's correct.

21 Q. You've not calculated how many non-citizens have
22 registered to vote in Kansas?

23 A. Over what period of time?

24 Q. In your -- in your report?

25 A. Well, in my report, I report on different numbers

1 from different sources of data. So if you could be
2 more --

3 Q. But you do not offer -- you do not offer a number
4 of how many non-citizens have registered in Kansas;
5 correct?

6 A. I'd have to look but -- I have reported different
7 numbers from different sources, so can you --

8 Q. Okay. Let me rephrase it this way: You don't
9 attempt to -- okay. Go ahead and look. Yes, go ahead
10 and look.

11 A. I don't come to a conclusion on a hard number.

12 Q. Okay. And you've not calculated how many
13 non-citizens have attempted to vote in Kansas, right, in
14 your reports?

15 A. I -- I have reported what some official sources
16 have provided evidence for.

17 Q. But you've not calculated how many non-citizens
18 have attempted to vote in Kansas; right?

19 A. Attempted to vote or vote?

20 Q. Attempted to vote.

21 A. No.

22 Q. Okay. You did not calculate the rate of
23 non-citizen registration in your book *The Myth of Voter*
24 *Fraud*?

25 A. The rate of non-citizen registration?

1 Q. Uh-huh. In your book?

2 A. For what period of time are we talking about?

3 Q. In your book -- in your book, *The Myth of Voter*
4 *Fraud*, you did not calculate the rate of non-citizen
5 registration; correct?

6 A. You know, a rate is specific to sort of a bounded
7 period or a bounded universe of information, so I'm --

8 Q. Have you --

9 A. It's a little hard to just talk about a rate.

10 Q. Have you updated your book since your deposition,
11 your second deposition?

12 A. No.

13 Q. Okay. So at least as of the time of your
14 deposition, which I assume would be now as well, you did
15 not calculate the rate of non-citizen registration in
16 your book *The Myth of Voter Fraud*; correct?

17 A. That's correct, but I -- I just want to try to
18 get you to be more specific when you ask me a question
19 like that because I -- you know, I can calculate rates
20 for different periods of time, but I didn't calculate a
21 rate, to answer your question.

22 Q. Okay. So that's a no, you did not?

23 A. Not a rate, no.

24 Q. Thank you. And in -- in preparing your reports,
25 you never spoke to any Kansas legislatures -- Kansas

1 legislators regarding their vote for the SAFE Act, did
2 you?

3 A. No.

4 Q. You testified earlier about some of the -- the
5 cases in which you -- the cases in which you testified.
6 Do you remember that?

7 A. Do you mean court cases? Yes.

8 Q. Yes, the court cases. And you mentioned the
9 *ACORN* case?

10 A. Yes.

11 Q. And I believe you said that you testified as a
12 fact witness?

13 A. Yes.

14 Q. And can you remind us again what you said was the
15 reason why -- initially you were offered as an expert;
16 correct?

17 A. That's correct.

18 Q. But your expert -- your expert report was -- or
19 your expert testimony was withdrawn and you were offered
20 as a fact witness instead?

21 A. That's correct.

22 Q. And do you recall why you said you were offered
23 to testify as a fact -- why you were -- what the court
24 said about you testifying as a fact witness? Do you
25 recall what the court -- okay. Go ahead.

1 A. I'm --

2 MS. LAKIN: Objection to the extent that it
3 mischaracterizes Dr. Minnite's testimony. She
4 didn't testify about that.

5 MR. ROE: Do you recall -- I can rephrase.

6 THE COURT: Reframe the question.

7 BY MR. ROE:

8 Q. Do you recall if the court made any mention about
9 your testimony?

10 A. The -- the court, just in a sense, sort of
11 acknowledged that I had testified as a -- I guess as a
12 fact witness on -- but didn't say anything more except
13 in a footnote had to respond, I suppose -- I mean, I
14 don't understand the legal process that well but that
15 there was this motion to exclude that the judge had to
16 rule on. So in the footnote he granted the motion, but
17 it didn't make sense to me because I wasn't an expert.
18 So I didn't quite understand how I could be excluded as
19 an expert if I wasn't actually admitted as an expert.
20 So it seems a little confusing.

21 Q. So do you recall the court criticizing your use
22 of a compendium of news stories?

23 A. The only thing that I testified to was a table
24 that summarized news stories. That was the only portion
25 of the report that I wrote which actually looked at

1 investigation -- investigatory records I'd received from
2 the State Election Enforcement Commission in
3 Connecticut. But that wasn't brought into the case.
4 The only thing that I testified was a table that
5 summarized news stories.

6 Q. Do you recall -- do you recall that the court
7 stated that, Professor Minnite's fact testimony
8 exhibits -- it notes their value, if any --

9 MS. LAKIN: Your Honor, he's just reading
10 from the court opinion without establishing --

11 THE COURT: Why don't you show it to her.

12 MR. ROE: Okay. I can do that. Sorry.

13 BY MR. ROE:

14 Q. Do you recall that now?

15 A. Yes.

16 Q. So what did the court say about your -- your
17 testimony exhibits?

18 A. It says, "Professor Minnite was originally
19 offered as an expert witness, but she was withdrawn as
20 an expert after defendant challenged her expertise on
21 the topic for which she was proffered.

22 In essence, the basis for the opinion that
23 Professor Minnite had intended to offer at trial was a
24 compendium of articles and news reports concerning
25 election fraud that she pulled from a selection of

1 electronic databases.

2 Defendant continues to object to Professor
3 Minnite's compendium of news stories as well as her
4 testimony as improper lay opinion. Although the court
5 will not exclude Professor Minnite's fact testimony and
6 exhibits, it notes that their value, if any, is
7 extremely limited since the existence or non-existence
8 of published articles respecting voter fraud does not
9 constitute actual evidence as to the prevalence of voter
10 fraud. And, in any event, as noted below, states need
11 not wait for an outbreak of voter fraud in order to take
12 measures to try to prevent it from occurring in the
13 first place."

14 Q. I think you also -- did you testify earlier that
15 you -- you testified in other cases as well?

16 A. Yes.

17 Q. You testified in *North Carolina State Conference*
18 *of the NAACP versus McCrory*?

19 A. Yes.

20 Q. Do you recall what the court said about your
21 testimony in that case?

22 A. Well, you could show it to me because it -- it
23 went on for more than a page.

24 Q. It was quite an opinion.

25 MS. LAKIN: Mr. Roe, can you, please, tell

1 us as well what page you're on?

2 MR. ROE: It's on page 441 of the opinion.

3 THE COURT: What page?

4 MR. ROE: Page 441 of the opinion, 182
5 F.Supp.320.

6 THE WITNESS: Is there a page number at the
7 bottom that you could pull out?

8 MR. ROE: Yes.

9 THE WITNESS: Very lengthy opinion, running
10 on 80 pages.

11 MR. ROE: It's a very lengthy opinion.

12 Apologize, Your Honor, I'm trying to pull up the
13 document right now. Page 83 of the PDF.

14 BY MR. ROE:

15 Q. You see what it said about your trial testimony
16 there in the first paragraph -- the second paragraph
17 that starts with "In Support," starting with the
18 sentence, "even Dr. Minnite"?

19 A. In support -- the whole thing?

20 Q. No, just -- just where it starts "even
21 Dr. Minnite" right before the number 442.

22 MS. LAKIN: Objection, Your Honor.

23 Defendant is simply asking the -- the witness to read
24 various --

25 MR. ROE: Your Honor, okay.

1 MS. LAKIN: -- opinions into the record with
2 no basis for asking the question --

3 MR. ROE: I asked her -- let me rephrase.

4 MS. LAKIN: -- to read particular parts of
5 that opinion.

6 MR. ROE: That's fine. Don't worry about
7 reading that right now.

8 BY MR. ROE:

9 Q. So after -- can you, please, read it to yourself
10 and let me know if it refreshes your -- what the court
11 said about your testimony.

12 A. I mean, it goes on to the other page. Do you
13 want me to read --

14 Q. You would agree, then, that the court has stated
15 you conceded in a previous case that -- that while there
16 was a risk of voter fraud, it's real in a sense that it
17 could happen; correct?

18 A. Yes.

19 Q. Okay. Sorry. I guess I could ask that, huh?

20 And you also testified that you -- you
21 testified in *Lee versus Virginia State Board of*
22 *Elections*?

23 A. Yes.

24 Q. Do you recall if there was a motion to exclude
25 your expert testimony in that case?

1 A. Yes.

2 Q. Do you recall what the court said?

3 A. No.

4 Q. If I hand you a copy of it, would that help?

5 A. Thank you.

6 Q. On the second page, the -- the sixth paragraph,
7 starting with "Dr. Minnite's viewpoint." Basically, the
8 end of that opinion --

9 A. Yes.

10 Q. -- or almost?

11 Is it correct -- do you -- do you agree with
12 the *Crawford* opinion?

13 MS. LAKIN: Objection, relevance to whether
14 or not she agrees with it.

15 THE COURT: I'll sustain.

16 BY MR. ROE:

17 Q. You're here to testify about voter fraud;
18 correct?

19 A. Say that again.

20 Q. You're here to testify about your expertise
21 involving voter fraud of some kind?

22 A. Yes.

23 Q. Okay. And did you -- in the -- in the *Crawford*
24 case, did you submit anything to the Supreme Court?

25 A. I was a amicus signatory.

1 Q. Okay. Have you written any reports since the
2 *Crawford* opinion?

3 A. Reports on what?

4 Q. Expert reports in cases --

5 A. Yes.

6 Q. -- since the *Crawford* opinion? Did you submit an
7 expert report in this case?

8 A. Yes.

9 Q. I'm sorry, in the *Lee* case, the *Lee versus*
10 *Virginia Board of Elections*?

11 A. Yes.

12 Q. Okay. And is it correct that the court -- is it
13 correct then that in your report, did you -- do you
14 disagree with the *Crawford* opinion as it -- as it
15 discusses voter fraud?

16 MS. LAKIN: Same objection, Your Honor.

17 THE COURT: I don't -- well, I'm not
18 understanding.

19 BY MR. ROE:

20 Q. All right. In your expert report in the *Lee*
21 case, did you -- did you cite to the *Crawford* opinion?

22 A. I don't remember. You'd have to show me that.

23 Q. We'll get back to that. Okay. That's fine.

24 All right. So let's talk about your
25 definition of voter fraud. You said you defined it as

1 the corruption of the electoral process of the voter; is
2 that right? The corruption of the electoral process by
3 the voter?

4 A. Intentional.

5 Q. The intentional corruption of the electoral
6 process by the voter, excuse me.

7 It's your view that what matters is the
8 voter's knowledge that his or her action's unlawful?

9 A. In a definition of fraud, yes.

10 Q. And, in other words, an act can be technically
11 legal but not fraud?

12 A. That is correct.

13 Q. Okay. So illegality encompasses voter fraud, but
14 voter fraud does not encompass illegality; correct?

15 A. No. I'm not sure you got that right.

16 Q. I'm sorry. Illegality is broader than voter
17 fraud; correct?

18 A. Right. So there are -- there could be things
19 that are illegal that are not fraudulent, but everything
20 that's fraudulent is illegal.

21 Q. Okay. And so under your definition then of voter
22 fraud, the fact that a non-citizen registers to vote in
23 Kansas would not by itself constitute voter fraud;
24 right?

25 A. Right.

1 Q. Okay. But you would agree that in Kansas,
2 non-citizens are not permitted to register to vote?

3 A. Correct.

4 Q. Okay. And if -- under your definition, if a
5 non-citizen voted in Kansas, that by itself also would
6 not constitute voter fraud?

7 A. Well, it could. You'd have to know something
8 about the circumstances.

9 Q. But if that's all we knew, it would not
10 necessarily be voter fraud?

11 A. What do you mean, if that's -- if you mean if
12 just know --

13 Q. Yes.

14 A. -- that there's a vote and it was cast by a
15 non-citizen --

16 Q. Yes.

17 A. -- you'd know it was illegal, yeah.

18 Q. Okay. But it wouldn't necessarily be fraud?

19 A. We wouldn't --

20 Q. Okay.

21 A. -- know necessarily.

22 Q. You'd also agree with me that someone could
23 commit your definition of voter fraud, but -- you know,
24 for instance, a non-citizen knowingly casts a ballot, he
25 knows he's not supposed to do it, you would agree that's

1 voter fraud?

2 A. Yes.

3 Q. Okay. But you'd also agree that it's possible
4 that a county official may not learn of that voter
5 fraud; right?

6 A. It's possible.

7 Q. Okay. And kind of the inverse of that, you'd
8 agree that if a -- if an individual who is a non-citizen
9 didn't realize that he couldn't vote but he did vote
10 anyway, that may not be voter fraud?

11 A. It may not, but it would be illegal.

12 Q. Right. Okay. And, again, that's because your
13 definition of voter fraud requires an individual to have
14 knowledge of the illegality?

15 A. I want to stress it's not some idiosyncratic my
16 definition. It's -- it's -- the word fraud has a
17 meaning, and that meaning is that there's intent behind
18 it. And that's actually what Kansas laws are with
19 respect to illegal voting as well. So I -- you keep
20 saying my definition, but, you know, it's not like it's
21 a freak definition. It's a word that has some -- you
22 know, has meaning. So intent is important --

23 Q. Can I just clarify --

24 A. -- in distinguishing fraud from something that's
25 just illegal.

1 Q. Can I clarify one thing?

2 A. Sure.

3 Q. So do you think that Kansas law does not make it
4 a crime for somebody who's a non-citizen to vote if
5 they -- if they didn't know they weren't supposed to?

6 A. No. I --

7 Q. Okay. So then you said it's in Kansas law. So
8 you would say Kansas law is still, as far as illegality,
9 is broader than the definition of voter fraud you cite
10 in your report?

11 A. Well, Kansas -- I mean, I -- you know, I don't
12 have it in front of me, but -- but I have looked at the
13 election crimes portion of the Kansas Election Code and
14 most of the things that we call voter fraud, so voting
15 more than once or something like that, it's knowingly
16 doing it is part of that. That's all I'm saying.

17 Q. So is it your belief that your definition of
18 voter fraud and the word knowingly in the Kansas statute
19 are the same?

20 A. To the extent that intent is part of the
21 definition of fraud.

22 Q. Can you explain to me what your definition --
23 what your understanding of intent is in the Kansas law?

24 A. When it says knowingly, for example.

25 Q. Uh-huh.

1 A. But I don't have the law right in front of me, so
2 I can't cite the language.

3 Q. Okay. Okay. Well, we can get it here for you in
4 a little bit. And maybe we should come back to this.
5 I'm curious on that.

6 Okay. I do have a question. Have you ever
7 heard of the term statutory notice?

8 A. I don't know.

9 Q. So you don't know what that is?

10 A. I don't think I could give you a good definition
11 of it.

12 Q. Okay. Have you ever heard of the theory
13 ignorance of the law is not a defense?

14 A. Yes.

15 Q. What do you understand that to mean?

16 A. In general, that there can be some things -- some
17 crimes you can commit, you can't just say I didn't know
18 about it so --

19 Q. So --

20 A. But I'm not a lawyer, so I -- I wouldn't want to
21 venture too far into those sorts of -- definition of
22 legal terms that way.

23 Q. Okay. So, again, going back to your definition
24 of voter fraud -- hold on one second. Let's just get
25 back to this in a second.

1 So then you would agree with me, right, that
2 state criminal codes impose penalties on behavior that
3 arise from recklessness rather than intentional?

4 A. I don't know.

5 Q. Okay. So let's look -- let's put it this way:
6 So let's say a non-citizen registers to vote in Kansas,
7 right. Let's say they -- they quickly read through the
8 application, read through the attestation but don't
9 really comprehend that -- what the attestation says, and
10 they sign it. Would that constitute voter fraud?

11 A. If it's -- you're talking about the registration
12 application --

13 Q. Uh-huh.

14 A. -- and they got registered?

15 Q. Say they supplied -- yes, yes, they got
16 registered. They checked the boxes and they got
17 registered.

18 A. Right.

19 Q. But they didn't realize they couldn't do that.

20 A. It would be illegal.

21 Q. But would it be voter fraud?

22 A. Well, you'd have to know a little bit more. Like
23 in some of the cases we were looking at before, we had
24 some notes that helped give us some context to those
25 cases but --

1 Q. I'm -- this is -- this is the context.

2 A. I don't know -- I don't know in that case if it's
3 fraud, but it's illegal.

4 Q. So let's say the individual called the county
5 election office and said I didn't know that I couldn't
6 register to vote, then would it be voter fraud?

7 A. It may or may not be.

8 Q. Okay. How much farther do we need to go before
9 it becomes voter fraud?

10 A. Well, we have prosecuted cases of voter fraud
11 and -- in which -- and even I can think of one from that
12 Ballot Access and Voting Integrity Initiative where a
13 person was convicted of a crime that we could call voter
14 fraud. And so I would call it voter fraud if the court
15 adjudicated it, whether the person said I didn't know
16 about it or not. I would -- I would tend to defer to
17 the -- the court decision based on the findings that --
18 and the evidence that had been brought into that process
19 of deciding.

20 Q. Okay. So then if somebody's convicted of a
21 crime, then it's voter fraud?

22 A. It could be.

23 Q. So even a conviction may not be voter fraud?

24 A. Well, I would count it that way. I mean, if
25 it -- if that was what they were convicted of, that's

1 how I would categorize it. But the categories of fraud
2 and illegal are very close together because one is a
3 subset of the other, and the line is sometimes a little
4 bit hard to figure out.

5 Q. What if somebody pled to a crime, would that be
6 considered voter fraud?

7 A. I would think if they're -- they're pleading
8 guilty, then they're admitting to the crime.

9 Q. Do you know if -- and you said you've never been
10 a prosecutor; correct?

11 A. Correct.

12 Q. Do you know whether individuals plead guilty to
13 avoid a trial?

14 A. I was told that when I interviewed people in the
15 federal defenders program in Milwaukee by attorneys who
16 were dealing with some cases there that they actually
17 had advised their clients to plead guilty even though
18 they weren't -- they didn't think that they -- they
19 were.

20 Q. So then it's -- would you agree it's possible
21 then that somebody could plead guilty and it still not
22 be --

23 A. It's possible.

24 Q. Okay. Do you believe that voting by a
25 non-citizen is a victimless crime?

1 A. What do you mean by a "victimless crime"?

2 Q. Do you believe if a non-citizen votes that nobody
3 else -- nothing else is -- nothing's wrong with that, or
4 do you think that's okay -- or do you think that's okay,
5 first off?

6 A. No, of course I don't think it's okay.

7 Q. Okay. Do you think that anybody else is impacted
8 by non-citizen voting?

9 A. In -- I don't understand your question. What do
10 you mean "impacted"?

11 Q. Let me actually rephrase it.

12 A. I mean, I think in Kansas it's called a
13 non-person felony or whatever. But what do you mean by
14 "victimless crime"?

15 Q. Okay. Let me rephrase that slightly.

16 If a -- let's say a non-citizen votes and
17 it's in a close election and that one vote changes the
18 outcome of the election. Is that a problem?

19 A. Yes.

20 Q. Okay. If a -- if a non-citizen is told by a
21 community organizer that he can and should register to
22 vote and the non-citizen does so relying on that advice,
23 is that voter fraud?

24 A. You know, I don't know how that would be
25 prosecuted to know. I mean, if they -- if a non-citizen

1 registers to vote and they do it intentionally knowing
2 that they're not allowed to do it, it's fraud.

3 Q. But what if they don't know they're not allowed
4 to do it and somebody else tells them they're --

5 A. That might be something where there's a gray
6 line. You know, it could still be illegal. It would
7 still be illegal if they got registered.

8 Q. Okay. So what you're saying is -- correct me if
9 I'm wrong -- that in your definition of voter fraud, it
10 requires some kind of a judgment? You have to look at
11 the stuff and just make a judgment of whether or not
12 it's fraud?

13 A. The definition is really developed so that we can
14 try to measure the phenomenon. And so, you know, we
15 have to make choices about how to do it. And I think
16 I've tried to do it in a reasonable way. And I apply
17 it -- that definition consistently. So I don't
18 understand your question.

19 Q. You would agree that to determine whether it's
20 voter fraud, if you're looking at a specific case, you
21 have to make a judgment as to whether that's voter
22 fraud?

23 A. I would try. I would say that I can't always
24 tell exactly if it's voter fraud, but it -- I may -- I'm
25 looking at cases that -- where they're illegal, and I --

1 that's sort of part of the universe that I look at of
2 fraud. When I'm looking for fraud, I find illegal
3 activity, and then I try to figure out how much of that
4 might be actually fraudulent, where there was an intent
5 on the part of the voters to break the law.

6 Q. Okay. And you were -- and, again, I think you'd
7 agree with me -- I think you mentioned it fell-- you
8 looked at the chart in this -- in preparing your
9 reports, right, involving incidents -- well, you know,
10 let's come back to that actually. Sorry. I'll make a
11 note.

12 Okay. So, basically, what you're saying is
13 that somebody could be committing a crime but not
14 knowing they're committing a crime? Like, for instance,
15 speeding, right; somebody could speed and not know
16 they're speeding?

17 A. I suppose.

18 Q. Okay. So if somebody's driving a car and maybe a
19 tree branch or something is covering the speed limit
20 sign, and it goes down from 45 to 35 and they continue
21 to go 45, they might not know they're speeding; right?

22 A. That's true.

23 Q. But in that situation, the cop could still write
24 a ticket; correct?

25 A. I would assume.

1 Q. You would assume?

2 A. Well, I can tell you that it's happened to me
3 that -- and the cop didn't write a ticket, even though I
4 technically was speeding.

5 Q. Okay. Do you know why?

6 A. No. I was glad he didn't write it.

7 Q. Okay. But the same could be -- but you would
8 agree with me, though, that it is technically breaking
9 the law, right, even if you don't know it's breaking the
10 law?

11 A. Yes.

12 Q. Okay. And your definition of voter fraud is kind
13 of the same. You're trying to list through situations
14 that are not necessarily illegal but it's something that
15 the person knows they shouldn't be doing?

16 A. Well, as I said, it's more the other way. It's
17 more that the sort of larger category of illegal
18 captures that behavior. But as I looked into these --
19 the cases, and I looked into many of them in detail, I
20 discovered they were sort of more complicated. In other
21 words, there were people being convicted of essentially
22 voter fraud crime, even though that statute doesn't
23 exist -- doesn't tend to exist. It's not like in state
24 codes it says voter fraud, this is what it is, but
25 something else like a false statement or perjury or

1 whatever related to filing a -- a false application.

2 And so when I look into it, I look at -- I
3 take for -- at face value if there have been
4 prosecutions and convictions that that's what the person
5 was convicted of, whether I think that they committed
6 the crime knowingly or not. If they were convicted of
7 it, that's one category in the data where I would
8 identify that illegal activity as fraudulent.

9 Q. Let's turn to page 16 of your -- of your -- your
10 initial report. I'm sorry. Page 20 and 21 of your
11 initial report. Sorry. I had that wrong.

12 Do you recall looking at -- do you recall
13 looking at incidences of non-citizens casting ballots in
14 2008 or 2009 in your initial report?

15 A. Yes.

16 Q. Do you recall a -- looking into an issue with the
17 Sedgwick County District Attorney's office involving a
18 woman of Philippine birth who voted in the Wichita
19 primary?

20 A. Yes.

21 Q. Do you recall relying upon a statement by Nola
22 Foulston?

23 A. Yes.

24 Q. Who is Nola Foulston?

25 A. I believe that at the time she was a prosecutor.

1 Q. And the statement that you relied upon was simply
2 that she -- you know, I'm sorry. The statement that you
3 relied upon was simply that the person, the non-citizen,
4 felt like she was doing what she was supposed to do; is
5 that right?

6 A. Yeah. I quote Ms. Foulston telling the *Wichita*
7 *Eagle* editorial board, "she," referring to this woman of
8 Filipino birth, "felt that she was doing what she was
9 supposed to do."

10 Q. Okay. And you didn't speak to Ms. Foulston, did
11 you?

12 A. No.

13 Q. You didn't speak to the non-citizen either?

14 A. No.

15 Q. So would it be correct to say that your analysis
16 of that is simply what you read in that newspaper?

17 A. Yeah. It's not exactly analysis. I'm reporting
18 on this case.

19 Q. Okay. Would it be fair to say that many portions
20 of your expert report are simply looking at on-line news
21 sources and reporting what you read?

22 A. I looked at a lot of news stories, over -- almost
23 2,000 news stories, but my report is not based on just
24 news stories.

25 Q. Did you speak to anybody in those news stories in

1 your report?

2 A. No.

3 Q. Did you -- so then what else would it be based
4 upon if you're not -- I'm mean -- wait. Strike that.

5 Okay. Okay. So do you recall looking at
6 some Sedgwick County -- Sedgwick County charts in
7 these -- in your multiple reports; correct?

8 A. Spreadsheets.

9 Q. Yes, the spreadsheets?

10 A. Yes.

11 Q. Okay. So you don't deny that this -- that the
12 chart itself, which you reviewed, and I think you also
13 reviewed the underlying ELVIS data, you don't deny
14 that -- that illegal activity is present; correct?

15 A. Correct.

16 Q. It's just that a lot of it's not voter fraud in
17 your opinion?

18 A. The notes and information recorded there raise
19 questions about the context. For example, when somebody
20 uses an alien resident -- or resident alien card to show
21 proof of citizenship, that suggests to me that
22 somebody's kind of confused.

23 Q. Okay. And we're talking about that column with
24 the notes, did you understand that to be notes of the
25 county office? Some kind of explanation?

1 A. My understanding was, yes, they were notes
2 prepared by the election officials in Sedgwick
3 County or --

4 Q. And do you --

5 A. -- or the Secretary of State's Office, because I
6 believe this actually -- this spreadsheet at the back of
7 my report that we've been talking about in its multiple
8 iterations was produced by the Secretary of State's
9 Office based on the information from Sedgwick County
10 election officials.

11 Q. You'd agree that election -- county election
12 officials work hard?

13 A. Oh, absolutely.

14 THE COURT: Mr. Roe, if you're at a good
15 stopping point -- it doesn't have to be this very
16 minute, but let's break for lunch here shortly. I'm not
17 saying that you have to complete, just --

18 MR. ROE: Give me two minutes and I can
19 finish this line of questioning.

20 THE COURT: Okay. Sure.

21 MR. ROE: Okay. Actually, you know what,
22 let's just break now. Okay?

23 THE COURT: Sure. All right. Let's be in
24 recess until 1:15.

25 (Recess for the lunch hour.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: March 15, 2018

/s/Kimberly R. Greiner
KIMBERLY R. GREINER, RMR, CRR, CRC, RDR
United States Court Reporter