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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.

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STEVEN WAYNE FISH, et al.,  
Plaintiffs,

v. Docket No. 16-2105-JAR

KRIS W. KOBACH,  
Defendant.

Kansas City, Kansas  
Date: 03/13/2018  
Day 6 (P.M. Session)  
Pages 1650-1878  
.....

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

APPEARANCES:

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(Appearances continued on next page)

1 APPEARANCES:

2 (Continued)

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## JESSE RICHMAN

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1 (1:33 p.m., proceedings commenced).

2 THE COURT: All right. You can be seated.

3 JESSE RICHMAN,

4 called as a witness on behalf of the Defendant, having  
5 first been duly sworn, testified as follows:

6 CROSS EXAMINATION

7 BY MR. HO:

8 (Continued)

9 Q. Doctor Richman, we established earlier that it's  
10 your understanding that everyone who submits a voter  
11 registration application form that is incomplete but for  
12 the submission of documentary proof of citizenship  
13 should be listed on the Kansas voter file as in  
14 suspense. Correct?

15 A. I do believe that's the case.

16 Q. Okay. Now, you're aware that after you submitted  
17 your initial expert report in this case one of  
18 plaintiffs' rebuttal experts, Doctor Eitan Hersh,  
19 submitted a report in March 2015. Correct?

20 A. Yes.

21 Q. And you're aware that Doctor Hersh looked for the  
22 names of the six individuals from your TDL survey who  
23 said that they were registered or had attempted to  
24 register to vote. He searched for the names of those  
25 six people in the Kansas voter file. You're aware of

1 that. Right?

2 A. I'm aware that he searched for them in the file  
3 that he had available to him.

4 Q. Okay. And you're aware that Doctor Hersh could  
5 not find the names of these six individuals in the  
6 Kansas voter file and, therefore, concluded that these  
7 six people had not registered to vote or submitted a  
8 voter registration form. Correct?

9 A. I am aware of that, though there may be more I'd  
10 like to say on this.

11 Q. Now, at the time that you submitted your rebuttal  
12 report in this case, you had not asked anyone to verify  
13 whether or not those six individuals from your TDL  
14 survey who said that they were registered to vote or had  
15 attempted to register to vote were actually in the  
16 Kansas voter file. Correct?

17 A. I can't give a simple yes or no answer to that.

18 Q. Okay. Doctor Richman, would you turn to Page 240  
19 in your deposition transcript, Line 14.

20 Question: Did you ask anyone to verify whether  
21 or not your six TDL survey respondents who said they  
22 were registered to vote or had attempted to register to  
23 vote were actually in the Kansas voter registration  
24 file?

25 Answer: I have not asked anybody to do that.

1           Was that my question and was that your answer?

2           A. That is correct.

3           Q. Okay. And so when you submitted your  
4 supplemental expert report in this case in April 2017,  
5 you did not dispute Doctor Hersh's conclusion that none  
6 of the six TDL holders from your survey who said they  
7 were registered to vote or had attempted to register to  
8 vote were actually in the Kansas voter file. Correct?

9           A. That is correct.

10          Q. Now, you contacted a total of 37 TDL holders.  
11 Correct?

12          A. Yes.

13          Q. And do you know how many TDL holders you  
14 attempted to contact?

15          A. I do not know the precise number.

16          Q. So there's no way to-- to calculate the precise  
17 response rate of TDL holders specifically for your  
18 survey. Correct?

19          A. As I noted before, I can-- I discussed the  
20 response rate for the overall combination of surveys,  
21 but I don't have a precise breakout.

22          Q. You don't have a precise breakout of the response  
23 rate for the survey of TDL holders specifically.  
24 Correct?

25          A. Correct.

1 Q. Okay. Let's bring up your supplemental report,  
2 Defendant's Exhibit 958, Page 9, Table 2 back up on the  
3 screen.

4 I want to ask some questions about your last  
5 estimate from your initial report, the one based on the  
6 19 incidentally-contacted individuals. Now, of the 19  
7 incidentally-contacted individuals, one stated on the  
8 survey that they had registered or attempted to register  
9 to vote. Correct?

10 A. That's correct.

11 Q. And you don't know if this person successfully  
12 registered to vote or simply attempted to register to  
13 vote. Right?

14 A. Right.

15 Q. And if they attempted to register to vote, we  
16 don't know what stopped them. Right?

17 A. That's right.

18 Q. Okay. Now, in your initial report you divide one  
19 by 19, you get an estimate of 5.3 percent of  
20 non-citizens in Kansas being registered to vote or  
21 having attempted to register to vote based on this  
22 sample. Correct?

23 A. Correct.

24 Q. And then you multiply that by the total  
25 non-citizen population of Kansas, you get about 6,000

1 non-citizens. Right?

2 A. That sounds right.

3 Q. The sample size here is 19?

4 A. That's correct.

5 Q. And for any of the methods of calculating the  
6 confidence interval that you employ in your supplemental  
7 report, Doctor Richman, the total confidence interval is  
8 over 20 percentage points. Correct?

9 A. That is correct.

10 Q. Now, you had the ages-- or you had age  
11 information for these individuals from your survey, but  
12 you did not seek to weight this sample on the basis of  
13 age. Correct?

14 A. That is correct.

15 Q. And you had race and ethnicity information from  
16 the sample and you did not seek to weight this sample by  
17 race or ethnicity. Correct?

18 A. Correct.

19 Q. Okay. Doctor Richman, I just want to back up for  
20 a second and just ask you in general about your views  
21 about non-citizen registration and voting.

22 Now, Doctor Richman, it is correct, is it not,  
23 that you have tried to push back on the claim that  
24 several million non-citizens voted in the 2016  
25 presidential election?



1 A. That is correct.

2 Q. And, Doctor Richman, you do not believe that more  
3 than 3 million non-citizens voted illegally in the 2016  
4 election. Correct?

5 A. That is correct.

6 Q. Doctor Richman, in your opinion, your electoral  
7 studies article does not support the claim that millions  
8 of non-citizens voted in the 2016 election. Correct?

9 A. Most likely not.

10 Q. Doctor Richman, I'm going to hand you what's been  
11 marked as Plaintiffs' Exhibit 154. This is a blog from  
12 your-- I mean an entry on your blog titled, "Why I would  
13 sign the open letter if it were true." Do you see that?

14 Doctor Richman, do you see that?

15 A. Yes.

16 Q. This is something that you wrote for your blog.  
17 Correct?

18 A. That is correct.

19 Q. You don't generally write things on your blog  
20 that you believe are inaccurate or untrue. Correct?

21 A. Correct.

22 MR. H0: Your Honor, we'd offer Plaintiffs'  
23 Exhibit 154 into evidence.

24 THE COURT: Any objection?

25 MR. KOBACH: No objection.

1 THE COURT: 154 admitted.

2 Q. (BY MR. HO) Can we turn to the first page of  
3 your blog, the last paragraph. And it looks like at the  
4 third-- sorry, the-- that's not--

5 A. That's something different.

6 Q. That's a different blog, right. Thank you. Up  
7 on the screen. So the last paragraph, the third  
8 sentence beginning with "my study" reads, "My study,"  
9 and then in all capital letters, "does not," end of  
10 capital letters, "support Trump's claim that millions of  
11 non-citizens voted in the 2016 election." You wrote  
12 those words. Right?

13 A. Yes.

14 Q. And by "my study," you mean your electoral  
15 studies article about non-citizen registration and  
16 voting based on the CCES. Correct?

17 A. That is correct.

18 Q. And in your view, an extrapolation from your  
19 electoral studies article on the CCES to the 2016  
20 election does not support the view that the entire  
21 popular vote margin in the 2016 presidential election  
22 was due to illegal votes cast by non-citizens. Correct?

23 A. That is correct.

24 Q. Okay. Doctor Richman, I'm going to hand out  
25 what's a transcript of Plaintiffs' Exhibit 133.

1 MR. HO: Your Honor, this is--

2 MR. KOBACH: Objection on the basis of  
3 relevance.

4 MR. HO: I'm going to explain in a second.  
5 This is a video, Your Honor, on the *Kansas City Star*  
6 website of an interview of Secretary Kobach expressing  
7 his views about the number of non-citizens who  
8 registered and voted in the 2016 election. I would like  
9 to play that video and admit it as a statement by a  
10 party opponent and then I would ask-- I would like to  
11 ask Doctor Richman, who has been offered as an expert on  
12 non-citizen registration, an opinion about that video.

13 MR. KOBACH: Your Honor, several things.  
14 There's been no notice provided of this. Secondly, it's  
15 just-- while it's fascinating to think about the number  
16 who voted who may or may not have been citizens of the  
17 United States in the 2016 election, this has nothing to  
18 do with this case, which is not-- this is-- he's testing  
19 President Trump's claims about people voting in the 2016  
20 presidential race but nothing to do with this case.

21 MR. HO: Well, it has been disclosed to the  
22 defendants, Your Honor. It's been on our box with all  
23 of our exhibits since the day that we made our exhibits  
24 available to the defendants. We've provided all of this  
25 to the Court. So there's no disclosure problem here,

1 Your Honor.

2 Secretary Kobach is the one who's put into  
3 issue questions about non-citizen registration and  
4 voting at the national level during his examination of  
5 Doctor Richman. Secretary Kobach has made  
6 representations about the level of non-citizen  
7 registration and voting at the national level, and I'd  
8 like to ask Doctor Richman one question about that.

9 MR. KOBACH: Your Honor, it's also not  
10 covered in the direct, it's not in the pretrial order.  
11 None of this subject matter was-- we're so far afield  
12 here, I'm not sure how you could tie it in.

13 THE COURT: Well, essentially I look at this  
14 as being an attempt to impeach an admission by a party  
15 opponent who have not taken the stand to testify.

16 Mr. Kobach, if you had testified in this  
17 case, this would be proper impeachment. You've chosen  
18 not to testify, but I think it's relevant. I-- I think  
19 that there have been statements about not only the  
20 effect of non-citizen voter registration in Kansas but  
21 nationally. And, in fact, much of the evidence that's  
22 been offered through experts looks at all-- all of these  
23 numbers.

24 And so I don't know how much weight I'm  
25 going to accord this, because it-- it's-- has some

1 relevance. I'm not saying it has great relevance, but  
2 it certainly has some relevance in terms of impeaching  
3 the credibility of Mr. Kobach, who has chosen not to  
4 testify but who has testified at least in a limited way  
5 through a deposition. So I will admit Exhibit 133 on  
6 that basis.

7 MR. HO: And, Your Honor, we're going to  
8 play the video that Exhibit 133 represents a transcript  
9 of and just the first page or so of the transcript.

10 THE COURT: All right. So when you offer a  
11 video, it sounds to me like Mr. Kobach has now had the  
12 opportunity to compare that video with the transcript.  
13 I'll allow you to play the video at this point and I'm  
14 going to-- so 133 is the video. I'm admitting the  
15 video, I'm not going to necessarily admit the transcript  
16 at this point until the defense has had an opportunity  
17 to compare the two.

18 In any event, transcripts of any sort of  
19 recordings are not considered the evidence anyway,  
20 they're just an aid to the trier of fact. So it's the  
21 video that would actually be the evidence. So I'm  
22 leaving open the question of-- as to whether the  
23 transcript is received into evidence for my assistance,  
24 because that's the only reason to otherwise look at the  
25 transcript, it's not the actual evidence.

1 MR. KOBACH: And, Your Honor, then I would  
2 have a second question. If you're admitting the video  
3 into evidence, then are you also sticking to your  
4 earlier-- the implication of your earlier order, which  
5 is that the-- because of the rule against cameras in the  
6 courtroom that the video would not become part of the  
7 record of the case, just like the video deposition of my  
8 deposition doesn't become part of the record?

9 THE COURT: Yeah, that's correct. Let me  
10 explain. So for purposes of the appellate record, the  
11 appellate record is based on this written transcript of  
12 everything that's said in this courtroom. And the  
13 video-- when a video deposition is offered in lieu of  
14 someone's testimony, it's as if the person is sitting  
15 here on the stand. And so the appellate record is the  
16 transcript of that video.

17 The appellate judges don't ever see the  
18 video any more than they see the people that are  
19 testifying live. So it's the transcript that becomes a  
20 part of that record.

21 So the transcript of this particular video,  
22 I'm going to give the defense an opportunity to compare  
23 it. It will become part of the record for appeal, but  
24 it's not-- what I was saying from my perspective as a  
25 district judge, it's not the evidence, the video is the

1 evidence.

2 But you're right, Mr. Kobach, it would be  
3 the transcript that would become part of the record  
4 ultimately, not the video. Not this video, not the  
5 other video deposition testimony.

6 MR. HO: May we proceed, Your Honor?

7 THE COURT: Yes.

8 (Plaintiffs' Exhibit No. 133 was played).

9 Q. (BY MR. HO) Doctor Richman, you're not aware of  
10 any research out there supporting the notion that the  
11 entire popular vote for president in 2016 can be  
12 attributed to non-citizen voting. Correct?

13 A. I-- I would like to elaborate a little bit in my  
14 response to that. The closest-- if you'll permit me.

15 Q. Well, can you answer my question, Doctor Richman?  
16 And my question is-- let me just repeat it so that the  
17 record is very clear.

18 A. Thank you.

19 Q. Doctor Richman, you are not aware of any research  
20 out there supporting the notion that the entire popular  
21 vote margin for president in 2016 can be attributed to  
22 non-citizen voting. Correct?

23 A. I do not believe that my study provides strong  
24 support for that notion.

25 Q. But, Doctor Richman, my question was: You're not

1 aware of any research out there supporting the notion  
2 that the entire margin for the popular vote for  
3 president in 2016 can be attributed to non-citizen  
4 voting. Correct?

5 A. I'm not aware of any research beyond  
6 extrapolations that I've pushed back against, as we just  
7 noted from my study. One could take high-end estimates  
8 from the study and depending on what denominators and so  
9 forth, one could try to get there. One of the  
10 challenges, too, is that not every non-citizen who votes  
11 for one side or the other. And so you have to subtract  
12 that out as well.

13 Q. Doctor Richman, could you turn to Page 120 in  
14 your deposition, Line 5.

15 MR. NAJARIAN: Do you want the video, sir,  
16 or--

17 MR. HO: No, thank you.

18 Q. (BY MR. HO) Question: Are you aware of any  
19 research out there supporting the notion that the entire  
20 margin in the popular vote for president in 2016 can be  
21 attributed to non-citizen voting?

22 Answer: I am not aware of any.

23 Was that my question and was that your answer?

24 A. That is correct.

25 Q. Thank you, Doctor Richman. I don't have any more



1 questions for you.

2 MR. WOODS: No questions, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. KOBACH:

5 Q. Mr. Richman, we're going to go back through a  
6 number of the things Mr. Ho questioned you about. And  
7 on a number of these issues you expressed a desire to go  
8 merely beyond the yes or no answer Mr. Ho was attempting  
9 to confine you to, so we're going to start near the  
10 beginning of his cross examination.

11 He asked you about weighting of survey results or  
12 survey estimates and he talked about the-- initially  
13 talked about the estimated non-citizens registering as  
14 illustrated in the CCES data and whether that was  
15 weighted for race and ethnicity. Do you recall that  
16 line of questioning?

17 A. I vaguely recall. I'm not sure exactly which of  
18 the CCES analyses that it was in relation to. It  
19 might've been in relation to in Table 1 of-- or no, I'm  
20 sorry, in table-- it was more likely Table 2, we spent  
21 so much time there in my--

22 Q. Table 2 of which one?

23 A. Second report.

24 Q. Yep.

25 A. He was asking about whether I had weighted the 4

1 of 14. 4 of 14 is rather a small sample to get  
2 weighting algorithms to converge. I have since done  
3 weighted estimates because the sample size has increased  
4 substantially with the addition of 2014 and 2016 data.  
5 Unfortunately, the plaintiffs have not allowed those  
6 analyses to be included.

7 The basic results are quite similar on a  
8 qualitative level with the weighted analysis.

9 Q. Okay. So when it comes to the weighting of the  
10 CCES-based research on Table 2, is it your testimony  
11 that you, A, didn't have access to the additional data  
12 because of plaintiffs' protests and, B, if the weighting  
13 had been done, because of the size of the sample it  
14 would've been essentially the same?

15 A. We would've reached similar conclusions.

16 Q. Now, you-- when you were questioned by opposing  
17 counsel, you did say you weighted some of the survey  
18 data for one of the other-- I believe it was one of the  
19 other estimates you provided; is that correct?

20 A. I think that might've been in the context of  
21 discussing the survey of individuals on the TDL list.

22 Q. I think that's correct.

23 A. And--

24 Q. Go ahead. Well, can you explain what weighting  
25 you did?

1           A.    Okay.  So my recall is that I weighted in my  
2    initial report to the TDL list itself on the basis of  
3    the demographic information available there.  It didn't  
4    change the number, 6 of 37, to do that weighting in that  
5    analysis.

6           Q.    So the 6 of 37 remain the same regardless--  
7    either before the weighting or after the weighting?

8           A.    Yeah.

9           Q.    Is it always necessary to weight surveys?

10          A.    Surveys are sometimes weighted and sometimes not.  
11    If you look at the-- at the issue, there are debates  
12    about weighting.  One of the challenges is that the--  
13    when you're weighting you are changing the results of  
14    the survey.  And so I think one of the things I tried to  
15    do in some of these analyses was to report both weighted  
16    and unweighted because I-- although perhaps that's a  
17    little bit confusing in terms of having two numbers,  
18    that allows people to assess, well, what is weighting  
19    doing here and how is weighting potentially changing the  
20    estimate.

21                So I think weighting is a useful strategy.  It's  
22    widely applied in the field of public opinion research.  
23    But depending upon the specific context, it is not  
24    always applied.  And I think it's useful to think about  
25    the specifics of it-- of an analysis.

1           So, for instance, in the last election, the *L.A.*  
2 *Times* had a panel survey which was useful in thinking  
3 about this because you have-- they're asking the same--  
4 trying to ask the same people every week about their  
5 views. And there was one respondent who was an  
6 African-American male in Illinois who was a Trump  
7 supporter, a younger African-American male, a group  
8 that's relatively hard to reach in survey research.  
9 Young voters in general are difficult to reach and we're  
10 talking about a subset of that group.

11           When this individual responded to the survey, the  
12 portion of African-Americans who the survey indicated  
13 were supporting President Trump would jump up. And when  
14 that person-- some weeks they couldn't reach that  
15 person, it went down because there was such a weight put  
16 on one individual.

17           So one of the tradeoffs with weighting is that  
18 you are putting more weight on some respondents and less  
19 weight on other respondents. Most of the time that's  
20 going to lead to getting a more representative sense of  
21 the broader population. But in examples like this, you  
22 can see how that can arguably become an issue.

23           Q. Are there other methods to ensure that a sample  
24 is representative of the larger population other than  
25 weighting?

1           A. Well, so there are a variety of ways of drawing  
2 inferences from samples. Weighting is an important  
3 element. There are various other kinds of approaches  
4 that people apply. For instance, sometimes researchers  
5 use what is an approach based more on regression  
6 analysis in terms of developing a model for response  
7 using a multi-level regression model where you can bring  
8 in additional information beyond what's in the sample on  
9 the basis of what-- what are these areas like.

10           So if you're trying to understand, for example,  
11 state opinion, you can get a relatively accurate  
12 estimate by using this kind of approach even from a  
13 relatively modest size national sample. So that's one  
14 of a variety of other methods people use to try to  
15 derive reliable estimates from samples.

16           Q. People sometimes use a quota method as well?

17           A. Quota method is another way of endeavoring to  
18 ensure that the sample as a whole matches the population  
19 on the basis of a range of different characteristics.

20           MR. HO: Objection, Your Honor, and move to  
21 strike. Doctor Richman's reports contain nothing about  
22 the sort of relative merits of weighting versus quota  
23 methods of conducting surveys. The quota method that  
24 Secretary Kobach is referring to is something that his  
25 next witness, Mr. McFerron, will testify about. This is

1 an attempt to bootstrap Mr. McFerron's testimony. I  
2 think if Mr. McFerron wants to defend his methodology,  
3 he can do it when he gets here.

4 MR. KOBACH: This has nothing to do with  
5 supporting Mr. McFerron, this is to show that  
6 plaintiffs' contention that because weighting was not  
7 done in some of these estimates, that somehow the  
8 estimates are improper is incorrect. There's lots of  
9 ways to ensure representatives. This is a direct  
10 response to Mr. Ho's cross.

11 THE COURT: All right.

12 MR. HO: The quota method that he's  
13 referring to is not something that Doctor Richman  
14 utilized so it can't possibly be a response to the  
15 questions that I had.

16 THE COURT: All right. I'll overrule as to  
17 the objection of this general line of testimony. I will  
18 disregard his response concerning the quota method  
19 because that's not one of the methods that was listed in  
20 the table, any of the tables that he used. There were,  
21 I don't know, five or six different methods. This was  
22 not one of them.

23 MR. HO: Thank you, Your Honor.

24 MR. KOBACH: Just to clarify, Your Honor,  
25 the quota method is not a margin of error method. It's

1 a way to show representatives of the sample. So the  
2 quota method is not comparable to the Agresti and all  
3 those other things, it's a method of assuring that your  
4 sample is representative.

5 THE COURT: All right. Proceed. I'll allow  
6 this line of testimony.

7 Q. (BY MR. KOBACH) Okay. So you were just talking  
8 about that method, are there some instances when either  
9 quota method or regression analysis would be more  
10 appropriate than weighting?

11 A. Yes. I just described one of them a moment ago  
12 in the context of multi-level regression analysis. If  
13 you're trying to draw state level estimates from  
14 national opinion survey, simply waiting doesn't help  
15 with the problem that maybe you have only 50 respondents  
16 from a state. The multi-level regression allows you to  
17 draw strength from the other things you know about the  
18 state to get a more accurate estimate.

19 Q. And are there some instances-- well, to look at  
20 this case, are some of the estimates that you did not  
21 drawn from surveys?

22 A. Yes.

23 Q. So, for example, the Sedgwick County TDL list  
24 or-- sorry, not TDL, the Sedgwick County naturalization  
25 ceremony list where I believe it was 8 of 791 or

1 something like that?

2 A. Something like that, I think that's right.

3 Q. That would not be an appropriate place where you  
4 would do weighting; is that what you're saying?

5 A. Well, in that context, I did not have the data  
6 that would be necessary to try to weight it. I suppose  
7 one could attempt to do weighting, but my sense was in  
8 this case we had the population almost-- and then my  
9 second analysis, really quite the population of  
10 naturalizing citizens. And weighting is typically used  
11 when-- naturalizing citizens in Sedgwick County.  
12 Weighting is typically used in a context in which the--  
13 you're-- you're working from a sample.

14 Now, I did look at an extrapolation from Sedgwick  
15 County to Kansas. As I discussed yesterday I think it  
16 was, Sedgwick County is very similar across a range of  
17 demographic characteristics to the state of Kansas, so  
18 weighting would be very unlikely to change the estimates  
19 in any substantial way in my opinion.

20 Q. Are there other circumstances where you-- a  
21 qualified researcher drawing reliable conclusions might  
22 not need to do weighting that might be relevant to this  
23 case?

24 A. Oh, sorry. I just talked about the case where  
25 I-- you're not really working from a sample. Another



1 instance, of course, would be there-- there are various  
2 contexts in which weighting would be unnecessary. It  
3 would depend upon sample size relative to sample frame  
4 and things like that in part, the relative coverage of  
5 the sample frame.

6 There are times when a survey is designed in a  
7 way that really requires weighting to make accurate  
8 inferences. That's a-- a special case that isn't  
9 relevant here as an instance where you are intentionally  
10 oversampling some sub-population.

11 So, for example, in 2008 the American National  
12 Election Study oversampled African-Americans. Why?  
13 Because of the historic nature of that election, they  
14 wanted to-- the designers of the study wanted to be able  
15 to allow researchers to look closely at the electoral  
16 behavioral of African-Americans.

17 If you're drawing inferences from the American  
18 National Election Study about the U.S. population,  
19 though, obviously you have to correct for that  
20 intentional oversample of-- of that sub-population.

21 Q. Does weighting sometimes produce-- does the  
22 weighted survey sometimes produce a less accurate result  
23 than an unweighted survey if the-- for example, in a--  
24 in an election might be one context or any-- any context  
25 where you-- you eventually know what the correct number

1 is?

2 A. I-- I had an experience like that a few years  
3 ago. As I mentioned, at the Social Science Research  
4 Center we did a number of political polls. One of them  
5 was related to-- I think this was related to the 2013  
6 gubernatorial race in Virginia. I think that's the one  
7 I'm thinking of. In that context, if memory serves,  
8 our-- you know, we did do a poll and one of the goals of  
9 election polling is to understand what the outcome of  
10 the race is going to be.

11 As it turned out in that instance, our unweighted  
12 numbers were very, very close to the actual outcome.  
13 Our weighted numbers turned out to be not as close. So  
14 it certainly can happen.

15 Q. So is it fair to say in this case in the variety  
16 of samples and estimates you provided, that you weighted  
17 in every instance where weighting was both appropriate  
18 and possible?

19 A. Okay. Over the course of the two sets of reports  
20 I did, I think the answer to that is yes.

21 Q. Now moving on. Mr. Ho asked you about TDL  
22 matching. You-- in response to him, you gave a  
23 question-- or you gave an answer to his question, and I  
24 think you were cut off. You said that the timeline can  
25 verify that the person on the TDL match list of people

1 is not a citizen.

2 What did you mean by that? Was that your  
3 reference to a temporary visa holder not being able to  
4 become a naturalized citizen for a period of years or  
5 what were you referring to?

6 A. Yeah, that's what I was referring to. So, for  
7 instance, there are some-- if you have an individual who  
8 provides the temporary presence document and is  
9 registered prior to that time or shortly thereafter that  
10 time, I think it's very unlikely that they would have  
11 naturalized because there are a sequence of events. You  
12 don't become a citizen before you-- typically before you  
13 have been a legal permanent resident.

14 And so if you do not have a legal permanent  
15 resident document, you're unlikely to immediately become  
16 a citizen. The normal period of time I believe is five  
17 years as a legal permanent resident before one can apply  
18 for naturalization.

19 Q. And with respect to those individuals, was there  
20 also a second verification of the person's non-citizen  
21 status?

22 A. I-- as I discussed a little bit I think in my  
23 prior testimony, there was a verification of status with  
24 ICE.

25 Q. Moving on a little bit. Mr. Ho also asked you

1 about the DMV matching process looking at non-citizens  
2 that the DMV found-- I'm trying to determine which list  
3 this was. He interrupted you regarding this line of  
4 analysis too. You subsequently-- oh, this had to do  
5 with the green card holder list provided by the DOV.  
6 And you said you subsequently matched green card holders  
7 with the voter file and confirmed that they were  
8 registered; is that correct? Did you want to add-- A;  
9 is that correct?

10 A. Well, so I matched these names with the voter  
11 file. And also one of my-- one of the things I was  
12 interested in and at the time of the deposition I hadn't  
13 yet been able to do so, this--

14 MR. HO: Your Honor, I'm going to object  
15 here because he didn't do this. He just testified that  
16 by the time of his deposition, which was after his  
17 supplemental report, his last disclosure in this case,  
18 he performed this analysis. I-- I think it's  
19 undisclosed expert testimony and should be stricken.

20 THE COURT: I agree, sustained.

21 MR. KOBACH: I'm going to offer a proffer,  
22 Your Honor, just to--

23 Q. (BY MR. KOBACH) You may continue.

24 A. Okay. So there were a couple of aspects that I  
25 looked up once I got access to the information that I

1 needed. One of these was whether the individuals on  
2 this list from the-- the individuals I referred to who  
3 had provided their legal permanent resident documents at  
4 the same time as or after registering to vote, whether  
5 these individuals were on the same-- on the list from  
6 Sedgwick County or on the list of TDL matches from Bryan  
7 Caskey. None of them were. So these are individuals  
8 who were not in either of those categories of  
9 information that are-- that were referenced in one of  
10 those questions.

11 THE COURT: Mr. Kobach, as you know, there  
12 have been a number of instances now where I've allowed  
13 you to make a proffer; mostly, if not exclusively, in  
14 connection with my sustaining objections to-- through  
15 this witness as well as some others, offering up new  
16 evidence supporting new opinions or old opinions that  
17 were not disclosed in the expert report or not otherwise  
18 disclosed.

19 And it's Rule 26, of course, that's been the  
20 basis for my rulings. I think it would be helpful if  
21 you would just articulate under what provision of  
22 Rule 26 you think this is permissible. And we can take  
23 a ten-minute break or so, if you'd like to.

24 I do think we need to make a record on this  
25 because there's so many questions that have been posed

1 to this witness as well as others that have drawn this  
2 objection that it's undiscovered expert testimony,  
3 undiscovered evidence, not properly disclosed through  
4 initial disclosures or supplemental disclosures under  
5 Rule 26.

6 And I-- you know, I know that, you know, you  
7 wanted to make a record through proffer suggesting that  
8 you think my rulings excluding this under Rule 26 are  
9 wrong, so I do think we ought to have a record of what  
10 your basis for that is. So let's take a break for let's  
11 say 15 minutes.

12 MR. KOBACH: And, Your Honor, just quickly.  
13 Are you wanting this just for this particular proffer or  
14 for the prior ones as well?

15 THE COURT: Well, all of them are in the  
16 category of evidence that was not in the expert report,  
17 not provided through a supplement to the expert report,  
18 not otherwise disclosed in my view to plaintiffs through  
19 Federal Rule of Civil Procedure 26. And the remedies  
20 for violations of that, of course, are Rule 37.

21 And so I think they-- in my view what I'm  
22 talking about are not just this witness but others where  
23 this has come up and you have felt the need to proffer  
24 because you felt like my ruling excluding the testimony  
25 or the evidence was wrong.

1           So I think just one-- one answer that fits  
2 all-- all of these types of things falling in that  
3 category.

4           MR. KOBACH: Sure.

5           THE COURT: All right. So let's be in  
6 recess for ten minutes, 15 minutes. You let us know  
7 when you're ready.

8           (Recess).

9           THE COURT: All right. You can be seated.  
10 All right. I'm not-- I should've made myself clear.  
11 We're not going to stop this testimony for an oral  
12 argument. I just want your citation to the section of  
13 Rule 26 that you're relying on, and then we'll just go  
14 from there.

15           And the other thing is, I-- and I think what  
16 prompted me to ask that was you've been engaged in  
17 proffering and I allowed that, you'll recall, with  
18 respect to the-- you were trying to submit new evidence  
19 about the numbers on the suspense list. And I don't  
20 know what the new numbers were, plaintiff had just  
21 learned I guess so I allowed that proffer.

22           But you'll recall I ruled with respect to  
23 this witness on some of these issues in a motion *in*  
24 *limine*. And so that motion-- that order and the motion  
25 as well sets out this evidence. So I don't think we

1 need to reiterate with more proffers with respect to Mr.  
2 Richman, they're already in the record unless you're  
3 asking him about something that wasn't addressed in the  
4 *limine* motion.

5 But in any event, so what section of Rule 26  
6 are we talking about?

7 MR. KOBACH: Well, there's basically four  
8 provisions of the Rules of Evidence that we would look  
9 to. Specifically regarding Rule 26, we'd make reference  
10 to 26(e)(2) which refer internally to 26(a)(2). And it  
11 extends-- effectively extends a deadline for an expert  
12 to the pretrial disclosure date, which in this case is  
13 January 20th, 2018-- I'm sorry, 30th, 2018.

14 So an example of that would be Professor  
15 Richman's January 2018 supplementary data that he  
16 provided, we've even called it a report I guess, but it  
17 was supplemental information that was before the  
18 pretrial deadline.

19 THE COURT: And I've already ruled on that  
20 in a *limine* order, so I don't need to hear any more  
21 proffering of that. It's already-- all of that dispute  
22 is contained within my ruling on that. Okay.

23 MR. KOBACH: And then the other which--  
24 which also applies in the case of Doctor Richman is not  
25 under 26 but it's under Federal Rule of Evidence 705 and



1 703. And those regard the underlying facts and data  
2 which form the basis of an expert's testimony and  
3 opinions. And those underlying facts and data do not  
4 need to be expressly stated in the opinion itself.

5           So, for example, you'll remember we had the  
6 issue of the 2.2 percent which Professor Ansolabehere--  
7 appeared in Mr. Richman's report and then Professor  
8 Ansolabehere used it in a way that Mr. Richman didn't  
9 think was correct because he thought the true number  
10 from Mr.-- from the total population would be  
11 .1 percent.

12           And on cross examination and on direct  
13 examination, we talked about that issue and I asked him  
14 what are the underlying facts and data that make you say  
15 his 2.2 percent-- his use of the 2.2 percent is way too  
16 high and why do you think it's .1 percent? So those  
17 were the underlying data for his conclusion asserted in  
18 the supplementary expert report that said 2.2 was way  
19 too high.

20           THE COURT: All right. Thank you. Anything  
21 you want to-- I'm sorry.

22           MR. KOBACH: Just a couple other quick-- and  
23 I know we're trying to globally cover all of these  
24 various issues. In many of the cases we didn't miss the  
25 deadline as asserted by plaintiffs. In many of them,

1 for example, there was supplementary discovery or  
2 otherwise production for plaintiffs.

3 For example, plaintiffs' expert Hersh  
4 requested or I guess plaintiffs requested on his behalf  
5 a later ELVIS file. We provided the ELVIS data for  
6 2017. That would be an example of something which the  
7 plaintiffs were-- was produced to the plaintiffs,  
8 although technically one might've-- you know, for  
9 example, well beyond the 2016 ELVIS file data.

10 And then finally, in a couple of these  
11 little squabbles there has been a situation where there  
12 has been no motion to compel. Plaintiffs have said,  
13 well, this should've been produced. And, of course, our  
14 side in the discovery process do not believe it fell  
15 within the scope of their request for production. At  
16 that point a motion to compel would've been in order,  
17 but plaintiffs didn't do a motion to compel.

18 So those are the four reasons globally that  
19 I think cover all of these.

20 THE COURT: All right. And an example of  
21 that would be the expert-- the request for production on  
22 any documents that have to do with execution or  
23 implementation of DPOC--

24 MR. KOBACH: Correct.

25 THE COURT: -- and your view that that

1 didn't include anything about the hearing procedures in  
2 these files, the administrative files that you created  
3 on each of the six people. And I ruled that, yes, it  
4 did. So, okay, understood. You've made your record.

5 Mr. Ho, anything you want to say more?

6 MR. HO: Just a few things really quickly.  
7 I don't think we need to say anything with respect to  
8 Doctor Richman's additional disclosures from January  
9 2018 because of Your Honor's comprehensive ruling on  
10 that.

11 But just to respond to a couple of things  
12 that Mr. Kobach said. First, with respect to the notion  
13 that some of this new testimony is necessary to disclose  
14 the underlying facts and bases of Doctor Richman's  
15 opinion, it's a little difficult to keep track, Your  
16 Honor, because there's so many new things that keep  
17 popping up. So it's hard to make a clear record about  
18 why it is that we object to each of these things  
19 individually.

20 But if you just take a look at the most  
21 recent thing that Secretary Kobach tried to put in the  
22 record which prompted this break, it was about a new  
23 matching analysis that Doctor Richman did with green  
24 card holders in the DMV file that he testified that he  
25 did after his deposition.

1           It can't possibly have formed the basis for  
2 his opinions in his reports because it was after that  
3 point. And if he did do that after that point and they  
4 wanted to rely on it, then defendants at a minimum  
5 should've disclosed that to the plaintiffs. But that  
6 analysis didn't even make its way into Doctor Richman's  
7 2018 untimely disclosure that was made five weeks before  
8 trial.

9           The second thing I want to respond to  
10 something Secretary Kobach said about Professor Hersh's  
11 analysis. Secretary Kobach noted that we requested two  
12 separate voter files for Professor Hersh's rebuttal  
13 analysis in this case. And that's true, but let me just  
14 make the record clear as to why that's the case.

15           We asked for a voter file so that Doctor  
16 Hersh could replicate the analyses performed, the  
17 matching analyses performed by Bryan Caskey and Doctor  
18 Richman. They gave us a voter file. Doctor Hersh  
19 performed that match and produced his report.

20           There were a-- a number of cases that were  
21 missing from that matching analysis and no one could  
22 figure out why that was the case until the defendants  
23 volunteered to us that they gave us an incomplete voter  
24 file and that's why Doctor Hersh's initial disclosure  
25 was incomplete. So we asked them to please produce a

1 complete voter file, after which Doctor Hersh  
2 supplemented his initial report and produced a complete  
3 report.

4           So, yes, we have supplemented a report, but  
5 we did it the proper way. We did it with full  
6 disclosure to the defendants. And the only reason we  
7 had to do it in the first place, Your Honor, was because  
8 of the incomplete disclosure from the defendants. So  
9 the idea that there's any kind of reciprocity here  
10 that's happening I think is-- is clearly incorrect.

11           THE COURT: All right. Understood. Let's  
12 get back to examining this witness.

13           MR. ROE: Your Honor, can I say one thing  
14 about the voter file issue? Is that okay? I'm sorry.

15           On the voter file issue, yeah, it was a--  
16 there was a mistake and I just want to clarify for the  
17 record. We were asked for various different things,  
18 including like party affiliation and whatnot. And so  
19 one of the party-- what we clicked as far as to print  
20 off or generate the numbers that they were asking for,  
21 there was a field in there that essentially didn't--  
22 wasn't included based on something they had previously  
23 been asking for, based on what they wanted of the voter  
24 file. And so that's what ended up happening.

25           I just want to clarify that we produced what

1 we thought they were asking for. And then what up ended  
2 up happening was-- is that one of the fields ended up  
3 having missing data, you know, which required us to send  
4 another updated version of that in April of 2017. So I  
5 just wanted to clarify what happened.

6 THE COURT: All right. And it doesn't at  
7 all refute what Mr. Ho said about the fact that this  
8 wasn't some sort of reciprocal, they're giving you new  
9 numbers at the last minute with respect to Mr. Hersh.

10 All right. Let's get back to completing the  
11 redirect of Doctor Richman.

12 MR. KOBACH: Okay. And, Your Honor, I just  
13 want to just read one sentence from their production of  
14 documents. And this has to do with the request for  
15 documents concerning the implementation of DPOC. Here's  
16 the exact wording--

17 THE COURT: I've already ruled-- I have  
18 already ruled. No, go back. I've already ruled and  
19 that is of record or you can make it of record. All  
20 right. Let's proceed.

21 Q. (BY MR. KOBACH) Doctor Richman, I believe we  
22 were just about to go to the interchange between you and  
23 Mr. Ho regarding the estimates-- estimates of citizens  
24 without documents that would satisfy the documentary  
25 proof-of-citizenship requirement according to the Kansas

1 law.

2           You were-- in having that interchange with him,  
3 you were explaining why the 2.2 percent in Doctor  
4 Ansolabehere's report was way too high. Was there  
5 anything further you wanted to explain about that?

6           A. There might've been, but I'm having trouble  
7 remembering it now.

8           As we just discussed, that's 2.2 percent of a  
9 fraction of the overall set of new registrants. That's  
10 my principal point, and that was what I raised with-- in  
11 my objection in my second report, my rebuttal report to  
12 Professor Ansolabehere.

13           Q. You were also asked by Mr. Ho about a person who  
14 gets a document that is kept for that person by someone  
15 else. And he was asking you-- he was pressing you to  
16 acknowledge that in his view it was an additional step.  
17 But whether it's an additional step depends on the  
18 context, does it not?

19           A. I suppose it does depend on the context and how  
20 it is being kept for someone. More broadly, I think the  
21 question of whether-- to what degree it's a cost is  
22 going to be context-dependent, depending on how it is  
23 kept.

24           Q. I think-- so let me give you an example which  
25 actually applies to one of the plaintiffs in this case.

1 So if a person-- a person's mother or father has the  
2 birth certificate back home and the person is at  
3 college, if the person simply calls Mom and says, could  
4 you take a picture of it and text it to me with your  
5 phone, that would be just one step. Correct?

6 A. That would be one step.

7 Q. Versus if the person happened to have it in his  
8 desk at college, he would go and fish through his desk  
9 for it, which would also be just one step; is that  
10 correct?

11 A. I-- I suppose. In both cases, the individual  
12 would then have to do something with the document having  
13 received it, forwarding it to the appropriate election  
14 authorities in some form after getting it into their  
15 hand.

16 Q. So would it be correct to say that it's not  
17 always the case that if you-- if you have somebody  
18 holding the document for you, it doesn't necessarily  
19 entail an additional step to obtain it for DPOC  
20 purposes?

21 A. I-- I suppose so. And one can imagine  
22 hypotheticals that could go either way in terms of how  
23 many steps there would be, either side.

24 Q. You were also asked by Mr. Ho about coding of a  
25 huge number of respondents looking for foreign names.



1 Do you recall that?

2 A. Yes.

3 Q. You don't need this coding to be precisely  
4 accurate, do you? In other words, you don't need the--  
5 your estimate of whether the name is foreign or not to  
6 be precise, do you?

7 A. The more precise it is, the better. But I was  
8 fairly happy with our inter-rater agreement, which was  
9 95 percent. And the goal here was to simply try to make  
10 sure that as we're sampling from the suspense list, we  
11 are not oversampling or undersampling people from  
12 different kinds of demographic groups.

13 Unfortunately, the suspense list does not provide  
14 much demographic information. We have gender, we have  
15 age, but beyond that - and geographic categories - it's  
16 limited. And so this was an attempt to further ensure  
17 the representativeness of the-- the weighted sample.

18 Q. And to ensure representativeness, do you need a  
19 rough estimate or do you need to know precisely the  
20 exact number of people in the sample who are  
21 foreign-born or in whatever category?

22 A. In my view, a close approximation would get you  
23 most of the way there.

24 Q. And your expert report didn't actually include  
25 any specific conclusions about the nationality of the

1 people that were called, did it?

2 A. No.

3 Q. You also had an interchange with Mr. Ho about a  
4 survey with-- oh, the possibility of a survey in which  
5 there were no relevant responses. So let me just make  
6 sure I understand what your answer was and-- if you were  
7 calling a population of a county let's say to locate  
8 people who are a non-citizen, criteria No. 1, and a--  
9 and registered to vote, criteria No. 2, is it your point  
10 that you may have difficultly randomly calling people to  
11 hit one of those criteria to even begin the analysis?

12 A. Yes. So to calculate the percentage of  
13 non-citizens on a registration list, one would need to  
14 be able to subset the analysis in ways that were  
15 difficult, given the-- the set of responses we got.

16 Q. You also had an interchange with Mr. Ho about if  
17 a respondent to a survey tells you that they registered  
18 to vote but didn't register to vote, does that  
19 undermine-- but they actually didn't register to vote,  
20 does that undermine the reliability of the survey? You  
21 said in some cases that might be true but not always,  
22 and then you wanted to elaborate.

23 A. So I think one of the interesting things is we  
24 think about survey misreporting in this context, is that  
25 if somebody is-- the underlying theory for a lot of the

1 misreport-- the over-reporting of registration and  
2 voting in surveys is that this is driven by people's  
3 awareness of a norm that one ought to vote, one ought to  
4 register.

5           If somebody is a non-citizen, the-- any claim to  
6 be registered or claim to have voted suggests a-- either  
7 unawareness of or view that it doesn't apply to them  
8 attitude toward the legal requirement that one must be a  
9 citizen in order to register to vote. So if there is  
10 over-reporting of registration or voting by  
11 non-citizens, that still tells us something important  
12 arguably about misunderstandings or some other kind of  
13 attitude toward the law concerning the rules on who can  
14 register to vote.

15           Q. You were also asked by Mr. Ho about the other  
16 studies that you have done where you have used the Wald  
17 method for calculating margin of error. And I believe  
18 Mr. Ho's implication was that since plaintiffs' expert,  
19 Doctor Ansolabehere, had used the Wald method in his  
20 estimate of the margin of error in this case, that made  
21 it okay. I may be slightly off when I'm recounting your  
22 interchange, but do you recall that interchange?

23           A. I think my point was that plaintiffs' expert did  
24 not apply the Wald method correctly. And so instead of  
25 using the observed proportion as the literature

1 recommends as the basis for calculating the Wald  
2 estimate of the confidence interval, the plaintiffs'  
3 expert picked a completely different number that is  
4 completely inconsistent with other things that he has  
5 said concerning his beliefs about non-citizen voting.  
6 And so that seemed like a very odd choice.

7 Q. So just to-- this is the P number we're talking  
8 about. Right?

9 A. That's right.

10 Q. So if you pick a P of .5, you're essentially  
11 assuming that 50 percent-- your guess, your best guess  
12 before the-- before the calculation is that 50 percent  
13 of the people gave whatever the response is?

14 A. That is how the-- that's when you would calculate  
15 that confidence interval. If you're analyzing Binomial  
16 proportion, you would calculate that confidence interval  
17 with P equals .5 when the observed sample has a-- a  
18 50 percent giving some response.

19 Q. So to use the Sedgwick County example again, if  
20 you had eight respondents-- or eight of the-- a subset  
21 of 791 naturalizing non-citizens, if eight were already  
22 registered, your P would be eight over 791 because you  
23 already-- you already have that knowledge. Correct?

24 A. Right.

25 Q. Would it be correct to start with a P of .5?

1 A. I was very puzzled by his choice to do that.

2 Q. And so to summarize, you weren't saying that  
3 the-- the Wald method is always wrong, is that correct,  
4 just that it's when you choose the wrong P?

5 A. The Wald method has been criticized on other  
6 grounds as well, but the Wald method was not  
7 appropriately applied in this case either. So the Wald  
8 method-- I think the field is gradually moving away from  
9 use of the Wald method. It's a simple method and  
10 that's-- that's been useful in terms of teaching and so  
11 forth, but moving away from that.

12 But the more fundamental issue was whether the  
13 Wald method itself was correctly applied in some of the  
14 confidence intervals that Professor Ansolabehere was  
15 providing.

16 Q. Do all of the various methods for calculating  
17 margin of error require the person doing the calculation  
18 to plug in a P value?

19 A. All of them take as a basis information from the  
20 sample, such as the P value. Some of them use-- I think  
21 that's typically a-- a principal element of information.  
22 They're also obviously using the sample size and so  
23 forth.

24 Q. Mr. Ho also asked you to estimate-- or about an  
25 estimate of non-citizens registered based on the report

1 of responses and then linking that to the voter-- oh, so  
2 the-- the reported survey respondents and then linking  
3 that to the voter file. On that question to you, you  
4 wanted to explain further. What was your further  
5 explanation, if you recall?

6 A. I do not recall, I'm sorry.

7 Q. Mr. Ho also referred to Page 258 of your  
8 deposition. If you could flip to it. And there, too,  
9 you indicated that there was more you wanted to explain.

10 A. Ah, yes.

11 Q. So just to put the question on the record. So  
12 this was the subject of cogent criticism, which is how  
13 you described some aspects of the criticism of the  
14 electoral studies article, and you were cut off when you  
15 wanted to explain further what you were referring to  
16 when you said cogent criticisms. Go ahead.

17 A. Okay. So I was concerned that the record seemed  
18 to indicate that what I thought the cogent element of  
19 the criticism was was simply them raising the issue that  
20 maybe some respondents to the survey responded  
21 incorrectly. This was an issue which was raised and  
22 discussed in my initial article. So I didn't think  
23 raising that was particularly cogent, that was something  
24 that-- I had already introduced it as a topic.

25 What I thought was insightful was the use of the

1 panel study, the-- this opportunity to use individuals  
2 who responded multiple times in multiple years  
3 concerning whether they were citizens or not. The use  
4 of that research design I thought was a-- a valuable  
5 contribution to our ability to understand the phenomena  
6 of non-citizen registration and voting.

7 Q. Mr. Ho also asked you a series of questions to  
8 which you expressed an interest in giving more than a  
9 yes or no answer. And it had to do with the open letter  
10 that was a response to I believe your 2014 electoral  
11 studies article that you published with your colleagues.

12 And I believe the question he posed to you was  
13 something along the lines of were there-- are you aware  
14 of other-- something about are there many open letters,  
15 or maybe you had started to say there were many open  
16 letters, I'm sorry, and that's where you got cut off.

17 A. Okay. So I was able to subsequently explain that  
18 I had mentioned in the deposition a book I had-- I had  
19 encountered which discussed a number of these instances.  
20 I don't know whether-- I think I was also cut off in  
21 mentioning there was a very high-profile case last year  
22 involving an article in I think Third World-- the *Third*  
23 *World Quarterly Studies*, I can't remember the exact  
24 journal.

25 An author, a political scientist published a

1 paper. It got a lot of negative attention from people  
2 who did not like the conclusions. Ultimately something  
3 like that 16,000 people signed an open letter  
4 criticizing it. So that's many orders of magnitude  
5 greater than in this case. The editor received death  
6 threats as well and the journal pulled the article on  
7 the basis of those death threats to the editor.

8 Q. And this open letter, is this the open letter  
9 that you said you comprehensively responded to in your  
10 working paper with your colleagues?

11 A. No. The open letter-- the-- the response with my  
12 colleagues was to the Ansolabehere, Luks and Shaffner  
13 article. The open letter does reference that article,  
14 but-- and so in a sense, that working paper is also  
15 responding to some of the concerns raised in this  
16 letter. And I-- in my response here to the letter I  
17 detail-- I summarize some of the ways in which that's  
18 the case.

19 Q. Can we now put up the two demonstrative exhibits,  
20 yeah, about the Sedgwick County data? Opposing counsel  
21 put these on the screen for you as well, although we're  
22 going to do I think one at time. Do we have that?

23 Okay. So it's this extrapolation from Sedgwick  
24 County naturalization ceremony information and then  
25 there was another one that was just below 1,100, I



1 believe. Can you switch to that one? Yeah, so these  
2 two here. Do you recall opposing counsel putting both  
3 of these estimates--

4 A. Yes.

5 Q. -- in front of you? And the-- Mr. Ho asked you  
6 about, you know, why-- why you won't-- why you didn't  
7 weight for age when using the data extracted from the  
8 naturalization ceremonies, and I believe your response  
9 was something along the lines of, well, this is not a  
10 survey, that's where you weight for age, and then you  
11 were cut off. Is there more you want to explain here?

12 A. So what we're looking at in Sedgwick County is  
13 the population of naturalizations. The county  
14 attended-- election officials attended every  
15 naturalization ceremony, according to the information I  
16 was provided. And so we have here all of the people who  
17 naturalized-- on this particular slide we have a ratio  
18 of all the people who naturalized and registered while  
19 providing their naturalization document and had a  
20 previous record divided by all of the people who  
21 naturalized in the Wichita CSA.

22 So the only aspect in which one might want to do  
23 some weighting here is in extrapolating from the  
24 Sedgwick County data to this data as a whole. As I  
25 discussed in my response to Professor Minnite, the

1 demographics of the non-citizen population in Sedgwick  
2 County are very similar to the state as a whole, so it  
3 did not-- does not appear that weighting would be  
4 warranted in this case.

5 Q. And is that demographic information available on  
6 the Census Bureau website?

7 A. That demographic information is available on the  
8 Census Bureau website.

9 MR. KOBACH: Your Honor, I would ask the  
10 Court to take judicial notice of any and all demographic  
11 data on the Census Bureau website that may be used by  
12 the parties here.

13 MR. HO: Your Honor, the Census Bureau  
14 website contains reams and reams--

15 MR. KOBACH: Lots.

16 MR. HO: -- and reams of data. I can't even  
17 respond to Secretary Kobach's request for judicial  
18 notice without knowing what he's referring to.

19 THE COURT: Is there something specific  
20 there?

21 MR. KOBACH: The specific demographic data  
22 about Sedgwick County and the specific demographic data  
23 about the full state of Kansas.

24 MR. HO: A lot of demographic data about  
25 Sedgwick County. Demographic data encompasses a lot of

1 things. I don't even know what time frame Secretary  
2 Kobach is referring to. This is--

3 MR. KOBACH: We could provide it to them.  
4 We're still in the process.

5 MR. HO: If he wants to send me something,  
6 I'm willing to look at it.

7 THE COURT: All right. If you all can reach  
8 a stipulation, that would be helpful.

9 MR. HO: Thank you, Your Honor.

10 Q. (BY MR. KOBACH) Is there anything else you  
11 wanted to add about why you-- you didn't-- didn't do  
12 weighting here?

13 A. (Shakes head from side to side).

14 Q. Okay. You were also asked by Mr. Ho about  
15 naturalized persons versus-- I'm sorry, naturalizing  
16 non-citizens versus non-citizens who don't intend to  
17 naturalize I think or don't intend to register. Do you  
18 recall-- and again, you were interrupted and you were  
19 starting to say something about reasons why a person  
20 might give one response versus another. Did you want to  
21 explain further if you can recall that interchange?

22 A. So in my report I discuss this in some further  
23 detail. There are potentially problems if you're  
24 intending to naturalize if you have registered to vote.  
25 One of the links I provided was to a discussion of

1 dealing with this challenge for residents preparing to  
2 naturalize. So that's-- that's one of the-- one of the  
3 issues.

4 Q. Is the problem you're referring to the fact that  
5 then you would-- it would become evident, as it did to  
6 the Sedgwick County Election Office, that you were, in  
7 fact, registered to vote prior? In other words, a prior  
8 criminal behavior would become evident?

9 A. And that could potentially even cause problems.  
10 I believe, although I'm not a lawyer and I can't render  
11 any kind of legal opinion, I think that could cause  
12 problems with the naturalization application, but I-- I  
13 don't know for sure.

14 Q. So if there is that disincentive to register to  
15 vote at the naturalization ceremony, does that suggest  
16 that the eight out of 791 may not be reflective of the  
17 greater number of individuals who were already  
18 registered to vote at those naturalization ceremonies?

19 A. As I articulated previously I believe, I think  
20 that somebody who knows that they're already registered  
21 to vote is less likely to make contact at the ceremony.  
22 You might have an address to update or things like that,  
23 but otherwise you're already on the rolls, you don't  
24 need to register to vote, versus somebody who is not  
25 already registered to vote.

1           One of the things I think that new citizens want  
2 to do, and it's a terrific thing in terms of our society  
3 and participation, is to take-- begin to receive the  
4 ability to participate in our elections fully and  
5 completely by registering to vote. And so those people  
6 I think would be very likely.

7           Q. So just to be clear; are those two independent  
8 reasons why eight out of 791 might not include all of  
9 the individuals in those naturalization ceremonies who  
10 were already registered to vote?

11          A. I'm having trouble keeping track of exactly how  
12 my reasons blend together, but those are-- those are  
13 reasons anyhow.

14          Q. Okay. Now, let's look at Page 27 of your  
15 supplementary report. You were asked some questions  
16 about this by Mr. Ho.

17          A. I'm sorry, which page? Where did you say?

18          Q. I think it was-- I have so many pieces of paper  
19 on our desk, it's hard to keep them straight. It was  
20 Page 27 of your supplementary report. Okay. Blow it up  
21 just a little bit. Further down I think.

22                 You know, it might've been Paragraph 27, I'm  
23 sorry. It was the question about non-citizens who are  
24 not lawfully present in the country, in fact,  
25 registering. And you were-- Mr. Ho referred to a

1 footnote which was a-- I believe a FOX News article  
2 about a-- ICE agents stating that non-citizens  
3 frequently have voter registration cards. And then you  
4 were trying to explain that that was not the only source  
5 for your assertion. Do you recall that interchange?

6 A. Yes, that was actually Page 26 to Page 27.

7 Q. Okay.

8 A. It's at the very top of 27 that the second part  
9 of the quote with the ICE agent is included. And then I  
10 also have a discussion of the ways in which having a-- a  
11 voter registration card could be useful for someone  
12 without documents because it would provide one element  
13 of the set of documents required to work. And so I have  
14 a reference here to the I-9 form, for instance.

15 Q. Okay. Then you may recall just before the lunch  
16 break Mr. Ho asked you about the estimates of registered  
17 non-citizens in Kansas based on the TDL survey results  
18 and he showed you the-- well, he made reference to the  
19 18,000 estimate, which was based on a 16.5 percent  
20 number that you had calculated.

21 And then he said-- he asked you what happened to  
22 that number after you weighted it. And you had a  
23 demonstrative exhibit I believe which showed that 13--  
24 that's all right, we don't-- well, you can put-- yeah,  
25 1,373 was the number-- or 13,173 was the weighted

1 estimate. And that was based on a 11.4 percent  
2 calculation?

3 So is this-- is the 13,173 the weighted version  
4 of the 18,000 calculation?

5 A. This is weighted to match the respondents to the  
6 Kansas non-citizen population.

7 Q. But I think you said you did some weighting to  
8 get the original 18,000 estimate, too; is that correct?

9 A. My recall is the original estimate was based on  
10 weighting to match the TDL list. So if that recall is  
11 correct, then both were weighted, but they were weighted  
12 in different ways.

13 Q. So is one form of weighting better than the  
14 other?

15 A. It depends on what you're trying to make an  
16 inference about. I think the weighting to the TDL list  
17 is arguably superior if you're trying to get an estimate  
18 of the rate of non-citizen registration or attempted  
19 registration among individuals in that TDL category.

20 On the other hand, if one is constructing a  
21 statewide estimate, arguably it is preferable to look at  
22 the weighting to state non-citizen demographics.

23 Q. Then Mr. Ho tried to dig deeper into this-- this  
24 13,173 number or the 18,000 number. And he asked you  
25 questions about the survey itself where it asked, did

1 you register or attempt to register. Do you recall  
2 that?

3 A. Yes.

4 Q. Now, if someone in their mind answering the  
5 survey said that they attempted-- were thinking that  
6 they attempted to register, is it likely that that  
7 person would end up on the suspense list if they went as  
8 far as completing a registration card?

9 A. If they went-- if they completed a registration  
10 card, my impression is they would end up on the suspense  
11 list.

12 Q. But you've done some calculations to estimate the  
13 size of the non-citizen population on the suspense list,  
14 haven't you?

15 A. Yes.

16 Q. And are those-- did those calculations yield  
17 number-- in one calculation 88 people and in another  
18 calculation 125 people?

19 A. Yes, I think so.

20 Q. So could one combine the two analyses you just  
21 did and say, well, of the 13,173, if your other analysis  
22 of non-citizens on the suspense list is correct, only  
23 125 of them at the most could be individuals who were  
24 not ones who-- individuals who attempted to register?

25 A. I'm not sure whether that's the-- it depends on



1 how people are thinking about the attempt to register.  
2 You've offered a hypothetical about what that might  
3 mean, but I'm not sure that that's a comprehensive way.  
4 That's a set of instances of how someone might think  
5 about it.

6           So in this case context, if we accept your  
7 hypothetical, I suppose that would be a reasonable  
8 inference. But I'm not-- I'm not convinced that that's  
9 the only context in which someone would indicate that  
10 they had attempted to register.

11       Q. You were also asked about the-- the TDL matching  
12 exercise, I think this is what it was where-- the  
13 matching of the TDL list to the voter rolls and-- and  
14 about how Professor Hersh was not able to find six on  
15 the list that the state had. You-- and you were  
16 interrupted again in your responses there. Was there  
17 more you'd like to say about that?

18       A. I'm trying to recall. There might well have  
19 been, but I'm having trouble recalling it at this time,  
20 I'm sorry.

21       Q. And I don't know if counsel was trying to imply  
22 this or not, but it seemed perhaps that he was, that  
23 those might be the same people identified in your survey  
24 data of the greater population of TDL survey respondents  
25 where I think one of your numbers you found was six.

1 Those aren't the same six people, are they? The six  
2 identified in your survey versus the six discrepancy in  
3 the matching that Professor Hersh did?

4 A. I'm not sure I understand the question, I'm  
5 sorry.

6 Q. The-- the six respondents in your survey, those  
7 aren't linked-- those aren't the same people that  
8 would've been identified necessarily in the TDL matching  
9 exercises that the state and that Professor Hersh did,  
10 are they?

11 A. I-- I think that my impression of the testimony  
12 by the-- the reports from-- proffered by the plaintiffs  
13 I think involve the assertion that they are not. So--  
14 and at the time that I completed these reports, I did  
15 not have the full voter file and was not able to  
16 independently assess that assertion. I requested it but  
17 it was not provided to me.

18 Q. And then Mr. Ho asked you about your statement in  
19 the deposition I believe that-- concerning the 2016  
20 election about what research is out there. And he  
21 pressed you to acknowledge that there was no research  
22 out there or there was only one piece of research. You  
23 were cut off there too. Have you had the opportunity to  
24 explain what you meant?

25 A. Partially. I-- I think that the-- in deposition

1 the question was fairly clear that it was exclusive of  
2 my 2014 paper. And within the context of the 2014  
3 paper, I have pushed back about-- against these kinds of  
4 statements because I think it's inappropriate to talk  
5 only about a top-end estimate that's based on not just  
6 whether people said they were registered to vote-- said  
7 they voted rather, but whether they have any kind of  
8 indication that they've voted. Maybe people who said  
9 they didn't vote and had a voter file, all of those,  
10 that's the very top, that 11-point something figure.  
11 It's very uncertain.

12 Furthermore, as I-- as I mentioned, it's  
13 important to estimate the portion of non-citizen voters  
14 who are voting for each candidate. So the evidence I've  
15 seen from earlier years' CCES is that although most  
16 non-citizens vote for Democratic candidates, not all do.  
17 And so if you're thinking about the contribution to a  
18 margin like the margin between Clinton and Trump, you  
19 need to think about that also.

20 So simply if you-- even if you had several  
21 million, which I think would-- I've said what I think  
22 about that in general. But even if you had several  
23 million, that wouldn't necessarily translate into the  
24 same number of million of votes adding to the margin for  
25 one candidate versus the other because some votes would

1 go both ways.

2 MR. KOBACH: No further questions.

3 MR. HO: No recross, Your Honor.

4 MR. WOODS: Nothing, Your Honor.

5 THE COURT: May Doctor Richman be excused?

6 You're excused.

7 THE WITNESS: I should leave all of this  
8 here?

9 THE COURT: I'm sorry?

10 THE WITNESS: I should leave all of these  
11 here?

12 THE COURT: Mr. Kobach, are you going to--  
13 those are your exhibits there?

14 MR. KOBACH: Yeah.

15 THE COURT: Okay. All right.

16 MR. KOBACH: We're turning it over to  
17 plaintiffs' counsel.

18 THE COURT: At this point, Mr. Ho, you're  
19 going to call your two witnesses?

20 MR. HO: We're going to try, Your Honor, but  
21 time looks a little tight.

22 THE COURT: All right. Let's proceed.

23 MR. HO: Plaintiffs called Doctor Eitan  
24 Hersh.

25 EITAN HERSH,

1 called as a witness on behalf of the Fish Plaintiffs,  
2 having first been duly sworn, testified as follows:

3 MS. ZHANG: Good afternoon, Your Honor. My  
4 name is Emily Zhang and I'm an attorney with the  
5 American Civil Liberties Union representing Plaintiff  
6 Fish in this case.

7 DIRECT EXAMINATION

8 BY MS. ZHANG:

9 Q. Doctor Hersh, can you please state your full name  
10 and spell it for the record?

11 A. My name is Eitan Hersh. E-I-T-A-N. Last name,  
12 H-E-R-S-H.

13 Q. What is your current position?

14 A. Currently I'm an associate professor of political  
15 science at Tufts University.

16 Q. Is that a tenured position?

17 A. Yes.

18 Q. What is your educational background?

19 A. I have a bachelor's degree from Tufts University  
20 and a master's and Ph.D. from Harvard.

21 Q. And what's your Ph.D. in?

22 A. Government.

23 Q. What are your primary areas of research?

24 A. I focus on American politics, U.S. elections,  
25 election administration, civic engagement.

1 Q. In the course of conducting your research, what  
2 is your methodological focus?

3 A. Most of my work relies on studying large-scale  
4 individual databases, like voter registration files, and  
5 matching those databases to other sources of individual  
6 level data.

7 Q. Have you published peer-reviewed research that  
8 applies matching analysis to official voter registration  
9 records?

10 A. Yes.

11 Q. Have you published peer-reviewed research that  
12 analyzes the quality of records in state voter systems?

13 A. Yes.

14 MS. ZHANG: Your Honor, the plaintiffs offer  
15 Doctor Hersh as an expert in voter registration records  
16 and matching analysis.

17 THE COURT: Any objection?

18 MR. ROE: No objection, Your Honor. No  
19 objection.

20 THE COURT: All right. Doctor Hersh is  
21 recognized as an expert in those fields.

22 Q. (BY MS. ZHANG) Doctor Hersh, at a very high  
23 level what were you asked to do in this case?

24 A. I was asked to look at the voter file in the  
25 state of Kansas and look at attempts to match to the

1 voter file various sources of evidence of non-citizens  
2 from the TDL list server data. I was asked to look at  
3 the state's and their witnesses' attempts to do that  
4 matching and also to conduct my own matching.

5 Q. Did you prepare any expert reports in this case?

6 A. Yes.

7 MS. ZHANG: Your Honor, may I approach?

8 THE COURT: Yes.

9 MS. ZHANG: I handed the witness a binder.

10 Q. (BY MS. ZHANG) Doctor Hersh, will you take a  
11 look at the document in Tab 1, Fish Plaintiffs'  
12 Exhibit 105. What is this document?

13 A. This is my initial report.

14 Q. Is your CV appended to the end of the report?

15 A. Yes.

16 Q. Is that CV current?

17 A. No. No.

18 Q. Will you take a look at the document in Tab 2 of  
19 the binder, Fish Plaintiffs' Exhibit 133. What is this  
20 document?

21 A. This is my updated CV.

22 Q. Now can you turn to Page 2 of your CV. The  
23 second item from the bottom of that page lists a  
24 publication by you and Doctor Stephen Ansolabehere from  
25 2012 entitled "Validation - What Big Data Reveal About

1 Survey Misreporting and the Real Electorate." What was  
2 that paper about?

3 A. That paper was about this topic of survey  
4 misreporting. For basically forever, as long as  
5 scholars have done public opinion research, they've  
6 noticed that on questions that are socially desirable,  
7 like voting and registration, people tend to misreport,  
8 which is a nice way of saying lie or misremember their  
9 behavior.

10 And so in 2012 Doctor Ansolabehere and I, we  
11 matched a similar large-scale survey, the CCES, to voter  
12 registration records to study the relationship between  
13 reports of those behaviors and validated data of those  
14 behaviors.

15 Q. And just to be clear, you found that there was  
16 over-reporting of both registration and voting?

17 A. Yes.

18 Q. Is that paper peer-reviewed?

19 A. Yes.

20 Q. Can you take a look at Tab 3 of the binder,  
21 Plaintiffs' Exhibit 106. What is this document?

22 A. So following the-- I believe following my  
23 deposition in this case the state provided-- Secretary  
24 of State's Office provided a list of 125 registration ID  
25 numbers which they claimed were associated with



1 registered voters or voters listed in the ELVIS database  
2 who were non-citizens. I looked up those registration  
3 ID numbers in the database and produced some statistics  
4 about that data.

5 Q. And is that information contained in what's  
6 called the first supplemental report in this case?

7 A. That's what we're looking at, yes.

8 Q. And let's turn to Tab 4 of the binder. This is  
9 Fish Plaintiffs' Exhibit 107. What is this document?

10 A. This is a second supplement report.

11 Q. And do these reports that you've submitted  
12 accurately represent your analysis in this case?

13 A. Yes.

14 Q. And did you sign each of these reports under  
15 oath?

16 A. Yes.

17 MS. ZHANG: Your Honor, I'd like to admit  
18 Fish Plaintiffs' Exhibit 105, 106 and 107, which are  
19 Doctor Hersh's reports in this case, and also  
20 Exhibit 138 which is the CV, his most recent CV, into  
21 evidence.

22 THE COURT: Any objection?

23 MR. ROE: No objection.

24 THE COURT: All right. Exhibits 10-- 105,  
25 106, 107 and 138 admitted.

1 Q. (BY MS. ZHANG) Before we delve into each of the  
2 analyses you conducted in this case, I just want to go  
3 quickly over the data you analyzed and the methods you  
4 applied. So first the data. What was the data that you  
5 used in conducting your matching analysis?

6 A. So I used multiple versions of the voter  
7 registration database called ELVIS, which contains  
8 voters and previous voters and suspense voters and  
9 inactive voters in the state of Kansas. And those were  
10 linked to the TDL lists and to survey evidence of  
11 non-citizens.

12 Q. Now, before you started your matching process, is  
13 there anything you did to the data?

14 A. Yes. So there are two stages for the matching  
15 process. The first is pre-processing the data so that  
16 indicators like name or address or birth date that  
17 appear on multiple databases but are not necessarily  
18 stored the same way can interact with one another.

19 So, for example, there are different conventions  
20 for names, last names, hyphenated last names, names with  
21 apostrophes, upper case and lower case. And so  
22 pre-processing is making those differences the same so  
23 that the last name Bader-Ginsburg with a hyphen matches  
24 to Bader Ginsburg without a hyphen.

25 Q. And moving on to the actual matching process.

1 How was that conducted?

2 A. So I conducted the match through an algorithm  
3 that I've developed in a number of peer-reviewed  
4 articles which takes multiple sweeps, multiple attempts  
5 to match two different databases by combining  
6 indicators.

7 So the indicators that were available for this  
8 case that I used were name, first name and last name,  
9 date of birth, and address. From the address field I  
10 extracted numeric values that are stored in a clean  
11 enough way to be helpful in matching, so those are the  
12 street number. So in 105 Main Street, the 105. And the  
13 zip code.

14 I then used these indicators of name, address,  
15 and date of birth to match in combination. So I just  
16 tried to match two records based on name and date of  
17 birth, just based on address and date of birth, leaving  
18 out name, and then all three; name, address, and date of  
19 birth.

20 Q. How do you make sure the same individual on both  
21 lists are all captured by your matching process?

22 A. Right. So this attempt to do multiple sweeps is  
23 designed exactly to reduce false positives. So what  
24 that means is suppose there are two people that are on  
25 the same list, so a non-citizen who is a registered

1 voter, but they have different last names or they've  
2 changed the addresses.

3           The reason I do these multiple sweeps through the  
4 database is-- is to accommodate that. So if you've  
5 changed your last name but you have the same address and  
6 date of birth, you'll still match. If you've changed  
7 your address but you have the same first-- you know,  
8 name and date of birth, you'll still match. And so that  
9 is exactly to reduce the chance that I'll miss someone  
10 due to a false negative.

11       Q. I think you mentioned earlier in your answer that  
12 it was to minimize false positives. But at the end of  
13 your answer you mentioned it was to reduce the number of  
14 false negatives. Can you just clarify what those two  
15 are and which one you're referring to?

16       A. Yes, sorry. So I was talking about false  
17 negatives there. So false negatives are two indicators  
18 that represent the same person but they fail to match.  
19 A false positive is two indicators that represent two  
20 different people but they do match.

21       Q. Now, when you run a match the way that you've  
22 just described, which is sweeping the data multiple  
23 times, how certain are you that you've identified a  
24 non-citizen who registered to vote?

25       A. So on average if these two people match, the

1 answer will be right. It will be right most of the time  
2 because two people who have the same-- two records that  
3 have the same name and address and date of birth or just  
4 two of those three likely identify a correct match. But  
5 there are actually three reasons to believe that even  
6 the group of people who were matched are not necessarily  
7 true positives.

8           And so the first of those reasons are there are,  
9 you know, not a lot, but we're not talking about a lot  
10 of people in any of the matching done here. There are  
11 some people who do have very common names so that they  
12 might be on different records. In my report I talk  
13 about case of Robert Smith in Kansas. There's a Robert  
14 Smith in Kansas with one date of birth, another Robert  
15 Smith, the same date of birth, different addresses. So  
16 in that situation is that kind of person matched, it's a  
17 common name and date of birth. That might be a false  
18 positive. So that's one source of error.

19           The other source of error, a second source of  
20 error, relates to timing. So there might be people who  
21 match, for example, the temporary driver's license list  
22 to the voter file. But really, since the time that they  
23 were on that temporary driver's license list, they have  
24 naturalized. And so they match but they don't represent  
25 a true non-citizen voter.

1           The third source of error is actually the most  
2 important, which is that none of the analysis that I  
3 have done can distinguish someone who purposefully was a  
4 non-citizen registering to vote from a non-citizen who  
5 accidentally registered to vote or from a situation in  
6 which a government clerk accidentally registered that  
7 person to vote.

8           Q. Now, let's work through each of the analysis you  
9 supplied in this case, starting with the analysis of the  
10 information presented by the Kansas Secretary of State's  
11 Office. Could you turn to Tab 3 of your binder, which  
12 is your supplemental report in this case, Plaintiffs'  
13 Exhibit 106. Could you turn to Page 2?

14           What does the table on this page which continues  
15 onto the next page represent?

16           A. So I was given these records, these registration  
17 ID numbers from the Secretary of State's Office that  
18 represented what they believe are the-- the non-citizens  
19 registered to vote. And I looked these individuals up  
20 in the voter file, the first voter file I was given, and  
21 these data describe that analysis.

22           Q. Were you able to find all 125 individuals on the  
23 Secretary of State's list in the voter file that you  
24 were given?

25           A. No. Of the 125 registration ID numbers given to

1 me, only 97 of them appeared on the list.

2 Q. Could you turn to Tab 4 of your binder, your  
3 second supplemental report in this case, Plaintiffs'  
4 Exhibit 107, Page 5. This is as noted in the stamp at  
5 the bottom, not the page numbers in the report. Sorry,  
6 Page 5, yeah.

7 What does the table on this page represent?

8 A. So this is the same-- roughly the same analysis.  
9 A couple things have changed. One is the state provided  
10 two additional records, now there are 127 records. And  
11 they provided a different database. So the first  
12 database that they-- that I analyzed contained 11,000  
13 fewer records. They then produced a database that was  
14 more complete, which produced an additional 11,000  
15 records. And so I re-did that first analysis on the  
16 database that they claimed was more complete.

17 Q. Just so the record is clear; when you looked for  
18 the individuals in these two different versions of the  
19 ELVIS file, did you look for each registrant in exactly  
20 the same way?

21 A. Yes.

22 Q. Looking at Table 3 on this page, which rows of  
23 data contains individuals who at the time you ran the  
24 analysis were successfully registered voters?

25 A. So of the 122 people that appeared on the voter

1 file - 127 was the number I was given, I found 122 - but  
2 only 48 of them were registered voters at the time.  
3 Those amount to the row designated active voters and  
4 inactive voters. So 48 total.

5 Q. Now I'd like to ask you about the materials from  
6 Mr. Caskey that you reviewed. First there's a  
7 spreadsheet from Sedgwick County and then there's a  
8 matching analysis. Let's start with the Sedgwick County  
9 spreadsheet. Could you turn to Tab 1 of your binder,  
10 which is your initial report in this case, Plaintiffs'  
11 Exhibit 105, Page 22.

12 MR. ROE: What page?

13 MS. ZHANG: 22.

14 Q. (BY MS. ZHANG) What does the table on this page  
15 represent?

16 A. I was given information from the Sedgwick County  
17 database of individuals who were claimed-- purported to  
18 be non-citizens on the voter file and I analyzed those  
19 data in the voter file.

20 Q. Row 7 reads "number who voted." What does that  
21 row of data indicate?

22 A. 17.

23 Q. And what does that 17 number refer to?

24 A. So of these individuals who are claimed to be on  
25 this spreadsheet of non-citizen registrants, 17 of them



1 had cast at least one ballot.

2 Q. Does the voter history data in ELVIS indicate  
3 when an individual voted?

4 A. Yes. For each election it's designated the  
5 election that it's-- you know, the 2014, whatever  
6 election date it is that's associated with that vote.

7 Q. And did you look into when each of these 17  
8 individuals had voted?

9 A. Yes.

10 Q. What did you find?

11 A. As the next row indicates, that of these  
12 individuals actually only five of them voted prior to  
13 their date of naturalization.

14 Q. Now I'd like to move on to Mr. Caskey's matching  
15 analysis. Could you turn to Tab 4, your second  
16 supplemental report in this case, Plaintiffs'  
17 Exhibit 107, Page 3.

18 A. Yes.

19 Q. What does the table on Page 3 represent?

20 A. So Mr. Caskey from the state performed a match  
21 between the TDL list and the voter file. He then  
22 provided the registration ID numbers from that match. I  
23 looked those individuals up and reported statistics  
24 about their characteristics.

25 Q. Did you also independently conduct a matching

1 analysis of your own?

2 A. Yes. I independently used my algorithm that I  
3 just described to match the TDL records to the voter  
4 file.

5 Q. If you'll turn to Page 4 of that same report.  
6 What is represented in Table 2?

7 A. Yes. So this is the-- this is the results of my  
8 independent match between the TDL file and the voter  
9 file.

10 Q. You had described your matching techniques  
11 earlier. Are there any differences in the way that you  
12 matched to the voter file compared to Mr. Caskey?

13 A. Yes. Mr. Caskey provided very little information  
14 to me. I received very little information about how Mr.  
15 Caskey provided his match, but there are some  
16 differences that I am aware of.

17 One is that I used address information to improve  
18 the quality of the match and I believe he did not.  
19 Second, Mr. Caskey used driver's license identification  
20 numbers to match records between these two files.  
21 However, I independently assessed the driver's license  
22 identification number and, in Kansas, I noted that it is  
23 not a unique identifier. So there are multiple people  
24 in Kansas who have different names, addresses, dates of  
25 birth but share a-- share a driver's license ID number.

1 That led me to the conclusion that it was invalid as a  
2 unique identifier to match databases.

3 Q. And were there any discrepancies in the matches  
4 that you found compared to what Mr. Caskey found?

5 A. Yes. Actually in my algorithm I found additional  
6 people, 82 versus he found 80. I also noted that he  
7 considered-- you know, he-- matches that were from-- for  
8 example, a match of two people that had different  
9 addresses, different dates of birth, different driver's  
10 license numbers. So I believe my-- my analysis  
11 provided, first of all, 82 additional-- 82 people total  
12 versus 80 and was more accurate.

13 Q. Now, looking at Table 2. Which rows of data  
14 contain individual who-- individuals who at the time you  
15 ran the analysis were successfully registered voters?

16 A. So of these 82 individuals that I found, 18.  
17 That's 14 active and four inactive were registered  
18 voters at the time.

19 Q. Row 7 of this table reads "number who voted."  
20 What does that row of data indicate?

21 A. So of these 82 people or who on both the TDL file  
22 and the voter file, only three are on record of ever  
23 having cast a ballot.

24 Q. Now I'd like to move on to some of Doctor  
25 Richman's analysis that you looked at. And we'll start

1 first with Doctor Richman's survey of the suspense list.

2           Could you turn to Tab 1 of your binder, your  
3 initial report in this case, Plaintiffs' Exhibit 105,  
4 Page 12. What does the table in the middle of this page  
5 represent?

6           A. So Doctor Richman conducted a survey of  
7 individuals on the suspense part of the voter file. He  
8 then asked them about their citizenship status. I-- and  
9 found seven who self-reported as non-citizens and  
10 appeared on the suspense list. I identified those  
11 people in the voter file.

12           Q. Row 3 of this table reads "number who voted."  
13 What does that row of data indicate?

14           A. That of the seven individuals who appeared on  
15 both files, one is on record as having never cast a  
16 ballot.

17           Q. Now I want to turn to the last of Doctor  
18 Richman's analysis that you looked at in this case,  
19 Doctor Richman's survey of TDL holders. What is your  
20 understanding of what Doctor Richman did in his survey  
21 of TDL holders?

22           A. He surveyed temporary driver's license holders  
23 and asked them, among other things, whether they were  
24 registered voters. And he found six individuals who  
25 reported that they were registered voters. However, I

1 looked them up on the voter file and they are not  
2 registered voters.

3 Q. How many times did you conduct this analysis?

4 A. Twice with the initial voter file record I had  
5 and then the updated one.

6 Q. Did your findings change when you ran the  
7 analysis the second time around?

8 A. No.

9 Q. What is your interpretation of your finding that  
10 none of those who self-reported as being registered to  
11 vote in Doctor Richman's TDL survey could actually be  
12 matched to the voter file?

13 A. Yeah. Well, as I mentioned in the study of  
14 misreporting, in general, people misreport all kinds of  
15 behaviors that they think are socially desirable. So  
16 they misreport about whether they're blood donors,  
17 whether they're charitable or not, clearly when  
18 they're-- whether they're voters or registered voters.  
19 Even behaviors that don't seem socially desirable but in  
20 the context they are.

21 So, for example, there's peer-reviewed research  
22 suggesting that male college students misreport their  
23 number of sexual partners, which for them in the moment  
24 they're asked is the socially desirable response. And  
25 so this is really consistent with lots of evidence that

1 people who-- who have some socially desirable reason to  
2 say something misreport.

3 Q. Now I want to step back and look at all the  
4 matching analysis that you conducted in this case.  
5 Putting aside these instances in which individuals  
6 misreport whether they're registered to vote, so looking  
7 at the cases in which you've actually matched  
8 individuals to the voter file. What is your view of the  
9 frequency of non-citizen registration in Kansas?

10 A. So there's two analyses, two kinds of analyses I  
11 did in my reports that I think reflect on this question.  
12 The first is evidence of low-incidence idiosyncracies on  
13 the Kansas voter file, which are actually consistent  
14 with low-incidence idiosyncracies on all voter files.

15 And I'll give you a couple of examples that I  
16 describe in my report. In the state of Kansas there are  
17 over 100 people with birth dates in the 1800s who are  
18 registered voters. In Kansas there are 400 individuals  
19 whose-- who were born-- who have birth dates that appear  
20 after they were registered voters.

21 And so in those situations, you could concoct a  
22 story that there's something amiss, that who are these  
23 parents pre-registering their unborn children? Why are  
24 there 400 registrants who were registered before they  
25 were born? You could concoct the story-- you can

1 concoct a story that there are actually many, many more  
2 and these are just the ones that there's evidence of.

3           We don't concoct those stories because there are  
4 a lot of reasonable explanations for why something like  
5 that happens. People are hand-writing registration  
6 forms, they're hand-keyed into a computer. And out of  
7 millions of records or hundreds of thousands of records  
8 there are a few, in this case 400, who are accidentally  
9 keyed in with the wrong birth date and we don't make  
10 much of it.

11           When you see evidence that maybe 100 people, 125  
12 people appear on both these records, it seems very  
13 consistent on just a volume level with these other forms  
14 of idiosyncracies that we don't make much of, and that  
15 leads me to believe they're likely administrative  
16 errors. So that's reason one.

17           Q. Do you have a view on whether the instances of  
18 non-citizen registration that you've identified through  
19 your matches are accidental or intentional?

20           A. Yes. So I think that this is a really  
21 interesting question of whether-- if you see someone  
22 who's a registered voter as a non-citizen, how do you  
23 know-- how can you evaluate this question of whether it  
24 was purposeful or as a result of an administrative error  
25 or their own mistake?

1           And the evidence in my report that speaks to that  
2 has to do with the voting. If you think someone is  
3 intentionally registering to infiltrate our election  
4 system, then you would think that they would actually  
5 vote. Otherwise, to register but not vote is like, you  
6 know, holding up a bank and not taking any money.

7           And what we see in the evidence that I've  
8 reviewed is that compared to an overall voting rate  
9 among registrants, something like 70 percent, almost  
10 none of these people who are on both lists vote. Out of  
11 82, three voted.

12           In Doctor Richman's analysis-- in one analysis,  
13 zero voted. In another analysis, one voted. So to have  
14 a voting rate among these non-citizen registrants at 0  
15 or 1 percent is a really good indication that what's  
16 happening here is not purposeful but accidental.

17           Q. And do you have a theory as to where that  
18 accident occurred?

19           A. Yeah, just like I spoke about with the  
20 administrative error, you know, there are-- there are  
21 lots of steps in the voter registration system,  
22 especially a system in which people are being asked to  
23 register, they're registering, they're filling out paper  
24 by hand and individual clerks are keying in that  
25 information.





1 Q. And you reviewed the Sedgwick County spreadsheet.  
2 Correct?

3 A. Yes.

4 Q. And you're not testifying today that all those  
5 individuals registered to vote unintentionally. Right?

6 A. I am not testifying that they registered  
7 intentionally or unintentionally.

8 Q. Okay.

9 A. For every one of them.

10 Q. I'm sorry, what?

11 A. En masse, I'm not testifying that they-- that  
12 they've all registered either intentionally or all  
13 registered unintentionally.

14 Q. Okay. Regarding the ELVIS-- the Sedgwick County  
15 ELVIS data you looked at, you're not denying that every  
16 one of those had an ELVIS file, are you?

17 A. I'm not sure I understand the question.

18 Q. The-- are you stating that all of the  
19 individuals-- or you're-- okay. Go to Page-- to Tab 4,  
20 please. Well, let me rephrase. On Table 2 on Page 3 of  
21 Tab 4, counsel had you looking at a number with active  
22 and inactive. Do you recall that?

23 A. Table 3?

24 Q. Table 2 on Page 3, sorry.

25 A. Yes.

1 Q. Okay. Individuals with an S code or an R code,  
2 those individuals are also in the ELVIS file. Correct?

3 A. They're in the ELVIS file. Correct.

4 Q. Okay.

5 A. But they're not registered voters at the time of  
6 the analysis.

7 Q. Okay. And when you say "not registered voters at  
8 the time of the analysis," they submitted a voter-- to  
9 be in the ELVIS file, you understand they did submit a  
10 voter registration application?

11 A. That is my understanding.

12 Q. Okay. To clarify, you're not a Kansas attorney.  
13 Right? You're not a Kansas attorney?

14 A. I'm not an attorney of any state or any kind.

15 Q. Okay. I didn't think so. And you were-- during  
16 the deposition you were shown a statute in Kansas  
17 regarding driver's licenses. Do you recall that?

18 A. I don't recall that.

19 Q. Okay. Do you have your deposition by any chance?

20 A. I do not have my deposition.

21 Q. Hold on one second. Turn to Page 137, please.

22 It's Page 35 I think on the pdfs. And I'm not asking  
23 you to make a legal conclusion here, I just-- you were--  
24 do you recall-- I'm just asking if you recall being  
25 shown a statute, specifically 8-243 during your

1 deposition?

2 A. Would you like me to read the--

3 Q. No, I was just asking you to just look at it and  
4 see-- just refresh your recollection whether you  
5 remember being shown that statute. Page 137, it should  
6 be the top left of the page on, like I said, the 35th  
7 page of your deposition on the four.

8 A. Okay. Now, I-- I've seen that.

9 Q. Now, do you recall that that statute stated that  
10 the license shall bear a distinguishing number assigned  
11 to the licensee?

12 A. Yes.

13 Q. Okay. All right. Let's go-- let's move on.  
14 Okay. So you're a registered Democrat. Correct?

15 A. Yes.

16 Q. And you have utilized what's called the Catalist  
17 System. Correct?

18 A. I've--

19 Q. Not in this case, but in the past?

20 A. I've worked on cases and in research using the  
21 Catalist's voter file.

22 Q. And that's a voter file vendor utilized primarily  
23 by the Democratic Party. Correct?

24 A. I don't-- I don't believe so.

25 Q. Do you want to open to Page 27 of your

1 deposition, please. Line 12 through Line 14. Stated:  
2 Are you aware that the Catalist is used primarily by  
3 Democrats? Your response was yes?

4 A. You just asked me a question about the Democratic  
5 Party and this is referencing Democrats.

6 Q. My apologies, okay. But you didn't use that data  
7 in this case. Correct?

8 A. Correct.

9 Q. Okay. In your-- in your report you mentioned the  
10 issue of false positives on Page 5, Paragraph 10. Do  
11 you recall that?

12 A. Yes.

13 Q. Okay. Now, earlier on the stand you mentioned  
14 false negatives but you did not mention false negatives  
15 in your report that I recall; is that correct?

16 A. Maybe not by name, but the way I described the  
17 algorithm to accommodate this problem.

18 Q. Okay. Well, you would concede that similar  
19 errors can lead to false negatives. Right? You would  
20 agree with that? The ones that lead to false positives,  
21 similar errors can lead to false negatives? Similar  
22 administrative errors can lead to false negatives as  
23 well as false positives. Do you agree with that?

24 A. I-- I would-- administrative errors are less  
25 likely I would say to lead to false positives and false

1 negatives than just population-- population  
2 characteristics or database issues.

3 Q. Okay. Let me rephrase. It's also true that  
4 administrative errors such as this, you know, could lead  
5 to under-reporting the actual numbers of non-citizens  
6 registering or attempting to registered to vote. You'd  
7 agree with that. Right?

8 A. If there are false negatives in this context,  
9 that would mean that we are-- would be under-counting  
10 the number of purported non-citizen registrants.

11 Q. Okay. Now, your matches-- your searches include  
12 a first name, last name, address, date of birth. That  
13 was one match. Correct?

14 A. Correct.

15 Q. Date of birth, first name, last name was a  
16 separate match?

17 A. Yes.

18 Q. And address, date of birth was the third match?

19 A. Yes.

20 Q. And you testified earlier that you did not  
21 include driver's license numbers. Correct?

22 A. Right.

23 Q. Okay. So if someone has the same date of birth  
24 but a different first name or a last name and a  
25 different address, you'd say that's not a match.

1 Correct?

2 A. So, for example, like John Smith and--

3 Q. Yeah.

4 A. -- Mary Kelly and they have different addresses  
5 and different driver's license numbers--

6 Q. I was going to say--

7 A. -- I would say I would not count that as a match.

8 Q. Right. Let's say somebody had a different-- so  
9 same date of birth, so let's say 1-1-2000. Okay?  
10 Different first or last name, so let's say it's John  
11 Smith and John Smythe. And a different address. Would  
12 that-- would that be a match under your algorithm?

13 A. Mr. Smythe and Mr. Smith at different addresses  
14 with the same birth date would not be a match.

15 Q. Okay. And as you said earlier you did not use  
16 driver's licenses in your match criteria. So if someone  
17 had the same driver's license, same date of birth, but a  
18 different first name or a different last name and a  
19 different address, the same kind of thing. Right?

20 So John Smythe and John Smith, same date of  
21 birth, different address, but they have the same  
22 driver's license number, that still would not be a match  
23 under your algorithm. Correct?

24 A. Only in the state of Kansas, because the state of  
25 Kansas' driver's license numbers are unreliable as

1 unique identifiers.

2 Q. Okay. So that's a yes then?

3 A. I just wanted to clarify that it's in the context  
4 of this particular court case and this particular data  
5 set.

6 Q. Okay. So on page-- so throughout your-- your  
7 report you criticized Doctor Richman's matching as  
8 potentially generating a lot of false positives--  
9 (reporter interruption).

10 MR. ROE: Sorry. I'm trying to speed up so  
11 that we can get the court going.

12 Q. (BY MR. ROE) You criticized Doctor Richman's  
13 matchings potentially generating a lot of false  
14 positives, both on Pages 4 and 9. But just to clarify,  
15 you found 16 matches using your search criteria. Right?

16 A. I believe that's right.

17 Q. And Doctor Richman found 16 names. Correct? I  
18 believe this is on Page 9 of your report.

19 A. I believe that's right. And there was maybe I  
20 think one difference between our two matches.

21 Q. Right. I think there was one that you found as a  
22 match that he did not and he found one as a match that  
23 you did not. Correct?

24 A. I think that's right.

25 Q. So potentially 17 matches between the two of you?



1 A. Yeah, I believe I conducted analysis based on  
2 that. Right.

3 Q. Now, regarding the one that Doctor Richman  
4 counted that you did not, you said that it was because  
5 it was due to a single name on one file as opposed to a  
6 double name on the other combined with a different  
7 address, do you recall? Expert report Page 9,  
8 Paragraph 14.

9 A. This is the one that he found but I did not?

10 Q. Yes.

11 A. Right. Right. This person had a-- an alternate  
12 name spelling, if it's the same person and, what, a  
13 different address, something like this?

14 Q. He has a different address and a double name as  
15 opposed to a single name if I remember correctly.

16 A. Right.

17 Q. Okay. And so when somebody has a double name,  
18 that would be, for instance, a hyphenated, could that be  
19 a considered a double name?

20 A. Right.

21 Q. Okay. So, for instance, this person-- it's  
22 possible this person could've gotten divorced and moved  
23 away and that would be the same person?

24 A. You could tell a story like that.

25 Q. I'm just saying it's possible. Right?

1 A. Well, yes, in the realm of possible things, that  
2 is a possible thing.

3 Q. Also could be the fact the person uses a single  
4 name and a double name interchangeably? So it could be  
5 like John Michael Smith and John Smith and they just use  
6 the double name interchangeably as the single name. So  
7 in one file he might be John Michael Smith, another file  
8 he might be John Smith, right? Could be the same  
9 person?

10 A. Right, in the way that Bob Dylan and was it  
11 Robert Zimmerman are the same person. You know, anyone  
12 could have different names, right.

13 Q. Right. But mine specifically was referring to  
14 your one that was not a match. So I'm-- I'm giving you  
15 an example of why that could not be a match based on  
16 double names. My example is what you're talking about?

17 A. Your example-- it is possible for someone to use  
18 different naming conventions.

19 Q. Okay. So do you recall during your deposition  
20 you discussed a bunch of-- some different-- not the 28  
21 that wasn't within the first voter file but prior to  
22 that, your initial match, there were ones that both--  
23 that you said were a match-- not a match that Doctor--  
24 that Mr. Caskey said were a match. Do you recall that?

25 A. Yes.

1 Q. Okay. Do you have a copy of your-- you probably  
2 don't, so let me see if I have a copy. Okay. Do you  
3 recall during your deposition you were shown a driving  
4 history for various individuals?

5 A. Yes.

6 Q. Okay. And do you recall reviewing those driving  
7 records and determining subsequently there were many  
8 individuals that you determined were not a match but  
9 later turned out you would agree they probably would be  
10 a match with that additional information?

11 A. Well, not exactly. Because what happened there  
12 is that the attorney from the state suggested to me that  
13 this was the complete list of the voter file and then I  
14 later learned after the deposition that the state had--

15 Q. Yeah, I'm not referring to that. I'm referring  
16 to--

17 A. -- found another individual.

18 Q. Sorry, I'm not referring to that. I'm referring  
19 to your initial match where during the deposition some--  
20 some driver's license records were shown to you  
21 regarding the various individuals on the matches. Do  
22 you recall that?

23 A. Yes.

24 Q. Okay. And so during that deposition, you were  
25 shown various individuals who you claimed were not a

1 match based on different addresses. However, when shown  
2 the driver history, it showed that the same address in  
3 the ELVIS file was also part of the-- it just wasn't the  
4 person's current DMV address. Do you recall that?

5 A. I'm just having a little bit of trouble answering  
6 that question because my understanding is that the  
7 reason that I did not identify the individuals that Mr.  
8 Caskey identified was because the state failed to  
9 provide 11,000 individuals on the voter file.

10 Q. Okay. Can you turn in your deposition to  
11 Page 113, please, Line 6. Do you see where it says:  
12 And I'll go through and let you know which ones do not  
13 match on address and we'll be discussing those? Line 6  
14 through 11.

15 A. I'm sorry, I'm just going to the previous page to  
16 read the question. So I'm-- may I just point out that  
17 the-- the question being asked to me is-- has an  
18 introductory clause "if our office composed a  
19 spreadsheet appropriately," and that is the introductory  
20 clause to the question. And so I'm answering it in that  
21 context.

22 But other than just described, following the  
23 deposition I learned that the state apparently didn't  
24 produce that spreadsheet correctly, so I wouldn't want  
25 to attest--

1 Q. Okay. And again, I'm not referring to the ones  
2 that we ultimately--

3 A. Excuse me, but you are saying-- we are talking  
4 exactly about Mr. Caskey's 80 matches, that's what this  
5 question is about.

6 Q. Yes.

7 A. Those are the ones I did not find that he did  
8 find. That's what we're talking about.

9 Q. No, we're talking about the ones that you said  
10 were not a match in his initial-- on your initial-- how  
11 many were not a match in his initial test? You said you  
12 found 62 and he had 52--

13 A. He had 80, something like that.

14 Q. Right. But you said that you found I think 62  
15 and he had-- you only could identify 52 on his initial  
16 match. Do you recall that?

17 A. We can go look it up.

18 Q. Okay.

19 A. So he had 80 and I found 52 in the voter file.

20 Q. Right.

21 A. And so we're not talking about the 80 minus 52,  
22 that's what-- this question that you're asking me about.

23 Q. I'm talking about the 52 that you did find.

24 THE COURT: Is this based on the incomplete  
25 records or the complete records?

1 MR. ROE: No, this is the complete records,  
2 Your Honor.

3 Q. (BY MR. ROE) Do you recall-- you do recall  
4 seeing a list of certified driving records. Correct?

5 A. Correct.

6 Q. Okay. And so maybe-- do you recall then if-- so  
7 you see on that page the cases 5, 6, 8, 14, 17, 20, 25,  
8 34, 36, 37, 62, 67, 76 and 78.

9 A. Yes, I see those numbers.

10 Q. Those did not match on address. Do you recall  
11 that?

12 A. Do not match-- so these are ones that-- that are  
13 in Mr. Caskey's records that don't match on address,  
14 yes.

15 Q. Right. Do you recall that now?

16 A. I mean, I'm just reading through the-- I'm  
17 reminding myself here, yes.

18 Q. Okay. And-- but you do recall that you were  
19 subsequently shown certified drivers' records and that  
20 many of those that you had counted as not a match ended  
21 up having the same address at a different time with the  
22 DMV. Do you recall that?

23 A. Yes, I-- I don't recall. It says specifically,  
24 "I'll assert to you that the 28 individuals you were  
25 unable to locate are also on this, but they're-- but

1 they're--" yes, is this what you're talking about, the  
2 ones that were not highlighted now?

3 See, all of this was under the assumption that I  
4 was provided with the right data, so I'm just trying to  
5 make sure I understand whether we're talking about  
6 something that's really not relevant as I don't have the  
7 right data in this-- at the point of this deposition.

8 Q. So are you saying that-- do you know if cases 5,  
9 6, 8, 14, 17, 20, 25, 34, 36, 37, 62, 67, 76 and 78  
10 ultimately were matches when you did the next  
11 calculation after the deposition?

12 A. So these numbers that you're talking about, case  
13 numbers?

14 Q. Uh-huh, these were on your spreadsheet. Correct?

15 A. So I matched all of the-- right, so just to  
16 reiterate, I found-- I believe I found, what, nearly all  
17 of the ones that Mr. Caskey found plus more, I'm just--

18 Q. Okay.

19 A. The sequence here is a little bit tricky, right.

20 Q. I'm aware of that. I-- yes. Do you recognize  
21 this?

22 A. This looks like a spreadsheet that we reviewed at  
23 the deposition.

24 Q. Okay. And you-- you created this spreadsheet.  
25 Correct?

1 A. Incorrect.

2 Q. You did not create this spreadsheet. This was  
3 provided to you?

4 A. Yes.

5 Q. Okay. So looking at Case 5--

6 MS. ZHANG: Garrett, could you identify what  
7 this spreadsheet is?

8 MR. ROE: Oh, I'm sorry. This is the  
9 spreadsheet that was provided during the deposition. I  
10 don't have the exhibit-- exhibit number off the top of  
11 my head.

12 MS. ZHANG: What is it of?

13 MR. ROE: It's of the-- the full TDL match.

14 MS. ZHANG: By who?

15 MR. ROE: By Bethany.

16 MS. ZHANG: Sorry, is this Mr. Caskey's  
17 match?

18 THE COURT: Okay. Let me stop you for a  
19 minute. So are you showing him this to impeach him or  
20 are you going to--

21 MR. ROE: I'm going to-- I'm trying to walk  
22 through what happened at the deposition with him so he  
23 can recall.

24 THE COURT: Okay. So I think probably this  
25 needs to be marked as an exhibit.



1 MR. ROE: Okay.

2 THE COURT: So does anybody know what it is?

3 MR. ROE: Where are we at on defense  
4 exhibits, Your Honor?

5 THE COURT: And then identify it as to what  
6 it is that you're asking questions about. It's-- I  
7 think the last defendant's exhibit I show is  
8 Exhibit 1204.

9 MR. ROE: Okay. So 1205.

10 THE COURT: Could be wrong, you might want  
11 to skip a few more ahead, I'm not sure.

12 MR. ROE: 1206 then.

13 THE COURT: 1206? All right. And it's a  
14 spreadsheet created by Bethany.

15 MR. ROE: That's my understanding. I  
16 thought it was created by Doctor Hersh, but it was  
17 created by Bethany.

18 Q. (BY MR. ROE) So looking at Case 5 on this  
19 spreadsheet, you would agree same driver's license--  
20 same driver's license. Correct?

21 A. Yes.

22 Q. Same name?

23 A. Yes.

24 Q. Same date of birth?

25 A. Yes.

1 Q. Different address?

2 A. Correct.

3 Q. This is a match or is not a match?

4 A. My algorithm would count this as the same person  
5 if one of these records appeared on the ELVIS file and  
6 one on the TDL file, correct.

7 Q. Okay. Okay. So going to No. 62 then. Same  
8 driver's license number, and I apologize for the size of  
9 the print.

10 A. Yes. It looks like-- these appear to be the same  
11 driver's license number.

12 Q. Okay. Same first name?

13 A. Yes.

14 Q. Different last name?

15 A. Yes.

16 Q. Same date of birth?

17 A. Yes.

18 Q. Different address?

19 A. Correct.

20 Q. Your algorithm would call that a non-match.

21 Correct?

22 A. Non-match, correct.

23 Q. Okay. And again, it's possible-- we discussed  
24 earlier this person could've, for instance, changed  
25 their last name through marriage or something. Correct?

1 A. They could've changed their last name and  
2 address. Right.

3 Q. Okay. Right. Or they could've gotten divorced  
4 and moved out, correct, would be another option?

5 A. Yes, or they can be different people.

6 Q. Right. Yeah, the point is simply if it could be  
7 shown in the certified driving record, which I-- I  
8 believe it was during your deposition, and if you need  
9 me to, I can find it, I think you said you had more  
10 confidence that that would've been an actual match.  
11 Correct?

12 If you had more information showing that the  
13 address listed was the same address on the voter file  
14 for instance-- or on the-- yeah, there was a-- the  
15 driving record had the same address as the ELVIS file at  
16 some point in the driving record, that would increase  
17 your confidence this was actually a match, not a match.  
18 Correct?

19 A. So if there's a person who has different  
20 surnames--

21 Q. Uh-huh.

22 A. -- and different addresses, but in a larger set  
23 of data that include, for example, a driver's previous  
24 address--

25 Q. Uh-huh.

1 A. -- and that address matched the voter file, yes,  
2 that would surely increase one's confidence that this is  
3 a match.

4 Q. So would you agree that would be an example of  
5 perhaps a false match-- or a false negative under your  
6 algorithm?

7 A. Let me just be careful here, because I believe  
8 that this analysis was done because your attorney from  
9 your office was trying to figure out why I was not  
10 making matches that Mr. Caskey was making. And we know  
11 now the answer to that is because I was provided with  
12 the wrong voter file.

13 Q. I'm asking you about this specific one.

14 A. This specific example.

15 Q. Yes, yes.

16 A. My-- my algorithm would-- would-- if I had more  
17 data, I would incorporate the data into the algorithm.

18 Q. Under your algorithm, just from the data you have  
19 currently, which is two separate addresses, you would  
20 agree this would be-- with a different last name, you  
21 would agree this would be a non-match under your  
22 algorithm. Correct?

23 A. Correct.

24 Q. But if you had a certified driving record that  
25 listed the same address as listed in, for instance, the

1 voter file, then you would agree that yours likely  
2 would've been a false negative in that instance.

3 Correct?

4 A. In that instance I would have updated my  
5 algorithm, right. I mean, if I was provided with more  
6 information to match, I would use that information so I  
7 can make the best match possible.

8 Q. I'm sorry, so that's a yes or a no?

9 A. It depends on whether you're defining my  
10 algorithm as like the thing that I would use to do this  
11 or what I used particularly in this case given what I  
12 had at that moment.

13 Q. In this case given what you had at that moment.

14 A. At that moment I would've not counted that a  
15 match, and that would've been incorrect because it  
16 would've looked-- because more information would've  
17 revealed that it would be a match.

18 Q. Okay. Okay. Case No. 85. Again, same driver's  
19 license?

20 A. Yes.

21 Q. Different first name. This would be an example  
22 of a double first name, correct, on the second one?

23 A. Or a middle name stored as part of a first name.

24 Q. Okay. And same with the last name, right, it's a  
25 hyphenated last name?

1 A. Right.

2 Q. But you'd agree with me that the first name on  
3 each of these is the same as-- excluding the second name  
4 in the first name field, if that was clear.

5 A. The first five--

6 Q. Yes.

7 A. -- letters--

8 Q. Uh-huh.

9 A. -- of the first name field are the same in both  
10 these records.

11 Q. And the-- prior to the hyphen in the second  
12 name-- the second column, second row of the second  
13 column - if that makes sense for the record - is equal  
14 to the-- is the same as the line in the other matched,  
15 you know, record that you-- the record that's not the  
16 same last name in your algorithm. Correct?

17 A. Correct.

18 Q. Okay. So stated another way to make it easier  
19 for the record, this is essentially John and John Jones  
20 and then also Smith and Michael Smith. Correct? So it  
21 can be like John-- or would you agree with that? Not  
22 using the actual names in here because they should be  
23 under confidential so I'm trying not to--

24 MR. ROE: This should be marked as  
25 "confidential," Your Honor, by the way, so I'm trying

1 not to--

2 THE COURT: All right. It can be redacted.

3 MR. ROE: Yeah, so I'm trying not to use the  
4 actual names in the--

5 THE COURT: Could I just get a point of  
6 clarification here? So this is about the differences  
7 between Mr. Caskey and this witness' calculation of  
8 matches.

9 MR. ROE: Well, yes, Your Honor, this is--  
10 this is--

11 THE COURT: And Mr. Caskey came up with 80  
12 and this witness came up with 82?

13 MR. ROE: Well, I think this witness came up  
14 with 82 and then I think after the deposition I think we  
15 had it up to 85 is my reading of the deposition.

16 THE COURT: But essentially this is about a  
17 difference of two people, that's what the difference is  
18 between--

19 MR. ROE: Your Honor, yes, I'm trying to  
20 establish that there are--

21 THE COURT: All right. I just wanted to  
22 make sure I--

23 MR. ROE: -- obviously false positives,  
24 false negatives and we're identifying a few of these on  
25 here.

1 Q. (BY MR. ROE) So anyway, finishing out the  
2 question, you'd agree that-- that although this is not--  
3 not a match in your algorithm because it has different  
4 last names-- or I'm sorry, different first name,  
5 different last name, different address, same birth date,  
6 same driver's license, if the-- if you had the updated  
7 address that would match, would it then become a match?

8 A. So are you asking me if I had additional address  
9 information from the DMV--

10 Q. Yes, yes.

11 A. -- and that additional information suggested that  
12 a previous address from one of these individual records  
13 matched the current address from the other, that would  
14 increase my confidence that this would be a match.

15 Q. Okay. If there was an administrative error  
16 caused by wrongly entering a person's birth date, is  
17 that more likely to produce a false positive or a false  
18 negative under your algorithm?

19 A. If there's an incorrect--

20 Q. Birth date.

21 A. -- birth date, that would more likely produce a  
22 false negative under my algorithm that relied on birth  
23 date.

24 Q. Okay. If multiple people have an identical date  
25 of birth indicating that they are so old that they are--



1 they're unlikely to be alive, could that be explained by  
2 the fact that when ELVIS was originally set up, a number  
3 of records with no date of birth were all assigned the  
4 same birth date?

5 A. That's exactly my point, that there are  
6 administrative reasons why you see odd things on voter  
7 files.

8 MR. ROE: Hold on one second.

9 Q. (BY MR. ROE) Last question. Is it socially  
10 desirable to state that you're a non-citizen-- is it  
11 socially desirable to state you're a non-citizen and  
12 you're illegally registered to vote?

13 A. As I said, it could be, because voting and  
14 citizenship are both socially desirable things to a lot  
15 of people. And so just like it's not-- it wouldn't be  
16 socially desirable for me as a married 34-year-old man  
17 to overstate my number of sexual partners, it does not--  
18 it might be socially desirable for a college student to  
19 do that.

20 So depending on one's personal context, it's--  
21 it's very reasonable to expect that misreporting  
22 something that are widely considered desirable things,  
23 like citizenship and voting, that-- that people might  
24 misreport those behaviors.

25 MR. ROE: No more questions.

1 THE COURT: Any redirect?

2 MS. ZHANG: Just a few, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. ZHANG:

5 Q. Doctor Hersh, I want to ask you about the  
6 spreadsheet that you were provided during your  
7 testimony. Were you provided the spreadsheet at any  
8 point before you wrote your reports?

9 A. No.

10 Q. Can you look at the last page?

11 A. Sorry, let me just clarify. I wasn't provided it  
12 before I wrote my first-- first report.

13 Q. Will you look at the last page of the  
14 spreadsheet. How many individuals are on the  
15 spreadsheet?

16 THE COURT: This wasn't offered into  
17 evidence I don't believe.

18 COURTROOM DEPUTY: No.

19 THE COURT: Is it?

20 MS. ZHANG: I hope not.

21 THE COURT: This is Exhibit 1206, it wasn't  
22 offered into evidence so you shouldn't be asking  
23 questions about it.

24 MS. ZHANG: Doctor Hersh can't offer this--  
25 this spreadsheet into evidence?

1 THE COURT: Oh, you can offer it.

2 MS. ZHANG: Oh, okay. No, no.

3 THE COURT: I'm just saying Mr. Roe didn't  
4 offer it into evidence.

5 MS. ZHANG: No, I just wanted to ask him how  
6 many-- I want to establish that the number of  
7 individuals on this spreadsheet is not similar to  
8 anything else we've seen either from Mr. Caskey or  
9 anything produced by Mr.-- Doctor Hersh.

10 THE COURT: Okay. Go ahead.

11 Q. (BY MS. ZHANG) How many individuals are on the  
12 spreadsheet?

13 A. So we're referring to the spreadsheet that the  
14 state just provided to me? Yeah, this spreadsheet has  
15 93 individuals.

16 Q. All right. I want to ask about the timing of  
17 your deposition where you were asked questions about the  
18 various matches. At the time of your deposition, how  
19 many voter files had you been presented with at that  
20 point in time?

21 A. One.

22 Q. And were you given a voter file after your  
23 deposition?

24 A. Yes.

25 Q. And at that point did your analysis change?

1 A. Yes.

2 Q. How many matches you found-- were you able to  
3 locate the individuals in Mr. Caskey's matches in the  
4 new voter file that you were given?

5 A. So in the first one I found 52 out of 80 matches  
6 that he found. And in the second one I found 76 out of  
7 80 that he found.

8 MS. ZHANG: No further questions, Your  
9 Honor.

10 THE COURT: Anything from you, Mr. Johnson?

11 MR. JOHNSON: No, Your Honor.

12 THE COURT: Anything more?

13 MR. ROE: No.

14 THE COURT: All right. May Mr. Hersh be  
15 excused? All right. You're excused.

16

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25 Are you ready with your next witness? I

1 think we probably ought to take a quick break, but we'll  
2 keep going after that.

3 MR. HO: Well, we are, Your Honor, but I-- I  
4 don't know how we can possibly finish Doctor  
5 Ansolabehere in the amount of time that we have left  
6 unless the Court were willing to stay quite late I  
7 think.

8 You know, my direct examination of him is  
9 probably 45 to 50 minutes and then I don't know how long  
10 the defendants would intend to cross examine him. This  
11 is his second trip now he's taken out to Kansas City.  
12 It would be a significant hardship for him to be here on  
13 Monday, although I could talk to him about it to try to  
14 work that out. I'm just not quite sure how to proceed  
15 at this point, Your Honor.

16 THE COURT: Well, do you think you'll spend  
17 45 minutes? Typically cross doesn't take as long as  
18 direct.

19 MR. HO: This is far from a typical case,  
20 Your Honor.

21 THE COURT: Who-- who's going to cross  
22 examine?

23 MR. KOBACH: I am.

24 THE COURT: Mr. Kobach has been pretty  
25 efficient, relatively efficient in his cross

1 examination. I'm willing to stay late.

2 MR. HO: We are too. If we can get this  
3 done tonight-- today, Your Honor, we would be thrilled.

4 THE COURT: All right. Let's take a  
5 ten-minute recess and come back.

6 (Recess).

7 THE COURT: All right. All right. You can  
8 be seated. Mr. Ho.

9 MR. HO: Thank you, Your Honor. The  
10 plaintiffs call-- the Fish plaintiffs call Doctor  
11 Stephen Ansolabehere.

12 STEPHEN ANSOLABEHHERE,  
13 called as a witness on behalf of the Fish Plaintiffs,  
14 having first been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HO:

17 Q. Doctor Ansolabehere, would you please state your  
18 name for the record and spell your last-- both of your  
19 names actually?

20 A. My name is Stephen Daniel Ansolabehere. Stephen,  
21 S-T-E-P-H-E-N. Ansolabehere, A-N-S-O-L-A-B-E-H-E-R-E.

22 Q. Thank you.

23 MR. HO: I'm approaching to hand the witness  
24 a binder of exhibits.

25 Q. (BY MR. HO) Doctor Ansolabehere, could you

1 please turn to Tab 1 in your binder.

2 MR. HO: And for the record, this is  
3 Plaintiffs' Exhibit 136.

4 Q. (BY MR. HO) Doctor Ansolabehere, what is in  
5 Tab 1?

6 A. That is my CV.

7 MR. HO: Your Honor, the plaintiffs would  
8 like to offer Plaintiffs' Exhibit 136 into evidence.

9 THE COURT: Any objection?

10 MR. KOBACH: No objection.

11 THE COURT: Exhibit 136 admitted.

12 Q. (BY MR. HO) Doctor Ansolabehere, could you  
13 briefly describe your professional background for the  
14 Court?

15 A. I'm a professor of government at Harvard, I hold  
16 the Frank G. Thompson Chair at Harvard University in  
17 government. I was an assistant professor at UCLA. I  
18 moved to MIT in 1995 where I was an associate professor  
19 and a full professor and then I moved to Harvard ten  
20 years ago.

21 Q. I believe there is a section on the first page of  
22 your-- not there, I made a mistake.

23 You have some special projects that you're  
24 involved in like the Caltech/MIT voting technology  
25 project, the CCES, the CBS Decision Desk, could you tell

1 the Court a little bit about that?

2 A. I'm involved in a variety of research and  
3 consulting projects that have to do with election  
4 administration, voting, survey research. I'm the  
5 creator and principal investigator of the Cooperative  
6 Congressional Election Study, which is the largest  
7 survey research project in my discipline, political  
8 science.

9 I've been on the board of the American National  
10 Election Studies for 12 years, which is the longest  
11 running political science research project that dates  
12 back to 1948. I was the founding director of the  
13 Caltech/MIT voting technology project which was created  
14 to examine voting technologies, such as machines used  
15 for counting equipment-- or counting votes or recording  
16 votes, voter registration systems and so forth.

17 And I work for CBS News and have since 2006 on  
18 the election night decision desk where we design the  
19 surveys we use and the data collection processes. We're  
20 projecting the elections on election night on the  
21 national news.

22 Q. Beginning on Page 2 of your report through it  
23 looks like Page 11 is a list of your publications, is  
24 that right, Doctor Ansolabehere?

25 A. That's correct.



1 Q. Could you give a very brief overview of your  
2 record in peer-reviewed publications?

3 A. I've published five books and approximately  
4 eight-- 80 articles. The articles I've written have  
5 been in a variety of disciplines, primarily political  
6 science but also economics, statistics, history and law.  
7 And the field-- topics of interest have included things  
8 like survey research methods, statistics for analyzing  
9 large sample data, statistics for matching large  
10 surveys.

11 In addition to publications, I'm also one of the  
12 associate editors of the-- of *Public Opinion Quarterly*,  
13 which is the journal of the American Association for  
14 Public Opinion Researchers and just stepped down as the  
15 editor of the "Political Economy and Individual  
16 Decisions," book series at Cambridge University Press,  
17 which is a peer-reviewed book series for the Cambridge  
18 University Press.

19 Q. And could we look at Page 12 of your CV which  
20 will be on the screen. You have a section here called  
21 research grants, could you just give a very brief  
22 overview of some of the research grants you've gotten?

23 A. The research grants that I've received have  
24 concerned a variety of subjects ranging from  
25 experimentation with political advertising to funding

1 the Caltech/MIT voting technology project, to funding  
2 the Cooperative Congressional Election Study. They come  
3 from a variety of sources, private foundations such as  
4 the Carnegie Corporations and public foundations such as  
5 the National Science Foundation.

6 Q. And I think we skipped over this, but could you  
7 tell us just very briefly about your educational  
8 background before you became a professor?

9 A. I went to the University of Minnesota as an  
10 undergraduate. I received my Bachelor of Arts in  
11 political science and my Bachelor of Science in  
12 economics. I went to Harvard University and received my  
13 Ph.D. in government in 1989.

14 Q. Let's look at Pages 14 and 15 of your CV. You  
15 have sections here titled-- you have a section here  
16 titled "Expert Witness Consultation and Testimony."  
17 Included in this section, among other things, is your  
18 work testifying in court as an expert in voting rights  
19 litigation; is that right?

20 A. That's correct.

21 Q. Can you give a couple of examples of-- and if  
22 we'd look at the next page of your CV. A couple of  
23 examples of your work as an expert. For example, I see  
24 *Harris v. McCrory* up there.

25 A. *Harris v. McCrory* is a voting rights case in

1 North Carolina in U.S. District Court. The plaintiffs  
2 won that case. It was appealed to the U.S. Supreme  
3 Court and the U.S. Supreme Court upheld the decision.

4 Q. Did you offer testimony as an expert in that  
5 case?

6 A. I did.

7 Q. And did the United States Supreme Court cite your  
8 expert testimony in its decision in *Cooper v. Harris*?

9 A. Yes, they did.

10 MR. HO: Your Honor, plaintiffs request  
11 judicial notice of *Cooper v. Harris*, 137 S.Ct. 455, 2017  
12 citing Doctor Ansolabehere's testimony favorably at  
13 Page 1477.

14 THE COURT: So noticed.

15 Q. (BY MR. HO) And you also have a case up here,  
16 *Romo v. Detzner*, could you tell us a little bit about  
17 that?

18 A. *Romo v. Detzner* is a Florida re-districting case  
19 under state law in the state of Florida.

20 Q. And did you offer expert testimony in that case?

21 A. I did.

22 Q. Was that case later renamed *League of Women*  
23 *Voters v. Detzner*?

24 A. It was.

25 Q. And did the Florida Supreme Court cite your

1 opinion favorably in that case?

2 A. They did.

3 MR. HO: Your Honor, the plaintiffs request  
4 judicial notice of *League of Women Voters versus*  
5 *Detzner*, 172 So.3d 363, Florida Supreme Court year 2015  
6 citing Doctor Ansolabehere's testimony favorably at  
7 Page 445.

8 THE COURT: So noticed.

9 Q. (BY MR. HO) Doctor Ansolabehere, have you ever  
10 been precluded from testifying as an expert witness?

11 A. No.

12 Q. Now, in any of these cases did a court ever  
13 disagree with an aspect of your analysis?

14 A. Yes. They've never accepted everything I've  
15 ever-- I've said, but there are two cases where the  
16 courts took issue and disagreed with something we put  
17 into the record.

18 Q. Is one of those cases the Virginia re-districting  
19 case *Bethune-Hill*?

20 A. Yes.

21 Q. And what happened with respect to your opinion in  
22 the district court?

23 A. *Bethune-Hill*, we had measured the degree of  
24 racial polarization using the methodologies put forward  
25 in *Thornburg versus Gingles*, a 1986 Supreme Court case.

1 Another methodology was introduced by the defendant's  
2 witness. The courts threw up their hands and  
3 discredited both of us, Professor Katz and me, and  
4 ignored the evidence and went ahead on the grounds-- on  
5 other grounds.

6 That case was appealed to the United States  
7 Supreme Court. The Supreme Court of the United States  
8 vacated the decision and remanded it back to the federal  
9 district court for a re-hearing.

10 Q. And tell me a little bit about the Texas voter ID  
11 litigation under Section 5 of the Voting Rights Act.

12 A. I was hired by the Department of Justice to be an  
13 expert witness for-- in their case. They had been sued  
14 by the state of Texas over pre-clearance, and we did a  
15 database matching to measure the extent to which people  
16 did or did not have the IDs required under the law.

17 Q. Did the district court-- the three-judge district  
18 court hearing that case credit your opinion?

19 A. Judge Tatel listed three specific issues that he  
20 had with the approach that we took to database matching  
21 and-- but they-- they had struck down the law. The law  
22 was-- the decision was then vacated because of the  
23 Shelby County decision. The case was re-heard under  
24 Section 2, the Department of Justice sued Texas, and we  
25 fixed the three issues that the-- Judge Tatel had and

1 went actually much farther. So using the same--  
2 basically the same methodology, we went back into court  
3 and the Court cited our approach and our methodology and  
4 struck down the law a second time.

5 MR. H0: And, Your Honor, the plaintiffs  
6 would seek judicial notice of that case. *Veasey versus*  
7 *Abbott*, 830 F.3d 216, the Fifth Circuit sitting en banc  
8 in the year 2016, citing Doctor Ansolabehere's testimony  
9 favorably at Page 259.

10 THE COURT: So noticed.

11 MR. H0: And at this time, Your Honor, the  
12 plaintiffs offer Doctor Ansolabehere as an expert in  
13 statistics, survey research, voter registration and  
14 American politics.

15 THE COURT: Any objection?

16 MR. KOBACH: No objection.

17 Q. (BY MR. H0) Doctor Ansolabehere-- I'm sorry.

18 THE COURT: All right. I'm accepting him as  
19 an expert in these fields.

20 MR. H0: Thank you, Your Honor.

21 Q. (BY MR. H0) Doctor Ansolabehere, as an expert on  
22 statistics, when you are making an estimate about a  
23 larger population based on a smaller sample, what are  
24 some of the hallmarks of reliability that you look for?

25 A. Some of the key aspects of any study that's

1 drawing on a smaller sample to study a larger population  
2 are having a sufficiently large sample size to have  
3 statistical power to have some degree of discernability  
4 across different possible ranges of hypothesis or  
5 hypothesized values that are of interest. Having a  
6 representative or random sample, if you have true  
7 randomness, which is hard to achieve, then you can count  
8 on having representativeness. But if you can't have  
9 true randomness, you still want to strive for  
10 representativeness. That is a way of avoiding biases in  
11 the sample.

12           And then you want to have accuracy of  
13 measurement. You want to avoid measurement errors or  
14 random recordings in-- of the responses to whatever the  
15 instrument is, whether it's a survey question or an  
16 experiment or something like that. You want to have--  
17 you want to avoid misreporting, which is systematic  
18 lying, and you want to avoid problems of non-response;  
19 that is that the sample drawn systematically was skewed  
20 toward one set of respondents, one set of people rather  
21 than another.

22           Q. I want to ask you about one of the things that  
23 you just mentioned. I believe you mentioned sample  
24 size, right, to have a-- an estimate with some  
25 statistical power. What are you looking for in terms of

1 sample size when you're making an estimate about a  
2 larger population based on a smaller sample?

3 A. Typically when we do national sample surveys for  
4 CBS or Harris or one of the other organizations I work  
5 with, we look for sample size-- we plan studies to have  
6 sample sizes of usually a thousand or more, that will  
7 guarantee a kind of margin of error in the planning  
8 phase before you do the study of plus or minus 3  
9 percent. 500 gives you a plus-- sample size of about  
10 plus or-- sorry, a margin error of about plus or minus  
11 four-and-a-half percent. And the margin of error gets  
12 worse as the sample size gets smaller at the rate of one  
13 over the square root of the sample size.

14 Q. Can you just explain that last point? What is  
15 the relationship between the size of the sample and the  
16 margin of error?

17 A. So the margin of error is our measure of  
18 uncertainty; that is, if we did the sample-- did the  
19 study over and over many times, just from interviewing  
20 these people as opposed to those people, the estimate  
21 would move around a bit. It would-- the weight at which  
22 it moves around follows a very well-known pattern, which  
23 is that it moves at the rate of one over the square root  
24 of the sample size. So the bigger the sample size, the  
25 more precise the estimate is, that number gets smaller



1 and smaller.

2 So a sample size of 20 would have a pretty big  
3 margin of error. A sample size of 1,000 would have a  
4 pretty small margin of error. A sample size of 10,000  
5 would have a very small margin of error.

6 Q. And lets focus in on what you were asked to do in  
7 this case. In very broad terms at a high level, Doctor  
8 Ansolabehere, what was it that you were asked to do in  
9 this case?

10 A. I was asked to review the report of Professor  
11 Jesse Richman to assess what the evidence was that was  
12 brought to bear, what my interpretation of what that  
13 evidence meant in terms of the rate of non-citizens in  
14 the state of Kansas that were registered or attempted to  
15 register to vote, and assess the reliability and  
16 statistical credibility of the evidence.

17 Q. Could you turn to Tab 2 in your binder. This  
18 document has already been admitted into evidence. It's  
19 Defendant's Exhibit 952. Do you recognize this as the  
20 expert report from Professor Richman that you were asked  
21 to analyze in this case?

22 A. It is.

23 Q. Could we turn now to the third tab in your  
24 binder, which is Plaintiffs' Exhibit 102. What is this  
25 document, Doctor Ansolabehere?

1 A. That is my evaluation, my report evaluating  
2 Doctor Richman's report.

3 Q. Does this report accurately represent your  
4 analysis in this case?

5 A. It does.

6 Q. And does it accurately represent the sources and  
7 the materials on which you relied in forming your  
8 opinions in this case?

9 A. It does.

10 Q. And does it accurately represent your conclusions  
11 in this case?

12 A. It does.

13 MR. HO: Your Honor, at this time the  
14 plaintiffs would offer Plaintiffs' Exhibit 102 into  
15 evidence.

16 MR. KOBACH: No objection.

17 THE COURT: Any objection-- I'm sorry?

18 MR. KOBACH: No objection.

19 THE COURT: 102 admitted.

20 MR. HO: Thank you.

21 Q. (BY MR. HO) I'd like to ask you about Table 2 in  
22 your report, which is located on Pages 37 and 38 of the  
23 pdf. Doctor Ansolabehere, what is-- what does this  
24 table represent?

25 A. This table-- this table represents the-- or

1 presents the five different analyses that were presented  
2 in Doctor Richman's report of the number or percent of  
3 non-citizens who registered or attempted to register.  
4 The report that Doctor Richman submitted had five  
5 distinct methodologies and five distinct estimates of  
6 the percentage of non-citizens who were registered to  
7 vote using survey data. And that's what this-- this is  
8 an examination of.

9 Q. And I want to now focus on the bottom half of  
10 this table. Not this part, but the part under the  
11 portion with the line "Summary of Kansas Estimates," and  
12 it has some info on the second page, the following page  
13 as well. What does this section of the table represent?

14 A. So the-- the five different studies had very  
15 widely-differing estimates from zero at one extreme to  
16 29 percent on the other extreme. This is a summary of  
17 the different studies under the assumption that all  
18 those studies are conducted with essentially the same  
19 representativeness of the state of Kansas' non-citizen  
20 population, treating them as if they were all drawn from  
21 the same population.

22 Under that assumption, you can summarize those  
23 quite easily. Assuming that they're all the same, then  
24 you should have an average estimate of the non-citizen  
25 rate, which is the average of those studies. And there

1 are two different estimates presented here.

2 One is the simple average, taking each number on  
3 its face value as a separate estimate on its own,  
4 ignoring the sample size.

5 The second weights by the sample size. And by  
6 that I mean it gives more weight to studies with larger  
7 sample and less weight to studies with smaller sample.  
8 And the simplest way to think about what this estimate  
9 is is take all the studies together, take all of the--  
10 every instance of a non-citizen in any study, put  
11 those-- sum them together, that's the numerator. And  
12 you take all the sample size, sum those, that's the  
13 denominator. And that's the percentage.

14 Q. Between these two analyses that you present here,  
15 the simple average and the sample size weighted average,  
16 as an expert in statistics and voter registration, which  
17 of these do you think provides a more statistically  
18 informative understanding of what Doctor Richman did in  
19 his first report?

20 A. Well, a sample size weighted average is  
21 preferable because the simple average not only gives too  
22 much weight to studies with very small sample sizes,  
23 sample sizes of 19 or 14, and treats them the same as a  
24 study with a sample size of 700 or 500. And in  
25 statistical terms, we have much more confidence in the

1 estimate based on a sample size of 700 or 500 than we do  
2 on a sample size of 19, 14 or 37.

3 Q. Okay. So is this what you refer to in your  
4 report as your meta-analysis?

5 A. Yes.

6 Q. And what assumptions, if any, does this  
7 meta-analysis make about the validity of Doctor  
8 Richman's underlying data for his estimates?

9 A. This meta-analysis takes the data at face value.  
10 It assumes that the data are representative or random,  
11 it assumes that there are no measurement error problems,  
12 there are no non-response problems, there are no  
13 misreporting problems. It just treats the data on face  
14 value as if they were drawn from an unbiased and  
15 representative sample.

16 Q. And what does that 1.3 percent refer to?

17 A. That is the estimated percent of people,  
18 non-citizens in the state of Kansas, who are registered  
19 or attempted to register. Treating again the data at  
20 face value.

21 Q. Okay. So if we take Doctor Richman's data at  
22 face value, we assume it's accurate, we assume it's  
23 representative of the entire non-citizen population of  
24 Kansas, you're telling me that we get an estimate that  
25 1.3 percent of non-citizens in Kansas are registered to

1 vote?

2 A. Correct.

3 Q. And--

4 A. Or attempted to.

5 Q. Or attempted to register to vote. Thank you.

6 In your opinion as an expert on statistics,  
7 survey research and voter registration, Doctor  
8 Ansolabehere, when you do that, when you take all of his  
9 data at face value, assume it's accurate, assume there  
10 are no representativeness problems, does that data  
11 provide persuasive evidence of a statistically  
12 significant rate of non-citizen registration in the  
13 state of Kansas?

14 A. No, because there's a great amount of variation  
15 from study to study and that variation reflects our  
16 uncertainty about the actual estimate.

17 Normally if we were just drawing random samples  
18 as if we were, say, doing surveys for public opinion  
19 polls over and over again, we'd expect a rate of  
20 variation based on the formulas, the theoretical  
21 formulas that are developed on sampling theory.

22 Since we have multiple studies, we actually just  
23 take the variation across the studies as the measure of  
24 variation. And that's what I've done here in the second  
25 row. And that gives me the degree of uncertainty I have

1 about the estimate. That degree of uncertainty is  
2 3.8 percent. And the standard-- the margin of error  
3 associated with that is roughly two times the degree of  
4 uncertainty, that's 7.6 percent. So it's a very wide  
5 margin of error for a 1.3 percent estimate.

6 So in statistical terms, I wouldn't-- we couldn't  
7 reject the hypothesis that the rate of non-citizen  
8 voting was, in fact, zero or extremely close to zero or  
9 higher, perhaps as high as 8 or 9 percent. It could be  
10 anywhere in that range. There's just a great deal of  
11 uncertainty with these estimates.

12 Q. And I believe you said the rate of non-citizen  
13 voting, did you mean the rate of non-citizen  
14 registration?

15 A. Sorry, registration.

16 Q. Registration or attempted registration. Right?

17 A. Correct.

18 Q. Would it be an accurate representation of what  
19 you just said to say that looking Doctor Richman's data,  
20 aggregating it all together, assuming it's valid,  
21 assuming its representative of non-citizens in Kansas,  
22 that the information that he presents shows a rate of  
23 non-citizen registration in Kansas that is not  
24 statistically distinct from zero?

25 A. Correct, because the number zero would lie inside

1 that interval of 1.3 percent plus or minus 7.6 percent.

2 Q. And let me just understand what that means,  
3 Doctor Ansolabehere. If that estimate is not  
4 statistically distinct from zero, in your opinion, are  
5 you saying that zero non-citizens in Kansas have ever  
6 registered or attempted to register to vote?

7 A. No. But what it means is that the-- the number  
8 is-- could be extraordinarily small. It could be very  
9 close to zero or that the total number of non-citizens  
10 who have ever attempted to register to vote might be  
11 just no-- no more than those that are in this collection  
12 of data.

13 Q. Okay. Let's talk about the individual estimates  
14 that Doctor Richman presents, starting with the top of  
15 the table, his estimate based on the CCES. So we're  
16 still on Table 2 of your report but at the top of the  
17 table.

18 A. Okay.

19 Q. Just before we get into the CCES estimate, I just  
20 want to very briefly ask you, what is the CCES?

21 A. The CCES is a survey that-- of approximately  
22 50,000 to 60,000 individuals nationally every election  
23 year. And we've conducted it every year since 2006.

24 Q. And your role with it is?

25 A. I created it and I'm the-- one of the



1 co-principal investigators of it.

2 Q. And how is it administered to respondents?

3 A. It's administered by YouGov, a national polling  
4 firm over the Internet.

5 Q. Okay. Now, as you understand it, how did Doctor  
6 Richman in his initial report produce an estimate of  
7 non-citizen registration based on the CCES?

8 A. So one of the questions in the CCES asks how long  
9 your family has been in the United States. And it-- the  
10 CCES is designed to be a sample of citizens because it's  
11 a study for election-- electoral purposes, so we put no  
12 effort into trying to design for non-citizens.

13 One of the categories in that is the catch for  
14 non-citizens, it just says, you know, all four of my  
15 grandparents-- the categories are: All four of my  
16 grandparents were born in the United States, at least  
17 one of my grandparents was not born in the United  
18 States, at least one of my parents was not born in the  
19 United States, I was not born in the United States and  
20 I'm a naturalized citizen, I was not born in the United  
21 States and I'm not a citizen.

22 Professor Richman analyzed the responses to "I  
23 was not a citizen" and correlated that with reported  
24 measures of whether you said you were registered to vote  
25 and also validations where we've taken the survey and

1 matched it to the voter files.

2 Q. And so when he uses the CCES to produce an  
3 estimate of non-citizen registration in Kansas, what  
4 does he arrive at?

5 A. He arrives at an estimate of 29 percent.

6 Q. And in your opinion as an expert on statistics  
7 and survey research and as the principal investigator of  
8 the CCES, does this data and Doctor Richman's use of it  
9 provide adequate statistical information to make an  
10 informed estimate about the rate of non-citizen  
11 registration in Kansas?

12 A. No.

13 Q. Why not?

14 A. Well, first it is an extremely small sample size  
15 of 14, which means that the-- if you-- if you designed  
16 the study at the outset of 14 people in the state of  
17 Kansas, it would be underpowered, it wouldn't have  
18 sufficient statistical precision to tell much at all  
19 about the true rate of non-citizen registration or  
20 attempted registration.

21 Second, there is now published research showing  
22 that there's a measurement error problem with this  
23 particular question such that these results could be  
24 explained entirely from random measurement error of a  
25 very small amount because this category is very small.

1 Third, this group, as I said, it was not designed  
2 to be representative of the non-citizen population in  
3 the United States, let alone in the state of Kansas.  
4 And this group of non-citizens is highly  
5 non-representative; they're older, they're educated,  
6 they're married and so forth. And those factors tend to  
7 be correlated with over-reporting.

8 And then finally when we look at the actual  
9 validations, we see a very high rate of over-reporting  
10 of registration among the non-citizens, like only one of  
11 the four people who said this-- who were in his analysis  
12 as being non-citizens who reported registering to vote  
13 were validated. And it's very likely that that was  
14 just-- those people just clicked the wrong box when they  
15 responded to the survey and they were, in fact,  
16 citizens.

17 Q. Well, let's talk in a little bit more detail  
18 about a few of those pieces, specifically the  
19 measurement error with respect to citizenship status.  
20 Have you documented measurement error in the CCES with  
21 people reporting that they're not citizens despite being  
22 citizens?

23 A. Yes. In 2010 and 2012 we re-interviewed a sample  
24 of about 20,000 people from the CCES nationwide and  
25 re-administered the entire questionnaire to them. Part

1 of the purpose was to measure stability of question  
2 responses. And what we found was there's a small amount  
3 of measurement error in this question, but it's enough  
4 to completely contaminate that one category, the people  
5 who say they're non-citizens.

6 One way to think about this is imagine you have  
7 two barrels. One barrel has 100 gallons of oil in it  
8 and one barrel has one gallon of water in it. And you  
9 have a five-- a .5 percent measurement error, that's a  
10 very small measurement error and that's about the rate  
11 that we observe.

12 Suppose you take out one-half of 1 percent of the  
13 oil and pour it into the water. And you take that one--  
14 point one-half of 1 percent of the water and pour it  
15 into the oil. You'd never notice the water in the oil,  
16 it's such a tiny percentage of the 100 gallons of oil.  
17 But one-half of 1 percent of the oil is, in fact,  
18 one-half of one gallon, and so that's now a third of the  
19 liquid in the other one. And that's essentially what's  
20 going on here.

21 There's a very small measurement error in this  
22 question of one-half of 1 percent, which is trivial for  
23 most purposes, but it has completely contaminated the  
24 non-citizen category because people are just randomly  
25 making a click error or something like that that is

1 creating that measurement error. And so some small  
2 percentage of citizens are accidentally clicking the  
3 non-citizen button and, voila, that's the problem.

4 And we see that as soon as we look at the  
5 re-interviews, because there are a very high percentage  
6 of people who said they were citizens in one year and  
7 then non-citizens in the next year, which is, in fact,  
8 an impossibility.

9 We see this with other questions. A good example  
10 is education. We've had-- there is a small percentage,  
11 about the same percentage as with citizens, who say in  
12 one-- in 2010 they had a Ph.D. and in 2012 they didn't  
13 finish high school, all right, which is an impossibility  
14 we think.

15 Q. So, Doctor Ansolabehere, as the co-principal  
16 investigator of the CCES, these 14 individuals from  
17 Doctor Richman's sample of self-identified non-citizens,  
18 do you have confidence that those 14 individuals are, in  
19 fact, non-citizens?

20 A. No.

21 Q. Can we very briefly look back at your CV,  
22 Plaintiffs' Exhibit 136, and put Page 3 up on the  
23 screen. And I'm looking at the title-- the second full  
24 title on the year 2015. Is this a peer-reviewed article  
25 that you published in which you demonstrated citizenship

1 misreporting in the CCES?

2 A. Correct.

3 Q. All right. You mentioned another issue with  
4 respect to Professor Richman's estimate,  
5 representativeness. Now, the self-identified  
6 non-citizens in the CCES I believe you said were not  
7 representative of the non-citizen population as a whole;  
8 is that right?

9 A. Correct.

10 Q. What effect, if anything, does that  
11 non-representativeness have if you're trying to make  
12 estimates of registration based on the self-identified  
13 non-citizens in the CCES?

14 A. Well, they tend to be better educated, they tend  
15 to be older, they tend to be whiter and various other  
16 characteristics, all of which are correlated with being  
17 more likely to register, but they're also correlated  
18 with being more likely to misreport registration.  
19 They're more likely to be the liars in our surveys.

20 There's a second paper in my CV called  
21 "Validation," which examines the rate of misreporting,  
22 especially of the registration and turnout questions,  
23 and shows that these are the characteristics that  
24 correlate not only with participation but also with  
25 misreporting participation. So it's very likely that

1 these people are misreporting.

2 Q. Let me-- let me just stop you there and let's go  
3 to your CV again really quickly, Plaintiffs'  
4 Exhibit 136, and Page 4 on the screen. The title that's  
5 second from the top, year 2012, the article titled  
6 "Validation," that's a peer-reviewed article that you  
7 wrote?

8 A. Correct.

9 Q. And in that peer-reviewed article you document  
10 over-reporting of registration status in the CCES?

11 A. Correct.

12 Q. Okay. Now, as the principal-- as a co-principal  
13 investigator of the CCES, what effect, if anything, does  
14 this phenomenon of over-reporting of voter registration  
15 status mean for any estimates of voter registration that  
16 one would try to develop from the CCES data?

17 A. Well, this-- this is not just unique to the CCES,  
18 this goes-- the American National Election Study has  
19 this problem, the General Social Survey has this  
20 problem, every public opinion survey has this problem,  
21 which is why public opinion surveys are not great  
22 predictors of election outcomes, because they can't get  
23 registration and turnout right, as we've learned in the  
24 last election.

25 The problem is we think that we-- the surveys

1 inflate registration rates, reported registration rates,  
2 reported voting rates. So we'll overestimate  
3 systematically the registration rates due to  
4 misreporting.

5 Q. And if we go back to your Table 2 from your  
6 report on Pages 37 and 38 of your report, and just that  
7 top section, of the four people who on the CCES in  
8 Doctor Richman's sample said that they were registered  
9 to vote, how many of them could actually be linked to a  
10 valid state voter registration record?

11 A. One of them could be linked to a valid  
12 registration record.

13 Q. And what conclusions, if any, do you draw about  
14 the other three?

15 A. The other three are misreporting. So we have a  
16 75 percent misreporting rate, which is pretty high.

17 Q. Now, taking all of these issues we've discussed  
18 about the CCES, and as an expert on statistics, survey  
19 research and voter registration and as the co-principal  
20 investigator of the CCES, do you have an opinion about  
21 whether Doctor Richman's estimate based on the CCES  
22 provides persuasive evidence of a statistically  
23 significant rate of non-citizen registration in Kansas?

24 A. I do have an opinion.

25 Q. What's that opinion?



1 A. It does not provide evidence of any-- any-- it  
2 provides no information really about the rate of  
3 non-citizen registration in Kansas.

4 Q. Okay. Let's talk about the second line here, his  
5 estimate based on Sedgwick County naturalization  
6 information. Now, what did you understand Doctor  
7 Richman to be doing with Sedgwick County naturalization  
8 information?

9 A. In Sedgwick County when people who were not  
10 citizens became naturalized citizens, there was an  
11 analysis done of the number who reported-- who were--  
12 who were found to have already registered to vote.

13 Q. As an expert on statistics, do you have an  
14 opinion as to whether Doctor Richman's estimate of  
15 non-citizen registration in Kansas, based on this data  
16 from Sedgwick County, is based on a representative  
17 sample of non-citizens in Kansas?

18 A. It's not a representative sample of non-citizens  
19 in Kansas.

20 Q. In what way is it non-- are-- would a pool of  
21 people from Sedgwick County not be representative of the  
22 broader non-citizen population of Kansas?

23 A. People who become naturalized, again, tend to be  
24 older, more stable of living situations, better educated  
25 and so forth. So they tend to be different

1 socioeconomically than the pool of all non-citizens in  
2 the state of Kansas.

3 Q. What effect, if any, as an expert on statistics  
4 and voter registration do you believe-- do you expect  
5 that the fact that non-citizens-- that naturalized  
6 citizens, excuse me, are older, better educated, and  
7 have higher education rates than other non-citizens,  
8 what effect would you expect that to have on Doctor  
9 Richman's estimate here of non-citizen registration?

10 A. It would be too high. It would be biased upward  
11 as an estimate of the entire non-citizen populations,  
12 not a registration rate.

13 Q. So just to be clear, his estimate of non-citizen  
14 registration here is 1 percent. Correct?

15 A. Correct.

16 Q. And you-- your testimony is that, if anything,  
17 that would overestimate the rate of non-citizen  
18 registration in the state of Kansas?

19 A. Correct.

20 Q. Now, let's forget that for a second and let's  
21 just assume that these individuals are, in fact,  
22 representative of the entire non-citizen population in  
23 Kansas, so that we do have a representative sample.

24 Even under that assumption, Doctor Ansolabehere,  
25 as an expert on statistics, do you have an opinion about

1 whether this data provide persuasive evidence of a  
2 statistically significant rate of non-citizen  
3 registration in Kansas?

4 A. I do have an opinion.

5 Q. And what is that opinion?

6 A. It's not-- this is-- again, not statistically  
7 significant in the sense that statisticians measure the  
8 degree of uncertainty about an estimate. The  
9 theoretical margin of error, which assumes randomness  
10 and representativeness, assumes no bias, is presented at  
11 the far right of the table. It's plus or minus  
12 .36 percent, which is-- zero is inside of that interval.  
13 So we could not reject the hypothesis that these data  
14 were generated from a rate of zero or very nearly zero.

15 Q. So is Doctor Richman's estimate of non-citizen  
16 registration based on the Sedgwick County data  
17 statistically distinguishable from zero?

18 A. No.

19 Q. Okay. Let's talk about the next line down, the  
20 Kansas TDL survey estimate. Staying on Table 2 of your  
21 report. What's your understanding of what Doctor  
22 Richman did here?

23 A. The temporary driver's license list are people  
24 who have a temporary driver's license because they are  
25 not citizens, and they conducted a survey of the TDL and

1 measured how many people reported or attempted-- being  
2 registered or attempted to be registered.

3 Q. Now, let's again assume there are no errors in  
4 the data and let's assume that this sample is  
5 representative of the non-citizen population in Kansas.

6 In your opinion as an expert on statistics,  
7 survey research and voter registration, if we'd make  
8 those assumptions, does Doctor Richman's data here based  
9 on the TDL survey provide adequate statistical  
10 information to make an informed estimate about the rate  
11 of non-citizen registration in Kansas?

12 A. No, it has an extremely wide theoretical margin  
13 of error. That's assuming everything is okay with the  
14 sampling and there's no other biases. The-- the width  
15 of that confidence interval is 16.4 percent, so this  
16 could be-- if this study is the only study we had, the  
17 estimate could be anywhere from .1 percent to  
18 37 percent.

19 Q. I want to ask you about a different document in  
20 your binder now, Tab 6, which is Plaintiffs'  
21 Exhibit 109, Doctor Richman's survey instrument for this  
22 survey. It's already been entered into evidence. Do  
23 you recognize this?

24 A. Yes.

25 Q. And I want to point you to Question No. 3 on the

1 survey, the voter registration question. "Have you  
2 registered to vote or attempted to register to vote in  
3 the state of Kansas?"

4 What reaction, if any, do you as an expert on  
5 survey research have to the wording of this question?

6 A. Well, it's a double-barreled question. It asks  
7 you two different behaviors and it's not clear how you'd  
8 distinguish actually being registered to vote or  
9 attempting to register to vote from that question. It's  
10 also imprecise as to when this activity happened; was  
11 this ten years ago, was it in the last six months, so  
12 there's a-- it's called the telescoping problem.

13 Q. Doctor Ansolabehere, if someone answered "yes" to  
14 this question, would we have any way of knowing if that  
15 person, in fact, successfully registered to vote?

16 A. No, because it doesn't distinguish whether you  
17 succeeded in registering or merely attempted.

18 Q. So when we look back at Doctor Richman's estimate  
19 that 16.5 percent of non-citizens in Kansas have  
20 registered to vote based on the TDL-- registered to vote  
21 or attempted to register to vote based on the TDL  
22 survey, we don't know if any of those individuals  
23 actually registered to vote. Correct?

24 A. No, we don't.

25 Q. Okay. Are you familiar with the term

1 non-response bias in the field of survey research,  
2 Doctor Ansolabehere?

3 A. Yes.

4 Q. What does that mean?

5 A. That means that in conducting a survey there's a  
6 certain number of people who refuse to answer your  
7 survey. The higher the number, the greater the problem  
8 or worry we have with response bias. And the problem  
9 with the bias is when the non-respondents become  
10 increasingly different from the respondents, like you  
11 only get educated people or only people who speak a  
12 certain language in responding to the survey and then  
13 they're systematically different from those who don't  
14 respond.

15 Q. So when you're evaluating a survey, do you want  
16 to know something about the response rate?

17 A. Yes.

18 Q. When you looked at Doctor Richman's report and  
19 the underlying information in it, was there any  
20 information that allowed-- that would allow you to  
21 calculate the response rate for the survey of TDL  
22 holders specifically; that is, the number of TDL holders  
23 he attempted to contact under the--

24 A. Yeah.

25 Q. -- total that he did contact?

1           A. So there was no response rate reported in the  
2 survey. When we publish things at political-- *Public*  
3 *Opinion Quarterly*, it's standard to have a response rate  
4 alongside of the survey. And the CCES has response  
5 rates published on the website where the data is  
6 distributed so that there wasn't anything in-- in the  
7 report. There-- I did receive a-- a spreadsheet, it was  
8 an analysis of all the calls made by the phone survey,  
9 and the overall response rate to the call rate was  
10 5 percent.

11           Q. Was there any way to distinguish the response  
12 rate among TDL holders specifically?

13           A. In-- I was going to say in that spreadsheet, it  
14 didn't delineate which category it was done, because  
15 they-- the survey was done of the three data sets at the  
16 same time, the TDL and-- and so forth. So they were  
17 doing three surveys at the same time, so it was unclear  
18 which-- what the response rate was for each of the  
19 surveys.

20           Q. And, I'm sorry, Doctor Ansolabehere, I realize I  
21 forgot to ask you two quick questions about the  
22 double-barreled survey question that Doctor Richman  
23 used. As an expert on survey research, would you write  
24 a voter registration question in that way?

25           A. No, we've never written like that.

1 Q. And as a peer reviewer for academic journals, if  
2 someone submitted a paper based on a survey featuring a  
3 voter registration question worded that way, would you  
4 accept that paper for publication?

5 A. It's pretty unusual, it would need some  
6 additional justification as to why. It wouldn't be  
7 accepted as a measure of registration, for example.

8 Q. Okay. One other question about the TDL survey,  
9 Doctor Ansolabehere, or two, sorry. As an expert on  
10 statistics, do you have an opinion as to whether Doctor  
11 Richman's estimate of non-citizen registration in Kansas  
12 based on the TDL list is derived from a representative  
13 sample of the non-citizen population of Kansas?

14 A. Yes, I do have an opinion.

15 Q. And what's that opinion?

16 A. The sample is not-- not representative. The  
17 state-- the report itself says that the TDL holders are  
18 a pretty small percentage of all non-citizens in the  
19 state and they appear to have fairly different  
20 characteristics.

21 Q. Taking all of the issues that we've discussed  
22 about the TDL survey; as an expert on statistics, survey  
23 research and voter registration, do you have an opinion  
24 about whether Doctor Richman's estimate based on the  
25 survey of TDL holders provides persuasive evidence of a



1 statistically significant rate of non-citizen  
2 registration in Kansas?

3 A. I do have an opinion.

4 Q. What's that opinion?

5 A. It does not provide statistically significant  
6 evidence and there are questions about coverage and  
7 sample bias and-- and measurement questions with the  
8 survey, so those could contribute to bias and should  
9 further widen our level or degree of uncertainty about  
10 the estimate.

11 Q. Okay. Let's go back to your Table 2, pages-- on  
12 Page 37 of the pdf of your report and I want to ask now  
13 about the next line on it, the Kansas counties line.  
14 What is represented on this line?

15 A. This was an examination of registrations in four  
16 counties.

17 Q. And what's your understanding of what Doctor  
18 Richman did with a survey of-- in these four counties?

19 A. There is a study of 576 individuals in these four  
20 counties. None of the-- of registrations and none of  
21 them were-- I'm sorry, I forget which way it went,  
22 non-citizens or registrations. But there were basically  
23 no non-citizens who registered or attempted to register  
24 in these counties.

25 Q. To the best of your recollection, did Doctor

1 Richman offer an estimate of non-citizen registration in  
2 his report based on this survey of these four counties?

3 A. He did report the zero number, he didn't report a  
4 zero percent. I calculated that from the evidence  
5 presented in the paragraphs.

6 Q. So if you were to calculate an estimate of  
7 non-citizen registration in Kansas based on Doctor  
8 Richman's survey of these four counties, what would that  
9 estimate be?

10 A. Zero percent. That's what's presented in the  
11 table.

12 Q. Now, this sample has more than 500 observations  
13 in it; is that correct?

14 A. Correct.

15 Q. What does that fact tell us about the statistical  
16 power of this estimate in comparison to Doctor Richman's  
17 other estimates?

18 A. Well, it's-- the sample size is much larger than  
19 the analysis of the CCES, which has 14 estimates, or of  
20 the TDL, which has 37, or of the incidentally-contacted  
21 respondents, which shows 19.

22 So there's a great deal more power, ability to  
23 distinguish among possible values. We have more  
24 confidence, much more confidence in this estimate than  
25 we do in those other three. The Sedgwick County

1 estimate has much-- a somewhat higher sample of 789. So  
2 that one has a little more precision than this.

3 Q. Now, Doctor Ansolabehere, in your meta-analysis  
4 which we discussed earlier, did you include this  
5 estimate in conducting that meta-analysis?

6 A. I did. I included all of the estimates that were  
7 presented.

8 Q. Why did you include this one?

9 A. It's an estimate of the percentage of  
10 non-citizens who are registered or-- or report  
11 registration.

12 Q. As an expert on statistics and voter  
13 registration, can you think of any reason for-- any  
14 valid reason for excluding this data from your  
15 meta-analysis?

16 A. No. It was what was in Richman's report, so...

17 Q. All right. Let's talk about the next line down,  
18 "Kansas Incidentally-Contacted Respondents." What's  
19 represented on this line?

20 A. In conducting the surveys of the TDL and others,  
21 they-- when the phone company was calling the  
22 households, they would ask for-- they would ask to speak  
23 with a specific individual, but sometimes they would  
24 accidentally speak to some other individual. And those  
25 are incidentally-contacted people.

1           They-- in conducting that, they examined those 19  
2 individuals and determined that one of those  
3 incidentally-contacted individuals was a non-citizen who  
4 had registered or attempted to register. And that's an  
5 estimate of 5 percent.

6           Q. And again, we don't know if this person  
7 successfully registered to vote or merely attempted to  
8 register to vote; is that your understanding?

9           A. That's correct.

10          Q. Now, in your opinion as an expert--

11                   MR. KOBACH: I just-- I've tried to let you  
12 go fast, but I didn't object a moment ago. Could you  
13 just point to me in the report where Doctor Ansolabehere  
14 said that the TDL holders are of fairly different  
15 characteristics from the total state population of  
16 Kansas? We couldn't find that.

17                   MR. HO: It is in-- on Page 25,  
18 Paragraph 52.

19                   MR. KOBACH: I think he simply states that  
20 Richman himself offers no statistical description of the  
21 characteristics or correction or re-weighting of this  
22 data. I don't think he states that TDL holders in  
23 Kansas have a fairly different characteristic from the  
24 rest of the population of Kansas, which he just said on  
25 the stand.

1 THE COURT: This is--

2 MR. KOBACH: So I would move to strike-- I'd  
3 move to strike that portion of his testimony.

4 THE COURT: All right. I'll disregard that  
5 statement if, in fact, he doesn't provide that  
6 particular opinion in his report.

7 Q. (BY MR. HO) Doctor Ansolabehere, coming back to  
8 the incidentally-contacted respondents. In your opinion  
9 as an expert on statistics, survey research and voter  
10 registration, if we assume that this data is accurate  
11 and unbiased, that it's a representative sample of  
12 non-citizens in the state of Kansas, does it provide  
13 adequate statistical information to make an informed  
14 estimate about the rate of non-citizen registration in  
15 Kansas?

16 A. No.

17 Q. Why not?

18 A. When Professor Richman reported this in his own  
19 report, he said this was statistically insignificant, so  
20 it was not a statistically informative value, couldn't  
21 be differentiated from zero. It has a small sample size  
22 of 19, so it's statistically very low power. And the  
23 whole study design is a little incomprehensible.

24 In other words, these are cases who-- that fall  
25 outside of the design. There's no basis for any doing

1 any projection beyond, there's no sampling theory,  
2 there's nothing. There's no conceptualization or design  
3 that's based in any kind of statistical foundation for  
4 doing any analysis with these cases. They're just  
5 arbitrarily encountered cases. In fact, they're the  
6 opposite of the cases that you wanted to get into-- into  
7 the study. So they're actually precisely the people who  
8 shouldn't be in the study.

9 Q. In your opinion as an expert on statistics,  
10 survey research and voter registration, does this  
11 estimate provide persuasive evidence of a statistically  
12 significant rate of non-citizen registration in Kansas?

13 A. No, it doesn't.

14 Q. Okay. I want to ask about one more section of  
15 your report and we should be just about finished. Can  
16 we turn to Page 32 of the pdf in your report. For the  
17 record, this is Page 31 of your report. Beginning at  
18 the bottom half of this page you have a section titled  
19 "D, Analysis of Suspense List." Do you see that?

20 A. I do.

21 Q. What do you discuss in this section of your  
22 report?

23 A. This is an analysis of the suspense list that was  
24 conducted. The suspense list is the list of all people  
25 who attempted to register but did not have the

1 appropriate documentation to show that they were  
2 citizens. And so they were put on a suspense list and  
3 they could come back later and present that  
4 documentation.

5 Q. When you read Doctor Richman's report, what's  
6 your understanding of what his best estimate is for the  
7 percentage of people on the suspense list who are  
8 non-citizens?

9 A. My understanding of his estimate is that-- his  
10 best estimate is that it is 0.7 percent.

11 Q. And the corollary to that would be what  
12 percentage, according to Doctor Richman's estimate, of  
13 the suspense list would consist of United States  
14 citizens?

15 A. It should be 99.3 percent because the question  
16 asks whether you're a citizen or non-citizen.

17 Q. And now just to focus again on that 0.7 percent  
18 figure. Is that estimate that Doctor Richman has, that  
19 0.7 percent of the suspense list consists of  
20 non-citizens, is that statistically significant?

21 A. No, it's not statistically distinguishable from  
22 zero. The 0.7 percent, the sample size is about 1,300.  
23 One over the square root of 1,300 gives you a margin of  
24 error of about plus or minus 3 percent, so that that's  
25 not statistically distinguishable from zero.

1 Q. Now, did you review any other reports by  
2 Professor Richman in this case?

3 A. I did.

4 Q. Could you turn to Tab 4 in your binder. This  
5 document has been marked as Defendant's Exhibit 958.  
6 It's Doctor Richman's supplemental report from April  
7 of 2017. Did you review this report?

8 A. I did.

9 Q. Did anything in Doctor Richman's rebuttal report  
10 cause you to change any of the opinions that were  
11 expressed in your report?

12 A. No.

13 Q. Did anything in Doctor Richman's rebuttal report  
14 cause you to change any of the opinions that you have  
15 described today on the stand?

16 A. No.

17 Q. Doctor Ansolabehere, as an expert on statistics,  
18 survey research and voter registration, taking the  
19 entirety of Doctor Richman's reports in this case, do  
20 you have a conclusion as to whether or not those reports  
21 contain persuasive evidence of non-citizen registration  
22 in the state of Kansas?

23 A. I don't know about the word "persuasive," but  
24 they don't provide any real statistical evidence; that  
25 is, any evidence that the rate of non-citizen



1 registration or attempted registration is below a trace  
2 amount, something very close to zero or perhaps even  
3 zero.

4 Q. So given that conclusion and your understanding  
5 that Doctor Richman's estimate is that 99.3 percent of  
6 the people on the suspense list are, in fact, United  
7 States citizens, what, if anything, do his analyses tell  
8 us about the effect of the documentary  
9 proof-of-citizenship requirement in Kansas?

10 A. It would appear that the-- the disproportionate  
11 number of people on the suspense list are, in fact,  
12 citizens. So a large number of citizens are being put  
13 on the suspense and I don't know if they're allowed to  
14 vote eventually or not, but they're being affected by  
15 this law. And a very, very small number of  
16 non-citizens, perhaps none, but a very small number is  
17 being-- of non-citizens are affected by this law.

18 MR. HO: Thank you, Doctor Ansolabehere.  
19 That's all the questions I have for you at this time.

20 THE COURT: Any questions, Mr. Johnson?

21 MR. JOHNSON: No, thank you.

22 CROSS EXAMINATION

23 BY MR. KOBACH:

24 Q. Good afternoon, Doctor Ansolabehere. Or evening  
25 I should say.

1 A. Good evening.

2 Q. I'm going to try to do this pretty quickly  
3 because we're running late on time, so forgive my quick  
4 questioning, but I want to try to get through fast.

5 Have you written peer-reviewed a research  
6 article-- peer-reviewed articles about non-citizens  
7 registering to vote?

8 A. The relevant article would be the article with  
9 Brian Shaffner and Sam Luks.

10 Q. And is that the one responding to the Richman and  
11 colleagues article of 2014?

12 A. Correct.

13 Q. And are there any other articles besides that one  
14 that you've written on that subject?

15 A. Not that I recall.

16 Q. Has a court ever found your expert testimony to  
17 lack credibility?

18 A. Define what you mean by "lack credibility,"  
19 like--

20 Q. Has a court expressed skepticism about your  
21 testimony?

22 A. Just those two instances that we reviewed with--

23 Q. Okay. And let's look quickly at those two  
24 instances. Did opposing counsel present you with a  
25 copy? I can't recall. I can give you one.

1 A. Of the case? Of the--

2 Q. Of the case.

3 A. No. Thank you.

4 Q. You're welcome. You'll see I've handed you a  
5 copy of the *Texas versus Holder* district court opinion.  
6 If you flip to Page 17 on the bottom pages, bottom page  
7 numbers, and you look at the paragraph break in the left  
8 column. Could you just read the first two sentences of  
9 that paragraph, "the failure to analyze"?

10 A. The first-- Page 17, the second-- oh, "The  
11 failure to analyze federal data is not the only problem  
12 with Doctor Ansolabehere's study," that paragraph?

13 Q. Yeah, go ahead and just read the second sentence  
14 too.

15 A. "Also plagued by several methodological flaws  
16 that make it impossible to rely on it, even from a-- for  
17 the more limited proposition that there exists a racial  
18 disparity in the possession of state-issued IDs."

19 Q. Is this a reference to your expert testimony in  
20 that case?

21 A. Yes.

22 MR. KOBACH: Your Honor, I offer-- rather,  
23 request judicial notice of *Texas v. Holder*, 888  
24 F.Supp.2d 113 at 133.

25 THE COURT: So noticed.

1 Q. (BY MR. KOBACH) And now I'm going to hand you  
2 another case. This is also one that was discussed by  
3 opposing counsel. This is the case you'll see at the  
4 front page is *Bethune-Hill versus The Virginia State*  
5 *Board of Elections*. If you look at Page 7, again  
6 looking at the bottom page numbers-- sorry, Page 37,  
7 looking at the bottom page numbers.

8 And then if you look at the first full paragraph  
9 on the right-hand column, could you just read that first  
10 sentence that says-- begins "with respect to Doctor  
11 Ansolabehere's"?

12 A. On Page 7 or--

13 Q. Page 37, I'm sorry.

14 A. Page 37. "With respect to Doctor Ansolabehere's  
15 analysis regarding race and politics as predictors of  
16 the likelihood of inclusion of VTDs in one of the  
17 challenged districts, the Court has both initial  
18 technical concerns and more fundamental substantive  
19 concerns about the method employed that cause us not to  
20 credit his views as to the reasons for VTD placement."

21 Q. Do you recognize that as being a reference to  
22 your testimony in that case?

23 A. Part of it, yes.

24 MR. KOBACH: Your Honor, I would request  
25 judicial notice of *Bethune-Hill versus Virginia State*

1 *Board of Elections*, 141 F.Supp.3d 505 at Page 551 for  
2 the purposes of the negative treatment of Doctor  
3 Ansolabehere's testimony.

4 THE COURT: So noticed.

5 MR. HO: And just so the record is clear,  
6 Your Honor, as long the judicial notice notes the full  
7 citation, which is vacated by *Bethune-Hill v. Virginia*  
8 *State Board of Elections* in the United States Supreme  
9 Court on March 1st, 2017, we have no objection.

10 THE COURT: I think you had me judicially  
11 notice the Supreme Court's opinion.

12 MR. HO: Not this one, Your Honor.

13 THE COURT: Okay. All right. So noted.  
14 That this-- the entire citation would include the  
15 subsequent history.

16 Q. (BY MR. KOBACH) Opposing counsel went through  
17 your CV extensively. Do you have any experience in the  
18 administration of elections?

19 A. Yes.

20 Q. What experience is that?

21 A. Well, practically I consult with the city of  
22 Boston on things like precinct design and I've worked  
23 with the U.S. Congress, helped-- in drafting the Help  
24 America Vote Act in 2002. I testified before the U.S.  
25 Senate on-- on voter registration statistics. Those--

1 Q. I'm sorry, I might've been unclear. When I say  
2 administration of elections, I mean the actual operation  
3 of an election, you know, the handling of registrations  
4 as they come in and then the tabulation and-- and  
5 receiving of votes on election day.

6 A. I'm a poll worker.

7 Q. Okay. Where are you a poll worker?

8 A. I've been a poll worker in Newton and in  
9 Minnesota back in college. That was a long time ago.

10 Q. Okay. Great. On Page 4, Paragraph 5 of your  
11 report you say that you worked as a consultant for the  
12 Brennan Center. Would you agree that the Brennan Center  
13 opposes proof-of-citizenship laws like this one?

14 A. I don't know what their position is. That was  
15 back in 2002 I think or 2001, the-- what you're  
16 referring to.

17 Q. Okay. I'm going to show the witness what I'm  
18 representing is a printout of the-- one sub-page of the  
19 Brennan Center for Justice's website. If you would  
20 read-- if you'd just-- I don't want you to read aloud  
21 but just kind of look at that first paragraph, that box  
22 that says "restricting the vote."

23 A. Okay.

24 Q. And if you see that second bullet point of the  
25 three bullet points in that box, "representing civil

1 rights groups, Center attorneys have helped with court  
2 rulings to block harsh voter ID laws and voter  
3 registration restrictions which could've made it harder  
4 for hundreds of thousands to cast ballots."

5           Would you agree that that suggests that the  
6 Brennan Center is opposed to laws like the one at issue  
7 in this case?

8           A. I don't know what their position is on this case,  
9 so...

10          Q. More broadly, would you agree that they have  
11 worked to oppose laws that try to prevent ineligible  
12 persons from registering?

13          A. Possibly. I think they're generally concerned  
14 with voting rights. I worked for them on a campaign  
15 finance case.

16          Q. Would you agree that they're opposed to photo ID  
17 laws?

18          A. I don't know.

19          Q. Doesn't it say in that bullet point that we just  
20 read "harsh voter ID laws"?

21          A. I-- harsh voter ID laws. There's a large range  
22 of voter ID laws in the United States.

23          Q. So it's your testimony that you don't have any  
24 reason for believing the Brennan Center opposes laws  
25 like the ones at issue in this case?

1 A. They might, they might not, I don't know. I  
2 don't have any knowledge of that.

3 Q. Okay. Are you involved with the Catalist  
4 database in any way?

5 A. I am.

6 Q. How?

7 A. I have a contract with them to do voter list  
8 matching. I also work with L2 and Aristotle data--  
9 (reporter interruption). I work with L2 and Aristotle,  
10 like the philosopher, sorry, it's the name of a company.

11 Q. Does Catalist primarily serve Democratic  
12 candidates and parties?

13 A. It's my understanding they serve Democratic  
14 candidates, labor union organizations, other groups like  
15 that. But I think they're primarily on the left side of  
16 the political spectrum.

17 Q. Is it correct to say that you and Professor Jesse  
18 Richman have disagreed as academics in the past?

19 A. Yeah, just about this one issue. I don't think  
20 we've ever had any other intellectual disagreements.

21 Q. Would you agree that an expert should come to a  
22 question with an answer not already determined?

23 A. Of course.

24 Q. Well, then let's look at your report and  
25 hopefully do so as quickly as we can. Is it correct to



1 say that your principal criticism of the Richman report  
2 concerns the margin of error?

3 A. No, the study designs often have a lot of flaws  
4 in them that create biases.

5 Q. Okay. Well, let's-- let's go through those  
6 second then, let's start with margin of error. In  
7 Footnote 2 on Page 11 of your report, if you could look  
8 at that. Do you have a copy of your report handy?

9 A. Footnote 2 on Page 11.

10 Q. Does this describe the margin of error  
11 calculation that you did in producing your report?

12 A. Yes. It's the conventional margin of error  
13 calculation that we use in designing studies and it's  
14 what is reported as the margin of error with nearly  
15 every publicly-released survey such as the CBS News  
16 survey or the Harris survey or the Gallup survey.

17 Q. Okay. If you could read the-- just to focus in  
18 on what matters, the second half of Footnote 2 beginning  
19 with "it is commonly assumed"?

20 A. "It is commonly assumed that  $P$  equals .5 priori  
21 in making this calculation."

22 Q. And then keep going.

23 A. "If the true rate  $P$  is very low, an alternative  
24 confidence interval calculation is possible using a  
25 Poisson distribution."

1 Q. And then continue to the end.

2 A. "I used the conventional formula using P equals  
3 .5."

4 Q. Okay. So I'm not sure if you were in the  
5 courtroom or not, but we had some discussion with Doctor  
6 Richman about the different methods people use. Would  
7 you say that you used the Wald method in this report or  
8 how would you describe it?

9 A. This method doesn't really have a name but Wald  
10 is pretty close to it.

11 Q. Okay. Are you familiar with the exact method of  
12 calculating margin of error?

13 A. Fisher's exact? There are many different exact  
14 methods, but usually the exact method is Fisher's exact  
15 method, yes.

16 Q. Have you ever used it?

17 A. Yes.

18 Q. Is it reliable?

19 A. Yes.

20 Q. Are you familiar with the various Agresti  
21 methods?

22 A. I know one method that Alan Agresti has put  
23 forward.

24 Q. Is it reliable?

25 A. Yes. I mean, the-- it's a method for sample

1 sizes of around 80 to 120 for fixing small discrete  
2 jumps in data.

3 Q. Are you familiar with the Jeffreys method?

4 A. Jeffreys method, the Bayesian Jeffreys?

5 Q. I believe it's spelled J-E-F-F-R-E-Y-S. I'm not  
6 sure how it's pronounced.

7 A. Jeffreys method, yes, it's a Bayesian confidence  
8 interval, yeah.

9 Q. Is it reliable?

10 A. Yeah, all these make assumptions and then those  
11 assumptions are reliable.

12 Q. And are you familiar with the scoring method?

13 A. There are lots of scoring methods.

14 Q. I think this-- the one that was described in  
15 Richman's report had a name attached to it, if you  
16 recall, or I can dig through real quickly here.

17 THE COURT: Wilson.

18 MR. KOBACH: There you go, Wilson.

19 Q. (BY MR. KOBACH) Are you familiar with that one?

20 A. I know about it, I've never used it.

21 Q. Never used it. Do you have any reason to believe  
22 it's not reliable?

23 A. No.

24 Q. Okay. And then in your footnotes just there you  
25 referred to if the rate of P is very low, you want-- it

1 is possible using-- to use a Poisson distribution. Is  
2 that a method of calculating margin of error as well?

3 A. It is.

4 Q. And is that one reliable?

5 A. Yes, under appropriate assumptions.

6 Q. Is the method you chose used with some public  
7 opinion surveys?

8 A. Nearly every one.

9 Q. Okay.

10 A. It's the standard approach.

11 Q. Are there differences between a public opinion  
12 survey attempting to assess a snapshot of where public  
13 opinion is on some question or some candidate versus the  
14 type of analysis being done in this case?

15 A. I-- so the-- the first question is what's the  
16 design phase. There's no description of the design  
17 phase. The design phase is when all these questions get  
18 settled about what the distribution is, what the likely  
19 P is and so forth.

20 In the absence of all of that information, we  
21 revert to the conventional method of calculating the  
22 margin of error. So when we report a margin of error  
23 with any survey, we use that because that's the quantity  
24 we use in designing the survey.

25 All of these margins of error follow the same

1 general formula, which is they all get smaller at the  
2 square root of N. And they're just different by a  
3 little bit, which is the numerator.

4 Q. Would you agree that when you're designing a  
5 public opinion survey, perhaps to see which candidate is  
6 leading in a race or what public opinion is on some  
7 close question, that it's appropriate to set the P value  
8 at .5 or 50 percent since-- if you haven't tested the  
9 question before?

10 A. Right. So if you-- if before you've designed it,  
11 unless you have prior knowledge about what the P is, the  
12 default is to set it at .5. It's called an ignorance  
13 prior. If I'm ignorant about anything about the  
14 problem, I set it at .5.

15 Q. But--

16 A. So I'm ignorant about the problem. Professor  
17 Richman's report contained no margins of error except  
18 for the one calculation that was statistically  
19 insignificant. So in the absence of that, I must  
20 proceed with an ignorance prior.

21 Q. But you did know some things about the issue of  
22 non-citizens voting, right, you had-- you talked at  
23 great length about finding in the CCES a relatively low  
24 percentage of non-citizens voting or registering; is  
25 that correct?

1           A. What we found in the CCES was that the  
2 measurement error was sufficiently severe that I  
3 wouldn't use the CCES to study non-citizen voting. That  
4 was what that argument-- that article is essentially  
5 arguing.

6           Q. You had the Sedgwick County data at your  
7 fingertips, didn't you, the eight out of 790-some  
8 individuals at naturalization ceremonies?

9           A. I only received-- the only information I had was  
10 the information in Professor Richman's report. It told  
11 me nothing about what the assumptions of the people were  
12 who designed the study. Those assumptions are what  
13 informs the margin of error calculation. So in the  
14 absence of that, we used the conventional margin of  
15 error calculation.

16          Q. So you're saying that it's appropriate to come  
17 into-- your belief coming into this was not that half of  
18 all non-citizens residing in the United States are  
19 registered to vote, was it?

20          A. It's that I have no belief, that is ignorance  
21 prior.

22          Q. You had no belief coming into this at all? You  
23 thought that it could be more than half of non-citizens  
24 registered to vote in the United States?

25          A. I have no idea what the number is.

1 Q. If the number that is-- if the number asserted by  
2 the state of Kansas, the number asserted by any state  
3 that has made any assertion on this subject, is that a  
4 relatively small percentage, certainly more than--  
5 certainly less than 25 percent of non-citizens in the  
6 state are registered to vote, wouldn't it be more  
7 appropriate to set a P value at the-- somewhere below  
8 25 percent?

9 A. You could set the P value, but say we set the P  
10 value at 25 percent, these differences become  
11 meaningless as you get a sufficiently large sample size.  
12 So if I set the-- the numerator at .25 as opposed to .5,  
13 if I have a sample size of 2,000 or 1,000, which is what  
14 I normally have with a survey, then that numerator  
15 doesn't matter for almost anything in the inference.

16 It's only when I have a sample size of 19 or I  
17 have no certainty at all and where small biases can  
18 completely mess up my survey that these things become  
19 meaningful. And then we're leaning an awful lot on  
20 other assumptions like randomness to carry the day in  
21 drawing any inferences.

22 Q. But assuming P to be .5 produces the largest  
23 margin of error using this method, doesn't it?

24 A. It is the-- yeah, it's the highest. That's the  
25 ignorance prior. That's the idea. The idea behind the

1 ignorance prior is I don't know what this is, so I'm not  
2 going to bias myself toward finding something.

3 So we begin with that margin of error. And that  
4 is what every survey researcher, every firm does, every  
5 academic researcher, every report, every time you see  
6 the margin of error reported in the media, that is  
7 basically what's being reported with very few  
8 exceptions.

9 MR. KOBACH: Your Honor, I'm handing the  
10 witness Attachment 17 to the Richman supplemental  
11 report. I'm not sure if it's already in evidence or  
12 not.

13 THE COURT: This is an attachment--

14 MR. KOBACH: 17.

15 THE COURT: -- to the supplemental report?

16 MR. KOBACH: Yeah. We similarly had this--  
17 an earlier attachment that it was-- that was the working  
18 paper, and I'm not-- and I think we concluded that was  
19 in evidence, or not?

20 THE COURT: Well, the attachments were not.

21 MR. KOBACH: Were not in evidence, okay.

22 THE COURT: So you marked and I think I  
23 admitted that other attachment. Are you wanting to mark  
24 and-- and offer this?

25 MR. KOBACH: Yeah, I'd like to offer this



1 into evidence. What's our number up to, 12--

2 MR. HO: Your Honor, we'd object to this.  
3 This is a paper written by Hilde Tobi, Paul B. van den  
4 Berg and Lolkje T.W. de Jong-van den Berg, none of whom  
5 as far as I know are coming in here to testify to  
6 authenticate this or testify to its contents.

7 MR. KOBACH: Your Honor, it's a public--

8 THE COURT: Well, then the other--

9 MR. HO: It's not Doctor Richman's work like  
10 the other paper was that went in.

11 MR. KOBACH: Your Honor, it's published at  
12 the website and it's a part of the Pharmacoepidemiology  
13 and Drug Safety Journal. It's a published article,  
14 we're just--

15 MR. JOHNSON: I'll also point out that none  
16 of these individuals seem to be in the United States.  
17 They're off in the Netherlands.

18 MR. HO: Your Honor, there are a lot of  
19 papers that I'd love to bring in here and throw into the  
20 record from people who are not testifying.

21 MR. KOBACH: I'm not going to-- I'm not  
22 going to offer it for the truth of the matter asserted,  
23 Your Honor, I'm just going to be offering it to-- for  
24 one small paragraph talking about sampling, the  
25 principal-- well, I take that back. I guess I am

1 offering it for-- tangentially for the truth of the  
2 matter of this one small paragraph.

3 THE COURT: All right. I'm not going to  
4 admit this. It is hearsay, it's not Doctor Richman's  
5 statements, it's not this witness' statements. And the  
6 other concern I have is I've been very careful to keep  
7 everything I think righteous on the-- on the scope of  
8 the expert's opinions. And it sounds like maybe you're  
9 going to try to elicit a new opinion. And I precluded  
10 you from doing that with your experts, I think I'll  
11 preclude you from doing that with their expert as well.

12 MR. KOBACH: I think it might fall under the  
13 learned treatises exception to hearsay. But regardless,  
14 we don't-- we don't need to admit it into evidence. I  
15 just want to use it to impeach the witness on this  
16 question.

17 THE COURT: All right. Go ahead.

18 Q. (BY MR. KOBACH) Doctor Ansolabehere, if you  
19 could turn to the second page of this, which is  
20 Page 240, and then you'll see there's a heading  
21 "Methods." And then right under that there's a  
22 sub-heading "Eight Methods to Calculate Confidence  
23 Intervals." Do you see that?

24 A. Yeah.

25 Q. Okay. And let me just-- to make this fast, I'm

1 just going to read for you the first just-- yeah, the  
2 first sentence. No, parts of the first paragraph.

3 "To proceed any further, we need to introduce  
4 some notation: Let  $P$  denote the estimate of the unknown  
5 proportion  $\pi$ ." And then down-- you skip down another  
6 two sentences, "The true  $\pi$  is estimated by  $P$  equals  $R$   
7 over  $N$ , where  $R$  is the number of observations with the  
8 characteristic under study (the successes)." Is this an  
9 accepted method for calculating what  $P$  is?

10 A. I'm just looking at this article, so I don't  
11 know.

12 Q. Well, looking at it now as an expert in--

13 A. I'd have to sit down and read the article. I  
14 mean, it takes--

15 Q. No, I'm just--

16 A. I don't know what this article is. When we  
17 review an article at a journal, we sort through it.  
18 This is from pharmacology, it's not any field--

19 Q. I'm just asking in calculating  $P$ , would you agree  
20 that the way you would calculate  $P$  is to look at the  
21 observed-- as you yourself said, you look at past  
22 examples, observed past occurrences of the event you're  
23 looking at and then set that over the number of past  
24 observations you've made. Wouldn't that be the normal  
25 way to calculate  $P$ ?

1 MR. HO: Your Honor, I'm just going to  
2 object. Mr. Kobach is asking Doctor Ansolabehere about  
3 a half of a sentence and then one other sentence plucked  
4 out of an article that Doctor Ansolabehere has never  
5 read, that isn't in evidence, that for which no  
6 foundation has been laid. I don't think anyone followed  
7 that question at all. And I-- I just don't--

8 MR. KOBACH: I would be happy to ask him to  
9 give-- drill very carefully for the--

10 THE COURT: I'm going to overrule the  
11 objection if you can answer this based on the  
12 information you've been given.

13 A. So when we calculate the estimated P, this is not  
14 the P we use in designing the sample, it's not the P we  
15 use in setting our inference or whatever margin of error  
16 is for a survey, we calculate the number of successes or  
17 yeses, or whatever they are, divided by the sample size.  
18 So it's-- sometimes that's called K. So K over N is a  
19 common notation for calculating--

20 Q. (BY MR. KOBACH) Right. But you'll see here--

21 A. -- P, the estimated P in the sample.

22 Q. Would you agree that it says right here, though,  
23 this is the method to calculate confidence intervals,  
24 which would be analogous to the margin of error.

25 Correct?

1 A. These are assuming a true P, a P, like a number.  
2 You know that number, you hypothesize that number.

3 Q. Right. So there is a true number of non-citizens  
4 registered to vote in Kansas. Right?

5 A. And we-- I have no idea what that is.

6 Q. And neither do I. But would you agree that we  
7 have a shared understanding that it's probably somewhere  
8 less than 25 percent of the entire non-citizen  
9 population?

10 A. It could be.

11 Q. So are you saying here that-- when you did your  
12 margin of error calculations, you honestly believed that  
13 the P, the number of-- going into this that you were  
14 totally ignorant of P and you thought it could be higher  
15 than 50 percent of non-citizens in Kansas registered to  
16 vote?

17 A. I'm using the normal formula for calculating the  
18 confidence interval.

19 Q. That doesn't answer my question.

20 A. Hang on. I'm using the normal formula for using  
21 a confidence interval when you don't have the  
22 information, which is my case.

23 Q. And my question was: Did you say-- assume that  
24 it could be as high as 50 percent or even higher? Yes  
25 or no?

1       A. If it was higher, then the confidence interval  
2 starts to drop on the other side. P is .5 is the  
3 assumption that I made, which is what is explained in  
4 the footnote.

5       Q. So again, are you-- were you assuming that the  
6 number of non-citizens registered to vote in Kansas  
7 could be 50 percent of those individuals or even higher  
8 than 50 percent? Yes or no?

9       A. It could be any number. I'm using--

10      Q. And that was your assumption?

11      A. And I'm using the ignorance prior because there  
12 were-- first of all, there were no confidence intervals  
13 at all, except in one case that was insignificant,  
14 reported in the initial report. So I'm having-- as an  
15 expert on the outside, trying to re-fill things in and  
16 ask the question.

17               As a reviewer, as someone evaluating a report,  
18 what is the evidence presented before me and does it  
19 stack up to our normal measures? In the absence of  
20 knowing what assumption was made by the-- the designer  
21 of the study of what the P was, what their P was, and  
22 that would dictate what the confidence interval  
23 calculations will look like or what the sampling  
24 methodology is, I'm using the traditional conventional  
25 methodology which you'll see reported at the Gallup

1 poll, at CBS News. Any reputable survey firm uses this  
2 to measure their level of confidence.

3 The important fact about that is that as the  
4 sample size grows, regardless of what these numerator  
5 calculations are, whether it's .25 or .5 or .1, as the  
6 sample size grows, the confidence intervals of all of  
7 these methods converge and become very small. They all  
8 become very small at the rate of the square-- one over  
9 the square root of N.

10 Q. Right. But--

11 A. So if the sample sizes had been sufficiently  
12 large, there wouldn't be any questions about margins of  
13 error.

14 Q. And there's no disagreement on that. But my  
15 point to you is: Assuming P is .5 produces the largest  
16 margin of error, does it not?

17 A. Yeah, it would be the largest margin of error  
18 because that's the standard error with P at .5.

19 Q. And if you're trying to show that Doctor  
20 Richman's work produced a margin of error that could go  
21 so low as to beyond zero, this would be the perfect way  
22 to do it, wouldn't it, to assume P to be .5?

23 A. That was not the way I approached it.

24 Q. You didn't follow the way of setting a value for  
25 P described in this article, did you?

1 A. I had never read this article before.

2 Q. I'm asking you now that you've read the article  
3 which shows the way to calculate P, you didn't follow  
4 that, did you?

5 MR. HO: Misstates the record, Your Honor.  
6 Doctor Ansolabehere has not read the article.

7 MR. KOBACH: I'm sorry, read the relevant  
8 paragraph of the article.

9 THE COURT: He doesn't know if it's the  
10 relevant paragraph unless he reads the whole article.

11 Q. (BY MR. KOBACH) Let's just frame it this way:  
12 You didn't do what the author of this article suggested  
13 as the way to calculate P, did you?

14 A. No, I didn't-- I hadn't read the article so I  
15 didn't do what they-- I don't know what their conclusion  
16 is, so...

17 Q. I'm just looking at the sentence there-- the  
18 paragraph there where P is calculated as P as R over N.  
19 You didn't do that, did you?

20 A. I calculated-- well, I didn't do the calculations  
21 with the exception of one calculation, which was zero  
22 over 576.

23 Q. Did you use the data you had been provided  
24 concerning Sedgwick-- or the information you had been  
25 provided in the Richman report, assuming it to be true,



1 that seven out of 790-some individuals in Sedgwick  
2 County who had naturalized were, in fact, already  
3 registered to vote? Couldn't that give you at least an  
4 approximation for P?

5 A. That's after the fact, that's like assuming the  
6 result after the fact. We usually when we design  
7 surveys, we start with a prior belief. And that prior  
8 belief is what dictates what our confidence interval is.

9 Q. Well, I'm not talking about design of the survey,  
10 I'm talking about calculating the margin of error after  
11 the survey.

12 A. Right. And I'm saying that we-- the decisions  
13 you make beforehand are what dictates your margin of  
14 error.

15 Q. The number of responses doesn't dictate your  
16 margin of error?

17 A. The number of responses that you collect is a  
18 function of your belief about what you're studying, what  
19 the sampling property is, what-- the processes that  
20 generates it, what the P is.

21 I have no idea what the process was, what the  
22 thinking was behind this design of these studies. When  
23 we design the CCES, we take an ignorance prior, we start  
24 with P at .5 and we draw a sample size that's big enough  
25 to give us the smallest margin of error to do various

1 analyses. Same at CBS News and the same standards I use  
2 in evaluating articles at-- for P0Q.

3 If I get an article for P0Q where I have a sample  
4 size and a sample proportion, I actually don't use that  
5 sample proportion, I just use 1 over the square root of  
6 N as the margin of error because that's the conventional  
7 margin of error to see what the author is up to.

8 Q. In your paper criticizing Richman and his  
9 colleagues, didn't you, yourself, conclude that the  
10 number of non-citizens registering is much smaller than  
11 50 percent of the non-citizen population in America?

12 A. In that article?

13 Q. Yes.

14 A. Yes. It looks to be smaller than 50 percent in  
15 that article.

16 Q. Much smaller than 50 percent. Right?

17 A. Yeah, in this data, yeah.

18 Q. Much smaller than 10 percent. True?

19 A. In those data, yeah.

20 Q. So you, yourself, had written an article where  
21 you found that the percentage was much smaller than  
22 10 percent, yet you willfully assumed an ignorant  
23 position and said, well, let's assume P could be as high  
24 as 50 percent. Correct?

25 A. In the absence of no information, no margins of

1 error calculated. For example, if this had come over my  
2 desk at POQ, I would've had to have rejected it without  
3 ever sending it out to review because the author didn't  
4 do what they should've done in giving me the most basic  
5 information to draw statistical inferences. And those  
6 statistical inferences were drawn.

7           So in the absence of any information, I have to  
8 revert to the conventional standard error calculation,  
9 which is what I'm assuming the designers did because  
10 that's how, you know, the-- every study is designed  
11 using that P of .5 divided by the square root of N  
12 calculation.

13       Q. Okay. And I'm going to try to move this along,  
14 so I might interrupt you a bit and opposing counsel can  
15 come back up if I cut you off.

16           Let's look at what you say, though, in  
17 Footnote 2. You say, "If the true rate of P is very  
18 low, an alternative confidence interval calculation is  
19 possible using a Poisson distribution."

20       A. Uh-huh.

21       Q. You concede that that is an alternative way to do  
22 it. Correct?

23       A. Yes.

24       Q. And you may recall that at your deposition I  
25 asked you to do a Poisson distribution to calculate

1 margin of error and you did one off the top of your  
2 head. And let's do that exercise again.

3 Look at Table 2 of your report, second row, the  
4 Sedgwick County example. Do you have that? And I  
5 apologize I was getting the number wrong, it was-- it's  
6 eight of 100-- do you see eight over 789?

7 A. Yeah.

8 Q. Okay. So let's do that exercise again. The data  
9 indicates that eight out of 789 naturalizing  
10 non-citizens were already registered prior to  
11 naturalization. Could you please calculate the margin  
12 of error using a Poisson distribution for that sample?

13 A. Yes. .01 over the square root of N.

14 Q. Okay. And what does that--

15 A. So whatever the square root of 789 is.

16 Q. So do you need a calculator?

17 A. Off of my head--

18 Q. You did it pretty quickly. I was amazed how fast  
19 you were doing it--

20 A. It is probably--

21 THE COURT: No, no. Don't talk at the same  
22 time. Please.

23 A. .01 divided by 30 roughly.

24 Q. (BY MR. KOBACH) If I gave you a calculator,  
25 could you do that?

1 A. One over 30-- so it's about .03 times two. So  
2 .06.

3 Q. .06, that's exactly what you calculated in the  
4 deposition. So that would be .6 percent. Right?

5 A. Right.

6 Q. And so by using that method, the Poisson method,  
7 you get a margin of error of plus or minus .6 percent.  
8 Correct?

9 A. Right. Under the assumption that P of .1 is  
10 true.

11 Q. And then that's significantly smaller than the  
12 3.6 percent margin of error you put in your report,  
13 though. Correct?

14 A. Correct.

15 Q. So you chose a method that yielded a six times  
16 greater margin of error to make your point that the  
17 margin of error could be so large as to include zero,  
18 didn't you?

19 A. Correct, because I'm using the standard margin of  
20 error. If I had presented the Poisson margin of error,  
21 that would've been unusual for survey research.

22 Q. But you stated in your own footnote, did you not,  
23 that the Poisson margin of error method would be  
24 appropriate when the number of positive responses or the  
25 number of responses you're looking for is pretty small?

1 A. When the true proportion is really small.

2 Q. And that would be the case when the number of  
3 non-citizens relative to the total-- or the relative  
4 number of non-citizens registered relative to the total  
5 number of non-citizens in the state is relatively small?

6 A. And by "relatively small," we're talking in the  
7 1 percent range, not in the 25 percent range.

8 Q. How about in the 5 percent range, would that be  
9 small?

10 A. 5 percent might be small.

11 Q. Okay. Let's talk about the number zero. You say  
12 in Paragraph 9 of your report and you said again on  
13 direct examination that, "It is not possible to reject  
14 the hypothesis that the rate of non-citizen registration  
15 in the state of Kansas is different from zero." Do you  
16 recall that?

17 A. Correct.

18 Q. Okay. How can you possibly match data in which  
19 you know that there is a definite positive number of  
20 non-citizens registering to vote, yet keep reaching a  
21 margin of error that indicates there could be no  
22 non-citizens representing [sic] to vote? Doesn't this  
23 suggest that there might be a problem with your margin  
24 of error calculation?

25 A. No. It's-- zero is in the acceptable range, the

1 margin of error is wide enough. What it means is that  
2 there's no more than a trace number or that the-- if we  
3 project beyond this particular sample, then it's  
4 entirely likely that there are zero additional  
5 non-citizens beyond the sample.

6 Q. Well, to use the Sedgwick County example we were  
7 just discussing, the one you just looked at, you say  
8 using your initial method of calculating margin of error  
9 that the confidence level includes-- the confidence  
10 bounds include zero, do they not?

11 A. That's correct.

12 Q. But we know that there are eight that have been  
13 observed. Correct?

14 A. Correct.

15 Q. So how can we possibly say that it's possible  
16 there are zero when we have just seen that there are  
17 eight?

18 A. There are different interpretations of the  
19 confidence interval. One is if I'm taking the sample,  
20 which is a small share of the entire population, and  
21 projecting out to the rest of the population, we cannot  
22 reject the hypothesis that there are, in fact, zero in  
23 the rest of the population.

24 Q. Right. If you--

25 A. Rather, one-- (reporter interruption).

1 Q. Sorry. But that is assuming that your margin of  
2 error is correct when you-- what you just said?

3 A. Right, and that the study is a random sample, a  
4 representative sample, and making all those assumptions.  
5 That margin of error calculation, you'll recall, is  
6 based on all of those assumptions.

7 The margin of error calculation at the foot of  
8 the table is not based on those assumptions about  
9 randomness and representativeness or even a known  
10 probability. It's just taking the variations across the  
11 estimates presented. And the variation across the  
12 estimates presented tells us that the uncertainty is  
13 3.8 percent on average across these samples, weighting  
14 by the sample sizes.

15 So that-- that tells me that the Poisson  
16 assumption is probably not right or there are problems  
17 with these surveys that are pushing them apart in ways  
18 that are systematic and biased.

19 Q. But if your methods of calculating margin of  
20 error using the P of .5 constantly tells you-- or not  
21 constantly, but in several instances tells you that the  
22 actual number could be zero and you know that the actual  
23 number is, in fact, a positive number greater than zero,  
24 wouldn't that suggest that your margin of error  
25 calculation might not be the appropriate one?



1       A. No. It says that the number could be anywhere  
2 from zero-- it says that if I do this study 100 times,  
3 95 out of 100 times because it's-- there's a certain  
4 probability calculation underneath the confidence  
5 interval, 95 out of 100 times zero, you know, could come  
6 up. And eight could come up 5 percent of those times.  
7 Or whatever the-- whatever the numbers are.

8       Q. Right.

9       A. So what this says is that 95-- if I did this say  
10 95 out of 100 times, in a significant number-- sorry.  
11 If I did the study 100 times, in a significant number of  
12 those times, zero is going to show up as an estimate.

13       Q. But if you did the Sedgwick County study  
14 100 times, in all 100 cases you would know of at least  
15 eight non-citizens who are prior-- registered prior to  
16 the sample. Correct?

17       A. So that would say the maximum number-- the  
18 minimum would be eight out of, what, 110,000  
19 non-citizens in the state of Kansas, assuming those data  
20 are correct and there are no errors in the data.

21       Q. So maybe this is a semantics issue then. So when  
22 you say statistically it could include zero, you're not  
23 saying in reality it could exclude zero. Correct?

24       A. It could've been drawn with a P very, very close  
25 to zero.

1 Q. Let me rephrase-- again, let me just ask. You're  
2 not saying-- when you say it's-- statistically the  
3 estimate could include zero, you're not actually  
4 asserting that the true number of non-citizens  
5 registered is actually zero?

6 A. Correct. What is a statement is there's so much  
7 uncertainty about this estimate, we have so little [sic]  
8 uncertainty in this, that the number could be zero or  
9 even-- or just very close to zero, some trace amount.

10 So it's just an expression of how much  
11 uncertainty there is and whether we accept the  
12 hypothesis that this is any more than a-- a minimal or  
13 de minimus amount of non-citizens in the state  
14 attempting or registering to vote.

15 Q. Now just to make this clear; so looking at your  
16 Table 2, even using your P equals .5, which produces a  
17 very large margin of error, even using that, it's-- the  
18 result you get is greater than zero on row one of the  
19 CCES 2006 to 2012 example. Right?

20 A. Right. Row one and I think row three. It's like  
21 a tenth of a point or something.

22 Q. So on both of those, even using your very broad  
23 margin of error, you'd still get more than zero.  
24 Correct?

25 A. Again, these are the theoretical margins of error

1 under the assumption of random sampling, representative  
2 sampling and no measurement error, no non-response and  
3 so forth, no misreporting. That-- the reason for doing  
4 the analysis in the foot of the table is to show you  
5 that the five studies presented in Doctor Richman's  
6 report are actually informative themselves, the  
7 estimates themselves.

8           The fact that we have 29 in one case, 1 percent  
9 in another case, 16 percent in another case, 0 in  
10 another case and 5 percent in another case, just the  
11 variation across the estimates - forgetting about any  
12 debate about theoretical margins of error - just the  
13 fact that there's so much variation tells us there's a  
14 lot of uncertainty about what the true estimate is. And  
15 that variation is represented in the second row in the  
16 bottom, and that's 3.8 percent.

17           That says that there's that much uncertainty in  
18 the estimates. The average is 1 percent, but the  
19 uncertainty is three-- 3.8 percent. And the margin of  
20 error, the conventional margin of error we'd calculate  
21 from that which says that, you know, if you did sampling  
22 a million times what's the range of estimates you'd get.

23           Q. Right.

24           A. That's 7.6 percent. So anywhere from 0 to  
25 8 percent. So it's a lot of uncertainty about where

1 that true estimate is. And we can't reject the null  
2 hypothesis, which is always the conceit in statistics,  
3 this is funny language. The null hypothesis--

4 Q. Which is--

5 A. -- that is, in fact, zero or the projection  
6 outside-- we can't reject a null hypothesis that the  
7 rate is truly zero or nearly zero or that the projection  
8 beyond the sample of observed cases to the rest of  
9 Kansas is, in fact, zero; that everywhere else outside  
10 of these few studies we have zero cases.

11 Q. This inability to reject the null hypothesis is  
12 kind of unrealistic, though, in looking at the real  
13 world, isn't it?

14 A. I don't know. The whole medical research field  
15 is based on it.

16 Q. Okay. Well, let's talk about that. So you'd  
17 agree that the-- well, let's-- let's separate out  
18 whether you would agree or not.

19 Let me represent to you that the state of Kansas  
20 has discovered 129 identifiable cases of non-citizens  
21 registering or attempting to register. Most of them  
22 registering. So if you've got 129 specific cases, would  
23 you agree that it's likely the total number of  
24 non-citizens registering in the state of Kansas is  
25 likely to be greater than 129?

1 A. I don't know. I don't know where the 129 comes  
2 from.

3 Q. Well, do you agree that it's very difficult for a  
4 state to identify non-citizens on the voter rolls?

5 A. I think it's hard to determine who's a citizen  
6 and who's a non-citizen--

7 Q. You can't look at the voter rolls--

8 A. -- in the population generally. (Reporter  
9 interruption).

10 Q. My apology. You can't look at the voter rolls  
11 and point out which-- which ones are non-citizens and  
12 which ones are citizens, can you?

13 A. No.

14 Q. Okay. So you'd agree--

15 A. Citizenship information is not on the rolls.

16 Q. So you'd agree that a state has to have an  
17 external indicator outside of the database itself to  
18 conclude that a person is a non-citizen. Correct?

19 A. I-- I don't-- I don't know. I've been-- my state  
20 does it differently than your state, so...

21 Q. You don't know?

22 A. My state, we just swear. We just say I'm a  
23 citizen. That's it. And my state is-- that's  
24 acceptable.

25 Q. And I-- I'm asking, though, if the person is

1 truly a non-citizen, regardless of whether he has sworn  
2 to be a citizen or not, would you agree that there's no  
3 way to just look at the voter rolls and say, oh, that  
4 person's sworn affirmation is incorrect and these others  
5 are correct. Would you agree?

6 A. I-- I guess. I-- I don't know.

7 Q. So--

8 A. I have no reason to doubt someone's sworn  
9 statement.

10 Q. So-- so you would say that if every person on the  
11 state's voter rolls has signed an affirmation of  
12 citizenship, we should conclude that every single person  
13 is a U.S. citizen?

14 A. No, I'm not saying that, but I'm just saying  
15 that's like-- that's more-- you know, people sitting  
16 where I am.

17 Q. But I think we're in agreement on the fact that  
18 it's difficult for a state to just look at the voter  
19 rolls and see which persons are non-citizens. In fact,  
20 it's impossible, isn't it?

21 A. Yeah, unless you have linked everything to ICE  
22 data, I don't know how you would do that.

23 Q. Right. Okay. So if a state manages to find 129  
24 non-citizens using external sources, would you agree  
25 that it's highly unlikely that the state has somehow

1 found all 129 on a voter roll of 1.75 million?

2 A. I don't know what this is about, I don't know  
3 what it's about that you're asking.

4 Q. I'm asking you what the Kansas voter rolls--

5 A. Okay. So here's what I'm interpreting your  
6 question to say: You invented some magic methodology  
7 for perfectless matching and you've determined these  
8 120-- and you've matched the entire list to some other--  
9 other list and you've determined these 129 match  
10 exactly; is that what you're saying?

11 Q. No, I-- let me just clarify. So let's say that  
12 by a couple of methods, by identifying people who  
13 register-- who naturalize and then we learn specifically  
14 that they were registered to vote prior to  
15 naturalization, we observe a certain number of cases,  
16 and that we have a number of cases of people who are  
17 confirmed by ICE to be non-citizens and on the voter  
18 rolls, and we have a number of cases where the person  
19 swears in a juror questionnaire form that he's a  
20 non-citizen and we confirm that that is a correct  
21 swearing.

22 Just assume for the purposes of this argument  
23 that they are correct. And you-- you total up all those  
24 instances and the state comes up with a total of 129  
25 cases that we have high confidence are not actually

1 citizens when they were registered to vote.

2 So if we have that 129 that the state has  
3 identified out of a voter roll of 1.75 million, would  
4 you agree that the-- there are probably others other  
5 than those 129 on those 1.75 million?

6 MR. HO: Your Honor, I'm going to object.  
7 This is beyond the scope of the direct.

8 MR. KOBACH: This is exactly within the  
9 scope.

10 MR. HO: I mean, Doctor Ansolabehere was not  
11 asked to opine about these cases that Mr. Caskey and Ms.  
12 Lehman identified and what that says about the voter  
13 rolls generally. He had a very narrow and specific  
14 subject for his testimony, which were the statistical  
15 estimates in Doctor Richman's report.

16 We're pretty far afield of that right now.  
17 If he had-- if Mr. Kobach had questions about what we  
18 can infer from the matching analysis that Mr. Caskey  
19 performed, for example, the appropriate witness from the  
20 plaintiffs' side to address those questions to would've  
21 been Doctor Hersh, who did testify about what inferences  
22 he would draw based on the matches that we've seen.

23 THE COURT: I agree. I don't think this is  
24 within the scope of what he testified to or what he was  
25 retained to testify about.



1 MR. KOBACH: Let me respond, Your Honor, if  
2 I may. He's testifying that the possibility could be  
3 that we-- that there are zero non-citizens on the voter  
4 rolls in Kansas according to these estimates and I'm  
5 pointing out that we--

6 THE COURT: Statistically zero, not actually  
7 zero. I thought he made that pretty clear.

8 MR. KOBACH: And now I--

9 THE COURT: He testified in his direct that  
10 he-- he's not saying that there's zero people. He's  
11 talking about statistically zero. There's a  
12 distinction.

13 MR. KOBACH: And now I'm asking him a  
14 question about statistically in his capacity as an  
15 expert in voter registration, would he agree that the--  
16 if you observe a certain number of cases, is the true  
17 number likely to be higher than the observed number.  
18 This is pretty straight down the line of his--

19 THE COURT: Well, your line of questioning  
20 had to do with 129 and couldn't that-- doesn't that mean  
21 it couldn't possibly be zero. You were talking about  
22 zero as a number. In fact, your whole preface to this  
23 line of questioning is let's talk about the number zero.  
24 All right?

25 But if you want to ask him about what he

1 meant by statistically zero, if I didn't hear it right  
2 or I need to be clarified, ask him that. But I think to  
3 ask him about the 129 and what that means in terms of a  
4 raw number is going beyond the scope of his-- his expert  
5 testimony.

6 Q. (BY MR. KOBACH) When you-- Doctor--

7 A. I mean, we can-- we can calculate like--

8 THE COURT: Wait a minute. Wait for a  
9 question. Wait for a question.

10 Q. (BY MR. KOBACH) Doctor Ansolabehere, if you look  
11 again at Table 2 of your report, let's just pick the  
12 Kansas TDL survey row, that's the third row where you--  
13 where the estimated percentage is 16.5. But using your  
14 method with a P of .5, you say that the confidence  
15 interval could be-- is actually 16-- plus or minus  
16 16.4 percent. So are you saying that the confidence  
17 interval in total is .1 percent all the way out to  
18 32.9 percent?

19 A. Yeah.

20 Q. So is it equally likely that it-- we've been  
21 talking a lot about the bottom end? Is it equally  
22 likely that the true number could be up at the top end  
23 and be 32.9 percent?

24 A. Yeah, it says there's-- that's how much  
25 uncertainty we have about this estimate. Anywhere in

1 that range. It's likely to be anywhere in that range.  
2 So if we did this study under the exact same conditions  
3 that this study was done 100 times, 95 out of 100 times  
4 it would be in that range from .1 percent to whatever  
5 the top end is, 39.

6 Q. Okay. I'm going to present to you so we can move  
7 along here a copy of-- of Doctor Richman's supplemental  
8 report which is in response to your rebuttal report.  
9 Have you seen this before?

10 A. Yes.

11 Q. Okay. If you look at Table 1 on Pages 6 and 7 of  
12 the Richman supplemental report, could you take a quick  
13 look at that? You'll see that in that report Richman  
14 uses other methods of calculating margin of error.  
15 Would you agree that each and every one of these five  
16 alternative methods of calculating margin of error  
17 yields a smaller margin of error than you got assuming a  
18 P of .5?

19 A. Yes, they're smaller.

20 Q. Each and every one of these?

21 A. Yes, they are smaller.

22 Q. So your method produced the largest margin of  
23 error of all of these other ones. Right?

24 A. It did.

25 Q. Do you disagree with Richman's calculations here

1 in Table 1?

2 A. No, I didn't disagree with his calculations.

3 Q. Okay. Now, let's look at Page-- Table 2, Page 8  
4 and 9. If you could just flip the page. It's-- again,  
5 you'll see that Richman does a revision here of Table 1  
6 of your report where he uses other methods to calculate  
7 margins of error.

8 Would you agree that each-- each and every one of  
9 these five alternatives yields a smaller margin of error  
10 than you got?

11 A. They do.

12 Q. Do you disagree with Professor Richman's  
13 calculations here?

14 A. No.

15 Q. On Paragraph 12 of your report, let's look at  
16 that. You state-- let me get to it quickly. You state  
17 that the number of U.S. citizens in Kansas who lack  
18 citizenship documents is likely larger than the number  
19 of non-citizens who have registered. Why is that  
20 comparison relevant?

21 A. Are you asking for a-- an interpretation of law?  
22 I'm unclear on the question.

23 Q. Well, no, not why is it legally relevant to this  
24 court. But why did you do that calculation? Or that  
25 comparison, I'm sorry, that comparison.

1       A. Well, that's just-- that's just the number-- he  
2 actually did the comparison of the 2.2 percent versus  
3 the .7 percent in his report. He actually-- he actually  
4 did it. So I was just calculating-- I was doing the  
5 projection outward of the 2.2 percent to the whole  
6 population.

7       Q. Okay. Were you in the courtroom when Doctor  
8 Richman said-- explained why he thought your-- your use  
9 of the 2.2 percent produced a-- a number that was too  
10 high? You multiply it out times the total number of  
11 non-citizens in the state to get 45,000?

12       A. No, I was not in the room.

13       Q. Would you-- would you agree that the 2.2 percent  
14 of people on the voter rolls-- sorry, on the suspense  
15 list who lack documentation is-- that the people on the  
16 suspense list, let's state that, are not representative  
17 of the total population of the state of Kansas. Would  
18 you agree with that?

19       A. They're-- yeah, they may or may not be. I--  
20 yeah.

21       Q. Okay. So, well, the-- we don't have any reason  
22 to believe that 2.2-- based on the suspense list, which  
23 includes people who-- which is defined as people who  
24 haven't provided proof of citizenship, we don't have any  
25 reason to believe that the entire state of Kansas is

1 equally unable to provide proof of citizenship, do we?

2 A. No, no-- no.

3 Q. And if I represented to you that 95 percent of  
4 the people who started the process since the law went  
5 into effect were able to prove their citizenship, that  
6 would be pretty conclusive evidence that the rest of the  
7 population is different from the suspense list, right,  
8 when it comes to proving citizenship?

9 A. Potentially.

10 Q. So therefore, it wouldn't be appropriate, would  
11 it, to apply 2.2 percent to the entire population of the  
12 state, would it?

13 A. I said-- I think it's clear that I said under the  
14 assumption that this is like the rest of the state.

15 Q. Oh, okay. So if the assumption were incorrect,  
16 then it wouldn't be correct to do that?

17 A. It's true of all the projections.

18 Q. Okay. You say in Paragraph 25 that-- of your  
19 report that the academic literature indicates people  
20 over-report registration and voting. I've read some of  
21 the literature regarding voting. I've never heard of  
22 one that specifically proved over-reporting of  
23 registration. I know there's over-reporting of voting.  
24 Is there a study or an article you can refer me to that  
25 refers to over-reporting of registration?

1           A. I think the first one is by Anderson and Silver  
2 in 1990.

3           Q. And what do they conclude?

4           A. They studied the American National Election  
5 Study, which is a face-to-face-- at that time was a  
6 face-to-face survey, so they had the names and addresses  
7 of people. And the people who conducted the interviews  
8 actually went to the election offices locally and saw  
9 whether the person was registered. And they concluded  
10 that people over-reported registration and over-reported  
11 voting.

12                   They also concluded that that particular survey  
13 had a sample bias, that the people who were  
14 participating in the survey were actually more likely to  
15 be registered and more likely to vote. And then that  
16 deli-- sorry, Traugott and Abramson and Anderson  
17 replicated that survey using the ANES.

18                   And then the ANES stopped doing voter  
19 registration-- voter validation and we got it started  
20 again with the CCES. And now the ANES has just started  
21 validation again. And there's a new paper out last  
22 month by Kosuke Imai and Ted Enamorado showing with both  
23 the CCES and the ANES over-reporting of registration and  
24 over-reporting turnout.

25           Q. Let's talk about social--

1 A. Over-reporting registration and voting.

2 Q. Let's talk about social desirability bias. Could  
3 you concisely define it for us?

4 A. Social desirability bias is when someone does  
5 something in a study because it's either socially  
6 desirable outside of the context of the study or  
7 socially desirable inside the context of the study.

8 Q. So on a-- okay, go ahead, I'm sorry.

9 A. Outside of the context of the study would be the  
10 case if there was a social norm that said you should do  
11 something. And inside the context of the study would be  
12 the desire of the individual to make the surveyor or the  
13 experimenter happy. And very often we see something  
14 called the Hawthorn effect where a survey respondent or  
15 a participant in a study figures out what the study is  
16 about and tries to make the researcher happy.

17 Q. Normally in such studies, is it socially  
18 desirable to be a criminal?

19 A. Well, I think the most severe such study was the  
20 Milgram experiment, famous experiment in the 1950s and  
21 1960s where it was socially desirable or the socially  
22 desirable thing was to execute someone.

23 Q. Right. But in a normal poll done in the year  
24 2016 or 2018, would someone normally expect-- would  
25 someone normally respond-- would you normally experience



1 a social desirability bias to-- for the person to admit  
2 conducting a crime?

3 A. Committing a crime?

4 Q. Committing a crime.

5 A. It depends on the survey. We bend over backward  
6 in academic surveys to try to avoid social desirability  
7 bias and they still creep in.

8 Q. Would you agree that in a case where you're  
9 asking an individual has he done something that is  
10 criminal behavior, more often than not social  
11 desirability bias would tend to indicate that people  
12 will not say they have done something that is criminal  
13 behavior?

14 A. Well, there's external norms which tend to work  
15 against that one but internal norms that tend to-- can,  
16 depending on how the survey is done, actually create  
17 that Hawthorn effect.

18 Q. Isn't it more likely that a non-citizen will call  
19 himself a citizen than a citizen will call himself a  
20 non-citizen?

21 A. I don't know.

22 Q. No idea?

23 A. No idea.

24 Q. Isn't it more likely that a person will avoid--  
25 who has not broken the law-- scratch that, let me

1 rephrase it.

2           Isn't it more likely that a person who has broken  
3 the law will not report that he has broken a law than  
4 the converse, where a person who has not broken the law  
5 will report that he has broken the law?

6           A. Depends on the law. If it's--

7           Q. What if the law is registering illegally?

8           A. If you rephrase the question: Have you  
9 registered illegally? That would probably be a question  
10 that's loaded in a way where the survey respondent  
11 figures out, oh, that you're looking for illegal  
12 behavior and I don't want to answer that way.

13           But if you phrase the question other ways, you  
14 can probably induce them to respond where you set the  
15 setting of the conversation in another way. For  
16 example, in the ANES, we-- we know that the American  
17 National Election Study actually encourages people to  
18 vote. People who do that survey because it's a  
19 three-hour interview actually end up as a result of the  
20 survey participating at a higher rate.

21           So that's a case where there's internal social  
22 desirability to do something that they wouldn't normally  
23 do. And the whole field of criminology is full of lots  
24 of studies where they convince people to do all sorts of  
25 weird behaviors that would be illegal.

1 Q. Is it possible-- it is possible, isn't it, that  
2 the sampling done by Richman included a large number of  
3 false negatives; that is, people who were registered and  
4 were non-citizens but do not admit it?

5 A. Which sample are you referring to?

6 Q. Any of the ones other than the Wichita and the--  
7 the Sedgwick County and the TDL matching, the ones that  
8 actually involved surveying people and asking them  
9 questions.

10 A. Well, CCES sure looks like just random  
11 measurement error. It looks like click-through error.

12 Q. Well, if it's random clicking error, then that  
13 could go either way. Right? You could have people  
14 randomly clicking that they were citizens when, in fact,  
15 they were non-citizens. Correct?

16 A. Correct. But there's a disproportionality  
17 problem there, as I explained with the example in my  
18 testimony.

19 Q. But the individuals still-- it is still quite  
20 possible that the number could be far greater than 14  
21 using the CCES numbers. Correct?

22 A. Which number? I don't understand the question.

23 Q. If you're assuming that there is clicking error,  
24 that a person wrongly selects non-citizens versus  
25 citizen, there's an equally likely probability that they

1 could wrongly select citizen when, in fact, they're a  
2 non-citizen. Correct?

3 A. Correct. That's what that assumes, that there's  
4 a-- a .5 percent error rate, which appears to be what  
5 the error rate is. They randomly are clicking one way  
6 or the other. But the contamination goes one way,  
7 because .5 percent of a small number of non-citizens -  
8 and it is a very small number in the survey - is a tiny  
9 proportion of all citizens. But .5 percent of citizens  
10 is a third of all the people who end up in the  
11 non-citizen category.

12 Q. Have you read any specific academic research on  
13 the question of non-citizens falsely reporting that they  
14 are citizens?

15 A. No.

16 Q. Would it surprise you to learn that there is  
17 academic literature on this question?

18 A. It wouldn't surprise me.

19 Q. I'm going to-- for the sake of brevity, I'm going  
20 to very briefly read to you from the Camarota report and  
21 ask you if you've heard of this. "There is certainly  
22 evidence that non-citizens often incorrectly report that  
23 they are U.S. citizens to the Census Bureau. Van Hook  
24 and Bachmeier in 2013 found that U.S. citizenship for  
25 Mexican immigrants in Census Bureau data was

1 over-reported by 25 to 38 percent. Passel and Clark in  
2 1997 found similarly high percentages-- percentage for  
3 immigrants from Latin America and Mexico using different  
4 data sources. None of plaintiffs' experts acknowledged  
5 this research."

6 Did you acknowledge this research?

7 A. No.

8 Q. Do you have any reason to-- to disagree with this  
9 research?

10 A. I don't know those particular articles.

11 Q. Do you have any research contrary-- do you know  
12 any research contrary to that that would indicate that--  
13 that indicted the methodology or somehow demonstrated  
14 that the conclusions of those two articles were  
15 incorrect?

16 A. Of those two articles, no.

17 Q. Have you done any primary research on this  
18 question of people not-- falsely reporting that they are  
19 citizens?

20 A. Beyond this-- the one study that's in my-- that  
21 we discussed already, no.

22 Q. Are you talking about the CCES?

23 A. Yeah.

24 Q. But the CCES didn't attempt to measure  
25 over-reporting, did it?

1 A. Of?

2 Q. Non-citizens-- or of-- well, either. False  
3 reporting of non-citizenship or citizenship, did it?

4 A. It measured the reliability, which is whether  
5 people are moving one way or the other. We don't know  
6 who-- if any of those people are or are not citizens for  
7 sure.

8 Q. Right. But you didn't attempt to measure how  
9 many false reports there were and the source of those  
10 false reports, did you?

11 A. Correct. I mean, I'm a little unclear on the  
12 question. Are you asking whether there's studies of the  
13 reliability of the census or--

14 Q. Well, I'm asking if you have done any studies  
15 regarding the scope-- the significance and the incidence  
16 of people falsely reporting that they are citizens.

17 A. No, I don't have access to data on who is and is  
18 not a citizen. Truly-- truly not-- like I don't have  
19 access to ICE data, for example.

20 Q. Looking at the Sedgwick County data, would you  
21 agree that the Sedgwick County cases, that's the eight  
22 out of 790-some, would you agree that those cases  
23 probably under-count non-citizens who are registered  
24 because most people don't register twice?

25 A. I don't know. All I know about the Sedgwick

1 County study is what is in Richman's report. I don't  
2 know when those people registered, I don't know if it's  
3 the same-- if it was a duplicate record, I don't know  
4 anything. I haven't looked at the raw material, I  
5 didn't get the raw data.

6 Q. Do you know how they were discovered?

7 A. No, just beyond--

8 Q. You have no idea how those--

9 A. Just beyond what was in the-- when they were  
10 naturalized, the records were checked and they were  
11 found to have already registered. That's my  
12 understanding.

13 Q. And you--

14 A. And that's what's--

15 Q. And you know that they registered at the  
16 naturalization ceremony. Right?

17 A. Right.

18 Q. So would you agree that many people in that  
19 scenario will not register a second time because they  
20 will know in their minds, oh, yes, I've already  
21 registered, I don't need to do this?

22 A. I have no idea. I have no basis for that, I've  
23 never studied that.

24 Q. Would a reasonable person reach that conclusion?

25 A. I don't know. I-- I have no basis for it.

1 Q. I'm asking you not as a-- now as a-- as a  
2 statistician but just as a reasonable person. Would you  
3 agree that it's-- it's unlikely-- it is likely that some  
4 people who have already registered will say, no, I don't  
5 need to register because I'm already registered?

6 MR. HO: I'm going to object to that, Your  
7 Honor. Although I do think Doctor Ansolabehere is a  
8 reasonable person, he's not here to testify about what a  
9 reasonable person thinks. He actually is here to  
10 testify as a statistician because that's what he's an  
11 expert in.

12 THE COURT: All right. Sustained.

13 Q. (BY MR. KOBACH) Okay. In Paragraph 36 of your  
14 report you-- you average Richman's five estimates. You  
15 agree that - and I think you said this in your direct  
16 exam - you would agree that just averaging the findings  
17 of the five samples or four samples, depending which  
18 ones you use, that's a rather crude method of trying to  
19 get a composite picture, isn't it?

20 A. The raw average gives the wrong weight to the  
21 different studies because the studies with 19 and 14  
22 observations are given equal weight to the ones with 500  
23 and 800. And that would be--

24 Q. And I think you agree it's inappropriate to  
25 weight them as equal data points. Correct?



1 A. Yes, I would.

2 Q. Okay. And is there a better way of--

3 A. It's preferable to do it the way I did it in the  
4 second column.

5 Q. Okay. Let's look at Doctor Richman's  
6 supplemental report, Page 11, Paragraph 22. Can you  
7 take a quick look there?

8 If you could just quickly read that paragraph.  
9 Well, let me direct you to where he says, "At a minimum,  
10 the appropriate formula would be the standard deviation  
11 divided by the square root of the number of  
12 observations." Do you agree with that statement?

13 A. No.

14 Q. Why not?

15 A. The-- at the appropriate-- I'm trying to refresh  
16 my memory about which standard deviation he was  
17 referring to here. Because at one point he takes the  
18 average of the standard deviations, which is, in fact,  
19 the incorrect thing to do and I'm trying to see if this  
20 is that point.

21 Q. Go ahead, take up-- take a minute if you need to.

22 A. This sentence is, in fact, incorrect that he has  
23 here in the middle.

24 Q. Which sentence are you referring to?

25 A. The part where he says this is inappropriate,

1 that the standard deviation of the observations is  
2 inappropriate.

3 Q. You're talking about this is inappropriate in the  
4 context of drawing a confidence interval?

5 A. Yes. He's doing the wrong thing here, he's  
6 making an error.

7 Q. Okay. So-- and what about the sentence I read,  
8 "At a minimum, the appropriate formula would be the  
9 standard deviation divided by the square root of the  
10 number of observations." Do you agree with that  
11 sentence?

12 A. Well, it's number of observations minus one, I  
13 think, because you've used a degree of freedom, but...

14 Q. Okay. Well, let's-- let's look at his Table 3 on  
15 Page 12.

16 A. Okay.

17 Q. If you look at that briefly, do you think that  
18 his revised calculation of your meta-analysis in his  
19 Table 3 is valid?

20 A. This is incorrect. This is actually--

21 Q. Why is that?

22 A. This is actually throwing away the information  
23 that is obtained by the variation across the samples.  
24 This is assuming that all the samples are drawn the same  
25 way and they're all representative of the same

1 proportion. And it's using essentially the sampling--  
2 it's using the theoretical sampling variance as the--  
3 the variance, which is incorrect.

4 The-- the correct-- what is obtained in the  
5 meta-analysis is the fact that there's variation across  
6 samples, there's variation across studies for whatever  
7 reason. It's ignorant about why, it doesn't make any  
8 further assumptions. This estimate, the 3.8 percent in  
9 my report, is the estimate that actually makes no  
10 assumptions about what P is. He's imposing assumptions  
11 about what P is and making these calculations under a  
12 theory that the data are generated from a random sample,  
13 which is not true.

14 Q. But--

15 A. This is saying-- this is saying we observe  
16 variation across the studies and so this is called the  
17 mean squared error. It's in every intro stats textbook.

18 Q. So when you did your meta-analysis, were you  
19 assuming P to be .5 again?

20 MR. HO: Your Honor, I'm going to object. I  
21 think he cut off Doctor Ansolabehere's question-- answer  
22 to his question there.

23 MR. KOBACH: You can come back on--

24 THE COURT: All right. You can come back  
25 and clarify if you need to.

1 A. No, I'm not assuming P as .5 in the  
2 meta-analysis.

3 Q. (BY MR. KOBACH) What are you assuming P to be in  
4 the meta-analysis?

5 A. P is whatever it is in the underlying population.  
6 It just says that the standard error-- in the-- in the  
7 event that you have multiple studies, in other words,  
8 this is--

9 Q. Right. Let me--

10 A. This is the event where it was-- actually  
11 replicated the study five times. So we're treating  
12 these as replicates. We've replicated the study five  
13 times. It's like medical research. We've done five  
14 different clinical trials, we get five different  
15 outcomes.

16 We could take all of the assumptions that the  
17 researchers imposed on us from their study design, or  
18 the better thing to do and this is done all the time  
19 with meta-analysis, is to take the observed variation  
20 because we have five replicates.

21 So all I'm doing is saying whatever the  
22 underlying P is, I'm not making any assumptions, I'm not  
23 making any assumptions that this is normally distributed  
24 or Poisson or Binomial or anything. I'm just saying  
25 take the data at face value. We observed the variation

1 across it. Measure the variation using the standard  
2 deviation of the means. That's called the means squared  
3 error, and it is 3.8 percent.

4 Q. Let's look at Richman's supplementary report,  
5 Page 17, Paragraph 38. Take a quick look at that.

6 A. Where?

7 Q. Paragraph 38 on Page 17.

8 A. The entire thing or some particular--

9 Q. The entire-- well, I think you'll need to look at  
10 the entire thing, but let's just focus-- fourth line  
11 down. "To address this concern, I have re-weighted the  
12 TDL list to match the American Community Survey  
13 five-year estimates for the state of Kansas..."

14 THE COURT: Slow down.

15 Q. (BY MR. KOBACH) "-- on age, gender, race, and  
16 Hispanic identification. The weighted estimates  
17 continue to indicate a substantial level of non-citizen  
18 registration, specifically 11.4 percent of non-citizens  
19 contacted through the TDL list responded that they were  
20 registered to vote or have attempted to register to vote  
21 once they were weighted to reflect the overall  
22 demographics of Kansas non-citizens. The confidence  
23 interval for this estimate ranges from 4.4 percent to  
24 25.3 percent Wilson or scored method."

25 Do you have any reason to disagree with his

1 re-calculation based on your criticism?

2 A. My calculation of the-- my-- my criticism of the  
3 TDL is that it was unrepresentative in certain specific  
4 dimensions. For example, education rates and so forth.  
5 And he calculates weights-- the weights he's calculating  
6 I would differ with. Those are called raking rates.  
7 They don't do much, they don't change estimates much.  
8 And they're the incorrect weights to use. They're not  
9 the weights we use for surveys.

10 Q. Why would you assume that the TDL list has a  
11 different educational level than the entire population  
12 of the state of Kansas?

13 A. Let me look at my report on the--

14 Q. Entire population of non-citizens in the state of  
15 Kansas, I'm sorry.

16 A. Well, take a driver's license. When I study for  
17 a driver's license, I have to be able to read because I  
18 have to read the-- the manual. So there's some level of  
19 literacy that's got to be assumed.

20 Q. And you're assuming that the TDL list is-- is  
21 more educated than the rest of non-citizens in Kansas?

22 A. Probably literate is my guess. And the  
23 question-- the question is what's the literacy rate look  
24 like in the state of Kansas for the rest of--

25 Q. Let me just ask-- let me get to that. So

1 you're-- it sounds like you're suggesting they're able  
2 to read English, but that's not-- that's not what being  
3 on the TDL list represents, does it?

4 A. No.

5 Q. It doesn't suggest that you are more educated,  
6 does it? It just says that you're able to read English.

7 A. It's educated up to a level. And we know from  
8 the ACS and the CPS that-- ACS measures non-citizens.  
9 We know from the ACS that non-citizens have a much, much  
10 lower education level.

11 Q. Let's look at Paragraph 53 of your report. With  
12 respect to the TDL list you also state that perhaps a  
13 non-citizen with a TDL might have subsequently become a  
14 U.S. citizen.

15 Are you aware that the TDL non-citizens were  
16 verified still to be non-citizens with ICE in this case  
17 while-- specifically to address this possibility?

18 A. I thought that-- pardon, I'm trying to find my  
19 paragraph. The paragraph again is?

20 Q. 53.

21 A. I turned to 58. Sorry. So in the Richman report  
22 there's no date on the TDL or when the person first  
23 appeared on the TDL in the study and when they  
24 subsequently--

25 Q. Correct. And for that reason-- are you aware

1 that for that reason these individuals on the TDL list  
2 were verified still to be non-citizens with ICE,  
3 specifically to address that possibility?

4 A. In the subset that's studied, yes. In the whole  
5 sample, it was not-- that's not that subset.

6 Q. So you would agree that with the subset that is  
7 studied, that concern is not-- is no longer valid in  
8 Paragraph 53?

9 A. Yes, but projecting from the entire TDL list. So  
10 then we have a subset of a subset, right, and the  
11 questions become even more intensified. How  
12 representative is the ICE list of the entire TDL list?  
13 How representative is the TDL list of the entire  
14 population? And we're projecting from the ICE TDL list  
15 to the TDL list and from the TDL list to the entire  
16 population. And those are the unrepresentativeness  
17 issues.

18 THE COURT: Mr. Kobach, can you give me an  
19 estimate of how much longer you--

20 MR. KOBACH: I am really getting close, Your  
21 Honor. I'm trying to get home for dinner myself.

22 THE COURT: Okay.

23 Q. (BY MR. KOBACH) In Paragraph 30 of your report  
24 you say that Richman does not correct for education  
25 level when looking at CCES results. How would you



1 correct for education level?

2 A. So one curiosity in what Doctor Richman is doing  
3 is that he comes up with his own weights and he does  
4 raking weights or what's called rim weighting. The CCES  
5 produces weights already and they're weighted for--  
6 according to the actual sample design. And part of that  
7 sample design is education, because we know that it's  
8 hard to get low income, low education people in the  
9 sample, in particular to get people with no high school  
10 education in the sample.

11 So he then re-weights but doesn't correct for one  
12 of the most important variables of the weighting which  
13 is education, and he doesn't use the formula that we use  
14 for education. So it's puzzling to me why he didn't  
15 just use the weights that are provided on the data set--  
16 in the data set to re-weight the data. But he elected  
17 to do his own weights and he ignored what is one of the  
18 most important variables in the weighting, which is  
19 education.

20 Q. We touched on this briefly before, you said  
21 during your direct examination that TDL holders have  
22 fairly different characteristics from the non-- the rest  
23 of the non-citizen population in Kansas. You mentioned  
24 one, you thought that they are-- have a higher education  
25 level. Do you have any source backing that assertion

1 up?

2 A. That's just based on education levels of  
3 non-citizens and the percent who are literate from the  
4 census. That's on the census website.

5 Q. Right. And do you have any--

6 A. But I didn't reference it.

7 Q. Do you have any source from the census that says  
8 education level of non-citizens who get a TDL are more  
9 educated?

10 A. No, I don't.

11 Q. So you're just speculating that the TDL list is  
12 more educated than the larger population. Correct?

13 A. Yes, because of what it takes to get a driver's  
14 license.

15 Q. Have you seen any research corroborating your  
16 speculation?

17 A. No, I have not.

18 Q. Are there any other differences between the TDL  
19 holders' characteristics and the characteristics of the  
20 larger non-citizen population?

21 A. The key difference is that they are 20 percent,  
22 they're one in five. And they're not random, they're  
23 people who voluntarily came forward to get a driver's  
24 license for whatever reason.

25 Q. Right. But you say that they have different

1 characteristics. I assume characteristics is not the  
2 fact that I chose to get a-- a chicken sandwich today.  
3 Characteristic is something more attributable to the  
4 person over time, isn't it?

5 A. Yeah.

6 Q. Okay. So other than education, are there any  
7 characteristics of these individuals--

8 A. That was-- that was the key one that I focused  
9 on, so...

10 Q. Are there any others?

11 A. That's it. And just what's in the report, just  
12 what's described in Jesse's report, that 20 percent of  
13 people have these-- possess these TDLs, so they're not,  
14 in fact-- I mean, it's a statement in his report that  
15 they're not, in fact, the entire-- representative of the  
16 population of non-citizens.

17 Q. That's a tautology, isn't it? You're saying that  
18 the people who are reporting-- the people who get  
19 driver's licenses are different because they got  
20 driver's licenses. Correct?

21 A. It's not a tautology because there are  
22 differences in whoever gets a driver's license.

23 Q. Let me just try to sum this up. Is there any  
24 other difference in characteristics of these people,  
25 other than education?

1 A. No, not that I know of, beyond what's stated in  
2 Richman's report and what's-- what I state explicitly in  
3 mine.

4 Q. And you are-- and you just admitted that you're  
5 speculating about the difference in education level.  
6 Correct?

7 A. Yeah.

8 MR. KOBACH: No further questions. Oh, wait  
9 a minute.

10 Q. (BY MR. KOBACH) Could you tell us again the  
11 literature-- and maybe you didn't give us examples, we  
12 thought you gave us examples of studies of non-citizens  
13 over-reporting registration; is that correct? You were  
14 giving us examples of non-citizen registration. Do you  
15 have any examples of literature of non-citizens  
16 over-reporting legislation [sic]?

17 A. In Richman's own study and in the re-analysis of  
18 that, we have from the validation in Richman's own study  
19 that four people reported that they were registered in  
20 the state of Kansas and were non-citizens from 2006 to  
21 2012. And of those, three were non-citizens. I believe  
22 that's what you're referring to.

23 Q. And do you have a-- so you're just citing Richman  
24 himself for that?

25 A. That's in the report.

1 Q. And do you have any literature you could direct  
2 us to of the-- of the general population, either of the  
3 United States or of a specific studied portion of the  
4 United States, over-reporting their registration?

5 A. That is-- that is a reference to the internal  
6 statistics of the CCES, of this report that he's  
7 provided.

8 Q. So beyond the CCES, there's not something else he  
9 refers to?

10 A. No, no, no. The comment I-- if I'm tracking  
11 this-- I don't know where this is coming from. But if  
12 I'm tracking this, my comment was: Of the four, three  
13 of the four misreported registration, which is a higher  
14 rate of misreporting, it's three-fourths misreporting  
15 than the rest of the CCES.

16 Q. Okay. The-- you may recall very early on in this  
17 cross examination I asked if you had pointed to  
18 literature stating that people over-report voting and I  
19 was asking if there are any literature that specifically  
20 over-reports registration-- that studies the-- and comes  
21 to the conclusion-- studies the issue and comes to the  
22 conclusion that people over-report their registration.  
23 Can you point to any literature on that subject?

24 A. I did. That's the Anderson, Abramson, Silver,  
25 Traugott. There's a-- there's a series of studies. And

1 then the validation study by Eitan and I and others.

2 Q. Okay. And that's it?

3 A. There's a Ph.D. thesis by Ivelisse Cuevas-Molina.

4 Q. I'm talking about peer-reviewed articles though.

5 A. Well, it's under peer-review now. It's like-- I  
6 mean, she just finished her thesis, so...

7 Q. So Anderson, Abramson, Silver, Traugott. Any  
8 others?

9 A. Off the top of my head, can I generate more names  
10 than that?

11 Q. Okay. Fair enough.

12 MR. KOBACH: All right. Thank you very  
13 much. No further questions.

14 THE COURT: Any further questions?

15 MR. HO: Very, very quickly, Your Honor,  
16 about three minutes.

17 THE COURT: All right.

18 MR. HO: I'll do my best.

19 REDIRECT EXAMINATION

20 BY MR. HO:

21 Q. Doctor Ansolabehere, let's take Doctor Richman's  
22 estimate of non-citizen registration based on the CCES  
23 and talk about it for a second. So we had 14  
24 respondents who self-identified as non-citizens in  
25 Kansas. Right?

1 A. Yes.

2 Q. And let's assume, as Doctor Richman does, that  
3 they're all, in fact, non-citizens. Okay?

4 A. Okay.

5 Q. Okay. How many of them did you say said on the  
6 CCES that they were registered to vote?

7 A. Four.

8 Q. And when you looked at the voter registration  
9 files, how many of them were actually registered to  
10 vote?

11 A. We found one matching record.

12 Q. So if we assume that all four of these  
13 individuals - as Doctor Richman does - are, in fact,  
14 non-citizens, what would the data that we just discussed  
15 tell us about non-citizens and registration  
16 over-reporting?

17 A. That three-quarters over-report.

18 Q. You are aware that Doctor Richman has-- we talked  
19 about his estimate of non-citizen registration based on  
20 the temporary driver's license list. Do you remember  
21 that?

22 A. Yes.

23 Q. And on his survey I believe six temporary  
24 driver's license-- people who-- six people from the  
25 temporary driver's license list answered affirmatively

1 to the question: Are you registered or have you  
2 registered to vote, is that your understanding?

3 A. Have you attempted to register to vote.

4 Q. Yes.

5 A. Yes.

6 Q. If I told you that Doctor Hersh looked in Kansas'  
7 voter files for those six individuals and could not find  
8 them anywhere, what would that fact tell you? If we  
9 assumed that all six of these people are, in fact,  
10 non-citizens as Doctor Richman does, what would the fact  
11 that these six non-citizens said that they were  
12 registered to vote but were not in the voter file tell  
13 you about non-citizens and registration over-reporting?

14 A. That means either they over-reported or the--  
15 they were not allowed to register because they didn't  
16 have documentation.

17 Q. Okay. Doctor Ansolabehere, you mentioned  
18 something called the ignorance prior.

19 A. Yes.

20 Q. What is that?

21 A. That's just my prior belief, if I know nothing  
22 about the data priori and I was not involved in  
23 designing the study, so I don't know what the  
24 assumptions of the survey researcher were, I use the  
25 standard approach to calculating the standard errors in



1 that case. In this case the margin of error using a P  
2 of .5.

3 Q. As an expert on statistics, is there any valid--  
4 would there have been any valid reason for you not to  
5 use an ignorance prior when you were calculating the  
6 confidence intervals for Doctor Richman's estimates of  
7 non-citizen registration?

8 A. No.

9 Q. As an expert on statistics, can you think of any  
10 valid reason not to use the method for calculating  
11 confidence intervals for Doctor Richman's estimates of  
12 non-citizen registration other than the one that you  
13 used in your report?

14 A. No.

15 Q. As an expert on statistics, can you think of any  
16 valid reason to use any of the following methods for  
17 calculating the confidence intervals for the estimates  
18 of non-citizen registration in Doctor Richman's report,  
19 the methods that he describes as the exact method, the  
20 Agresti method, the Jeffreys method and the Wilson score  
21 method?

22 A. Those methods are all under specific assumptions  
23 and there's no reporting of any of the assumptions for  
24 the sample data collection, so I have no reason to  
25 believe that those were the appropriate methods as

1 opposed to just applying a bunch of methods that are in  
2 a toolbox.

3 MR. HO: Thank you, Doctor Ansolabehere.  
4 Those are all the questions that I have for you.

5 THE COURT: All right. Anything more?

6 MR. JOHNSON: No, Your Honor.

7 MR. KOBACH: No, Your Honor.

8 THE COURT: All right. May Doctor  
9 Ansolabehere be excused? You're excused.

10 THE WITNESS: Thank you.

11 THE COURT: All right. We are going to  
12 recess and reconvene on Monday. I have a docket at  
13 9:00. Correct?

14 COURTROOM DEPUTY: Yes.

15 THE COURT: So we will reconvene at 9:30.  
16 And, Mr. Kobach, you have an additional or two  
17 witnesses?

18 MR. KOBACH: We have one additional witness,  
19 Mr. McFerron.

20 THE COURT: Okay. And that's it as far as  
21 you know?

22 MR. KOBACH: Oh, wait and possibly Mr.  
23 Caskey and if we cannot not all agree to various  
24 stipulations. And again, we're also working on  
25 stipulations regarding the Department of Vehicles. So

1 there's a possibility that either Mr. Caskey and someone  
2 from the Department of Vehicles or both if we can't  
3 agree on stipulations.

4 THE COURT: Okay. Understood. And then you  
5 have one more rebuttal witness.

6 MR. HO: One rebuttal witness for Mr.  
7 McFerron's testimony.

8 THE COURT: Okay. So we should probably get  
9 this case submitted on Monday, I imagine. All right.  
10 Everyone have a long good weekend and--

11 MR. JOHNSON: Your Honor, are you going to  
12 want closings of any kind?

13 THE COURT: If you'd like to present  
14 closings, that would be fine. I'll leave it up to you.

15 MR. HO: Thank you for--

16 THE COURT: You don't have to. I mean, I  
17 may ask you to submit proposed findings and conclusions,  
18 we'll talk about that on Monday. I guess I should tell  
19 you now, though, so you can prepare.

20 MR. JOHNSON: Right.

21 THE COURT: Who wants to do closings?  
22 Anybody?

23 MR. KOBACH: I'd be happy to do a very short  
24 one.

25 MR. HO: We'd be happy to do one, Your

1 Honor.

2 MR. KOBACH: I think brevity would be great  
3 for all involved.

4 THE COURT: All right. You can waive as  
5 well, Mr. Johnson, if you don't want to. All right.  
6 We'll do closings.

7 MR. JOHNSON: Five minutes.

8 THE COURT: Okay. All right. All right.  
9 So we'll see you at 9:30 on Monday.

10 MR. JOHNSON: Thank you.

11 MR. HO: Thank you so much, Your Honor.

12 MR. KOBACH: Thank you, Your Honor.

13 (6:46 p.m., proceedings recessed).

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C E R T I F I C A T E

I, Kelli Stewart, a Certified Shorthand Reporter and the regularly appointed, qualified and acting official reporter of the United States District Court for the District of Kansas, do hereby certify that as such official reporter, I was present at and reported in machine shorthand the above and foregoing proceedings.

I further certify that the foregoing transcript, consisting of 228 pages, is a full, true, and correct reproduction of my shorthand notes as reflected by this transcript.

SIGNED March 20, 2018.

/s/ Kelli Stewart

Kelli Stewart, CSR, RPR, CCR, RMR