

Transcript of Proceedings

Date: July 25, 2013

Case: APPLEWHITE, et al. vs. COMMONWEALTH OF PA, et al.



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Email:Office@Miller-Verbano.com

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

- - -

VIVIETTE APPLEWHITE; WILOLA
SHINHOLSTER LEE; GROVER FREELAND;
GLORIA CUTTINO; NADINE MARSH; DOROTHY
BARKSDALE; BEA BOOKLER; JOYCE BLOCK;
HENRIETTA KAY DICKERSON; DEVRA MIREL
("ASHER") SCHOR; THE LEAGUE OF WOMEN
VOTERS OF PENNSYLVANIA; NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, PENNSYLVANIA STATE
CONFERENCE; HOMELESS ADVOCACY PROJECT,

Petitioners,

VS.

THE COMMONWEALTH OF PENNSYLVANIA;
THOMAS W. CORBETT, in his capacity as
Governor; CAROLE AICHELE, in her
capacity as Secretary of the
Commonwealth,

Respondents.

**CERTIFIED
TRANSCRIPT**

C.A. No.

330 M.D. 2012

TRIAL - DAY NINE

HONORABLE BERNARD L. MCGINLEY

Harrisburg, Pennsylvania

Thursday, July 25, 2013

9:00 a.m.

REPORTED BY:

Marjorie Peters, RMR, CRR

A P P E A R A N C E S

On behalf of Petitioners:

ARNOLD & PORTER, LLP:
Michael A. Rubin, Esquire
David Gersch, Esquire
Dana Peterson, Esquire
Whitney Moore, Esquire
R. Stanton Jones, Esquire

ADVANCEMENT PROJECT:
Marian K. Schneider, Esquire

PUBLIC INTEREST LAW CENTER OF PHILADELPHIA:
Jennifer R. Clarke, Esquire

ACLU OF PENNSYLVANIA:
Witold Walczak, Esquire

On behalf of Respondents:

PENNSYLVANIA OFFICE OF ATTORNEY GENERAL:
Timothy Paul Keating, Esquire PENNSYLVANIA OFFICE
Kevin P. Schmidt, Esquire

DRINKER BIDDLE & REATH
D. Alicia Hickok, Esquire
Todd N. Hutchison, Esquire
Ronald P. DeJesus, Esquire

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P R O C E E D I N G S

THE BAILIFF: Commonwealth Court is now in session, the Honorable Bernard L. McGinley presiding.

MR. KEATING: Good morning, Your Honor.

MR. RUBIN: Good morning, Your Honor.

THE COURT: After yesterday, I think the only thing that we have outstanding pertains to the interrogatory No. 24 of the Petitioners' third set of interrogatories.

I know they're interrogatories, and I know it's unusual, so, I'll permit the unredacted response to interrogatory No. 24 of Petitioners' third set of interrogatories to be admitted into the record.

MR. RUBIN: May we have an exception, Your Honor?

THE COURT: Sure.

MS. HICKOK: Thank you, Your Honor. As you suggested, we're going to call Dr. Wecker first. Respondents call Dr. Wecker.

WILLIAM E. WECKER, a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. HICKOK:

Q. Good morning, Dr. Wecker.

A. Good morning.

Q. Would you state your name for the record, please.

1 A. William E. Wecker. W-E-C-K-E-R.

2 Q. Dr. Wecker, what is your profession?

3 A. I'm a statistician.

4 Q. If we could return to Exhibit 224 -- and we have broken
5 this down into four parts, Your Honor. We have 224a, which is
6 his expert report; 224b, which is his curriculum vitae; 224c,
7 which is his deposition and trial testimony; and 224d, which
8 are the materials that he reviewed.

9 If we could look first at 224b. Is this your curriculum
10 vitae?

11 A. Yes. I have a copy here.

12 Q. Can you please tell us about your educational
13 background.

14 A. I received a Bachelor of Science degree in basic
15 sciences from the United States Air Force Academy in 1963.
16 Then after several years of military service, I returned as a
17 civilian to the University of Michigan where I completed a
18 Master of Science in the Ph.D. degree in statistics and
19 applied mathematics.

20 Q. During your military service, what position did you
21 hold?

22 A. I was an officer in the Air Force. I flew fighter type
23 aircraft for the Air Force for several years.

24 Q. Thank you. So, if we look at your employment, we see
25 the time in the Air Force, and then what did you do after you

1 returned to civilian life?

2 A. Well, after completing a Ph.D. degree at the University
3 of Michigan, I accepted a job offer at the University of
4 Chicago where I was a Professor teaching statistics and doing
5 research in statistics and other areas of mathematics.

6 Q. After that?

7 A. Well, I continued the same thing. I have been to more
8 than one university. The longest was at the University of
9 Chicago, but then I have also been on the faculty at the
10 University of California at Davis, and I have taught at
11 Stanford, and occasionally at some other universities around
12 the world by invitation.

13 Q. In all of those teaching assignments, did you always
14 teach only statistics?

15 A. Not only statistics, but mostly. I taught some other
16 areas of mathematics as the needs rose; and at the University
17 of California, they had me teaching some computer science
18 courses in database design, database management and other
19 areas of computer science.

20 Q. After you taught at Stanford, did you then leave the
21 teaching profession?

22 A. Yes. I'm now retired. When we say it in Latin, I'm a
23 Professor Emeritus. So, for the last several years, I have
24 only taught occasionally by invitation. I'm no longer a
25 regular member of any university faculty, and I do -- a run a

1 consulting company because I'm old enough to be retired, but
2 not old enough to stop working. So, I do other people's
3 mathematical and statistical problems.

4 Q. What sorts of clients do you have?

5 A. Oh, there's every conceivable kind. Airlines,
6 automobile manufacturers, computer companies. A lot of
7 technological type things that get complicated. We have been
8 involved in rocket launches from Kazakhstan and orbits in
9 space. Banking, railroad mergers, just every conceivable
10 thing.

11 Q. And have you testified in court?

12 A. Yes, many times.

13 Q. And have you ever been retained by Arnold & Porter?

14 A. Yes.

15 Q. And you have also published; is that correct?

16 A. Yes. I think several pages after this cover page, you
17 will see a list of my professional publications.

18 Q. And are some of those publications invited publications?

19 A. Some of are chapters of books that were invited, yes;
20 and others -- the usual case is just an ordinary academic peer
21 reviewed journal.

22 Q. In your activities section, I note that you had an
23 associate editor position. Well, actually, you have got two
24 associate editor positions. Can you tell us about those?

25 A. Yes. The editorial board of an academic journal is the

1 organization that does a peer review for the journal. They're
2 the ones that decide what gets published and what doesn't get
3 published. It's a very responsible job because young starting
4 professors' careers hinge on whether their work is published
5 or not, so one has to be very careful about that work.

6 I have held that job for several years at the Journal of
7 the American Statistical Association, which is the premiere
8 statistical journal in the world. It's the flagship journal
9 of the American Statistical Association of the United States.
10 And in other journals under the auspices of the American
11 Statistical Association.

12 I don't do that anymore. It takes a lot of time and I'm
13 retired, but I did it as part of my service to the profession
14 for decades.

15 Q. For decades?

16 A. Yes.

17 Q. Thank you.

18 MS. HICKOK: Your Honor, at this time I would
19 like to proffer Dr. Wecker as an expert statistician.

20 MR. RUBIN: Your Honor, may I briefly voir
21 dire?

22 THE COURT: Certainly.

23 CROSS-EXAMINATION ON QUALIFICATIONS

24 BY MR. RUBIN:

25 Q. Good morning, Dr. Wecker. It's good to see you again.

1 A. Good morning.

2 Q. As you I'm sure remember, I'm Mike Rubin of Arnold &
3 Porter. I have a few questions for you. You're a
4 statistician and applied mathematician, correct?

5 A. Yes.

6 Q. You're not an expert in voting laws, are you?

7 A. I'm not.

8 Q. Not an expert in Pennsylvania's voting laws in
9 particular, correct?

10 A. Correct.

11 Q. And in your report, attachment C, that's the list of
12 things that you reviewed for this case; correct?

13 A. Yes.

14 Q. And Act 18 was not among those things, correct?

15 A. I'd have to look. I'm looking now, and I don't see that
16 as -- I have Pennsylvania voter ID law document, and that --
17 that's it.

18 Q. What is that document that you're referring to.

19 A. That's the title of a document. I don't have the full
20 document with me, so.

21 Q. Well, it's something that you reviewed; correct?

22 A. Yes, it's the -- refers to -- it's a summary of
23 Pennsylvania voter ID law that gave me a background.

24 Q. It was dated in March of 2013, correct?

25 A. Yes.

1 Q. What that says is the law of Act 18 photo ID law was not
2 in effect at the time, correct?

3 MS. HICKOK: March 2013?

4 THE WITNESS: I don't recall that detail.

5 BY MR. RUBIN:

6 Q. Okay.

7 A. I think I know that it hasn't taken effect yet, but I
8 don't remember reading it.

9 Q. In that -- you don't remember reading the piece of item
10 that was on your review list?

11 A. I read the document, but I don't remember the full
12 contents. It was just a background reading.

13 Q. Do you recall that it said the law was not in effect,
14 and thus, it doesn't lay out in that document how people would
15 be disenfranchised or not permitted to vote if the law were in
16 effect?

17 A. I don't recall one way or the other reading that detail.

18 Q. Your report discusses various aspects of voting laws in
19 Pennsylvania, correct?

20 A. Mostly not. Mostly, it discusses Dr. Siskin's
21 statistical.

22 Q. Does it talk about the uniform --

23 MS. HICKOK: Your Honor -- Your Honor, I'm not
24 certain how this goes to his qualifications as a statistician.

25 THE COURT: Yeah, you're getting a little bit

1 into cross-examination.

2 MR. RUBIN: Your Honor, his report contains
3 statements about what the law is under Pennsylvania.

4 MS. HICKOK: Your Honor, that's --

5 MR. RUBIN: If they're stipulating that he
6 will not testify as to what the law is, what the impact of the
7 law is, then I don't need to probe his qualifications on
8 testifying as an expert on what the law is in Pennsylvania,
9 what the impact of the law would be.

10 If he's not going to offer those opinions,
11 then I don't need to continue.

12 MS. HICKOK: Your Honor, he's here to testify
13 as a statistician who reviewed Dr. Siskin's report.

14 To the extent that Dr. Siskin drew
15 conclusions, he may review those conclusions; but he is not
16 making a legal analysis. That's not what he is here to do.

17 MR. RUBIN: Your Honor, his report talks about
18 various specific laws, whether people are able to vote
19 absentee, when they might be able to vote absentee.

20 As long as he's not offering that testimony,
21 and we can reserve this for objection at the time he offers
22 that type of testimony.

23 THE COURT: I suggest that's the way you
24 proceed.

25 MR. RUBIN: Thank you, Your Honor.

1 In that regard, we don't have an objection to
2 his qualifications as a mathematician and a statistician.

3 CONTINUED DIRECT EXAMINATION

4 BY MS. HICKOK:

5 Q. Dr. Wecker, what were you asked to do in this case?

6 A. I was asked to review the report of Dr. Siskin, in which
7 he did a statistical analysis of the SURE voter database, and
8 in comparison to the PennDOT database.

9 Q. In order to understand Dr. Siskin's analysis and
10 conclusions, did you also receive under a confidential
11 protective order access to the databases that Dr. Siskin
12 received access to?

13 A. Yes.

14 Q. Did you review some of those underlying records as well?

15 A. Yes.

16 Q. And was that an important part of your analysis?

17 A. Yes.

18 Q. After you reviewed Dr. Siskin's report, did you reach
19 any conclusions?

20 A. Yes.

21 Q. And what conclusions did you reach?

22 MR. RUBIN: Objection, Your Honor.

23 THE COURT: Overruled.

24 MR. RUBIN: Your Honor, if I may be heard very
25 briefly. Dr. Siskin laid out certain methodological concerns

1 with Dr. Wecker's work that I would ordinarily seek to voir
2 dire on, under the theory that they're not generally accepted.

3 With the Court's permission, I'd like to
4 reserve that for my cross-examination without waiving right to
5 object and move to strike that his opinions are not based upon
6 general acceptance.

7 THE COURT: Fine.

8 MR. RUBIN: Thank you.

9 MS. HICKOK: Your Honor, I would note that he
10 did not file a Frye motion at the time for motions in limine,
11 to the extent that he wants to make a generally accepted
12 challenge at this late date.

13 THE COURT: Let's not bicker. Let's proceed.

14 BY MS. HICKOK:

15 Q. I believe the question on the record was what did you
16 conclude?

17 A. My opinions relate to Dr. Siskin's list of a little more
18 than 511,000 SURE voter records which he describes as records
19 for Pennsylvania voters who do not have PennDOT ID based on
20 his analysis, and who cannot vote.

21 I have -- that's where my opinions are lodged, but the
22 opinions themselves are that he's wrong on all three points,
23 or at least he has no valid basis to assert his three points.

24 Q. So, are those three points, as I understand what you are
25 saying, that he has no basis to say that 500,000 -- roughly

1 500,000 voters lack ID to vote in the next election?

2 A. Well, in the first instance, he's wrong to say that the
3 list of SURE records actually corresponds to real Pennsylvania
4 voters.

5 In the second instance, he has no valid basis to support
6 his claim that the individuals that would correspond to his
7 records have not gotten PennDOT ID.

8 And the third that is that he has no valid basis to
9 claim that they -- these individuals who correspond to his
10 records cannot vote.

11 Q. So, let's explore those three statements.

12 MR. RUBIN: Your Honor, before they explore
13 those three statements, he just -- the witness just testified
14 that he is intending to offer an opinion as to whether certain
15 people are able to vote or not. That gets into the precise
16 area of voting rights and impact of the law, not statistics,
17 not mathematics; and we would object to that, to any testimony
18 in that area.

19 THE COURT: Overruled.

20 MS. HICKOK: Thank you, Your Honor.

21 BY MS. HICKOK:

22 Q. Now, can you explain further the first statement that
23 you made about the conclusions that Dr. Siskin drew that he
24 was actually reviewing 500,000 prospective voters?

25 A. Well, he did actually have a list that he created of

1 511,000 SURE records. That so much I agree with, he has that
2 list, which he created by procedures of his own design.

3 But as to the question of whether these records
4 correspond to actual Pennsylvania voters, he's not ascertained
5 if they're even alive; and thousands them, I know -- because
6 it's easy to know this; it would have been easy for Dr. Siskin
7 to know this -- are deceased, they're dead.

8 And I, in my layman's -- with deference to Mr. Rubin, my
9 layman's understanding here, is dead people are not voters.

10 He did nothing to ascertain whether they were alive or
11 dead, even though there was clear information in the actual
12 databases he reviewed indicating a code for deceased.

13 Q. So, now, when you say there was clear information as to
14 a certain number of those voters, in which database did the
15 clear information appear?

16 A. In the SURE database.

17 Q. Okay.

18 A. There's other sources of that information that were
19 available to me and I assume would have been available to
20 Dr. Siskin, although he didn't pursue them. There are Vital
21 Records that are maintained by governments indicating births
22 and deaths and migrations and things like that. So, you can
23 go there and find even more people who are deceased that would
24 correspond to these records.

25 So, that's my first observation, that he has not

1 determined if they're actual voters because he didn't
2 ascertain if they were even alive.

3 Q. And if you were to tell you that there was testimony in
4 this case that even the reporting of those Vital Statistics
5 has been -- well, is vastly backlogged, would that mean that
6 the numbers of deceased people in the database are actually
7 understated?

8 MR. RUBIN: Objection. Lack of foundation.
9 Calls for speculation and misstates testimony.

10 THE COURT: Maybe get some more information
11 from the Doctor.

12 MS. HICKOK: Okay.

13 THE WITNESS: I can speak responsively to your
14 question, I think.

15 MR. RUBIN: Objection. Your Honor, there's an
16 objection.

17 THE COURT: We're going to proceed. I will
18 give you a standing objection. You're going to hurt yourself
19 if you keep jumping up like that.

20 THE WITNESS: I'll try to remain responsive to
21 the question, but it's a complicated issue.

22 First, I do not believe that the code, which
23 is the letters DC, which is decoded as deceased in that
24 database, is actually comprehensive and complete. It's just
25 not designed to be that precise. So, there are almost

1 certainly other deceased individuals that are not marked as
2 deceased in that database.

3 If I have confused the Court, I apologize.
4 It's not my intention to claim that I have actually counted
5 all of the deceased individuals. I am just asserting that
6 Dr. Siskin has not ascertained whether they're alive or dead;
7 and rather than make a kind of empty assertion, I point out
8 that there is the availability there to get started with
9 thousands of deceased records and other ways to come at that.

10 The one thing that governments keep fairly
11 good track of somewhere is deaths. Statisticians somewhat
12 morbidly like deaths because they're easy to count, unlike
13 illnesses.

14 BY MS. HICKOK:

15 Q. Right.

16 A. So, that's the kind of data that's available. My
17 opinion is that he has done nothing to follow that up and
18 ascertain if on his list people are alive or dead, and that's
19 a bad start. We're not talking about a few. Many, many
20 thousands. I'm still trying to be responsive and not just run
21 on.

22 I point out that in the PennDOT database, which is part
23 of his work, he finds expired licenses; but thousands of those
24 expired licenses are expired five or more years ago. More
25 than 70,000 of them. There are some that go back to the

1 1970s.

2 Now, it raises the question for me, why would someone
3 have an expired license for so long. It might be a very
4 simple and easy to understand explanation, or it might be that
5 they're dead.

6 MR. RUBIN: Your Honor, I'm sorry to jump up
7 again; but Dr. Wecker is now going beyond opinions that are
8 even in his rebuttal report, which violates this Court's
9 order.

10 MS. HICKOK: He's explaining the opinions in
11 his report.

12 MR. RUBIN: There's no statistics or data on
13 70,000 people with expired licenses more than five years in
14 his report, Your Honor. This is unfair surprise and this is
15 against the Court's order.

16 THE COURT: You'll have a chance to
17 cross-examine. Thank you, Mr. Rubin.

18 THE WITNESS: So, I think I have fleshed out
19 the answer to your question about my concern and criticism
20 that Dr. Siskin didn't -- Dr. Siskin did not ascertain whether
21 his list of 511,000 were even actual, live Pennsylvania voters
22 insofar as he didn't ascertain whether they were alive at all.

23 But there are other criticisms on that same
24 point that I could tell you about, if you would like.

25 BY MS. HICKOK:

1 Q. Okay.

2 A. He did not ascertain in a thorough or comprehensive way
3 if the people -- the records that purportedly correspond to
4 people on the list of 511,000 might have moved out of state.

5 Now, there is a code for out-of-state move for some of
6 those records, and he did take advantage of that; but that's
7 not a comprehensive code, and some of these long expired
8 licenses, for example, may have -- if someone pursued and
9 tried to really understand what that data was, people had
10 either died or maybe they just moved away, and therefore they
11 don't need a current Pennsylvania driver's license.

12 So, the prospect of many records in his 511,000
13 corresponding to people who have moved maybe long ago is real,
14 and he didn't do anything to ascertain that he had flushed
15 those out of his counts.

16 THE COURT: What was the number that you say
17 Dr. Siskin attributed to migration?

18 THE WITNESS: I don't have a count of that,
19 Your Honor, in my head; but there was a code for out-of-state,
20 and I'd have look it up.

21 THE COURT: Out-of-state migration.

22 MS. HICKOK: Your Honor, it's in Dr. Siskin's
23 report. He says that there's a number that corresponds to the
24 out-of-state code.

25 THE COURT: Okay.

1 THE WITNESS: I do know that approximately
2 250,000 people a year move out of state in the State of
3 Pennsylvania, because I looked that up in the census data.

4 So, the potential there is very large.
5 Annually, 250,000 moving out. There are others moving in, but
6 it's -- it's not net migration, but that's not the -- you
7 don't want to look at net migration.

8 BY MS. HICKOK:

9 Q. It would impact -- it would impact a specific list at a
10 specific point in time --

11 A. Right.

12 Q. -- of people who had once registered.

13 A. It's not net. It's 250,000 a year moving out, and that
14 database is not going to stay current on that. It's
15 unreasonable to think it is.

16 So, I have only one other thing to end this, if I could
17 be too bold here and just move it along. There's a third
18 point, and that is his list of 511,000 includes also felons
19 who are not eligible to vote.

20 I'm not claiming to be an expert in the law of felons
21 and voting, but at least I have some understanding that if you
22 are a felon and you are incarcerated for your felony, there is
23 an issue with your voting; and he has done nothing to
24 ascertain whether or not there are felons ineligible to vote
25 in his 500,000. And I found them. They're in there.

1 Q. And what did you do just from available -- available
2 data that was available to him and publicly available to
3 ascertain whether that was a question he should have asked?

4 A. You don't have to even look at data to know it's a
5 question to ask. If he's done nothing to ascertain whether
6 there are felons included in his 500,000, you don't have to
7 look at data to know that. You just know that he didn't.

8 As to whether felons exist in the state of Pennsylvania,
9 I think they exist in the state of Pennsylvania. I haven't
10 counted them all up, but I have found some people who are
11 incarcerated by looking at his records and finding locations
12 for them that correspond to correctional facilities, and then
13 I found their names. I have looked them up in a Google
14 search, and I found their court records, and they're felons.

15 They're not all felons. But I found felons, and so he
16 has felons on his list; and he shouldn't. He should take
17 those out.

18 Q. Incarcerated felons.

19 A. Incarcerated felons.

20 Q. Okay. So, these are at least three categories of people
21 that should have been analyzed before he ever decided that
22 there was a number that he was going to be looking at of
23 people who would need ID to vote; is that correct?

24 A. Yes.

25 Q. Then I think you said that there was a second concern

1 that you had, which was that he hadn't properly ascertained
2 and had no basis to say that even if there were people who
3 were alive and living in the State of Pennsylvania and who
4 were not in jail, that these people lacked PennDOT ID.

5 What is your reason for saying that he didn't undertake
6 that analysis?

7 A. Well, there's an overarching fundamental reason, and
8 then I'll give some more specifics.

9 His procedure from which he creates his list of
10 511,000 -- leaving aside now whether they're alive or dead.
11 That's something we have talked about.

12 Where he gets this list of 511,000, is to attempt to
13 match a record in one database, the SURE voter database, to a
14 record in another database that was not designed to be
15 coordinated with the first one. If he's unable to do a match,
16 he jots that down as someone that has no PennDOT ID.

17 What he really should say is it's someone who he
18 couldn't find a the PennDOT ID record for. It's not the same
19 thing as if they had no PennDOT ID; and the basic and
20 fundamental problem is that matching process that he's doing
21 is very error-prone, unreliable undertaking.

22 Q. Now, did he acknowledge that himself?

23 A. Yes, yes. I think in several places he acknowledged
24 that. But why, why so error-prone?

25 When -- I don't want to turn this into a tutorial on

1 database design, but some databases are designed to do what we
2 call merge or match; and when you design them that way, you do
3 it with a merge or match key that is unique and allows you to
4 look up the one record in the one database and match it with
5 the other one.

6 And then, except for potential for error in that
7 process -- which is pretty bulletproof, really -- you can do
8 the matching.

9 But here he's -- he doesn't have that, because these
10 databases were not designed with the other in mind; and so
11 it's just an attempt to see if you can find records that seem
12 to be matching, and that's what the error-prone thing.

13 I can't fault him for trying. Maybe it could have been
14 a lucky day and they corresponded well enough that he could do
15 a decent job, but it was not a lucky day. These databases are
16 just differently designed, and very difficult to find a match.

17 Therefore, when you don't find a match, it doesn't mean
18 they don't have PennDOT ID; it just means that you couldn't
19 find them.

20 Now, I said I had some specific observations on that
21 aspect of whether or not he's ascertained if they have PennDOT
22 ID. So, these are some examples.

23 In the SURE database, there are many records with
24 missing data. Well, you can't match a missing data field to
25 something, because there's nothing to match. There are entire

1 records that are virtually clean of information, redacted or
2 missing information. There's no way to match those.

3 They're on his list of unmatched, but that's -- there's
4 no basis to say they have no PennDOT ID; it's just that it was
5 not possible to match them.

6 There are duplicates that he talks about in his
7 testimony and in his report. There's over 41,000 duplicates
8 in the SURE database. When I say duplicate I mean --

9 MR. RUBIN: Your Honor, again, we're in the
10 area of stuff for the last ten minutes that's nowhere in his
11 report, the 41,000 number. This is testimony that simply is
12 way beyond anything that was disclosed that he would testify
13 to in connection --

14 THE COURT: You can bring that out on
15 cross-examination.

16 MR. RUBIN: Thank you.

17 MS. HICKOK: Your Honor, perhaps I can
18 clarify.

19 BY MS. HICKOK:

20 Q. Dr. Wecker, since the time that you have provided your
21 report, did Dr. Siskin testify?

22 A. Yes.

23 Q. And have you been sent Dr. Siskin's testimony?

24 A. Yes.

25 Q. And is in part some of the testimony that you're

1 providing today a response to Dr. Siskin's testimony?

2 A. Yes, the part I was just talking about is in response to
3 what he said.

4 Q. Thank you.

5 A. I was aware of the duplicates. I hadn't made a major
6 point out of it because I don't think it's that big a point;
7 but since he brought it up, I'll bring it up.

8 The curious thing and problematic thing about the
9 duplicates, and I would -- let me define duplicate. First
10 name, last name, and date of birth; identical in both
11 databases. That's what I mean by duplicate. Other people
12 could define duplicate differently, but that's --

13 Q. Just to clarify --

14 A. Sorry, I misspoke. I don't mean in both databases. I
15 mean in the SURE database --

16 Q. SURE database.

17 A. -- defines more than one record with the first name,
18 last name and date of birth.

19 Q. So for example, if a person had the same first name,
20 last name and date of birth but had moved, they might have two
21 records, one of which is in their old address and one of which
22 is in their new address, and both would be in SURE.

23 Is that a possible explanation?

24 A. That's possible. I don't really know why there's
25 duplicates in there. It's common to have duplicates for

1 various idiosyncratic reasons in databases.

2 Q. To back up just one moment, how many records are in the
3 SURE database?

4 A. He cut it down to about 8 million.

5 Q. Okay. So, he was looking at 8 million records in SURE,
6 and how many records was he looking at in the PennDOT
7 database?

8 A. A little over 14 million.

9 Q. 14 million in the PennDOT database?

10 A. Yes.

11 Q. Okay. So, you're saying that out of that 8 million
12 records or out of the 511,000, that there were 40,000
13 duplicates, which universe.

14 A. The 8 million has the 41,000 duplicates, and there's
15 even some triplicates, and I will just ignore those. But
16 there are more than 3,000 among his -- 3,000 of the 41,000,
17 can be found in his list of 511,000. This is getting too
18 numerical for me.

19 Q. No, I'm following you.

20 A. The point is that there are some duplicates on his list;
21 and for me, the troubling and problematic thing is that
22 sometimes he's able to match one of the duplicates, but not
23 the other one.

24 Well, if these duplicates really are duplicates of the
25 same person, it makes no sense. You could claim that on the

1 one hand they had a PennDOT ID, and on the other hand they did
2 not.

3 So, it's kind of a complicated and head-scratching
4 point. So I didn't try to elaborate on it, but since he
5 brought it up, I will bring it up now. There's a troublesome
6 aspect with duplicates.

7 I mentioned the missing data, and there's another aspect
8 that I think is -- 30 years ago or 50 years ago wouldn't have
9 been as big a problem, but it's becoming a bigger problem
10 today.

11 Most databases are rather old fashioned in the way they
12 record names. They have a, what we call a field. You can
13 think of it as a slot or a box for last name, first name,
14 middle name or middle initial; but certain ethnic groups --
15 especially Asian ethnic groups, but others, too -- don't have
16 those naming conventions. Their last name might be more than
17 one word, as traditionally Europeans would count names.

18 The thing we think of as a last name they might think of
19 as a first name, and the whole thing gets very confusing in
20 the database. I have found many, many records where that
21 confusion entered in. He was not able to match because he was
22 dealing with one of these ethnic names that just didn't
23 decipher in the same way when you looked at one database over,
24 versus the other.

25 Q. So, for example, if PennDOT had treated a part of a last

1 name as a middle name, but the Department of State had treated
2 both as a last name, he would not have matched that record,
3 even though the entire name, if you wrote it out in both
4 things, would look like the same name?

5 A. Well, to a human eye, because the human eye is pretty
6 good at ignoring hyphens and having things displayed
7 differently. The human eye might spot it as the same name,
8 but the computer algorithms that he used -- the so called
9 fuzzy matching -- they're not that smart; and they not only
10 would miss it, they did miss many, many thousands of them.

11 Q. Now, I believe Dr. Siskin said in his report and also
12 testified that he did an actual manual review. Do you -- do
13 you have any opinion as to that?

14 A. Yes, this is a serious matter.

15 Yes, he did -- I think it's in his appendix C -- state
16 in more than one place that he did a manual review to
17 ascertain the accuracy of his computerized review, his
18 matching.

19 So, he's got -- what he did was he had 511,000 that he
20 thought did not have a PennDOT ID that he thought were voters.
21 He took a sample of 100 of those, and says that he manually
22 checked them to see if they really did not have PennDOT ID or
23 were incorrectly or correctly matched. He looked at them.

24 He said that he found 14 or 14% -- 14 out of 100 -- that
25 were not properly included in his list of 511,000. He reached

1 that conclusion by doing something he describes as manual
2 effort. He did not disclose what he did. He did not describe
3 what he did. He just referred to it as manual effort.

4 THE COURT: Can I take you back to the
5 duplicates, and the match between SURE and DOT. Does that
6 increase or decrease the 511,000 figure?

7 THE WITNESS: I think a thorough analysis of
8 the duplicates would certainly decrease the 511,000, and that
9 he has increased it artificially.

10 So, we were on the manual, but verification
11 step from his sample of 1,000. Because it was a sample of
12 only -- I'm sorry, 100, not 1,000. Because it was a sample of
13 only 100, there's some sampling errors that would associate
14 with his finding of 14 improperly non-matched records.

15 Failings, in other words, of his method to
16 match, which he overcomes in some unexplained way through
17 something he calls "manual effort."

18 He concludes because of potential for sampling
19 error, it may be as many as more than 50,000 records could be
20 of the same kind, that he had had them on his list of 511,000,
21 but shouldn't have. That's what he concludes.

22 But here's the important problem with that.
23 There's no way that that was a manual undertaking.

24 BY MS. HICKOK:

25 Q. Why not?

1 A. Because there's 14 million records. You can't look at
2 them by eye. Now, if he had a -- he didn't describe this, but
3 I know enough about what it takes to look at 14 million
4 records. You can't do that by eye, or manually.

5 So, what he must have done, I conclude by just thinking
6 about it, is he had this 12-step process for attempting to
7 find matches; and sometimes you would go through all 12 steps,
8 you couldn't find a match and, you would get on his list of
9 511,000.

10 The only thing that he could have done is to elaborate
11 and maybe have a 13- or 14- or 15-step procedure; but if he
12 does that, he's in no better position than he was before,
13 because the 12-step, the 10-step, the 13-step procedure is
14 still going to be an error-prone procedure that's going to
15 fail; and it's going to miss things.

16 So, the attempt to do a verification of some kind first,
17 in the first instance, found a large percentage that were
18 improperly on the list; and second, it doesn't find a reliable
19 count of how many should be deducted from the list because it
20 is a procedure that itself needs verification because it's
21 not -- I would be willing to credit the human eyeball. It
22 takes us back to Florida voting television where they're
23 holding up things to the light.

24 But even if we were to credit the human eye's ability to
25 do these matches, you know that that is not how he could have

1 done it. He had to be just running a computer and running a
2 computer is an error-prone process when you have these two
3 databases that are not designed to be matched.

4 Q. And that's because of the sheer volume of the records
5 that he was dealing with, it would not be possible to do it?

6 A. No, no -- well, the sheer volume is the reason you can't
7 do it manually. But the reason there's a problem is they
8 weren't designed to be matched in the first place. They were
9 recorded in different ways. They just don't match well.

10 Q. Okay. Now, did he also, in the way that he was
11 matching, and specifically with regard to date of birth, was
12 there anything in the way that he looked at that that also
13 gave rise to false non-matches?

14 A. Well, I can think of one thing. I don't know
15 necessarily what you are thinking of.

16 When he required a date-of-birth match, he sometimes
17 loosened the criteria that he was matching on so that you
18 could not -- he would not require an exact date of birth --
19 day, month and year. He might allow the month to be
20 different. In another case, he might allow the day to be
21 different. But he always, when matching on the date of birth,
22 required the year to be different -- I'm sorry, the year to be
23 the same.

24 Q. The year to be the same.

25 A. Exact match. But I will refrain from speculating as to

1 why this is, but I noticed that many, many people understate
2 their age on their driver's license. They cut a few years off
3 their age.

4 Q. They're being a little euphemistic.

5 A. I don't know why, but there are people who are obviously
6 the same person when you look at a human as at full record,
7 but their year of birth is different by a couple of years; and
8 that, that would have escaped his methodology, and he would
9 have put them on his list of non-matches when I think that
10 would -- that he should have recognized that that sort of
11 thing happens.

12 Q. Now, is it also true that there are in the SURE
13 database, there's been testimony that where data records --
14 where there was no date of birth known, that those dates of
15 birth were like 1/1/1900, and I believe Dr. Siskin mentioned
16 something about that.

17 A. Yes. That's just a way of dealing with missing
18 information. They put them as 1/1/1900. I think I even found
19 some 1800s in there that -- who knows how they got in there.

20 But I would treat them as erroneous or missing.

21 Q. So, does that further complicate trying to match dates?

22 A. Yes. It certainly does. If you have erroneous or
23 missing data of that kind. And matching dates of birth is one
24 of his primary methods.

25 Q. Now, you also said that Dr. Siskin had inferred from the

1 lack of -- from what he did to come to his universe of people
2 without PennDOT ID, that he was using that as a basis for
3 inferring that these were people who potentially could not
4 vote.

5 Do you have an opinion as to whether that was a proper
6 leap to make?

7 A. Yes.

8 Q. And what is your opinion in that regard?

9 A. It's a leap without valid basis. I think in some spots
10 in his report he acknowledges that he really has no basis to
11 assert that his -- that anyone, any one person on his 511,000
12 list, lacks the ability to vote.

13 But in other places, and the suggestion is being made in
14 the testimony, I think, suggests that he is taking that
15 position, that these are people who cannot vote.

16 So, to clear it up, I'll just say that there's no basis
17 that he's presented or that I can think of to leap from the
18 conclusion, even if you accepted the conclusion that they did
19 not have PennDOT ID -- which I dispute -- but if you found a
20 person that truly did not have PennDOT ID, they might well
21 have other ID that would allow them to vote.

22 I don't claim to be an expert on the voting law, but I'm
23 aware that colleges, care facilities, military ID, other forms
24 of government ID, passports, absentee voting, there's many
25 ways to vote that do not require PennDOT ID.

1 Q. Now, let's talk a little bit about some of those. Were
2 absentee voter records indicated in the SURE database?

3 A. Yes.

4 Q. Were military voter records indicated in the SURE
5 database?

6 A. Yes, but he didn't look at that. There's a field for
7 the source of the application to the SURE database, and one of
8 the sources is the decoded as military. And he -- you would
9 -- to me, that suggests this might be a person in the
10 military, with a military ID.

11 Q. Right. Or if they're stationed overseas, they might be
12 voting absentee but not have a current driver's license if
13 they have been over there too long.

14 A. If they're in the military, they have a military ID.

15 Q. Right.

16 A. No matter where they are.

17 Q. No matter what else is true. But it also might be that
18 that person is on his expired license list improperly.

19 A. That's correct. I'm referring to his list of 511,000,
20 which is about half inability to match on his part, and about
21 half matched, but expired in a way that he defines more
22 concretely.

23 So, yes, you can find applications there that say the
24 source was military; and he took no advantage of that.

25 Q. Then, you mentioned that you are, while you're not an

1 expert on the law, that you are aware that there are care
2 facility and university provisions that allow those
3 institutions to issue ID; is that correct?

4 A. Yes, I understand that.

5 Q. If you read his testimony, one of the questions that
6 came up was about the way in which you looked at care
7 facilities. Can you explain to the Court, first of all, how
8 it is that you looked at care facilities?

9 A. Yes. First, I got a list from counsel of care
10 facilities, and addresses. This would be the principal
11 address for the care facility or the administrative address.

12 Then I essentially drew a circle of about 500 feet, a
13 tenth of a mile around that, because this place where a person
14 might live -- this is a good illustration. Thank you. I'll
15 use it in my answer.

16 This is Bethany Village care facility. And the red dot
17 toward -- that's surrounded by the larger circle, that's the
18 point of the address that I had for Bethany Village.

19 And you can see, like many care facilities, Bethany
20 Village is a bit more spread out than just -- people don't
21 live in bunk beds one on top of each other at this point. So,
22 when I use the phrase, "they were at this facility" I didn't
23 mean they were all piled up on top of one another at this one
24 point.

25 I meant they were at it in the sense that were at a

1 facility that was eligible to issue these kinds of ID.

2 So, I drew a rather small circle in my description in my
3 report. In my computer programs I took circles of various
4 sizes, but I mentioned the number of people I found within
5 that small circle. But I didn't stop there.

6 Well, I mean -- let me pause at that point. Dr. Siskin
7 criticizes me because I'm looking at people inside this
8 circle, and maybe you can see there's some white area over to
9 the left and maybe I captured somebody who was not actually a
10 resident here, and that's true.

11 It's a procedure for trying to corral some people who
12 are residents and available to receive care facility ID, if
13 they're issuing that at these facilities.

14 But having corralled them, I now have records for them
15 and I can look at those records, and I can see that they have
16 addresses that say Bethany Village. They might be over to the
17 top right and they may be down to the top left or they might
18 be inside the circle, but the people I'm counting are in fact
19 at the facility.

20 Q. Okay. Because your circle is so narrow, if I look on
21 here, it looks like there are actually a lot of people that
22 are not captured by the -- because you did use a very
23 conservative distance.

24 A. Yes, and may I respond to that?

25 Q. Mm-hmm.

1 A. First, I'm not trying to count them and come up with a
2 precise count. I know that's a fool's errand. I can't
3 possibly use these databases and really get an accurate count.

4 I'm only trying to point out that Dr. Siskin could have,
5 but did not, make an allowance for these alternative forms of
6 ID; and that I'm documenting the obvious, that there really
7 are care facilities in the State of Pennsylvania. People that
8 really do reside there, and here are some records to prove it.

9 Q. And they're on his list.

10 A. Yes, and they're on his list of 500,000. And I find, I
11 think about 17 -- I forgot, 17,000 or 18,000 of them on his
12 list.

13 But that's with my rather stringent method. Now, I
14 didn't have time to look up addresses for everybody. But in a
15 few care facility cases, I looked up and I would find more
16 addresses than I had actually counted with my small radius
17 because I could find the people down toward the south there on
18 the map and over toward the east, and it was -- when you do
19 that manually, you can find more.

20 But I have no doubt that I have identified that there
21 are categories of people at care facilities who are eligible
22 to issue alternative ID.

23 Q. Now, did you undertake something similar when looking at
24 colleges and universities?

25 A. Yes.

1 Q. Can you explain to the Court how you did that?

2 A. Essentially the same way. Colleges and universities are
3 more spread out than care facilities, so I used a larger
4 radius. I used a mile.

5 Now, of course, that might capture some people who are
6 not students. I used an age range to help with that. 18 to
7 28. Because when I did find students with student addresses,
8 I noticed they were in that age range, and -- but still, one
9 could find a person in that age range who was not truly a
10 student or otherwise eligible to get a university or college
11 ID, but that doesn't undercut my point. My point is that you
12 can find a lot of them that are eligible.

13 Then I did the same thing I did at the care facility. I
14 looked at their addresses, and you find addresses like -- and
15 I'll use only fictitious names here. I won't mention that
16 because of confidentiality.

17 I found I reside at Fairchild Hall, and then they have a
18 second address because the record allows for a first address
19 and second address. At Bucknell University, I remember it was
20 701 Moore Avenue, I think, which is the University postal
21 receiving place. So, they reside at Fairchild Hall, but in a
22 second address they indicate the University postal place.

23 These are obviously people who are part of this
24 University; and they have ability, therefore, one would
25 suppose -- unless they were recently disenrolled for some

1 reason, they have the ability to receive ID from this college
2 if they are issuing that ID; and if not, they probably have a
3 passport because a lot of university people nowadays take
4 overseas excursions as part of their education.

5 So, that would turn us over to the alternative ID side
6 of things.

7 Q. Well, and if they had an out-of-state driver's license,
8 would they be limited in their ability to get to PennDOT to
9 get a DOS ID?

10 A. I wouldn't think so. I don't -- this is an example of
11 what one would need to do. If you really wanted to know the
12 answers to these questions, you would have to find a record
13 and learn about it.

14 But by the assumption of your question, if they had a
15 valid driver's license that allowed them to drive in the State
16 of Pennsylvania, and if they're located in a rural part of
17 Pennsylvania, seems quite likely that they have the ability to
18 make it by car to a place to get PennDOT ID.

19 But these students may not require that at all anyway,
20 because they probably have passports or alternative ID of some
21 kind.

22 Q. So, the -- did Dr. Siskin undertake any attempt to
23 analyze either the care facility information that was before
24 him, or this college and university information that was
25 before him?

1 A. The only thing he did, he did in testimony, not in his
2 report. He counted up the many thousands of college students
3 that I found through my methods. He counted up some care
4 facility people that I found and said, gee, that only adds to
5 60, 70,000, so maybe that's not a very big number.

6 Well, that's a misunderstanding of what I was about.
7 I'm not claiming to have found them all. That's hard. It's
8 just as hard for me as it is for him.

9 I can find a lot of them, and he didn't even look.
10 That's my point.

11 Q. Thank you. Now, if he were to have undertaken the work
12 to understand the data, and were to have changed the
13 configuration of the 511,000 so that he took out all of the
14 dead people, he took out all of the felons, he took out all of
15 the people who had moved out of state.

16 He undertook all of that work, he took those out. He
17 then found a way to create a different kind of algorithm that
18 would account for things like the middle name/last name issue,
19 and took into account whether these people were at colleges or
20 universities, whether they were at care facilities, whether
21 they were military, whether they had voted absentee -- took
22 all of those things into account, would that in itself give
23 you a number?

24 A. That would be a reduced number, if he did all of those
25 things. Probably hugely reduced. I don't know what it would

1 be, because he hasn't done it.

2 Q. But would that -- would that be the answer? Okay. I've
3 just done all of these algorithmic changes and deducted some
4 of these things. I now understand the data. Would that give
5 you the answer to the data?

6 A. Well, I'm sorry, the question is difficult because it's
7 hypothetical; and if I assume that he did everything
8 perfectly, I guess he would have something perfect. But I, I
9 don't really expect that it can be done that way.

10 Q. Do you think it could all be done by computer?

11 A. No. And that -- no. I think it's hopeless to match to
12 the level that I expect is required in a litigation setting,
13 and come up with a valid and reliable result. I just think
14 it's too hard to match these two databases, even if you spend
15 a great deal of time.

16 I think he could have done hugely better than he did,
17 because he didn't even check for dead people. There are some
18 things that are easy.

19 But if he did everything that I could think of and he
20 could think of and you could think of, I suspect that he would
21 still fall short and not really have a smaller list that you
22 could have true confidence in, but that's a hypothetical. It
23 hasn't happened, so I'm not going to worry about it.

24 Q. And if you were asked to undertake this analysis in a
25 hypothetical world, and you had gotten down to a smaller list,

1 what would you then do in order to be able to testify in court
2 that you have confidence that these are the people who
3 actually lack ID to vote?

4 A. Well, I would have to verify that just because I
5 couldn't find them didn't mean that there's some other
6 explanation for why I couldn't find them, and maybe that's
7 another person who has died and I just didn't know it.

8 So -- and I asked you about doing this, and you said it
9 was illegal, so I better not. I'd want to go out and talk to
10 them, at least a sample, an adequate sample of them, properly
11 designed sample. I'd really want to get to the bottom.

12 I'd want to run it to ground as to -- I had someone on a
13 list and I'm claiming they do not have the ability to vote,
14 that they lack PennDOT ID, they lack alternative ID and they
15 can't vote.

16 I'd want to know that I knew that. And not just that I
17 knew I couldn't match them when I had a computer.

18 Q. Do you see any indication in Dr. Siskin's report that he
19 did anything like that?

20 A. Well, he gives a hint of it in the section Roman numeral
21 VI, I think, but he doesn't explain himself very well.

22 There's a hint that he might have done something like
23 that, because he describes a process that I believe -- and I'm
24 just referring to his report now; I'm not trying to get into
25 his mind -- that as I read his report, it suggests that he did

1 something with his confidential data that eventually got him
2 to a few people that may have appeared in court.

3 Q. And can you explain to us what he said and what he
4 didn't say about how that worked?

5 A. He didn't say very much meaningful to me; but if you
6 really want a good answer to that, I think you better put it
7 up on the screen and we can just read it.

8 I have his report here and I can try to find it. If I
9 may, it's the second sentence that is instructive, where in
10 Roman numeral VI on page 24 of Dr. Siskin's report, he said he
11 -- "I subsequently was asked to confirm whether the following
12 registered voters, who may testify at trial, lack valid
13 PennDOT or DOS ID," and then he lists some names.

14 Q. Can you go back and read the first sentence for us?

15 A. Yes. "Petitioners' counsel asked that I use the public
16 full voter export file to provide them with a list of voters
17 who may lack valid PennDOT or DOS ID."

18 Q. So, now, do you believe that what he did was give the
19 511,000 to Petitioners?

20 A. I don't know. I don't know what he did. He doesn't
21 explain.

22 Q. He doesn't explain it. And does he have any indication
23 that he might have somehow filtered to get a more, more
24 probable list of people that might be a manageable list of
25 people to call? Does he refer to that anywhere in his report?

1 A. Well, I think that's what this section here is strongly
2 suggesting, that he must have done something like that.

3 Q. But there's nowhere in his report to look at to be able
4 to trace that he actually did that or what, what he found?

5 A. Nowhere in any of his disclosures does he document this
6 process. One just has to infer from reading the part that we
7 are reading. Some of the -- some inferences are entirely
8 speculative, some are pretty easy to be confident of; and the
9 one you just asked about, as to whether he had done something
10 to whittle down this list, to eventually get it to a few
11 names, obviously he did.

12 Q. Now, when you take the unreliable data out of the
13 511,000, would you expect that that would also impact the
14 tables that he has later on that talk about the demographics,
15 that talk about -- you know, the distance that a person has to
16 travel to a PennDOT center, that are all of the things that he
17 has done to kind of break down his 511,000? Would those be
18 reduced automatically in proportion? Like, if you --

19 A. I understand your question.

20 Q. Do you understand my question? I'm sorry. I'm not
21 articulating well.

22 A. We'll call those tables and his efforts the demographics
23 that he has developed; and the answer is, if the list of
24 511,000 from which he developed his demographics is no good,
25 then his demographics are no good.

1 And he would have to get a list of 511 -- of something
2 less than 500,000 that deletes the records that are
3 appropriate to have on there, and then do the demographics
4 over. You can't use the demographics from a bad list.

5 Q. Now what about his confidence intervals?

6 A. What's the question?

7 Q. Do you think that his confidence intervals give you a
8 reliable measure that all of the data that he's reporting are
9 plus or minus 5%?

10 A. Oh, no. They don't. I have replicated -- though he
11 didn't explain how he did it, this is my profession, so I have
12 replicated in his -- I think it's Appendix C, a certain
13 confidence interval he reports.

14 But the problem with that confidence interval, it is
15 based on a supposed verification of the accuracy of his
16 matching that is itself suspect.

17 That's the -- he verified that his 12-step matching
18 program failed 14 out of 100 times by applying something that
19 I'm going to call his 13-step method. But why should I trust
20 his 13-step method when I know his 12-step method is no good?

21 Calling it a manual undertaking has got to be a false
22 description. You know that it had to be a computer
23 undertaking, which is suspect.

24 Q. Okay. Now, when you and I spoke, you had said that
25 there were two parts of his testimony that you considered to

1 be evidence of a real analytical leap, and you created
2 demonstratives that you gave to us today; is that correct?

3 A. Yes.

4 Q. Can you highlight those two portions for us?

5 A. Well, I see on the screen here a portion of his report
6 -- this is part of his testimony. I'll read it.

7 "So, I think it is what I did has intuitive and
8 probative value to assessing the ultimate decision of who
9 doesn't have a valid ID of any sort."

10 Q. Do you agree with that statement?

11 A. Well, it's -- no, but I'm -- it's kind of an
12 inconsistent sentence. I agree that it's his intuition that
13 he's done some work, and it's led him to the intuitive
14 conclusion that there's some people -- he doesn't say how
15 many -- who have no valid ID; but I have been in a courtroom a
16 number of times, and I have never prevailed on an opinion
17 based on intuition.

18 So, I don't think this counts for very much. And that's
19 really all he's got, because even if you were to credit --
20 which I think you should not -- that he's correctly found
21 people without PennDOT ID who are alive and not felons, even
22 if you credit that, there's no way to get from that position
23 to the fact that -- to the claim they don't have a passport.

24 Maybe I shouldn't say there's no way. I'd say he has
25 provided no way.

1 And so, this is the biggest leap that I have ever seen
2 in terms of logical gaps between what the work was, and what
3 the conclusion that he's trying to support is.

4 Q. Let's look at the second one that was a particular
5 concern to you.

6 A. Okay. I'll read it. "In the November 2013 election,
7 Pennsylvania voters may be required to present valid photo ID
8 in order to cast a regular in-person ballot. The question
9 arises as to how many registered voters in the Commonwealth of
10 Pennsylvania -- I'll skip the parenthesis -- currently lack
11 such a valid photo ID.

12 Q. And why did this statement concern you?

13 A. Because it may be, and seems to me it would be, a
14 sensible question to ask; but he's done nothing to answer it.

15 And I refer back to my testimony of a moment ago. His
16 testimony does not address whether they have a valid photo ID.
17 It doesn't even try.

18 MS. HICKOK: Thank you.

19 MR. RUBIN: Your Honor, do you want to take a
20 short break or do you want to move right in?

21 THE COURT: We'll take a short break.

22 MR. KEATING: Thank you.

23 MR. RUBIN: Thank you.

24 (COURT RECESSED AT 10:09 A.M. AND RECONVENED
25 AT 10:24 A.M.)

1 THE BAILIFF: Commonwealth Court is now in
2 session.

3 CROSS-EXAMINATION

4 BY MR. RUBIN:

5 Q. Dr. Wecker.

6 A. Yes, sir.

7 Q. You had a limited assignment in this case, correct?

8 A. I had an assignment, yes.

9 Q. And it was limited to looking at Dr. Siskin's report and
10 coming up with criticisms of it, correct?

11 A. Essentially, yes.

12 Q. You were not asked to come up with an estimate of how
13 many voters in Pennsylvania lacked ID that would be acceptable
14 for voting, correct?

15 A. Correct.

16 Q. They didn't ask you to present a number to this Court,
17 they being Respondents, that you would deem reliable; correct?

18 A. A number on the point of your first question?

19 Q. Correct.

20 A. You are correct.

21 Q. Is that something that you believe you could have done,
22 if the Respondents had asked you to do so, sometime in the
23 last 16 months since the law was enacted?

24 A. I don't know. I wasn't asked, so I didn't have time to
25 think about it, or chance or a need. It would have been

1 difficult, and I think I can confidently say I could not do a
2 reliable job following the particular method of Dr. Siskin,
3 with his matching the two databases. I think I know that
4 much, but whether it can be done reliably with other means,
5 I'd have to study that.

6 Q. You weren't asked to comment on the survey that was done
7 by -- under the direction of Dr. Matt Barreto, were you?

8 A. I was not.

9 Q. You were not asked to comment on the testimony of
10 Dr. Marker, were you?

11 A. I was not.

12 Q. And your report contains a full list of the materials
13 you were sent before you submitted your report, correct?

14 A. Yes.

15 Q. And before submitting your report, you were not provided
16 Dr. Barreto's report; correct?

17 A. Correct.

18 Q. Nor Dr. Marker's report?

19 A. Correct.

20 Q. Nor Dr. Mutz's report?

21 A. Correct.

22 Q. You weren't provided this Court's opinion or any of this
23 Court's opinions before submitting your report, correct?

24 A. Let me think. I did read one court opinion and
25 nothing -- it had no impact on my work, and I didn't read the

1 whole thing; but I did receive an opinion, but it had nothing
2 to do with my work.

3 Q. So, you didn't receive this Court's prior finding that
4 between 1 and 9% of Pennsylvania voters lack acceptable ID for
5 voting purposes?

6 A. I don't recall that.

7 Q. You weren't provided the estimate done by the Department
8 of State previously of 1% of voters lacking acceptable ID for
9 voting?

10 A. I don't know anything about it.

11 Q. You weren't provided testimony that was given by the
12 former Director of Policy of the Department of State that her
13 estimate in working on the law, was 4 to 5% of voters lacking
14 a PennDOT ID?

15 MS. HICKOK: Your Honor, that mischaracterizes
16 the testimony.

17 THE COURT: You will be given a chance.

18 BY MR. RUBIN:

19 Q. You weren't provided that, right?

20 A. Whether you have characterized it correctly or not, I
21 have seen nothing of the kind.

22 Q. Fair enough. You were not provided Secretary Aichele,
23 Carol Aichele, Secretary of the Commonwealth's testimony in
24 February of 2013, in which she told, when asked what's the
25 number of people who lack ID according to the Department of

1 State, said: We don't have a new number; but an interesting
2 study was recently done, 3.5% of Philadelphia voters, actual
3 voters at the polls, lacked acceptable ID at the November 2012
4 election. You weren't provided that, were you?

5 A. I don't know anything about it.

6 Q. Were you told about the Commonwealth's own efforts to
7 match the PennDOT database to the SURE database last summer?

8 A. I know a little bit about that, yes.

9 Q. And you know when they did that work, they found 759,000
10 registered voters in the SURE database that they could not
11 match to the PennDOT database; is that right?

12 A. I don't recall the numbers. What I recall is they had a
13 different project than Dr. Siskin. They were doing some sort
14 of a database maintenance or something. But I haven't studied
15 it and I don't claim to be knowledgeable about it.

16 Q. If it wasn't for some database maintenance issue, if the
17 testimony in this court was -- is different than that, you
18 would defer to the testimony in this court; correct?

19 A. If the testimony is different that -- than what I
20 understand?

21 Q. Yes.

22 A. Well, then there would be -- I don't know if I would
23 defer to it. It may be that there would be something to
24 explain, but I don't know that I'd defer.

25 Q. And the people who did the work, have testified in this

1 court, you weren't provided that testimony; right?

2 A. Correct.

3 Q. Were you told that of the 759,000 people, the
4 Commonwealth took -- went another step and mailed out letters
5 to all of them?

6 A. I don't know these things, no.

7 Q. Okay. And --

8 A. You can cut this short. I only studied Dr. Siskin.

9 Q. Fair enough. But were you told that 150,000 of those
10 came back undeliverable?

11 A. I don't know that.

12 Q. And 150,000, subtracted from 759 is approximately how
13 much?

14 MS. HICKOK: Your Honor, he's way outside the
15 scope of direct.

16 THE COURT: I'll permit it.

17 THE WITNESS: Okay. It's around 600,000, but
18 I'm not sure what the number would mean or how to interpret
19 it.

20 BY MR. RUBIN:

21 Q. Were you told that the Commonwealth, as part of that
22 match, found another approximately half million registered
23 voters who in fact did match to the PennDOT database, but had
24 an expired -- an ID that would be expired more than 12 months
25 come the November 2012 election?

1 A. You asked if I was told?

2 Q. Yes.

3 A. The answer is no.

4 Q. You didn't see any documents about it, right?

5 A. I don't think so. I have seen documents on that subject
6 offered by Dr. Siskin, but not by anybody else.

7 Q. Now, you said that you wanted to pick up the phone and
8 call some of these voters on the 511,000 list; right?

9 A. When did I say that?

10 Q. You said that during direct examination.

11 A. I don't remember that. I don't -- but I'll try to be
12 helpful here.

13 Q. Well, let me if we don't remember --

14 A. I don't think I would want to talk to somebody on the
15 phone. I would like to interview. I think I may have said
16 that. I'd like to do -- if I were attempting to get to the
17 bottom of why I could not match a record from one database to
18 a record in another, and the record related to facts about a
19 particular person, and I wanted to really understand what
20 those facts were, a good way to learn those is to go talk to
21 that person.

22 Q. Okay. But Respondents' counsel told you that would be
23 illegal, right? That was your testimony.

24 A. In essence, yes. For me to use confidential information
25 to track down people and start talking to them about this

1 confidential information, they said was not appropriate.

2 Q. You've received emails from the Department of State's
3 counsel, Kathleen Kotula, if I have her name correctly;
4 correct?

5 A. I don't remember.

6 Q. Okay. Well, some of your reliance materials include
7 emails from her.

8 A. It's possible. I just don't remember -- I don't think I
9 have ever talked to that person, so I don't remember.

10 Q. Just so make sure that we understand how your -- how
11 Wecker & Associates works --

12 A. What?

13 Q. Wecker and Associates, that's you're the name of your
14 firm; right?

15 A. Correct.

16 Q. You have a back office support staff, correct?

17 A. We have about 20, 25 people.

18 Q. And they do most of the actual work and then you testify
19 about it; correct?

20 A. No, I don't think that's fair, no.

21 Q. Well, let's -- how many hours all-in did Wecker &
22 Associates spend on this project?

23 A. I haven't seen an invoice yet, but we have worked pretty
24 intensively since about the 1st of July, and even a few days
25 of the last day of June.

1 But to clarify and answer your question about how we
2 work, I am very hands-on in the work. If there's any project
3 that I'm involved in, I'm involved in from the beginning and
4 throughout, and work is done either by me or at my direction
5 and directly.

6 So, it is not the case that I sort of am some kind of
7 figurehead that waits until the work is done and then talks
8 about it. That doesn't happen.

9 Q. If your staff has received emails with the various data
10 on which you rely from the Department of State's counsel,
11 that's in the materials that you produced, you don't know
12 about that?

13 A. I probably do know about it or would have known. I just
14 don't remember that particular name, Kotula.

15 Q. Are you aware that she told the Court that it would be
16 perfectly acceptable to use these lists with certain
17 limitations to contact voters?

18 A. Which lists?

19 Q. The list of 511,000.

20 MS. HICKOK: Your Honor, he's
21 mischaracterizing.

22 THE COURT: Well, the Doctor can answer that,
23 if he's mischaracterizing.

24 BY MR. RUBIN:

25 Q. Are you aware that she said that that would be okay if

1 you used the public full voter extract and only contact people
2 on the full voter extract?

3 A. You're asking an interesting question. Do you -- I'm
4 confused by it.

5 Q. Well, my question is were you told that that is -- that
6 was the instruction that this Court has been given, that the
7 Respondents -- I mean, the Respondents have given to
8 Petitioners in order to allow us to contact potential
9 witnesses?

10 A. I still don't understand, and I can tell you what I
11 don't understand.

12 Q. Okay.

13 A. One -- here's one situation. You could use the list of
14 confidential 511,000 to identify a record in the
15 non-confidential list, and then use that identified record to
16 go talk to somebody. That seems like a charade. You are
17 really using the original list of -- the confidential list.

18 Or you could completely forget about anything that you
19 knew from the list of 511,000, and try to go contact people
20 exclusively with the non-confidential list, but then you
21 wouldn't know who to contact.

22 So, it sounds like either way you're relying on the list
23 of 511,000.

24 Q. If in fact that, quote, charade, is what the Department
25 of State instructed this Court would be acceptable and

1 Petitioners acceptable, you were told not to do even that
2 charade because it would be illegal; is that what I
3 understand?

4 A. I don't think it's correct that I was told not to do
5 something. There would be no time to do it because we talked
6 about it in the last day or two.

7 But I suggested that might be an interesting thing to
8 think about, and I was told there could be legal issues with
9 doing that.

10 Q. Are you aware that the Respondents themselves, the
11 Commonwealth, released approximately 1.2 million names
12 publicly from the work that they did matching the databases
13 last summer?

14 A. I don't know that.

15 Q. But bottom line, you were told that you couldn't
16 interview these voters and that was something that you wanted
17 to do?

18 A. No, I think that's not fair. It was something that was
19 discussed at a date that was so recent that there was no
20 possibility I could actually do it, and I wasn't discussing it
21 with the practical prospect of being able to do it, because I
22 was going to be testifying today and there would be no time to
23 do it.

24 I just discussed that it might be an interesting thing
25 to think about; and that's the answer I got, that it might be

1 some legal issues about doing that.

2 Q. You submitted your report July 8th, correct?

3 A. Yes.

4 Q. It is now July 25th, correct?

5 A. Yes.

6 Q. And in the intervening time period, you have not
7 contacted any voter, correct?

8 A. That's correct.

9 Q. And you were never asked to design a survey of
10 Pennsylvania voters to ask them about all types of IDs that
11 might be acceptable for voting, were you?

12 A. I was not.

13 Q. And you have some expertise in survey design, right?

14 A. Correct.

15 Q. You have offered expert opinions in survey design cases,
16 correct?

17 A. I have.

18 Q. And you have done surveys yourself, haven't you?

19 A. Correct.

20 Q. And you were not asked to do that here?

21 A. Correct.

22 Q. Nor asked to critique the survey that's been submitted
23 into evidence on not only PennDOT IDs, not only those types of
24 IDs, but also passports, care facilities and other types of
25 IDs; you weren't asked to comment on that survey, were you?

1 MS. HICKOK: Your Honor, that's asked and
2 answered. He has asked him at least three times.

3 THE COURT: We'll permit it one more time.

4 THE WITNESS: If you are thinking of something
5 other than the Siskin work, I did nothing else.

6 BY MR. RUBIN:

7 Q. Now, you got the databases from the Respondents;
8 correct?

9 A. I have two databases.

10 Q. You have two databases. Don't you have three?

11 A. Well, I -- it's become the norm to think about the
12 PennDOT and the DOS database as a single one.

13 Q. I'm sorry, say that again?

14 A. There's a Department of State data that was very early
15 on merged together with the PennDOT, and it has become the
16 vernacular here to refer to that as a database. So, I count
17 two.

18 Q. Okay. I'm confused. So, let's see if we can break it
19 down.

20 A. Okay.

21 Q. You received a database of all voters in Pennsylvania
22 that's in the SURE database, correct?

23 A. Yes.

24 Q. And some of those are valid voters; some of them are not
25 valid voters. Is that right?

1 A. Yes, I believe that's true.

2 Q. You also received a database from PennDOT, correct?

3 A. Yes.

4 Q. And you received a third database from the Department of
5 State, correct?

6 A. Yes. That's the -- the third one and the second one are
7 the ones that I think of as a single database.

8 Q. What do you mean by -- which -- what's the third one?

9 A. The third one you mentioned just to me in your question,
10 the Department of State database.

11 Q. Okay. So, there's a SURE database, there's a PennDOT
12 database. Did you also receive the full voter extract?

13 A. Oh, yes, I got that, but I didn't use it.

14 Q. And that's the one you could have used to contact
15 voters, but you didn't use that?

16 A. I don't know what I'm allowed to do. I know what you
17 say I'm allowed to do. I'll take instruction from somebody
18 else on that.

19 Q. Fair enough. What is -- you said there seems to be
20 another database, and that's what I'm confused about. What
21 other database?

22 A. Well, it is confusing. Very early on in Dr. Siskin's
23 work, he combined what could be thought of as two databases:
24 The Department of State ID database and the PennDOT database;
25 and he treated them as a single database throughout.

1 And in my testimony, I have been referring to PennDOT
2 ID, and the PennDOT database just as he does, but it's got
3 Department of State records in there, too.

4 Q. So, what actually was done is your folks in your shop
5 asked Dr. Siskin's shop to send them a list of the SURE ID
6 number and the PennDOT ID number; is that right?

7 A. We did.

8 Q. And then -- and that's all that was sent from Dr. Siskin
9 to tell you who his 511,000 was?

10 A. Right. We avoided transmission of confidential
11 information.

12 Q. Right. So, that's what you mean by this combined
13 database?

14 A. No. Sorry.

15 Q. Okay. Let's -- so, what is the combined database?

16 A. When I say PennDOT database, I'm referring to the
17 driver's license database and inclusive of the Department of
18 State ID information.

19 Q. Got it.

20 A. So, I don't always mention Department of State. I mean
21 to include it by records.

22 Q. Throughout your direct testimony, you kept referring to
23 Department -- PennDOT IDs. When you said that, were you
24 including in all of your answers -- to make this a lot
25 shorter -- the Department of State ID?

1 A. Right. And I think Dr. Siskin uses that shorthand as
2 well.

3 Q. So, but you got the PennDOT database and the SURE
4 database from Respondents; correct?

5 A. Correct.

6 Q. There was no court order allowing you to obtain that
7 database, was there?

8 A. I signed a confidentiality agreement.

9 Q. Are you aware that the Respondents insisted on special
10 extra security measures applicable to BLDS, which is
11 Dr. Siskin's organization, before they would release the data
12 to Dr. Siskin?

13 A. I don't know what the arrangements were with Dr. Siskin.
14 I know I had a very stringent confidentiality agreement and we
15 have abided by it.

16 Q. Are you aware that the position of PennDOT and the
17 Department of State is we can't even release this data to
18 anybody absent a specific court order?

19 A. I don't know what their position is.

20 Q. You got it from them without a court order; is that
21 right?

22 A. I'm not a lawyer, so I don't know what the proper term
23 is. I know I signed a multi-page confidentiality agreement
24 telling me what I could do and what I couldn't do before I got
25 the data.

1 Q. And did you have any problems getting the data out of
2 Respondents?

3 A. Took a while to get the administrative stuff in place,
4 and then no more than the normal awkwardness of transmitting
5 large databases, I would say.

6 Q. Did it take three times for PennDOT to send you the
7 correct data file?

8 A. I'm not sure.

9 Q. Are you aware that it took PennDOT three times to get
10 the correct data file to Dr. Siskin?

11 A. I don't know that.

12 Q. You testified that database matches is not easy.

13 A. Sometimes it is; sometimes it isn't.

14 Q. Have you testified in a database match case before?

15 A. I don't -- I can't think of any case that I would call a
16 database match case. It may be that matching was an element
17 somewhere in some case, but I'm not thinking of it.

18 Q. And you're aware that Dr. Siskin in his report was very
19 clear that there are inherent limitations when you are trying
20 to match two different databases? He said that expressly in
21 his report, right?

22 A. He said that, but then he went on to reach a conclusion
23 that seems to call for the opposite.

24 Q. And he said that there are -- there's obviously a margin
25 of error in any database matching?

1 A. This is where he's inconsistent. He says that, and he
2 also says that the people he's identified, the 511,000 do not
3 have PennDOT ID.

4 Q. Now, was Dr. Siskin's conclusion that there are 511,000
5 people who lack a PennDOT ID? Is that really what his
6 conclusion was, Doctor?

7 A. Well, I think he states his conclusions differently in
8 different places; but I can find places where he is that bold,
9 yes.

10 Q. You have Dr. Siskin's report in front of you?

11 A. Yes.

12 Q. 2096a, previously in evidence, Dr. Siskin's report. The
13 attachments are there as well, Your Honor.

14 THE COURT: Thank you.

15 BY MR. RUBIN:

16 Q. I'll give you another copy just in case.

17 Kelby, can we bring up page 26, please. Can we bring up
18 the first paragraph and last sentence and highlight that a
19 little bit and blow it up.

20 Dr. Wecker, I'm referring you to page 26 of his report.

21 A. Yes.

22 Q. Do you see the highlighted text?

23 A. Yes.

24 Q. Right before that, he recounts very specific numbers; is
25 that right?

1 A. Yes.

2 Q. And then Dr. Siskin writes, "even after accounting for a
3 reasonable margin of error and inherent imperfections in
4 matching two databases, these findings show with very high
5 confidence that hundreds of thousands of Pennsylvania
6 registered voters lack acceptable PennDOT or DOS ID for voting
7 in the November 2013 election."

8 A. You read correctly.

9 Q. Okay. So, his conclusion is hundreds of thousands;
10 correct?

11 A. His conclusion is different in different spots. Just on
12 the same page, right above it, he says, "I identify a total of
13 669,381 registered voters who lack valid PennDOT ID or DOS ID
14 in order to vote in the November 2013 election" period, no
15 qualification.

16 Q. Except for the next sentence, right?

17 A. Well, that's why I say, he's inconsistent. Some
18 sentences seem to be a little more flexible, and others seem
19 to be more definite.

20 If you look at page four, you can read the same thing.

21 Q. Well, let's stay on 26?

22 MS. HICKOK: Could the witness finish his
23 answers, please.

24 MR. RUBIN: We'll go to page four, but I'd
25 like to stay on 26.

1 THE WITNESS: You'd like, and I'd like to read
2 page four, so what do we do?
3 BY MR. RUBIN:
4 Q. We'll go to page four after we're done with page 26.
5 How's that?
6 A. Let's do it now.
7 Q. Let's do it -- let's do 26 now before we jump around.
8 Kelby's going to be jumping back and forth.
9 A. Okay. You win this one.
10 Q. Thank you. You agree in that sentence that you read
11 he's giving specific numbers, and then he takes those numbers,
12 explains that there are margins of error, inherent
13 imperfections and, then draws his conclusions of hundreds of
14 thousands?
15 A. I think that's a fair rephrasing of what he said.
16 Q. And in his testimony in this court, I believe I asked
17 him multiple times -- and people criticize me for bringing it
18 out multiple times -- but he said multiple times, "hundreds of
19 thousands of people."
20 A. He said that, I read that.
21 Q. And that was the conclusion that he offered to this
22 Court, correct.
23 A. And that's the conclusion that I say he has no valid
24 basis for.
25 Q. And if you look on page four.

1 A. Yes.

2 Q. Let's go to page four, Kelby. On page four, the middle
3 section, section 3, let's go to the last sentence. He again
4 writes, "these data show that hundreds of thousands of
5 registered voters lack PennDOT or DOS ID that will be valid
6 for voting in November 2013"; right?

7 A. Yes. If you could highlight the second sentence of the
8 next paragraph. "I identified 251,879" -- I'll leave out the
9 parentheses -- "who were not in the PennDOT ID database at
10 all, which means these registered voters likely do not have,
11 indeed never have had a PennDOT or DOS ID."

12 That's where he is more bold and without qualification.

13 Q. Well, the word "likely," not definitive, not definite,
14 not absolute. Likely, correct? That's the word there? Can
15 you highlight the word likely?

16 A. Yeah. Okay. That -- I see what you mean. Likely do
17 not have and indeed never have had. I'm just saying that in
18 different spots, he comes across with different degrees of
19 force in his opinion.

20 The weakest one is the vague hundreds of thousands for
21 which he has no valid basis, I claim. The stronger one is
22 511,000 without PennDOT ID.

23 Q. Let's move off the semantic debate. We do agree there
24 are inherent limitations in database matching; correct?

25 A. Sometimes yes, sometimes no. In this case, yes.

1 Q. In this case. In this particular case we agree there
2 are inherent limitations; right?

3 A. I agree with you.

4 Q. And you on your direct testimony and in your report talk
5 about false matches, where Dr. Siskin's methodology found
6 people that he said -- sorry, false non-matches. Where he
7 said they were not matched, where you said, hey, they probably
8 are matched. You talk about that. It's the 14%, right?

9 A. He said that, correct. That's his calculation.

10 Q. The 14% is his calculation, correct?

11 A. Yes.

12 Q. And in your report, you comment on that 14%; right?

13 A. Yes, but if you want further detail, we'd have to --

14 Q. No, I just want to know what's in your report.

15 A. Well, then we have to look it up. I said something
16 about that.

17 Q. Okay. And in your direct testimony here, you talked
18 about that 14% as well; correct?

19 A. I mentioned that, yes.

20 Q. And you talked about his -- Dr. Siskin's Appendix C,
21 where he did his audit of his work; correct?

22 A. Yes.

23 Q. You don't, in your report or in your direct testimony,
24 talk about the other type of error that Dr. Siskin tested; do
25 you?

1 A. I know about it. He wrote about it.

2 Q. Yeah, he wrote about it; you didn't. Is that right?

3 A. Right. That's not --

4 Q. And you didn't talk about it on direct, either; right?

5 A. Nope. Glad to talk about it, if you want.

6 Q. That type of error rate is the type of error rate where
7 he said, these people do match, but they're in fact not really
8 matches, right? That's the other type of error.

9 A. He says this, yes.

10 Q. And you agree that in matching two databases, those are
11 the two types of errors that you can have; they can go either
12 way.

13 A. I agree.

14 Q. So, your report and your direct testimony only critiqued
15 the type of error that would have brought the number down;
16 right?

17 A. I don't think that's fair. My critique is that he does
18 not have a reliable basis to reach the conclusion that he
19 reaches. I'm not trying to take his number to some other
20 number.

21 I think it is filled with falsehoods, voters who aren't
22 alive, other things that I mentioned in my direct; but the
23 bottom line conclusion is when you look at the entire effort,
24 it is not a sufficient effort to reliably make the claims that
25 he is making about either 500,000 or, more vaguely, thousands

1 of people without either PennDOT ID or other form of voter ID.

2 That's my position.

3 Q. The reports that you submitted in your direct testimony
4 don't even address that Dr. Siskin found when he looked at
5 people he was saying were matches, that a lot of those people
6 were actually not matches when you looked at their records
7 manually.

8 A. Well --

9 Q. Your report doesn't address that at all, right?

10 A. I did not discuss that, but I'm fully conversant with it
11 and glad to discuss it with you now.

12 Q. No, I don't want you to go beyond your report or your
13 direct testimony. Counsel would object if you did.

14 So, when you did your report, you just ignored it;
15 right?

16 A. No. I was --

17 Q. In your report, you didn't write about it.

18 A. I didn't write about it because it wasn't related to the
19 points that I was making; but I certainly am conversant and
20 would be quite happy to answer any questions about it.

21 Q. Now, let's focus on the work you actually wrote about in
22 your report, which is your critique of the false non-matches.

23 14%. Right?

24 A. His, that's his calculation.

25 Q. I understand.

1 A. You called it my critique.

2 Q. Well, you have a critique. You offered testimony
3 critiquing, criticizing how he did that, and saying that it
4 wasn't a manual search; right?

5 A. I've said that, yes.

6 Q. And you read Dr. Siskin's testimony, correct?

7 A. Yes.

8 Q. And you saw that he explained in detail to this Court
9 how it was a manual search, how he picked 100 people and he
10 and his team went through one by one, for each voter, and then
11 searched manually in the PennDOT database to see if they could
12 find something that the computer was too dumb to find.

13 A. Absolutely impossible. You can't look through 14
14 million things in a lifetime.

15 Q. Okay. I understand that you don't think you can do
16 that, but you can run a -- but Dr. Siskin testified -- you
17 understand that he testified that he did that; right?

18 A. Manually? Human eyes? Not a chance.

19 Q. Running a search --

20 A. That's a computer.

21 Q. -- on a database. Well, there's a difference between
22 telling -- writing an algorithm and then hitting a button and
23 turning it loose on the two databases to compare them and over
24 a couple of days the computer spits out matches and
25 non-matches. That's what Dr. Siskin did in his initial work,

1 right?

2 A. Yes.

3 Q. And in the manual search, what he called a manual
4 search, it was a human being sitting in front of the computer
5 screen with the name of the registered voter, all of their
6 detailed information, running searches with a human being
7 looking at the results on front of the computer screen;
8 correct?

9 A. Computer searches. There isn't a difference. The first
10 procedure goes one at a time, and it just does it real fast.

11 The second procedure does it one at a time on 100, but
12 it's a little slower but it's still a computer search and it's
13 error prone.

14 Q. Yes, it's a -- so you put in, say, all of the last
15 names. Take Rubin. All of the Rubins in the PennDOT
16 database, and that could -- and then have the human eye look
17 at that. That's the same thing as doing an algorithm?

18 A. Yes, because it has computer involvement. What if Rubin
19 is misspelled. What if you got the wrong Rubin?

20 The -- as long as it's understood that one has to have a
21 computer instruction finding things, and that computer
22 instruction can fail to find what you want, then that's all
23 I'm trying to say. It's not a manual process.

24 Q. And if Dr. Siskin's team spelled Rubin R-U-B-I-N,
25 R-U-B-E-N, R-U-B-E-U-N to account for that, that gets to that

1 point; right?

2 A. Then they might have found something that they could
3 call a match; but if they didn't spell it that way, then they
4 wouldn't have.

5 Q. And the bottom line, you really don't know what
6 Dr. Siskin did.

7 A. Because he didn't disclose it.

8 Q. Sorry. Someone coughed and I didn't hear you.

9 A. Sorry. I don't know because he never explained or
10 disclosed exactly what he did. He described it as a manual
11 procedure, but I know that it couldn't be exclusively manual.
12 It has to be a computer.

13 Q. On direct examination you talked about dead voters,
14 right?

15 A. Yes.

16 Q. People that you say in the 511,000 are deceased, right?

17 A. Yes.

18 Q. And I wrote it down, you said Dr. Siskin did nothing to
19 ascertain if they were alive or dead.

20 A. Yes.

21 Q. You said that, right?

22 A. I did.

23 Q. That's your belief, correct?

24 A. Yes.

25 Q. And if I recall correctly -- let me just consult my

1 notes -- you said that the SURE database had deceased voter
2 data in it and that he just ignored that. Is that what I
3 understand your testimony to be?

4 A. As a field that can be populated in some instances with
5 the letters DC, which when decoded mean deceased.

6 Q. Sure that's in the SURE database, Doctor?

7 A. Oh, good point.

8 Q. Sure you're not thinking about the PennDOT database?

9 A. Could be in the PennDOT database.

10 Q. Because you know that the SURE database is the official
11 list of registered voters in Pennsylvania, right?

12 A. I assume so.

13 Q. Those are the people who can show up and vote on
14 Election Day, right?

15 A. If they're alive.

16 Q. And you read Dr. Siskin's testimony in which he very
17 clearly to this Court explained how he got rid of all of the
18 registered voters in Pennsylvania in the SURE database that
19 the Department of State has indicated are deceased, right?

20 A. I didn't remember that.

21 Q. You don't remember that? You don't remember that
22 there's coding in terms of whether or not someone is a valid
23 voter or a deceased voter?

24 A. Valid and invalid, I think he said he did not choose to
25 distinguish. But I don't remember him eliminating deceased

1 voters.

2 Q. Do you know that there are various codes for voters, A
3 is an active voter and I is an inactive voter; right?

4 A. Right.

5 Q. And X is an deceased voter, right?

6 A. I'd have to check that. I don't remember that --

7 Q. You don't know that, right?

8 A. I remember that DC was the acronym that I remember.

9 Q. Yeah, DC was PennDOT. We're not talking about the
10 PennDOT database; we're talking about the SURE database.

11 A. X. Okay.

12 Q. X is the deceased database.

13 A. Okay. X.

14 Q. X is deceased in the SURE database. All right?

15 A. Okay.

16 Q. You're not -- you're saying okay, but you don't actually
17 have a -- you don't really know one way or the other; right?

18 A. Well, I have reviewed those databases, but the number of
19 fields is enormous. It runs for pages. I don't remember them
20 all.

21 Q. Did you hear Dr. Siskin explain that when he had
22 questions about the SURE database, he asked those questions to
23 the Department of State and relied on their responses as to
24 how to filter registered voters down to those that are alive,
25 active or inactive?

1 A. I don't remember that.

2 Q. If in fact Dr. Siskin did do that, and was left with 8.2
3 million registered voters who are not deceased in the SURE
4 database, your testimony that he did nothing to get rid of
5 deceased voters would simply be wrong; isn't that right?

6 A. I think I would have to elaborate. I certainly have
7 found voters who are deceased in his list of 511,000. So,
8 whatever he did, he didn't get rid of them.

9 Q. Now, what you did was you looked at the PennDOT
10 database; correct?

11 A. Looked at them both.

12 Q. You looked at the PennDOT database to come up with your
13 approximately 17,000 deceased voters, right?

14 A. Yes.

15 Q. Your understanding is that the Department of Health
16 tells both the Department of State and PennDOT when people
17 die?

18 A. I'm not sure of that, but you remind me that I did a
19 second thing, which was to work separately with some
20 Department of Health information, and so I had two sources of
21 deceased information.

22 Q. Did you read the Washington Post this morning?

23 A. No.

24 Q. Are you aware of the concern in other states, supposedly
25 about zombies voting where they say, hey, we have people who

1 voted who were dead, because the Department of Motor Vehicles
2 said they were dead in other states.

3 A. I used to live in Chicago.

4 Q. Fair enough. Certainly hope you're not suggesting that
5 Pennsylvania is Chicago?

6 A. I am not.

7 Q. Because you're surrounded by a lot of Pennsylvania folks
8 and you might not --

9 A. I love them.

10 Q. -- make them very happy.

11 Are you aware that this boogeyman of driver's license
12 centers looking at their database saying people are dead and
13 they're voting is something that's been studied extensively?

14 A. I don't know that.

15 Q. Including in today's front page of the Washington Post?

16 A. I haven't read it.

17 Q. And the results of all of those types of studies has
18 consistently been, oops, the records are just wrong, and these
19 boogeymen of zombies voting is just not a true thing; you
20 haven't looked at that at all, have you?

21 A. I haven't read these newspapers, and I would not
22 generally treat a newspaper account as a reliable source in
23 any event.

24 Q. Fine. How about the official report that's from the --
25 from the state law enforcement officials who investigated

1 these reports of zombies voting?

2 A. That would be more reliable, but I haven't read it.

3 Q. And if you went on washingtonpost.com, you could have
4 pulled that down today, I'll represent to you.

5 MS. HICKOK: Your Honor, this is way beyond
6 anything that -- he has testified several times that he didn't
7 read a Washington Post article, which has nothing to do with
8 the analysis that he actually undertook, or the fact that
9 Dr. Siskin said that those voters should be removed.

10 THE COURT: Yeah, I think you're going a
11 little far, Mr. Rubin.

12 MR. RUBIN: Fair enough.

13 THE COURT: I assume this is this morning's
14 paper. I don't know what time you got up.

15 MR. RUBIN: Earlier than I would like to, Your
16 Honor.

17 THE COURT: And you had to get here.

18 BY MR. RUBIN:

19 Q. Dr. Wecker, you agree that the PennDOT database may have
20 people listed as dead when they're really alive?

21 A. It's possible.

22 Q. Okay. And even if you take those people out, the whole
23 number is 17,000; right?

24 A. The number of -- what?

25 Q. Of people in the PennDOT database that are listed as

1 deceased, or the other sort of work you did, you came up with
2 about 17,000 deceased voters; am I remembering correctly?

3 A. Yes, but not meaning to be comprehensive. I am
4 confident that's just the tip of the iceberg.

5 Q. Well, you don't have a basis to say it's the tip of the
6 iceberg.

7 A. Yes, I do.

8 Q. Well, you didn't do the work to determine that; did you?

9 A. Yes, I did.

10 Q. How did you do the work?

11 A. Well, when I got the data on deaths from the
12 Pennsylvania Department of Health source, I looked at the
13 annual number of deaths and they made no sense at all. There
14 weren't enough, because it's -- we know that about -- rough
15 numbers -- about 1% of the population dies every year.

16 So, I know what the number of deaths in Pennsylvania are
17 going to be every year, and they were just way, way short.

18 So, somehow they aren't keeping up their records. So, I
19 know I'm not getting a full listing.

20 Q. So but it's not supposed to be a full listing of people
21 that died; it would have to be those people who died that were
22 registered voters who do not have, when they died, a current
23 and valid driver's license number and were not updated in the
24 SURE database as being dead, as part of their regular
25 maintenance work; is that -- that's what the number is that

1 you really need, right?

2 A. Well, however you --

3 Q. Well, just answer my question first before however.

4 A. No, I cannot say yes or no to that, because there is not
5 a single number that you really need. This was just a rough
6 cut on my part to see if I, it looked like I was getting
7 numbers that were making sense. And they just weren't making
8 sense.

9 One year, there might be 150,000 deaths reported, and
10 then in the neighboring year 25,000. Those aren't numbers,
11 Your Honor, from sharp memory; but that's roughly what I was
12 looking at. So, I knew I wasn't getting a full reading here.

13 Whether I looked at the entire population of
14 Pennsylvania, or I looked at a subpopulation like registered
15 voters. Registered voters are dying probably a little more
16 than 1% a year. So I know roughly what I should be seeing,
17 and I wasn't seeing those numbers.

18 Q. So, how many registered voters were listed as active and
19 inactive as of December 31st, 2012, in the Penn -- in the
20 Department of State SURE database?

21 A. I don't have the number from memory. If I'm thinking
22 the same way you are, I might -- maybe you're thinking of this
23 8 million number?

24 Q. Well, isn't it true --

25 MS. HICKOK: Your Honor, if he is going to

1 refer to data, he should show him the data.

2 MR. RUBIN: Well, I'm asking whether the
3 Doctor has ever seen that data.

4 THE WITNESS: I'm not sure I'm following you.

5 BY MR. RUBIN:

6 Q. So, December 31 -- you got data in May and June from the
7 Department of State, right?

8 A. Yes. May, yes.

9 Q. May.

10 A. Data that was collected in May that I received in late
11 June or early July.

12 Q. Fair enough.

13 So, you have a number and it's 8.2 million, same number
14 Dr. Siskin had, of registered voters that are active or
15 inactive in the SURE database.

16 A. That's the number I recall, yes.

17 Q. As of May.

18 A. Yes.

19 Q. Were you provided information on the number of
20 registered voters that were active or inactive in the SURE
21 database as of December 31st, 2012?

22 A. No.

23 Q. Did you see that in any of the testimony that has been
24 offered in this case, including on cross-examination of
25 Dr. Siskin and redirect of Dr. Siskin?

1 A. I don't recall that.

2 Q. And if that number is 8.5 million, does that indicate to
3 you that approximately 300,000 inactive voters were removed
4 from the SURE database from the time of the last big election,
5 the November election, and when Dr. Siskin did his work on the
6 database?

7 A. It might, or there might be some other explanation. I
8 would have to look into it.

9 Q. Taking out probably deceased voters?

10 A. I don't know. I'd have to look into it.

11 Q. That's not work that you have done.

12 A. I haven't studied that. I don't know.

13 Q. You also talked about the fact that some people move out
14 of state, right?

15 A. Yes.

16 Q. And they might have a expired driver's license, but they
17 no longer live in Pennsylvania, so who cares for them in terms
18 of voting; right? They're just irrelevant for voting.

19 A. Might be.

20 Q. In Pennsylvania, at least.

21 A. Could be. Might be. Might not be.

22 Q. You raised that concern on direct examination, right?
23 Migration, people moving out of Pennsylvania?

24 A. Yes. Some people very likely moved and were not
25 accounted for.

1 Q. Just so we're clear, people move into Pennsylvania, too;
2 right?

3 A. They do.

4 Q. People are moving out of Pittsburgh for a long time and
5 now they're all moving back in, right?

6 A. I haven't followed that, but I don't doubt it. People
7 come and go.

8 Q. Yes. And the people that come, they're going to need to
9 get ID; right?

10 A. Yes.

11 Q. In Pennsylvania to vote; is that right?

12 A. Unless they already have it.

13 Q. Well, if they have an out-of-state driver's license,
14 that doesn't count for voting; right?

15 A. No. Passport works.

16 Q. If they have a passport, right?

17 A. Yes.

18 Q. And you generally need a driver's license to get a
19 passport, or some other type of official photo ID; isn't that
20 right? That's generally the way it works?

21 A. There are -- I have got a passport and I have gone
22 through that procedure. I think there are various forms of
23 documentation that you can provide, but we -- and in the
24 hypothetical I have got in my head now, we have a person
25 coming in from out-of-state, they got a passport. They had it

1 in the previous state, however they got it, and now they're
2 here, and they can vote with it.

3 Q. And there are also people who move into the state who
4 don't have a passport and don't have a driver's license --

5 A. Right.

6 Q. -- at all, right?

7 A. Some, I suppose; but not very many of those.

8 Q. Have you done any work to figure out which way that
9 cuts? Are there more people coming in without ID than people
10 that are going out?

11 A. I don't know. I know there are more people coming in
12 total than are going out, although the numbers are fairly
13 close.

14 Q. Okay. You're aware that when someone moves out of
15 Pennsylvania and they turn in their driver's license to
16 another state, most states will then tell PennDOT, this person
17 no longer has their PennDOT driver's license?

18 A. I know that some states do and some states don't, and
19 even those that have reached an agreement to do it don't
20 always do it.

21 Q. Do you know how many states do?

22 A. How many states have agreed to?

23 Q. Yes.

24 A. I think 38.

25 Q. I'm sorry, what was that?

1 A. I think 38 is what I heard.

2 Q. Just 12 have not?

3 A. Agreed to. That doesn't mean they perform.

4 Q. Do you assume that government officials don't do what
5 they have agreed to do?

6 A. Many times.

7 Q. But you're aware that Dr. Siskin accounted for that by
8 excluding people with the designation OOS from his 511,000
9 number, right?

10 A. That only catches the ones that have gone -- that where
11 the state has agreed and performed, and all of the other facts
12 are in place, so that the out-of-state flag is included in the
13 database.

14 Q. You talked about fudging of birth dates.

15 A. I don't think I ever said fudging.

16 Q. People giving a euphemistic, I think counsel's term
17 was --

18 A. Some people --

19 Q. -- on -- to their birth dates for driver's licenses.

20 A. I'm sorry. Let me -- I didn't say fudging. I'll help
21 you here. I indicated that some people's year of birth is not
22 the same in each database, even though it's quite obvious it's
23 the same person.

24 I didn't claim I knew why that was, but apparently some
25 people record different years of birth. Don't know why.

1 Q. Dr. Siskin's matching Steps 1 and 3 did not require a
2 match on the date of birth at all or even year of birth,
3 right?

4 A. Some of his 12 steps required, some don't.

5 Q. Steps 1 and 3 do not, correct?

6 A. I'd have to look at his list whether it's 1, 2 and 3,
7 but there's some that do and some that don't. Doesn't matter
8 to me if it's 1, 2, or 3 or 4, 5 and 6.

9 Q. It's irrelevant to you?

10 A. Yeah, because it doesn't matter how he numbers the
11 steps. It's the 12 different steps.

12 Q. And you understand why he did 12 different steps, don't
13 you?

14 A. To try to get a match.

15 Q. Well, he tried -- yes, he tried to be as conservative as
16 possible; and if there was an arguable basis for a match, he
17 called them a match. Right?

18 A. Or missed it.

19 Q. Sorry?

20 A. There's lots of cases -- thousands, where there's not
21 only arguable, but obvious matches that he misses. So, he
22 doesn't, he doesn't catch all of the matches with his method.

23 Q. And that's where his 14% error rate comes in, right?

24 A. That's his calculation. He's low.

25 Q. And that error rate of someone who really matches but

1 missing them, that applies to his 251,000 number, people that
2 he said were not matches; right?

3 A. That's correct. It's about half of the 500,000.

4 Q. And that doesn't apply to people he said were matches,
5 but had an expired license; right?

6 A. Correct.

7 Q. The -- or other type of ID, expired or other types of
8 ID.

9 A. What?

10 Q. I said expired license, but expired PennDOT product.

11 A. Correct.

12 Q. For those people, there was a match, at least Dr. Siskin
13 said there was a match; right?

14 A. The expired list, there was.

15 Q. Expired.

16 A. Yes.

17 Q. The 259,000.

18 A. He matched, but he found the PennDOT ID was expired.

19 Q. And in fact, he didn't find 259,000 of those; he found
20 417,000. Right?

21 A. I have forgotten what the higher number was, but he
22 ended up working with 259,000.

23 Q. We agree on that, but he started on a higher number,
24 took out the out-of-state people, and was left with 259.

25 Right?

1 A. Yes.

2 Q. And some of those out-of-state people actually voted in
3 the November 2012 election, correct?

4 A. Possibly.

5 Q. And that's really understandable. You move to Florida,
6 you retire, you turn in your license, you get a Florida
7 license. Five, ten years pass. You get sick, you move back
8 home with your kids to Pennsylvania. That's a reasonable
9 explanation for that, right?

10 MS. HICKOK: Your Honor, thoroughly
11 speculative.

12 THE COURT: Overruled.

13 THE WITNESS: That and thousands of stories
14 like that can occur.

15 BY MR. RUBIN:

16 Q. Yes. So there's nothing nefarious about the fact
17 someone has a license or record in PennDOT that says they have
18 turned in their license in another state, but then they voted
19 in November. There's nothing nefarious about that.

20 A. Might be. Might not be. It can happen. It can happen
21 legitimately.

22 Q. Fair enough.

23 A. But it doesn't have to have legitimately. It could be a
24 mistake of some sort.

25 Q. Fair enough. So, you know that the number -- the only

1 error rate for those people who he found a match for but their
2 license is expired is an error rate in terms of matching where
3 he overmatched, where someone actually -- a voter actually
4 didn't really match in the PennDOT database; right?

5 A. He says. I don't agree.

6 Q. Well, that's, that's just logic; isn't it?

7 A. No.

8 Q. Isn't it logical that if he found a match, the
9 expiration date is not in question; that's just a data point
10 from PennDOT. Correct?

11 A. I'm with you so far.

12 Q. There's no ambiguity in the expiration date. It's a
13 number.

14 A. Right.

15 Q. Unless someone at PennDOT typed it in wrong.

16 A. I'm not quibbling about that.

17 Q. Fair enough. What are you quibbling about?

18 A. I guess I don't know. What's your question?

19 Q. Well, my question is that the error rate or potential
20 error rate for the 259,000 number is that he understated that
21 number because he was calling people a match to an expired
22 PennDOT product when they really weren't matching to any
23 PennDOT product.

24 A. Oh, that's where you're wrong.

25 Q. How is that wrong, Doctor?

1 A. Well, here's an example. He could have thought his
2 computer, running on his behalf, could have thought that it
3 found a match. And maybe we have fictitious names, Joseph and
4 Josephine Smith.

5 And he finds that he has matched Josephine's voter
6 record to Joseph's PennDOT ID. And then in the course of his
7 Appendix C work, he would say, well, that wasn't a proper
8 match. I thought I had a match, but I didn't.

9 But he then doesn't go on to search for the other spouse
10 record. So, there could have been -- it isn't that he didn't
11 have a match, it's that he didn't have the right one the first
12 time, but he could have gone on and found the right one, but
13 he didn't do that.

14 Q. But in your circumstance, because he used fuzzy names
15 and truncation names, Josephine and Joseph would have matched,
16 both of them to the same PennDOT record; and he would have
17 treated both of them as matches, right? 70,000 times he did
18 that; isn't that right?

19 A. I don't think we can say 70,000 times he did this one
20 hypothetical thing.

21 Q. But that's what Dr. Siskin said, it was 70,000 -- there
22 could be some overlap -- but 70,000 registered voters were
23 matched to multiple records, or to singular records where two
24 people were matched into one PennDOT record, both were treated
25 as matches. And sometimes there were three, sometimes there

1 were four registered voters matched to a single PennDOT
2 record.

3 A. That happened, yes.

4 Q. And that was -- that's 70,000 times, right?

5 A. But what about it?

6 Q. Do you agree that that's what happened?

7 A. Well, that's what he says happened; but my comment is --
8 and I'm sorry if I'm not tracking your question closely.

9 My comment is that that isn't necessarily a conclusion
10 that there were false matches. It's just that that particular
11 matching wasn't right. But if you looked elsewhere, you could
12 find a proper match.

13 So, you're not done, just by noticing that you have
14 three people matching. Joseph and Josephine, say, were both
15 matched to one PennDOT record because of the way he did his
16 computer.

17 You can't conclude from that that there was false
18 matching here, because the job isn't finished. He could have
19 gone on and looked for the other record, and that's what
20 wasn't done.

21 Q. But Dr. Wecker, isn't it true that under the way that
22 Dr. Siskin did his matching so conservatively that he would
23 have matched both of those people, in your hypothetical?

24 A. No, he misses them. When he comes in as a
25 post-processing step, the Appendix C step, and says --

1 Q. Well, I'm not talking about the post-processing. I'm
2 talking about the initial matching.

3 A. Okay. Then I didn't understand. So what's the
4 question?

5 Q. Okay. So in the initial matching in the hypothetical
6 that you gave --

7 A. Yes.

8 Q. -- Joseph and Josephine, the same last name, would be
9 matched; right?

10 A. Right. And it might turn out that they're matched in a
11 way that you and I would agree is proper. Or they might have
12 gotten both truncated and matched with the same record.
13 Either could happen.

14 Q. Now, you talked about duplicates. I want to make sure I
15 get this right. I think you said that in the SURE database
16 there are 41,000 -- and I realize it's an approximation --
17 duplicate records where the first name/last name, name and
18 date of birth were all the same.

19 A. Yes.

20 Q. And you take that to mean they're the same person; they
21 just have two different records in the SURE database.

22 A. One can't be absolutely sure, but I'm supposing that
23 they're the same person.

24 Q. And that's 41,000 is the number that you told this
25 Court, correct?

1 A. Right.

2 Q. And I think -- that's not 41,000 people in the 511,000;
3 right?

4 A. Right. I mentioned that number is about 3,000.

5 Q. That's 3,000 -- is that 3,000 out of --

6 A. The 41,000.

7 Q. 3,000 out of -- well, 3,000 out of 511,000?

8 A. And out of the 41,000.

9 Q. Fair enough. But if -- the Court asked the question, if
10 I recall correctly, would this bring the number down or up in
11 terms of the 511,000; and the answer you gave was it would
12 bring the 511,000 number down. Correct? This duplicate
13 issue?

14 A. Yes.

15 Q. And it would bring it down by 3,000; correct?

16 A. It's hard to say how much because it's complicated.

17 Q. Well, it's -- you gave us a number of 3,000 duplicates
18 out of 511,000. That's not complicated, is it?

19 A. I didn't say by how much it would bring it down because
20 the situation is complex because several things can happen.

21 But the one that was the most problematic for me is that
22 if we assume it's the same person because it matches first
23 name, last name and date of birth, and one of those pair of
24 records is matched and one is not matched, then it doesn't
25 make sense that you would conclude that there's a -- a valid

1 voter record here that doesn't match because you matched it
2 the first time you tried. It's just that you didn't get it
3 the second time.

4 Q. Okay. So, I'm confused now because if the first name,
5 last name and date of birth are the same, Dr. Siskin's 12
6 steps of matching would have matched them; right?

7 Same data, same result. Computers don't make judgments;
8 do they?

9 A. Well, somehow he has got cases where he's matched one
10 and not the other.

11 Q. Well, here's the thing that I'm not so sure about, and
12 I'm confused; and I hope you can help me out on.

13 You said there are 41,000 records in SURE where it's the
14 first name, last name and date of birth all match; right?

15 A. Yes.

16 Q. Isn't it true that the real number is 306?

17 A. No, I counted 41,000.

18 Q. Well, respectfully, Doctor, you didn't; and I'll show
19 you.

20 Handing out 2106a. This is one of the documents --

21 A. If you have to ask, I can explain it.

22 Q. Well, this is one of the documents that you produced to
23 us explaining your work; correct?

24 A. Right.

25 Q. And this was the multiplicity report for SURE voters,

1 the 8.2 million --

2 A. Right.

3 Q. -- is that right?

4 A. Correct.

5 Q. And you had first -- last name, first name, date of

6 birth matching and how many of those does one match, and you

7 have a number. And then multiplicity of two, that's your

8 41,000?

9 A. Right.

10 Q. And if all three match, it's 306,000 -- I mean 306, not

11 thousand.

12 A. That's the triples.

13 Q. Right.

14 A. I testified there were a few triples, but let's ignore

15 them because there weren't that many. There was 41,000

16 doubles. The three means triples. Two means doubles.

17 Q. So your testimony is that what this shows is that it

18 wasn't all three variables that matched --

19 A. No.

20 Q. -- but rather --

21 A. No, no. Multiplicity means how many times do I strike

22 the same record, with the same first name, last name and date

23 of birth. The three under multiplicity means I found three

24 records with the same first name, last name, date of birth.

25 There wasn't a lot of triples, so I didn't talk about

1 that. I just mentioned there were a few.

2 The doubles are 41,490.

3 THE COURT: Are the triples reported twice?
4 Are they reported in the doubles?

5 THE WITNESS: No, Your Honor.

6 BY MR. RUBIN:

7 Q. I want to talk about double-reporting. In your report,
8 Paragraph 12, you have a whole bunch of numbers for absentee
9 voters or deceased voters, for voters 65 living at a care
10 facility, et cetera; right?

11 A. Yes.

12 Q. And it's not correct just to add those numbers up,
13 right?

14 A. Well, you can add them, but you'd have to understand and
15 interpret what you have got; but let me -- I'll be brief. I
16 didn't add them.

17 Q. Right.

18 A. Because I didn't think it made a lot of sense.

19 Q. And it doesn't make sense because they're not unique
20 voters. Some of the deceased people, last time they voted
21 were absentee.

22 A. There can be overlap in the categories. That's one
23 reason it doesn't make sense. The other reason it doesn't
24 make sense is what does it mean? I'm not claiming to have
25 counted everything up. I'm just giving examples.

1 Q. Do you agree with me that -- let's just take your
2 college, the 48,046 voters aged 18 to 28 that you found to be
3 living at a college or university.

4 A. What's the question?

5 Q. Let's -- well, you found that many.

6 A. Yes.

7 Q. And you said they were living at a college or
8 university, right?

9 A. Yes.

10 Q. Do you agree with me that some number of those are not
11 college students?

12 A. Possibly, yes.

13 Q. Do you agree with me that some number of those are not
14 living at a college or university?

15 A. Let's -- for purposes of my answer, let me define "at a
16 college or university."

17 Q. Please do, because it's not in your report.

18 A. Yes, but I think it's clear enough. What I mean is when
19 I say at a college or university, I mean at the college or
20 university in the sense that they're eligible for a college or
21 university ID.

22 It doesn't mean they're all piled up at the post office.
23 It means that maybe they live or operate in the neighborhood
24 in such a way they can get one of these IDs if they're issued.

25 Q. So, is it your testimony here that this 48,046 number

1 are all enrolled in a college or university, such that they
2 can get an ID from that college or university?

3 A. No. No. I thought I was clear enough. It's a simple
4 method of describing a circle with a particular -- in the case
5 of colleges -- one-mile radius.

6 That's going to leave some real college students out,
7 and it's going to enclose some people who are not real college
8 students. But it's got a good hope of corralling lots of
9 college students, because they probably live near the
10 university.

11 I think -- having found a group of addresses that I
12 think are rich in college students, then I went out and looked
13 at their addresses, and I found things like Fairchild Hall,
14 and post office boxes that say 701 Moore Street, which is the
15 university address.

16 Q. Of which university?

17 A. To confirm -- hum?

18 Q. Which university?

19 A. That's Bucknell.

20 Q. Let me ask you a question -- does Bucknell --

21 A. Do you want me to finish?

22 Q. Okay, fair enough.

23 A. Okay. So that that gave me confidence that even though
24 I knew that it was rough as a method to just draw a circle
25 around the post office of the University to capture college

1 students, when I looked at the people I enclosed with the
2 circle I found lots of college students.

3 Q. I'm going to hand you Respondents' Exhibit 137. The
4 copy I'm giving you is not in color, but the color yellow
5 highlighting is on the screen.

6 Do you know what this document is?

7 A. No.

8 Q. Was it provided to you?

9 A. I haven't seen it.

10 Q. You were provided some information on the colleges,
11 right?

12 A. Yes.

13 Q. And you were provided some information on whether the
14 colleges, whether the Department of State thinks the colleges
15 are issuing IDs that are acceptable for voting and not
16 acceptable for voting; right?

17 A. No, I don't think so. I got a list of those that were
18 eligible to issue. Some of them actually issue, some don't.

19 Q. Let's take a look at -- this is Petitioners' 2110. This
20 is something that came from your team through Respondents'
21 counsel.

22 A. Yes. This looks familiar.

23 Q. There's a column there, DOS confirmed, coded 01;
24 correct?

25 A. I see it.

1 Q. 0 meaning not issuing; 1 meaning is issuing. Right?

2 A. I am not sure if that's a reliable interpretation, but I
3 think maybe that's what it's intended for; yes.

4 Q. And if you were to match it up with Respondents' 137,
5 the shaded ones are coded 1 and the unshaded ones are coded 0;
6 right?

7 A. Seems to be, yes.

8 Q. You did not, in the work you did, distinguish between
9 colleges that were coded 0 and colleges coded 1; correct?

10 A. Correct.

11 Q. You took every college and university on the list that
12 was provided to you by Respondents, geocoded it onto a map,
13 drew a one-mile -- a circle with a one-mile radius around it;
14 correct?

15 A. Right.

16 Q. And that one-mile radius encompasses, if you use the
17 pi-R-squared methodology -- which I think we'll probably agree
18 is the right one.

19 A. Whoops.

20 Q. About 3.14 square miles, correct?

21 A. Okay.

22 Q. With a few more dots that will go on forever. And you
23 did that for all of them regardless of whether or not the
24 colleges are actually issuing IDs that would be acceptable for
25 voting; right?

1 A. Right.

2 Q. Take a look at Bucknell and tell me whether that is
3 coded or highlighted to indicate that they're issuing IDs
4 acceptable for voting.

5 A. It's not, and I understood that. Bucknell is eligible,
6 but I understand not issuing.

7 Q. Did you look at a map of what this showed when you put
8 all of these circles on the map; did you actually look at a
9 physical map?

10 A. Pieces of it, not -- I didn't look at the whole state of
11 Pennsylvania.

12 Q. You did a nice little graphic for one of the care
13 facilities, right, with the circle showing how much that would
14 cover; correct?

15 A. Yes.

16 Q. Did you do that for colleges in Philadelphia?

17 A. No, I didn't draw a bunch of maps.

18 Q. Can we have 2114.

19 Dr. Wecker, I'm handing you 2114, which is Center City
20 Philadelphia, a map of that area. What I will represent to
21 you is with Mr. Siskin's help, we took your addresses; and
22 this is only the ones that, according to 137, are actually
23 issuing IDs acceptable for voting.

24 You didn't do this, did you?

25 A. I didn't make a map like this.

1 Q. At the top, the right-hand circle -- we put a one-mile
2 radius circle around it, that's Temple University.

3 A. Okay.

4 Q. Are you familiar with the neighborhoods around Temple
5 University.

6 A. I haven't been there.

7 Q. Haven't been there. When is the last time you were in
8 Philadelphia?

9 A. Years ago.

10 Q. Not very familiar with the neighborhood surrounding the
11 universities in Philadelphia, are you?

12 A. Not very.

13 Q. Consult with anyone who is familiar with that? Did you
14 talk to anyone who is familiar with --

15 A. With the neighborhoods, no.

16 Q. Did you -- do you know what the demographic makeup is
17 around Temple University?

18 A. I understand that it's not a whole lot different than
19 the neighborhood around the University of Chicago.

20 Q. Not a lot of college students that live right in that
21 area?

22 A. I don't know. I have -- you're asking me questions I'm
23 not an expert on. I don't know exactly who lives near Temple
24 University.

25 Q. Well, but under your methodology, any 28 -- I'm sorry,

1 18- to 28-year-old registered voter on Dr. Siskin's list of
2 511,000 who lives in this circle around Temple University,
3 according to your report and what you just testified, would be
4 considered living at a college or university and eligible to
5 get an ID from that college or university.

6 That's your methodology, right?

7 A. It's my methodology, but I think that you haven't
8 appreciated the full description of the methodology. My point
9 is easier to believe than your question suggests.

10 I'm just saying there are students at universities and
11 colleges in Pennsylvania; and some of them are at institutions
12 that actually issue, even though they're all eligible to
13 issue, this kind of ID.

14 Dr. Siskin has not accounted for that in any way. I
15 have taken a first cut at it by just drawing circles around
16 the universities and then checking some addresses in special
17 cases, three or four universities, and noticing, yes, I'm
18 finding students that live here.

19 And that's it. That's all I'm saying. He didn't do it.
20 He should have done it.

21 Q. Well, the ones that you have looked at, they were small
22 universities in isolated areas. They weren't ones in
23 Philadelphia, right?

24 A. Right. I didn't study Philadelphia universities.

25 Q. Okay. So, this map is only for ones that are, according

1 to the Department of State, actually issuing IDs that people
2 can use for voting.

3 Do you agree with me that there are people that you
4 said -- and the words you used were, are living at a college
5 or university or otherwise eligible to get an ID from that
6 college or university. Do you agree there are lots of people
7 living around Temple University that don't go to Temple,
8 couldn't get an ID from Temple.

9 A. I agree. There's some people that are enclosed in my
10 circle of one mile who are students; some people are not.
11 Some of the students are outside of the one mile.

12 But if you are going to go looking for students at most
13 universities, it made sense to me to look near the university.

14 Q. There are -- there's data out there that will actually
15 give you the precise geocoding for catchment area for each
16 university in Pennsylvania; correct?

17 A. I'm not following what you mean.

18 Q. Well, you just did this rough circle around the
19 university --

20 A. Yes.

21 Q. -- right?

22 Do you agree with me that there is software and data
23 that's commercially available that you can download the data
24 that would give you the exact geographic coordinates and
25 mapping of the colleges and universities and what the entire

1 campus looks like for Pennsylvania?

2 A. I haven't seen it.

3 Q. That data is out there, right?

4 A. I haven't seen it, but I'll take your word for it that
5 that's out there; and if it is, it might be useful and might
6 be a more refined way to approach it than my circles.

7 But in any event, my point is that Dr. Siskin didn't do
8 it.

9 Q. Let's take a look at Exhibit 2114a. Dr. Wecker, I'll
10 represent to you that we followed your methodology to the next
11 conclusion, and we put on more circles on this map -- again,
12 Center City Philadelphia. And now this includes the colleges
13 and universities that you used that, according to the
14 Department of State, are not issuing IDs that are acceptable
15 for voting. A lot more circles now, right?

16 A. I'm with you. I see circles.

17 Q. Covers huge swaths of Center City Philadelphia, correct?

18 A. Yes.

19 Q. Broad areas of Center City Philadelphia, where college
20 students don't live.

21 A. Where some don't live.

22 Q. Well, where -- if you are an 18- to 28-year-old, you
23 happen to live in one of these multiple circles and circles on
24 top of circles, there's a pretty good chance you're actually
25 not a college student; isn't that right?

1 A. Perhaps. I'm not familiar with the demographics.

2 Q. Okay. Well, did you do this for Pittsburgh?

3 A. I did my calculations for all of the universities
4 eligible to issue the ID.

5 Q. Let's look at Pittsburgh -- well, let me ask you the
6 question. Do you agree that Philadelphia is a very dense
7 population center; we're not talking rural areas like
8 Bucknell?

9 A. I agree.

10 Q. Let's take a look at 2113. Again, this first graphic.
11 It's Pittsburgh and it shows only the ones that the Department
12 of State says are actually issuing IDs.

13 THE COURT: Issuing student IDs, Mr. Rubin?

14 MR. RUBIN: Student IDs, yes. Yes, Your
15 Honor.

16 BY MR. RUBIN:

17 Q. You didn't do this for Pittsburgh, either; did you?

18 A. If the "this" means draw that map, I did not. That's
19 not my map. And if the "this" means did I make the
20 calculation, yes, I did.

21 Q. Fair enough. Good clarification. So, nobody who is 18
22 to 28 years old within one of these circles, according to your
23 report and your testimony, is a college student eligible to
24 get an ID from that college.

25 Is that what you testified to?

1 A. I don't believe that. I believe that they -- that this
2 is a method that is a crude method, but it would be a first
3 cut at capturing, corralling college students.

4 Not as good in Philadelphia as it is in more rural
5 settings, but it was an easy thing to do; and I was trying to
6 find college students. And I found lots of them by using this
7 method.

8 Q. How many of your 48,000 supposed college students are
9 from Philadelphia, did your method capture from Philadelphia?

10 A. I don't know that.

11 Q. Surprise you that it's 23,294 are from Philadelphia
12 using your method?

13 A. I don't know the number.

14 Q. And what about Pittsburgh; do you know that number?

15 A. No.

16 Q. 9,057; does that sound right?

17 A. I don't remember the number.

18 Q. Let's just for completeness, let's look at 2113a.

19 What we have done on 2113a, Dr. Wecker, is we have now
20 added on the rest of the colleges and universities that you
21 used that the Department of State says are not issuing
22 acceptable IDs. And that covers pretty much most of
23 Pittsburgh, right?

24 A. A lot, yes.

25 Q. Yes. And according to your methodology, anyone 18 to 28

1 years old in that area is at a college or university and
2 eligible to get an ID in that college or university.

3 A. No, I don't believe that. I think this is a good first
4 cut way -- and less so in Pittsburgh, but better in other
5 locations -- to corral college students and then further look
6 to see if the information on those students corralled seems to
7 reliably match what you would expect for a college student.

8 And I have done that in a number of instances, and I can
9 find college students. I'll be brief now and I hope I'm
10 responsive.

11 You wouldn't have to draw circles to know that there are
12 college students in the State of Pennsylvania, and that
13 Dr. Siskin has made no allowance for that when he's talking
14 about no valid ID. That's really my only point.

15 I just tried to go a step further to indicate that it's
16 possible to find them.

17 Q. Well, there are a lot of 18- to 28-year-olds in
18 Pennsylvania that are not college students, too; correct?

19 A. I'm sure.

20 Q. And by drawing circles around pretty much all of
21 Pittsburgh's area, and the large swaths of Philadelphia, you
22 also captured a lot of those people who are not college
23 students; correct?

24 A. That is correct. It's not as good a method for finding
25 college students in Philadelphia as it is in rural areas. But

1 whatever method you use, it would be good to have some idea
2 about these people with university IDs.

3 Q. And you don't know whether or not this Court has been
4 provided other data on that point?

5 A. I don't.

6 Q. You saw from Dr. Siskin's testimony that he understood
7 the Court has had expert opinions from other experts
8 addressing how many people who lack a PennDOT ID have another
9 form of acceptable ID?

10 A. I don't know that.

11 Q. You read his testimony, right?

12 A. Yeah, but I don't remember that.

13 Q. If in fact there is other data that answers the missing
14 question, makes the link, does that cause you to change your
15 opinion as to -- when -- as to what Dr. Siskin said that a
16 first step would be to first figure out who doesn't have a
17 PennDOT ID, and then figure out how many of those people
18 potentially have other types of ID?

19 A. Exactly. And my testimony is that he didn't do a very
20 good job on the first step and he didn't even try on the
21 second.

22 Q. But if someone else tried and there's other data --

23 A. That would be good.

24 Q. -- does that ameliorate your concern?

25 A. That would be good.

1 Q. Wasn't provided to you.

2 A. Am not aware of it.

3 Q. And that would be something that could be done, right?

4 A. Finding college students? Sure.

5 Q. No, figuring out how many people have other types of ID

6 besides a PennDOT ID.

7 A. That's the thing I said I would have to think about, if

8 one -- it's not clear how you do that, but they'd probably

9 have to do something complicated. Because you can't interview

10 everyone in the state.

11 Q. Well, you're good at complicated; right?

12 A. I do complicated things, yes.

13 Q. And my firm has hired you to do complicated things,

14 right?

15 A. Yes.

16 Q. Very good at that, right?

17 A. I do my best.

18 Q. You're one of the best at doing complicated things,

19 correct?

20 A. You may be going too far.

21 Q. I'll stipulate that you are one of the best at doing

22 complicated things. You will agree that your methodology in

23 this case isn't a complicated thing?

24 A. The circle drawing?

25 Q. Right.

1 A. No, it's not.

2 Q. Fair enough. You weren't asked by the Respondents to do
3 anything complicated, a complicated analysis; right?

4 A. Actually, the work we did was pretty complicated because
5 the Siskin matching thing is complicated.

6 Q. Okay.

7 A. And getting to the bottom of whether a failure to match
8 means no PennDOT ID or what it really means, that is
9 complicated. And I'm not sure I have penetrated that at all.
10 That's hard.

11 Q. But when you drew your big circles around these colleges
12 and universities all over the state -- including Pittsburgh,
13 Harrisburg, Philadelphia, elsewhere -- grand total, you found
14 48,000 18-to 28-year-olds.

15 A. Inside those circles, yes.

16 Q. And in your report, you wrote, "I found 48,046 voters
17 age 18 to 28 living at a college or university that is
18 eligible to issue valid photo ID"; right?

19 A. Right.

20 Q. And you used a one-mile radius, correct, to come up with
21 that number?

22 A. Yes.

23 Q. That's the not the only calculation you did, is it?

24 A. I used other radius measurements in my computer papers,
25 but I chose one mile as the best choice for university because

1 they're more spread out than a care center.

2 Q. If you had used a one-mile radius, a sort of quarter
3 mile radius around -- you don't have Temple up anymore -- but
4 around Temple, it would have been a much narrower circle;
5 correct?

6 A. Smaller radius, smaller circle.

7 Q. Yes. And would have excluded all of the 18- to
8 28-year-olds living in what's a very sociodemographically
9 uncollege-like neighborhood around Temple University; you're
10 taking those out of the picture, right?

11 A. Yes.

12 Q. And doing that, when you did .1 miles, it goes down from
13 48,000 to 11,000; right?

14 A. You said a quarter mile a minute ago and now you're
15 saying a tenth of a mile.

16 Q. Let's do tenths. If I said a quarter mile, I misspoke.
17 You did a tenth of a mile, brings you down to about
18 11,000; right?

19 A. A tenth of a mile? Yeah, sure, mechanically. I'm not
20 sure how smart it is.

21 Q. You didn't, in your report, say, I found 48,000 voters
22 age 18 to 28 living in a 3.14 square mile area around the
23 college and university, did you? You didn't say that?

24 A. No. I explained my methodology clear enough. I was
25 drawing circles around the universities.

1 Q. Well, you said -- let's actually bring up Dr. Wecker's
2 report, which is 224. I assume that you have a copy of it,
3 Doctor?

4 A. Yes, I do.

5 Q. Let's look at Paragraph 12 on page 6, Kelby.

6 A. Yes.

7 Q. Bear with me, Dr. Wecker, while we pull it up on the
8 screen.

9 THE COURT: What exhibit is that?

10 MR. RUBIN: This is 224, Your Honor.
11 Respondents' 224.

12 BY MR. RUBIN:

13 Q. Page six, Kelby. There we go.

14 Can you highlight the sentence on -- scroll down just a
15 little bit so it's on the screen. There you go. No, no,
16 scroll up. Sorry. I'm not very good at that. Highlight the
17 "I found 48,000" sentence, please.

18 What you wrote in your report is "I found 48,046 voters
19 age 18 to 28 living at a college or university," right?

20 A. Yes.

21 Q. Didn't explain that you drew circles with a one-mile
22 radius around the college or university, right?

23 A. Not in that sentence.

24 Q. You didn't explain your methodology at all, is that
25 right?

1 A. Say that again?

2 Q. You didn't explain your methodology with how you came up
3 with saying that they were living at a college or university
4 in your report.

5 A. I explained my circles drawing methodology in the
6 footnote for the care facilities, but I didn't put a separate
7 footnote on it for the universities; but it was obvious in the
8 computer materials what I did.

9 Q. Fair enough. Did you do anything to match up the age
10 range of the people that you were claiming were college
11 students to the known demographic age range for Pennsylvania
12 students?

13 A. No, I didn't claim they were college students. That's a
14 lot of times you've said that.

15 I don't -- I say that the age of 18 to 28, but I don't
16 say they're college students, because I know better than that.
17 I know that the circle will catch college students and
18 non-college students.

19 So, perhaps --

20 Q. Let me ask you this question: Who lives at a college or
21 university other than a college student that is 18 to 28 years
22 old?

23 A. Well, at the university simply means within the radius
24 of the circle I have drawn. And college students may live
25 there; other people may live there, but it's a good place to

1 go looking for college students.

2 Q. Okay. But those other people that live there, they are
3 not eligible to get a college ID; right?

4 A. Fine. But the ones that are, are; and those are the
5 ones that Dr. Siskin maybe ought to take into account on his
6 list of 500,000.

7 Q. We can take that down, please.

8 Bethany Village. Have you ever been to Bethany Village?

9 A. No.

10 Q. Have you ever spoken to anyone at the Bethany village?

11 A. No.

12 Q. Are you aware that the Department of State has been
13 desperately trying to call people this morning at Bethany
14 Village to find out whether or not they issue IDs?

15 A. I haven't seen any desperate people from the Department
16 of State.

17 Q. Would it surprise you that one of my colleagues spoke to
18 Bethany Village this morning. They said the Department of
19 State has been calling there all morning trying to figure out
20 whether or not they actually issue IDs?

21 A. I don't know. I don't know that one way or the other.

22 Q. You don't know whether or not they issue IDs, do you?

23 A. I'm told they do.

24 Q. Who were you told that by?

25 A. By counsel.

1 Q. Which counsel?

2 A. Alicia told me.

3 Q. Would it surprise you to learn that when we called them,
4 they said they're not currently issuing IDs but in the future
5 they will? Or it's -- and specifically, let me just be very
6 clear, IDs that are good for voting.

7 A. You are saying would it surprise me what?

8 Q. That if when we called this morning we were told that
9 they issue IDs to new residents, and that sometime in the
10 future they may be issuing IDs that are acceptable for voting?

11 A. It doesn't surprise me or not surprise me. I have no
12 knowledge of the phone calls.

13 Q. Is Bethany Village representative of all of the care
14 facilities in Pennsylvania?

15 A. No. Not -- I didn't intend it to be representative. I
16 just found that they had a nice map and I could use it to
17 explain my point.

18 Q. Did you go and do this for all of the care facilities?

19 A. Nope.

20 Q. Is Bethany Village what's known as a continuing care
21 facility.

22 A. I think they have -- I'm not sure. They have multiple
23 names for their facilities.

24 Q. Do you know what a continuing care facility even is?

25 A. No.

1 Q. If we have heard testimony from a -- that a continuing
2 care facilities have various levels of care so you can go in
3 living independently and, as you get older and unfortunately
4 more sick, you can progress to assisted living and onward and
5 upward.

6 A. I'm familiar with that.

7 Q. Do you know how many of your care facilities fall into
8 that category?

9 A. No.

10 Q. Did you do any work to figure that out?

11 A. No.

12 Q. Run any Google searches?

13 A. I have run Google searches, but not to figure that out.

14 Q. Do you know how many care facilities you drew your
15 circles around?

16 A. No, I don't have that number in my head.

17 Q. You were given lists, correct?

18 A. Yes.

19 Q. You were given lists by Kathleen Kotula, isn't that
20 right?

21 A. I don't remember who sent the list.

22 Q. But they were someone from the Respondents, correct?

23 A. Yes.

24 Q. You didn't pull up the lists yourself?

25 A. Correct.

1 Q. And none of those lists tells you whether or not the
2 care facilities were actually issuing IDs, correct?

3 A. Correct.

4 Q. Unlike for the college data, you have no data, other
5 than what Respondents' counsel told you about Bethany Village,
6 on which of those facilities are actually issuing; correct?

7 A. Right. I just know they're eligible.

8 Q. They're eligible because the General Assembly decided we
9 will say that if a care facility issues an ID that meets
10 certain requirements -- a photo, substantially conforming name
11 and expiration date -- we will accept that for voting?

12 A. That's my understanding.

13 Q. Were you told that when the Department of State analyzed
14 that proposal by the General Assembly, that they found that
15 most care facilities in fact do not issue those types of IDs?

16 A. I wasn't told.

17 Q. And if you live -- you weren't provided the
18 documentation on that, were you?

19 A. I wasn't told or provided documentation.

20 Q. You weren't provided the underlying research that was
21 done by the Department of State and Department of Aging to
22 finally reach that conclusion, were you?

23 A. You're correct.

24 Q. Did you do anything yourself to figure out the answer?

25 A. No.

1 Q. Did you ask the question, even?

2 A. The question being which ones issue and which ones
3 don't?

4 Q. Right.

5 A. I have not asked that question.

6 Q. So, when you found 18,217 voters age 65 and over living
7 at a care facility that's eligible to issue a valid photo ID,
8 you don't know whether those facilities actually are issuing
9 the ID; right?

10 A. I know some do, some don't.

11 Q. And when you concluded that Dr. Siskin did something
12 wrong because the voters -- let's just bring up the report
13 again, 224, instead me paraphrasing it. Same paragraph, same
14 page, Kelby.

15 In your -- in paragraph 12, after you give your various
16 examples, you concluded, "these are examples of voters who
17 were counted by Dr. Siskin as not having valid ID who appear
18 to either have access to valid ID," and then you go on to talk
19 about people who could otherwise have an ability to vote
20 without ID; right?

21 A. Right.

22 Q. When you said that 18,217 people living at a care
23 facility have access to a valid ID, didn't that require you to
24 know whether or not they actually have -- are living at a
25 facility that issues ID?

1 A. I didn't say they all had access. They either have
2 access or, so maybe they have access.

3 My point is the same as a moment ago, that Dr. Siskin
4 has done nothing to consider that there might be people among
5 his 511,000 who have alternative ID from a care facility. And
6 it's not that hard to find care facilities. It's not that
7 hard to find a radius that would include lots of people at
8 care facilities.

9 I have done this. I have checked it. They have
10 addresses at the care facility. I know I can find them.
11 Maybe not all, but lots of them. And so, I find that to be a
12 deficiency.

13 Q. Well, wait a sec. You just said that they had addresses
14 at the care facilities. That's not your 18,000 number, is it?

15 A. No, no. This is a spot-checking thing, because it takes
16 a lot of time. I have gone to certain, three or four care
17 facilities, looked at the people enclosed in my circle,
18 checked the addresses; and I find lots of them with addresses
19 that are within the -- that are within the circle that are at
20 the care facility address. A care facility address.

21 There's some, and quite a few outside -- in fact about
22 double the amount that I enclosed with my circle -- that also
23 have care facility addresses.

24 Q. And that was based upon Bethany Village, right?

25 A. And there were some others, too. I've forgotten,

1 Attleboro or some other facility I looked at.

2 Q. Did you do anything to check whether Attleboro facility
3 is issuing IDs?

4 A. I don't recall the details of that one.

5 Q. Do I understand correctly, Doctor, that you just said --
6 and I just want to make sure that I heard you -- that
7 Dr. Siskin didn't consider that his 511,000 people, some of
8 them might have access to another form of ID?

9 Is that what I heard you say? Before I argue with you,
10 I want to make sure that I heard you.

11 A. I want to make -- to get a good answer here. The -- I'm
12 not sure I can answer did he consider it. That is a state of
13 mind type question, but he did not do anything to try to pare
14 down his list of 500,000 for those considerations.

15 Q. Well, in fact, you can answer the question as to whether
16 Dr. Siskin considered it; can't you?

17 A. I found the question vague. I'm not sure what it means
18 that he considered it.

19 Q. Well, okay. Let's look at page four of Dr. Wecker's
20 report. Keep going. Keep going.

21 Right there on page four, you quote Dr. Siskin where he
22 said, "and he considered the fact that there are other forms
23 of ID and expressly acknowledged that and expressly
24 acknowledged that his report was limited to PennDOT or
25 Department of State IDs"; right?

1 A. Well, there you have --

2 Q. Is that in your report?

3 A. Yes, but it's my point, that he's limited. That's the
4 confusion of the question. He might consider it in the sense
5 that it's in his brain somewhere, but he doesn't consider it
6 in the sense that it makes an appearance in his calculation.
7 That's what I mean.

8 Q. That's not something that can be answered by comparing
9 the two databases, right?

10 A. It's not a very big step away because that's -- I was
11 trying to lead the way with my circle drawing that you don't
12 approve of, but it shows that I can go find people using those
13 databases that are at the care facilities. I don't need
14 anything else.

15 Q. But let's go back to what you concluded from that. The
16 care facilities are an example that would fall into the "have
17 access to valid ID," right?

18 A. They would either have access or they would have perhaps
19 other forms of ID, yes.

20 Q. Well, access to some other form of ID; right?

21 A. I'm not trying to hide from your point here, which is a
22 valid, and I was aware of it all along. Some issue, some
23 don't issue.

24 The ones that issue, if you're in that facility, you
25 have access. If they're not issuing, you don't have access

1 because they're not issuing. I can see that.

2 But that -- but that doesn't mean none of them issue.

3 Some of them are issuing. You have to take it into account.

4 Q. And when you took it into account --

5 A. I didn't do it. I'm pointing out that Siskin did not do
6 it.

7 Q. Right. But when you did your circles, you came up with
8 18 -- 18,217 in your report; right?

9 A. 65-plus living within that radius, yes.

10 Q. You said some do, some don't. The only data this Court
11 has heard -- I'll represent to you -- is that when the
12 Department of State did an analysis, most did not.

13 A. Okay.

14 MS. HICKOK: Your Honor, mischaracterizes the
15 record.

16 BY MR. RUBIN:

17 Q. And you don't know whether that's true or false,
18 correct?

19 A. I don't know whether your assertion is true or false.

20 Q. And my same question about access to IDs. If you happen
21 to be one of those students that goes to one of the 80
22 colleges that, according to the Department of State, are not
23 issuing valid ID for voting purposes, you don't have access to
24 ID that's a college ID; right?

25 A. I think that's correct. If they don't issue, you can't

1 have it issued.

2 Q. And I know you're not that familiar with Pennsylvania
3 colleges and universities, but --

4 A. No, I know Carnegie Mellon pretty well.

5 Q. Okay. Penn State, familiar with them?

6 A. I have been there.

7 Q. Big, a lot college students; right?

8 A. Yes, sir.

9 Q. They're only issuing, according to the Department of
10 State, to new students.

11 A. I don't know that.

12 Q. Take a look at 137, which is the Department of State's
13 report. You have it in front of you.

14 A. Yes. I didn't follow that. Is this the Siskin report?

15 Q. No, it's Exhibit 137. It should be the -- what they
16 call the sticker tracker. It's on the screen right now. You
17 can look at the screen, if you would like, or you can --

18 A. Okay. I have it.

19 Q. Do you have it in front of you?

20 A. Yes.

21 Q. Okay. Go down to Penn State. Do you see the Penn
22 State? They're all highlighted?

23 A. Yes.

24 Q. Then there's a notes column?

25 A. Yes.

1 Q. Go over, Kelby, please. Thank you.

2 Yes, to new students.

3 A. I see it.

4 Q. Penn State even, if you happen to be a grad student, a
5 senior, you don't have access to an ID from Penn State that's
6 good for voting, according to this chart.

7 A. No, you misinterpret. You say if you happen to be a
8 grad student. You can be a new grad student.

9 Q. Fair enough, but if you are in your third year of your
10 Ph.D. program.

11 A. If you are not a new student, however they interpret
12 this cryptic line to new students, then maybe you don't get
13 eligibility to get one of those IDs.

14 Q. I'd like to talk to you --

15 A. Sorry, go ahead.

16 Q. No, go ahead.

17 A. I have nothing to say.

18 Q. Fair enough. You can take that down, Kelby.

19 Before we leave the care facilities, the Court has heard
20 testimony about a certain facility called Maris Grove. Are
21 you familiar with that facility?

22 A. No.

23 Q. That's a continuing care facility. Are you familiar
24 with that?

25 A. I'm not familiar with it.

1 Q. Are you aware that Deputy Secretary Shannon Royer
2 recounted to this Court that it was a particularly memorable
3 visit that he went to Maris Grove?

4 A. I don't.

5 Q. Do you know how many of Dr. Siskin's 511,000 voters
6 without ID live at Maris Grove or live within your circle of
7 Maris Grove.

8 A. Not off the top of my head, I wouldn't know.

9 Q. Would it surprise you if the number is zero?

10 A. I don't get surprised or not surprised. I just think
11 about things.

12 Q. Do you have any reason to doubt that the number is zero?

13 A. I would think it would -- it could be that you see a
14 zero there, but that can -- that occurred a few times, because
15 the address that we were using was administrative and probably
16 not the best address for finding residents.

17 Q. And what about Normandy Farms. That's another one that
18 Deputy Secretary Royer remembered visiting fondly.

19 A. I don't know anything about it.

20 Q. Are you aware that none of the 511,000 are within one of
21 your circles around Normandy Farms?

22 A. Oh, I -- I'm thinking again --

23 THE COURT: It's a good time for us to take a
24 break, then.

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: We'll recess for --

2 MR. RUBIN: Your Honor, can I request just an
3 answer to this question before we take a recess? Is that
4 possible? In fairness. If not, we can --

5 THE COURT: Do you want to repeat your
6 question?

7 MR. RUBIN: Sure.

8 BY MR. RUBIN:

9 Q. Well, the Doctor was thinking about something. I just
10 wanted to give him a chance to just finish his thoughts so the
11 record can be completed.

12 Did you have anything further you wanted to add? It
13 looked like you were --

14 A. You have to ask the question again.

15 THE COURT: Normandy Farms.

16 BY MR. RUBIN:

17 Q. Normandy Farms. Zero people among the 511,000 within
18 your circle?

19 A. That's what set me to thinking. I'm not sure -- I'm
20 going to have to look into that. I'm not sure if finding that
21 my circle didn't find anybody there means the same thing as
22 that there's nobody there.

23 So, your question was, was there anybody from the
24 511,000 who was also at this particular facility; and I may
25 not have found them where I drew the circle, but they might

1 still be there.

2 Q. But you have no basis for that other than your
3 speculation, right?

4 A. Well, it's not pure speculation. I have noticed that in
5 several cases the circle that I drew didn't have any of the
6 511,000 in there; and then I looked at it more closely and I
7 could see we were using an administrative address that didn't
8 have residents in it.

9 So, that was fine with me because I was just trying to
10 do a rough way to capture residents of facilities, and I
11 caught a lot of them.

12 MR. RUBIN: Thank you, Your Honor.

13 THE COURT: Okay. We'll recess until 1:00.

14 THE BAILIFF: Commonwealth Court is now in
15 recess.

16 (COURT RECESSED AT 12:05 P.M. AND RECONVENED
17 AT 12:58 P.M.)

18 THE BAILIFF: Commonwealth Court is now in
19 session.

20 MR. RUBIN: May I inquire?

21 CONTINUED CROSS-EXAMINATION

22 BY MR. RUBIN:

23 Q. I hope you had a good lunch, Dr. Wecker.

24 A. Thank you.

25 Q. I assume that you didn't have any substantive

1 conversations with counsel for Respondents during lunch;
2 right?

3 A. That's correct.

4 Q. Did you learn anything new during lunch from any other
5 sources?

6 A. No. I had no substantive conversations with anyone --

7 Q. Perfect.

8 A. -- and read no documents related to the case.

9 Q. I assumed as much, but just --

10 A. Wanted to be comprehensive.

11 Q. Couple of things before we move on to the next topic.
12 You compared the area around Temple to the area around the
13 University of Chicago; do you remember doing that?

14 A. Yes.

15 Q. The University of Chicago, that area is in the South
16 Side of Chicago?

17 A. That's correct.

18 Q. An area with a high minority and high poverty
19 demographic, right?

20 A. Yes.

21 Q. A lot of 18- to 28-year-olds who are not going to the
22 University of Chicago live in that area, correct?

23 A. In one mile, there would be a lot of students; and I'd
24 have to think about how many non-students it would catch, but
25 it would catch some.

1 Q. And Pittsburgh, the area around Duquesne, that captures
2 a substantial portion of the Hill District; do you understand
3 that?

4 A. I'm not that familiar with Pittsburgh.

5 Q. Do you understand the Hill District is very similar to
6 the area around the University of Chicago?

7 A. I'll take your word for it.

8 Q. Now, another care facility whose name has come up in the
9 trial is the Watermark or the Waterman. Did you do anything
10 to investigate whether they're issuing IDs?

11 A. No.

12 Q. And there was a discussion that we had and I was
13 confused about sort of what it meant when you said there are
14 duplicates in the SURE database; do you remember that
15 discussion?

16 A. Not very well.

17 Q. Well, it's the 41,000 duplicates in the SURE database
18 number?

19 A. Yes.

20 Q. That number is for the entire SURE database, right?

21 A. Yes. We were clear on that.

22 Q. And only 3,000 of those were among the 511,000, right?

23 A. Right.

24 Q. Okay. There are also other big numbers that have been
25 thrown around, numbers about -- describing the general

1 population; for example, you said, I think 250,000 people
2 moving out of Pennsylvania?

3 A. Yes.

4 Q. The number in terms of assessing Dr. Siskin's work would
5 be how many of those people are within his 511,000; is that
6 right?

7 A. Depends on what question you ask.

8 Q. Well, whether there are people that Dr. Siskin says may
9 not have or do not have a PennDOT or DOS product that's good
10 for voting, the 250,000 number doesn't -- you wouldn't just
11 take his number and subtract 250 from it; would you?

12 A. Correct.

13 Q. You would look at how many people in his number actually
14 moved out of Pennsylvania, right?

15 A. It's not that simple. People who move out certainly
16 deserve further scrutiny because they may become
17 non-residents, and yet they may still appear in the two
18 databases we have been discussing. So, those people deserve
19 scrutiny that they haven't received in any depth, from -- in
20 my opinion, from Dr. Siskin.

21 But as you say, throwing out the number 250,000 a year
22 was only to point out that there's quite a lot of migration
23 going on, so you wouldn't want to just ignore this category.

24 Q. You say he didn't give it any scrutiny, but he took his
25 number from 417 to 259; right?

1 A. I didn't say he didn't give it any scrutiny. I think he
2 didn't give it a comprehensive analysis that is required if
3 you're going to try to reach the opinions that he claims to
4 reach.

5 Q. He looked at the data he had, the two databases, and
6 took the number from 417 to 259, by giving it the scrutiny;
7 correct?

8 A. He did some things, but he didn't do enough.

9 Q. And the -- another big number about Pennsylvania overall
10 that's been thrown around in this trial is something like
11 835,000 college students in Pennsylvania. That's not a number
12 that you have given, but I'll represent to you that that
13 number has been used at this trial.

14 You agree with me that the relevant number would be how
15 many college students are among the 511,000 statistic that
16 Dr. Siskin found, right, not the 835,000?

17 A. Well, I don't think I do agree. I think -- a number can
18 be relevant and yet not applicable to some particular
19 calculation. I think it's relevant to note there are -- if
20 your numbers are correct, I assume they are -- there's 800,000
21 college students here, and they might have access to ID, and
22 that's a good starting point to get you to want to go to work
23 to deal with that, so it's relevant in that sense.

24 Q. But in terms of looking at Dr. Siskin's 511,000, you
25 would want to see how many of those are college students;

1 right?

2 A. I would urge that, yes.

3 Q. And I was just taking a look to see if I had any other
4 things I wanted to clarify with you.

5 Now, I wanted to talk with you about the Bethany Village
6 map. If this works right, it should come up.

7 This is your map, and I've added a little bit to it
8 by -- because your circle is only the one-tenth of a mile,
9 correct?

10 A. Yes.

11 Q. And I took your radius, and I put some dots -- they're a
12 little hard to see on the screen. I'll try to point them out
13 without -- one dot, two dots. This is the third dot -- third
14 tenth of a mile from the zero. Same thing over here, or
15 six-tenths. You get all the way over here, seven-tenths of a
16 mile.

17 Would you agree with me that if you put a circle that's
18 a mile radius, you would cover the entire page and more?

19 A. Looks like it, yes.

20 Q. So, you would be -- when you did that for your care
21 facilities -- and I think in your report you had some number
22 like 79,000. This map shows that that 79,000 number would
23 include lots of people living even off this map entirely,
24 right?

25 A. That's true. A large circle would include lots more

1 people, but I'm not trying to represent that I am accurately
2 counting residents using the circle method. It's just a
3 starting point.

4 Q. Let's talk about your absentee voting number. In your
5 Paragraph 12, you observe that 56,437 of Dr. Siskin's
6 unmatched records voted absentee in the last election in which
7 they voted.

8 A. Yes.

9 Q. Do you agree with me that the fact that somebody voted
10 absentee in the last election they voted in, doesn't mean
11 they're going to vote absentee in the next election?

12 A. Correct.

13 Q. Do you agree with me that the fact that someone was
14 entitled under Pennsylvania law to vote absentee in a past
15 election doesn't mean they're going to be entitled to vote
16 absentee in a future election?

17 A. That's a legal question. I don't know the answer.

18 Q. Do you -- are you aware that Act 18, the photo ID law,
19 not only changed the requirements for identification for
20 voting in person, but also changed the identification
21 requirements for voting absentee?

22 A. I don't know.

23 MS. HICKOK: Your Honor, that's not a complete
24 statement of Pennsylvania law.

25 THE COURT: Overruled. You can continue.

1 BY MR. RUBIN:

2 Q. Are you aware it changed some of the, the photo
3 identification -- strike that. The identification
4 requirements for voting absentee?

5 A. I don't know this one way or the other. I haven't read
6 this Act 18.

7 Q. If in fact Act 18 imposed new requirements for voting
8 absentee in terms of identification for the first time
9 starting in the November 2012 election, the fact that people
10 were able to vote absentee in an election before 2012 doesn't
11 necessarily tell us anything about whether, under the new law,
12 they're going to be entitled to vote absentee; would you agree
13 with that?

14 A. No, it would probably be quite informative, but it
15 wouldn't be -- it would be something you would have to
16 calculate.

17 Q. Do you know how many people voted absentee in the 2012
18 election?

19 A. Not off the top of my head. I might have calculated
20 that somewhere.

21 Q. Do you know that Dr. Siskin calculated that?

22 A. I remember that, but I don't remember.

23 Q. It's approximately 24,000.

24 A. I don't remember his number.

25 Q. If I represented to you it's approximately 24,000, do

1 you have an explanation as to how come you have a
2 number and 24,000 voted absentee in November.

3 A. They're not the same thing.

4 Q. Apples and oranges, right?

5 A. I don't know about fruit, but they're not the same
6 calculation, so you wouldn't expect them to be the same
7 number.

8 Q. Did you -- do you know that with some limited
9 exceptions, to vote absentee in Pennsylvania, a normal voter
10 needs to provide a current and valid driver's license number?

11 A. (NO RESPONSE.)

12 Q. Are you aware of that?

13 A. To vote absentee --

14 MS. HICKOK: Your Honor, again, that
15 mischaracterizes the law.

16 THE WITNESS: That wasn't my understanding.

17 THE COURT: You'll get a chance to ask.

18 BY MR. RUBIN:

19 Q. What's your understanding of what's required to vote
20 absentee in Pennsylvania?

21 A. Well, I'm not holding myself out as an expert on this
22 legal question; but my understanding was you could do it with
23 the last four digits of the Social Security number.

24 Q. So, is it your understanding that you must have a
25 current and valid driver's license, and only if you don't,

1 then do you get to go to the last four digits?

2 A. No, I don't know the law that well.

3 Q. I'll represent to you that the law says current and
4 valid driver's license. If you don't have that, then you can
5 give your last four digits.

6 A. Okay. That's consistent with my understanding and that
7 would work.

8 Q. And then what happens?

9 A. And then you vote absentee.

10 Q. The ballot comes in, and has to be counted; right?

11 A. Yes.

12 Q. If it's not counted, you haven't really voted, right; do
13 you agree with that?

14 A. Semantics.

15 Q. Well, semantics; either your vote counts or it doesn't
16 count. That's pretty base semantics; right?

17 A. I'm in general agreement with you. I'm just not sure
18 what the proper terminology should be. If I vote, I fill out
19 an absentee vote, have I voted, even though you haven't
20 counted it? I don't know. That's semantics.

21 Q. If you put the last four digits as your proof of
22 identification, that has to be matched to something to verify
23 your identity; right?

24 A. That's my understanding.

25 Q. The SURE database, right?

1 A. I understand that.

2 Q. And you have mentioned that the SURE database is missing
3 some data, correct?

4 A. Yes.

5 Q. Some of those data fields that are missing, in fact, are
6 Social Security numbers; correct?

7 A. That's right.

8 Q. And in fact, of your -- let's see, I'm going to get
9 these numbers right.

10 Of your 56,437, 16.8% do not have the last four digits
11 of their Social Security number in the SURE database; isn't
12 that right.

13 A. I don't remember the 16. I thought it was more like 9.
14 I will accept your number.

15 Q. 9,000?

16 A. 9%, I was thinking, but I'm not remembering that well
17 what the answer to that calculation is.

18 Q. But there is a certain percentage not -- not -- not
19 zero, that last four digits cannot be matched to SURE because
20 the SURE database doesn't have the corresponding records.

21 A. Yes, my memory is that was about 9%.

22 Q. And of the voters who actually voted absentee in the
23 November 2012 election, do you know what percentage of those
24 absentee voters lack a valid four digit Social Security number
25 in the SURE database?

1 A. No, I'd have to look it up. I don't know.

2 Q. 25%; does that refresh your recollection?

3 A. No.

4 Q. Just because someone voted absentee in the past, in one
5 election, doesn't mean they're going to vote always absentee;
6 right?

7 A. I agree.

8 Q. And did you look at how many of your 56,000 people had
9 voted at the polls at a prior election?

10 A. I'm not following you. Oh, yes, now I understand you.

11 Not directly. I looked at how many had always voted
12 absentee, but I don't remember the number that I found.

13 Q. Surprise you if 25% of your number had previously voted
14 at the polls?

15 A. Not surprised or not -- surprised or not surprised, I'm
16 just listening.

17 Q. And at the November 2012 election, the people that voted
18 at the polls, did you -- you know from Dr. Siskin's testimony,
19 don't you, that 5%, approximately, had previously voted
20 absentee?

21 A. I don't remember him saying that, but it seems low, but
22 it could be 5%. I don't know. I'd have to look it up.

23 Q. When you wrote in your report that 56,437 of
24 Dr. Siskin's unmatched records voted absentee in the last
25 election in which they voted, you did that to suggest that

1 they would have access and the ability to vote through a means
2 that didn't require identification, right, in a future
3 election? That was the purpose of that observation, right?

4 A. Did you really mean to say would not require
5 identification? Or do you mean the photo ID?

6 Q. Well, let me rephrase the question.

7 When you made the observation of the 56,000, who last
8 time they voted, voted absentee, the purpose of that was to
9 suggest that that's a number of voters who would be able to
10 vote absentee in the future even if they didn't have
11 acceptable photo ID for voting in person in the future.

12 A. No. That wasn't -- my purpose was simpler than that. I
13 wanted to get a gauge for how many people are voting absentee.
14 So, I -- it looks like about 56,000 the last time I had a
15 chance to look, and that might give you some indication as
16 sort of the magnitude of the absentee votes.

17 Q. There's a direct measure of that 24,000 at the November
18 2012 election, right?

19 A. That's not a number I calculated.

20 Q. That's not the number you calculated. That's the number
21 that Dr. Siskin calculated, right?

22 A. I don't remember him doing that, but I'll take your word
23 for it.

24 Q. You didn't calculate a number for the November 2012
25 voters who voted absentee?

1 A. I don't think so. No, my number is for the last
2 election in which they voted. It's a magnitude of slightly
3 different number.

4 Q. You also talked about military bases, right?

5 A. Yes.

6 Q. You yourself are a veteran?

7 A. Yes.

8 Q. You think veterans should be able to vote, correct?

9 A. I never thought about it.

10 Q. Well, if you served your country --

11 A. Actually, I was taught not to vote.

12 Q. You were taught not to vote?

13 A. Yes, because we were told that we need to be -- at the
14 Air Force Academy, it was important to remain separate from
15 political cares.

16 Q. But after you've served your country and put your life
17 on the line like you have --

18 A. I have changed my view on that.

19 Q. Okay.

20 A. It's important to vote.

21 Q. Fair. Perfect. Right.

22 A. I was instructed that it would be good procedure to stay
23 totally clear of anything to do with politics.

24 Q. Fair enough. I'm pretty certain the military would
25 probably not give you that instruction today, but that's an

1 area we can agree on or disagree on. It doesn't matter.

2 A. I don't know what they're going to say.

3 Q. I want to talk about after you have served your country,
4 you're now a veteran, you are walking around with a veterans'
5 ID. It doesn't have an expiration date; it's no good for
6 voting. Do you think that's the right result?

7 A. I don't know. Right is some sort of a judgment here
8 that I am not involved with.

9 Q. But you -- you give some statistics in your report, and
10 you said that you found -- I found -- well, let's bring up the
11 report, Kelby. 224, page six, paragraph 12.

12 Maybe we'll get off Paragraph 12, but probably not.

13 A. All right.

14 Q. You write in that paragraph, "I found 2,547 voters
15 living at a military base where valid photo ID is required."

16 A. Yes.

17 Q. So, according to your report, those 2,547 voters were
18 living at a military base?

19 A. Well, if you --

20 Q. That's what your report says, right?

21 A. Ready for me?

22 Q. No, I just want -- is that what your report says?

23 A. I'm ready.

24 Q. Is that a yes?

25 A. My turn.

1 Q. No, you haven't answered my question.

2 A. You've -- you've asked compound and multiple

3 questions --

4 Q. Well, let me, let me, let me --

5 A. -- I want to try to respond to them.

6 Q. -- just for the record ask it clearly, then.

7 A. Should we start over?

8 Q. Yeah. Let's start over. I'll ask my question.

9 Your report says 2,547 voters living at a military base,

10 right?

11 A. Yes.

12 Q. And what you did there is you drew another circle,

13 correct?

14 A. Yes.

15 Q. You got a list of military bases addresses, correct?

16 A. Yes.

17 Q. Again came from Respondents, right? Counsel.

18 A. Yes.

19 Q. That table. And you drew a circle around it, correct?

20 A. Yes.

21 Q. And you didn't do .1 miles, right?

22 A. Correct.

23 Q. You didn't do one mile?

24 A. Correct.

25 Q. You did three miles, right?

1 A. Correct.

2 Q. Using our famous Pi R squared, that's a 28-square mile,
3 approximately, area around the address next to the military
4 base, right?

5 A. Right. Because military bases are more spread out than
6 nursing homes.

7 Q. Did you then look at the resulting 2,547 voters to
8 determine anything about them?

9 A. Yes, I looked up their addresses and I saw things like
10 the word "Fort" or other things that suggested to me that
11 these were probably members of the military.

12 Q. Did you find that 598 of them are born before 1950?

13 A. I didn't calculate that.

14 Q. Did you look at it?

15 A. (NO RESPONSE.)

16 Q. Do you see lots of people from the early 1900s?

17 A. Well --

18 Q. And the 1930s?

19 A. I have seen data -- dates in the database to 1900 and
20 even the 1800s. But I didn't specifically look at the age or
21 the date of birth of this particular population you're
22 discussing.

23 Q. How about people born before 1940, 480 of them? Do you
24 think people born before 1980 -- I'm sorry, 1940 are likely to
25 be in the military?

1 A. Certainly not active.

2 Q. Living at a military base?

3 A. Could be.

4 Q. Okay. How many of the military bases that you drew
5 circles around actually resulted in you finding voters living
6 at those military bases?

7 A. I don't recall them separately. I recall looking at the
8 addresses of -- or captured by my circles, and finding lots of
9 them that had words like "Fort" in their name of their
10 address, and I was interested to find, you don't have a single
11 Air Force base here in the state. I didn't know that. But
12 you find lots of Army places, and some of the addresses are a
13 giveaway that they're in the military.

14 Q. You found, and I'll represent to you, registered voters,
15 as you would describe them, living at a military base for only
16 three of the military bases.

17 A. I have to comment on that. I'm finding records. I'm
18 not finding registered voters. There's an issue about whether
19 these people are even alive.

20 Q. Fair enough. Well, you said in your report, 2,547
21 voters. Your word, right?

22 A. Well, voters means voter records.

23 Q. Well, when you said voters, did you say voter records?

24 A. No. You got me.

25 Q. Okay.

1 A. I meant voter records. I'm only looking at the records.
2 I'm not interviewing humans.

3 Q. Perfect. Now, we're clear on that.

4 So, 2,547 voter records found 272 of them in Franklin
5 County, which is where the -- I'm going to mispronounce this
6 -- Letterkenny Depot is based.

7 A. Okay.

8 Q. And the rest of them are all in Cumberland County. And
9 do you know what military bases are in Cumberland County.

10 A. No.

11 Q. I'll represent to you that's where Carlisle barracks
12 also known as the Army War College is, and also the Naval
13 Support Activity in Mechanicsburg. I'm terrible with
14 pronunciation, so I apologize to anyone who serves there.

15 That was 2,271. That's your entire universe of 2,547
16 between those three bases, okay?

17 A. Okay.

18 Q. Did you look at the size of the Army War College
19 Carlisle Barracks when you drew a map of 28 square miles
20 around it? Do you know how big it is in reality?

21 A. No, I didn't look at it.

22 Q. Did you Google the website and find out what they say it
23 is?

24 A. No.

25 Q. Would it surprise you that it's .7 square miles, the

1 entire base?

2 A. I'll take your word for it.

3 Q. You don't need to. Let's take a look at 2118.

4 Again, Doctor, with Dr. Siskin's help, we geocoded the
5 address that you used, and you will see it's the U.S. Army War
6 College Carlisle Barracks. It's in the center of the circle,
7 and then your three-mile radius encompassing a little over
8 28,000 -- 28, not thousand -- 2800 -- 28 square miles around
9 it. Do you see that?

10 A. Okay.

11 Q. Do you agree with me that the vast majority of that area
12 is not on the Army base?

13 A. It's not on the Army base but it wasn't my intention to
14 have that on the Army base. I'm just searching for people
15 that might be military ID carrying people, and they may live
16 on the base. They may live near the base.

17 Q. In your report, you wrote living at a military base;
18 right?

19 A. Yes, I -- we have to, I hope, understand "at" means such
20 that you are eligible to or in this case required to have a
21 military ID.

22 Q. And do you agree with me that many, many, many people
23 who live in this 28-square mile area have nothing to do with
24 the Army War College?

25 A. Many would not and many would. It's my first cut at

1 trying to corral the people who I'm interested in identifying.

2 Q. Rough cut?

3 A. That's right. It's a first rough cut. Look near the
4 place where you expect to find them, and then look more
5 closely to see if you can get other indications that you found
6 the right people.

7 Q. And when you said you looked more closely, you found the
8 word Fort in their address; right?

9 A. That and other words that strongly suggested that they
10 would have a military ID?

11 Q. Fort like in the street name, for example?

12 A. It could be some other Fort, right.

13 Q. And there's no Fort anywhere on here, is there? The
14 Army War College is not a Fort.

15 A. No, there's no Fort on there. That's just one of the
16 words that I remembered finding. There were other words.
17 Maybe barracks. Maybe other words.

18 Q. And you didn't do anything to refine to the people that
19 are actually living on the military base, right?

20 A. You're correct in what you point out, is this is not an
21 easy thing to do; but it is not an excuse for not trying, and
22 it's not an excuse to not doing something to recognize that
23 there are other forms of ID, and it would be wise to enumerate
24 them if you can.

25 Q. Let's take a look at the other one that's in Cumberland

1 County, the Naval support activity base. It's 2119.

2 Here there's lots of color. Different coloring and
3 shading and it's very difficult for me because I'm color
4 blind, but hopefully it will be easier for you. This area
5 right here is the center, do you agree?

6 A. Yes.

7 Q. That's the Naval Inventory Control Point which I will
8 represent to you is another name for the same military base.

9 A. Okay.

10 Q. It's a Naval facility. Do you agree with me, again,
11 your three-mile radius, 28 square mile encompasses a large
12 swath of area that's not part of that base?

13 A. Not intended to be part of the base. It's intended to
14 encompass areas where you might find people with military ID.

15 Q. And might not find people, right?

16 A. Surely. Surely, you will find some of each.

17 Q. You agree with me 2,547 voting records, at least some of
18 them, are not people who have military IDs?

19 A. Correct. There would be some who do not have military
20 IDs and there would be some with military IDs that are outside
21 the circle.

22 Q. And some of those military IDs may not have an
23 expiration date, right?

24 A. Military -- my experience with military IDs is they all
25 either have an expiration date or they say indefinite.

1 Q. Is that including a civilian who is working on the base?

2 A. I don't know.

3 Q. That's for military IDs for people in the military,
4 right?

5 A. The green ones.

6 Q. You said some people of your 2500 and change won't have
7 a military ID that's acceptable for voting; are we agreed on
8 that?

9 A. To be clear, because inside this circle I'm going to
10 find some people with military ID and some people that don't,
11 and further investigation is called for to try to narrow that
12 down.

13 Q. You didn't do any further investigation, did you?

14 A. Yes, I did. I looked at addresses to see if they looked
15 like they were the kind of address -- had the naming
16 conventions in them that would suggest military ID.

17 I looked elsewhere in the databases and saw origin of
18 requests for a record -- I'm sorry, not a record. I'm getting
19 tired here. For an ID that was originated with, quote,
20 military.

21 So, I'm finding lots of indications of the obvious that
22 there are military people with military IDs in Pennsylvania.

23 Q. You said lots. The top level that you could find was
24 2,500, and some of those aren't; correct? And can you
25 quantify for us how many, when you looked at the records, were

1 not.

2 A. They're only examples. They're only examples. And it's
3 not my intent to claim that I found them all or I know how
4 many there are. I just know that it's possible to go out and
5 find them.

6 So, it's not a suggestion I'm making that is sort of an
7 idealized thing that's impossible. I wanted to show that
8 there are things you can do to go find these things that
9 Dr. Siskin has not done.

10 Q. My question for you, Dr. Wecker, is when you looked at
11 the records, you said you found some that suggested to you
12 that, hey, these are actually military people.

13 You found some that suggested that they aren't military
14 people as well, correct?

15 A. Well, it didn't suggest clearly one way or the other.

16 Q. And for the ones that you didn't have suggestions that
17 they were from the military, is that most of them?

18 A. I didn't do a comprehensive review of all of the
19 addresses. I just spot checked.

20 Q. In your spot checking, can you tell us whether it was
21 most?

22 A. I don't -- no, I can't tell you that. I didn't have a
23 lot of difficulty finding military addresses. I know that.

24 Q. In terms of the area that's taken up by the Naval
25 Support Activity, did you ever find out that it's 1.26 square

1 miles?

2 A. I don't know that.

3 Q. Fair to say in your methodology, if the two base areas
4 that I represented to you are correct, it's about two square
5 miles taken up by those bases, and then you looked at people
6 living within a -- if I'm doing my math right -- 56-square
7 mile area?

8 A. You're adding up the two places?

9 Q. Yes.

10 A. Right. Go ahead.

11 Q. So, two square miles of actual military base, 56 square
12 miles in your circles?

13 A. But it's very common for the military not to live on
14 base.

15 Q. It's also very common for people not associated with the
16 base to live in an area near a military base, right?

17 A. That's also true.

18 Q. Fair enough. There was a comment that you made on
19 direct examination about felons and finding felons in the
20 database; do you remember that?

21 A. I do. Yes.

22 Q. Were you referring to finding felons in the SURE
23 database at large, the 8.2 million number?

24 A. No, in the 511,000.

25 Q. And is that you what, in your report -- can you bring up

1 the report again, Kelby.

2 Is that what you are referring to where you said, "I
3 found 1,294 voters living at a correctional center," and went
4 on from there?

5 A. Let me just find the spot.

6 Q. It's page six, paragraph 12. Kelby is helpfully
7 highlighting it on the screen for us.

8 A. Okay. I'm referring to that subject, but I'm not
9 claiming that I found 1,294 felons. I took the records that I
10 found, the 1,294; and then I looked at names, and then I
11 Googled names; and then I started finding court records that
12 led me to the understanding that they were felons.

13 Q. That's not something that you put in your report,
14 correct?

15 A. No, I hadn't done it by that time. Did it after this
16 report. Went to Google.

17 Q. I'm going to limit my questions to what you did in your
18 report, if that's okay.

19 A. That's fine.

20 Q. So, one -- when you read Dr. Siskin's testimony, did you
21 see some questioning about a Senator Vince Fumo?

22 A. I remember something about that.

23 Q. Apparently, fairly well known felon from this area?

24 A. Yeah. I'm not familiar with the situation, but I have
25 heard about it.

1 Q. Were you asked to determine whether Vince Fumo is among
2 the 511,000 number for Dr. Siskin?

3 A. No.

4 Q. Since reading that testimony, were you curious and
5 looked up Mr. Fumo in that 511,000?

6 A. No.

7 Q. Would it surprise you that he's not there?

8 A. And there's -- add another one in.

9 Q. I'm sorry, what did you say?

10 A. Add another one.

11 Q. Add another?

12 A. Felon.

13 Q. Well, let's come back to the correctional facilities.
14 Again, you were provided a list of facilities by
15 Respondents' counsel; correct?

16 A. Yes.

17 Q. And you weren't provided all of the correctional
18 facilities, only the ones in region A -- region 1, which is
19 the Philadelphia area?

20 A. Right.

21 Q. Again, as we saw with the colleges, Philadelphia is a
22 very dense population center; correct?

23 A. Yes.

24 Q. You will have a facility, and then right next door
25 another house; correct?

1 A. I haven't been there, but I'll assume that's true.

2 Q. Do you -- is it correct that for the correctional
3 centers, or the 1,294 voters -- I'll amend that for you --
4 voting records -- living at a correctional center, you drew
5 a .10-mile radius around the address that you were given;
6 correct?

7 A. Right. Tenth of a mile, 500 people.

8 Q. Yes. So, basically a city block all around, just about?

9 A. About.

10 Q. You didn't just -- you had specific addresses, and I
11 think there were 19 facilities. You didn't just run a search
12 for that address, right?

13 A. Well, I have done that, too. Most of these matches at
14 the tenth-of-a-mile level are exact zero distance matches, but
15 there's some that are -- like 20 feet from. I remember one
16 was 20 feet from the center.

17 Q. Let's -- well, are you going by feet? What about the
18 actual address that's given, the house number?

19 A. It varies.

20 Q. The street name.

21 A. It varies.

22 Q. Varies. You found there are people that are among the
23 1,294 where the street number is different than the actual
24 address at the correctional center, right?

25 A. That's true.

1 Q. And they're actually living on different streets, right?

2 A. I don't know.

3 Q. You don't know. You haven't looked.

4 A. I know -- well, I have looked at the record. I don't
5 know what the truth of it is. Where they're living, I don't
6 know. I'd have to -- that's part of the thing that I think
7 would be the interesting part, is get to the bottom. Run this
8 to ground. You have got data records. You think you
9 understand what they mean, but do you really understand what
10 they mean? The only way to find it, I think, is to get
11 further investigation.

12 Q. Well, let's see how much you understand of these care
13 facilities, if we can. Can we have 2120, please.

14 A. I don't think you meant care facilities.

15 Q. You're correct. Correctional facilities. Residents of
16 some care facilities may feel they're in correctional
17 facility.

18 Can I also have Respondents' 239, please. Thank you.

19 Showing you Petitioners' 2120, which is a printout of an
20 Excel file. Just so you know, we expanded the columns so that
21 we can actually read it that we got from you, Dr. Wecker.

22 This is a list of the correctional facility addresses
23 that you were sent for -- I believe it's called Region 1, and
24 they're all in Philadelphia, except for three of them; right?

25 A. Yes.

1 Q. What do you know, or tell us what investigation you did
2 into what these various addresses and locations represent,
3 before you plugged it into your computer?

4 A. Well, I don't know anything other than what I see on
5 this piece of paper. I just go to these locations, draw a
6 small circle, and see if I can find records that have
7 addresses in those circles.

8 Q. Perfect. I'm going to show you Respondents' 239. And
9 this is a document that we received from Respondents' counsel.
10 If you can confirm for me that this is not a document that was
11 sent to you before you did your work.

12 A. I confirm that.

13 Q. You can see it's actually a web address as well,
14 correct?

15 A. Yes.

16 Q. So, if you had wanted to, you could have gone on and
17 taken a look at this and figured out what these 19 facilities
18 were before plugging them in and drawing circles aren't them;
19 you could have done that, right?

20 A. Well, if I knew that address, which I don't.

21 Q. You can Google things, correct?

22 A. Well, in principle, this is a findable thing, if you did
23 it.

24 Q. Fair enough. The first address on 2120, your list,
25 corresponds to the Region 1 office; correct?

1 A. I'm confused. What's 2120 have to do with this? Okay.

2 The Exhibit 2120.

3 Q. Okay. The Exhibit 2120.

4 A. Yes. Oh, here.

5 Q. Your exhibit, Excel file. That's 2120, and then

6 Respondents' 239.

7 A. Got it.

8 Q. The first address on your Excel file corresponds to the
9 regional office, right?

10 A. Yes.

11 Q. Not actually a place that criminals stay. That's where
12 the administrative offices are, right?

13 A. I would agree that they may not stay there, but they
14 might have that address in their record.

15 Q. Did you look?

16 A. Yes, I drew circles around all of these.

17 Q. And did you look to see whether there was anyone among
18 your 1,294 who were living at 261 Old Oak Road, the address of
19 the Region 1 office?

20 A. If I did, I certainly don't remember that level of
21 detail.

22 Q. Would it surprise you or -- let me ask it a different
23 way because you don't like being surprised.

24 A. Please.

25 Q. That there are 26 people that got captured by your

1 circle who were living on the same road, but not at that
2 address. Did you ever find that out?

3 A. I haven't seen that level of detail.

4 Q. The next three items on your correctional facilities
5 list, Philadelphia CCC No. 2, No. 3, and No. 4. Do you know
6 what those are?

7 A. I can only tell you what I read; and beyond that, I
8 don't know anything. They're male and female facilities. I
9 have a zip code. That's all I know.

10 Q. Did you do any research to see how big those facilities
11 are, how many beds they count?

12 A. No, I just looked at those addresses, because I thought
13 it might be a good place to find felons.

14 Q. And you found 407 folks -- well, five folks who were
15 living at that actual address?

16 A. I don't know the number.

17 Q. 407 living on the same road?

18 A. I'll take your word for it.

19 Q. Don't know that, either?

20 A. I don't know it by memory, no, because that would be too
21 much detail for anyone to know.

22 Q. Let's take a look at Respondents' 231. Again, this is a
23 document that was provided to us by Respondents. If you could
24 confirm that it was not a document that you saw when you were
25 doing your work.

1 A. I confirm that.

2 Q. And do you see on the front page under CCCs, there's
3 Eastern?

4 A. Yes.

5 Q. And it says, the total institution population is 45, and
6 the operational bed capacity is 45?

7 A. Yes.

8 Q. And if you found hundreds of people supposedly living at
9 those facilities, that doesn't make sense; does it?

10 A. It could. Because remember, these are records, not
11 people. And they could have those addresses.

12 Q. And if you only have five who actually have that address
13 but 407 living on the same road, that doesn't suggest they're
14 living at the facility; does it?

15 A. It's only "at" in the sense they're living within 500
16 feet.

17 Q. And living within 500 feet, one block radius around it,
18 doesn't mean they're living at it; correct?

19 A. The way I was using the word "at," that's what it meant.
20 You're within 500 feet. That's what I mean by "at."

21 But I credit your point that that circle might have
22 people who are felons. That's a good place to go looking for
23 felons.

24 But it's bound to have other people who are not full
25 felons in there, too. But if you want to look for felons,

1 it's better than to start there than it is out in the hallway
2 here, although I guess this hallway might be a good spot, but
3 you -- where would you go look? This is where I would think
4 you would want to look.

5 Q. Well, you have another 15 facilities; right?

6 A. Right.

7 Q. And you looked for -- well, first off, you looked for
8 felons at the regional office?

9 A. I looked at all of these addresses. Not because I think
10 they have to be sitting there, but because their record might
11 have that address.

12 Q. So, there are another 15 facilities, I think they're
13 community contract facilities, where the Department of
14 Corrections contracts and has some contract arrangement with
15 them. We can see that from Respondents' 239?

16 A. Right.

17 Q. You see it lists out all of the contract facilities?

18 A. Yes.

19 Q. Did you do anything to research that population?

20 A. Yes, I drew circles around them and started looking for
21 felons.

22 Q. The total bed population if you look at 239 of those
23 facilities is 290 for those 15 facilities, right?

24 A. I'm just going to take your word for it. I'm not sure
25 where to look. Let's just assume you're right.

1 Q. Now, when you read Dr. Siskin's testimony, do you recall
2 a question from Respondents' counsel which was kind of mocking
3 Dr. Siskin, and let me just read that.

4 "Did you understand that these people were sentenced to
5 treatment -- I mean, it was part -- it is still a penal
6 institution. It's part of the penal system, is it not? I
7 mean, that's why I was asking you. It's not some place that
8 someone's going to pay to go because they want to get clean
9 and sober." Do you remember that question?

10 A. No.

11 Q. Did you do any investigation to determine if non-felons
12 lived at any of these facilities because -- precisely because
13 they want to pay to go there to become clean and sober?

14 A. I did not, although when I was looking for felons, I
15 many times did not find them. So, that -- if you could call
16 that an investigation.

17 Q. You understand in Pennsylvania, felons actually can
18 vote; correct?

19 A. I didn't think the ones in jail could.

20 Q. Well, they can register to vote, if the next election is
21 going to be after their release date; right?

22 A. I believe that's correct.

23 Q. And people who live at correctional facilities, some of
24 them are not felons, they're misdemeanants; correct?

25 A. Right.

1 Q. Some of them might be in pretrial detention, correct?

2 A. Right.

3 Q. And those people get to vote, right?

4 A. It's my understanding.

5 Q. And if all of these facilities are halfway houses, those
6 people can actually vote in person; correct?

7 A. Right.

8 Q. So, let's -- did you do anything to look at the Luzerne
9 facility.

10 A. It's on my list. I did the same thing as I did with any
11 of the others.

12 Q. It is on your list which is 2120, right?

13 A. Yes.

14 Q. You found 28 people living at that exact location,
15 correct?

16 A. Or within 500 feet.

17 Q. Well, 28 people with the exact address. Did you look to
18 figure that out?

19 A. I did, but I don't have that much memory to remember all
20 of these results. But I looked within 500 feet and very
21 commonly, they had the exact address.

22 Q. Let's take a look at 2122. I'll represent to you that
23 if you Google Luzerne, you get to their website, and just --
24 and you get a lot of information on the Luzerne Treatment
25 Center matching up to the same address.

1 Can you blow that up a little bit, Kelby?

2 As what's on your list. Do you see that it says --
3 let's let Kelby finish.

4 Clients who are 18 years of age and over are referred
5 and funded through a variety of sources, including county
6 referrals, county corrections, private sector, and state
7 funding through the Department of Public Welfare or the PA
8 State Department of Corrections, private insurance, and
9 self-pay may also be arranged. Do you see that?

10 A. Yes.

11 Q. So, sounds like people would go there, and pay to help
12 get clean and sober; right?

13 A. I have no opinion on that.

14 Q. Let's do 2124. The last one on your list was the Self
15 Help Movement.

16 Is that right?

17 A. Yes.

18 Q. Does that sound like a correctional facility to you?

19 A. I don't know the sound of correctional facilities, but
20 it sounds nicer than some of the others.

21 Q. And I have handed you out a printout from the
22 selfhelpmovement.org.

23 A. Yes.

24 Q. And first page says, "Self Help Movement is a drug and
25 treatment facility located in the far Northeast section of

1 Philadelphia;" right?

2 A. Yes.

3 Q. And I'd like to have you turn to the third page?

4 A. Okay.

5 Q. And do you see the address there? And this is where you
6 can give to this supposed correctional facility, and make
7 donations. Do you see the address matches up to the one you
8 used?

9 A. Yes.

10 Q. On the front page, you see it's a 501c3 organization?

11 A. Yes.

12 Q. And if you look at the very last page -- Kelby, I don't
13 think you have the very last page there.

14 What's on the screen is not going to match up to what's
15 in the official exhibit, Your Honor.

16 But the last page, do you have one that says admissions?

17 A. Yes.

18 Q. Are you ever -- have you ever heard of an admissions
19 process for correctional facilities?

20 A. I'm not familiar with it. Oh, actually, I am. I
21 have actually looked at a jail overcrowding problem in Los
22 Angeles once, and visited the jail. So now that you mention
23 it, I'm actually quite conversant with it.

24 Q. But on this, talking about people applying, applicants
25 must be workable in a group situation; right?

1 A. The applicants I was looking at were not applying.

2 Q. Fair enough. So the admissions process that you looked
3 at for a correctional facility is not one where people were
4 applying to go there.

5 A. I was looking at the county jail.

6 Q. Fair enough. Let's take a look at 2123a, c, and d.
7 Let's put up 2123a first. This is Hannah's House. This is an
8 article about Hannah's House. I assume that you did not look
9 up Hannah's House before you went through your circles?

10 A. Correct.

11 Q. But Hannah's House is actually on your list, correct?

12 A. Correct.

13 Q. And the address in the second paragraph of this article
14 matches the address on your list; is that right?

15 A. Where is the address in the article?

16 Q. The second paragraph, Hannah's House, Inc., located at
17 2823 -- do you see it?

18 A. Yes, correct. I agree.

19 Q. That matches your list?

20 A. Yes.

21 Q. So, you drew a circle around Hannah's House; right?

22 A. Yes.

23 Q. And it says, "Hannah's House helps incarcerated women
24 back on their feet"; is that right?

25 A. Yes.

1 Q. And does it also explain that they welcome anyone who is
2 at risk of going back to prison to come in and check
3 themselves in?

4 A. Where is that?

5 Q. Same paragraph as the address, "any woman at risk of
6 returning to prison is welcome at Hannah's House, and they are
7 continuously encouraged to come inside to turn their lives
8 around."

9 A. I see that.

10 Q. Not a place for felons exclusively, correct?

11 A. Sure. I agree.

12 Q. Let's do 2123d. Power of Google. This is a street
13 level view of what comes up as Hannah's House. It's a little
14 hard to read on the printout, but the door says, "Hannah's
15 Heart House." Do you see that?

16 A. No.

17 Q. It's hard to read. But fair enough to say that you have
18 not -- I think that probably made it worse, Kelby.

19 Fair enough just to say that you have not Googled
20 Hannah's House and the address and looked at the front door?

21 A. You are correct.

22 Q. And I'll just say for the record that the address listed
23 here from Google, as it says address of the approximate,
24 Google put you right next door in their flower garden, so I
25 scrolled over to find Hannah's House itself. Just for the

1 record.

2 A. Sounds like an imperfect undertaking.

3 Q. Fair enough, and we'll concede that point.

4 2123c. Did you give that one to me already? Yes, you
5 did.

6 This is a printout of the actual map from Google for
7 Hannah's House. It's even labelled very nicely by Google
8 there for us. And this not an advertisement for Google.
9 Hannah's House is located in Philadelphia, correct?

10 A. Yes.

11 Q. And with buildings around it, correct?

12 A. I assume so. That's what it looks like.

13 Q. Even if you look over here, this is a pretty big
14 apartment building. Lots of people, other residential areas
15 all around Hannah's House, right?

16 A. Yes.

17 Q. When you drew your circle, anyone living in that area
18 who is among the 511,000 would have been captured?

19 A. The circle is only 500 feet, so I wouldn't say anyone in
20 the area.

21 Q. Well --

22 A. Anyone within 500 feet.

23 Q. That would take us -- do you agree, probably this whole
24 block here, maybe a little bit of this area as well?

25 A. I wouldn't do this by pointer. I would get a scale and

1 I would actually figure it out. So, I -- there's no
2 indication in the scale of this map. This is a difficult
3 question. I can't tell you where 500 feet is on this map, but
4 I bet what are you trying to get at doesn't need me to do
5 that.

6 Q. Right. There are only five people who actually had the
7 identical address at Hannah's House among the 511,000; is that
8 right?

9 A. I don't know roughly.

10 Q. And seven people who lived on the same road, but not at
11 the same place.

12 A. I don't know the number.

13 MR. RUBIN: Give me just one moment.

14 BY MR. RUBIN:

15 Q. How much has the Commonwealth had to pay for your work
16 in this case?

17 A. So far, nothing.

18 Q. How much are you planning on charging them?

19 A. Whatever the people that do my invoices come up with.

20 Q. Do you have an estimate? You're a statistician
21 mathematician. You know how many hours, right?

22 A. I'm not an accountant.

23 Q. How many hours --

24 A. I don't have an estimate. I can tell you that I have
25 had several people working hard on deciphering the Siskin

1 work, and working on these very large databases fairly
2 constantly from the 1st of July, so it's going to add up; but
3 I couldn't tell you exactly how much.

4 Q. You charge 700 an hour?

5 A. I do.

6 Q. How much do your people charge?

7 A. Less.

8 Q. How much less?

9 A. Different ones charge different amounts.

10 Q. Can you give us a range?

11 A. 2, 3, 4, 5.

12 Q. Can you give us an estimate of how many actual hours
13 they have work on this?

14 A. Not reliably, I cannot. I gave you a good impression
15 here, they have been working hard, sometimes all night long,
16 for a few days. So, there have been quite a few hours, but I
17 haven't -- I wouldn't want to make an estimate and then turn
18 out for it to be wrong.

19 Q. Have you had to pull any all-nighters?

20 A. Three of them did, and I went home and got some sleep.

21 Q. Good to be the boss. How many hours have you put in?

22 A. I don't have that with me. I write them down on cards
23 during the course of the day and I leave them by my computer
24 and I add them up at the end of the month.

25 Q. Fair enough. Can you give us a ballpark for yourself?

1 A. Let me think for a minute. Ballpark, I could do that.

2 It may be four days. Four eight-hour days.

3 Q. Four eight-hour days?

4 A. Something like that.

5 Now, when I actually go add it up, if it doesn't add up
6 to exactly that, I hope that counsel will be --

7 MR. KEATING: That's the ceiling right there.

8 THE WITNESS: That's what I think it is.

9 BY MR. RUBIN:

10 Q. Of your 1,294 folks living at a correctional center, did
11 you look to find that 189 were living at the exact address?

12 A. I have looked for exact address matches, but I don't
13 remember the counts. Some of them are exactly there, some of
14 them are just within 500 feet.

15 Q. And there are 565 living on the same road but not at the
16 same address?

17 A. I don't know those numbers.

18 Q. And 729 not even living on the same road?

19 A. I'm not sure about those numbers.

20 MR. RUBIN: Those are our questions at this
21 time, Your Honor. Give me a moment to clean up the mess that
22 I have made.

23 MS. HICKOK: May I inquire, Your Honor?

24 THE COURT: Certainly.

25 MS. HICKOK: Thank you very much.

REDIRECT EXAMINATION

1
2 BY MS. HICKOK:
3 Q. Good afternoon, Dr. Wecker.
4 A. Good afternoon.
5 Q. You were asked a number of questions about people moving
6 in and out of state; do you recall those questions?
7 A. Yes.
8 Q. Now, if a person moves into the state, and decides to
9 become a resident, are there steps that that person would be
10 expected to take in -- as a part of establishing residency?
11 A. I'm sure of it, yes.
12 Q. And if a person decided that they were going to vote,
13 would that person have to apply to register to vote at the new
14 address?
15 A. I'm not holding myself out as an expert in these matters
16 but these things seem obvious to a citizen of any state, that
17 the answer is yes.
18 Q. And so, the fact that there might be other people who
19 are moving into the state that have not yet showed up on the
20 SURE database or on the PennDOT database doesn't mean that
21 those people don't exist; it just means that those people
22 are -- may not be captured in the snapshot that you saw; is
23 that correct?
24 A. That's true.
25 Q. So, if they're not captured in the databases at all, the

1 fact that people are moving into the state wouldn't impact
2 your conclusions that you needed to assess the impact of
3 people moving out; would it?

4 A. That's correct. You need to look at the people moving
5 out.

6 Q. Thank you. Now, there were a number of questions about
7 colleges and universities, and you described one way in which
8 a person could begin to look at what Dr. Siskin did in terms
9 of his identification of names and addresses, and determining
10 whether his 511,000 were capturing college students.

11 You were asked a question about the 835,000 students
12 that are in Pennsylvania. If you were starting from scratch,
13 would another way to assess the amount of students who had
14 access to college ID be to start with that 835,000 number and
15 do an assessment on that?

16 A. Yes. I think you could do that. You could go to
17 each -- there's not that many universities. You could go to
18 each and every one of them and get them to describe their
19 policies and practices and enrollments, and you could add
20 things up that way.

21 But then matching what you find there to Dr. Siskin is
22 going to be difficult.

23 Q. So, the reason that you undertook it in the way that you
24 did is because you were trying to analyze the types of people
25 that he had put into his mismatch category?

1 A. Yes. I'm trying to link directly to the Siskin work,
2 and working off his list of 511,000, and finding college
3 students' records on that list.

4 If I went to a university independently, then I may
5 learn a lot about that university, but I don't know how it
6 pertains to his list, the Siskin list. That would be -- so, I
7 would be back in the box.

8 Q. And your point in identifying the work that you did was
9 simply to point out to the Court that this is a
10 non-insignificant issue that he should have and did not look
11 at; is that correct?

12 A. Yes, but two things; that is, these issues are not --
13 are significant. The numbers are large enough that you can't
14 just ignore them; but I wanted to go further than that, and I
15 wanted to show that this is not an impossible undertaking, at
16 least in some measure, not impossible.

17 There's things that can be done to advance this
18 investigation; and so, yes, my methods were not terribly
19 refined, but they were finding felons and college students and
20 other things that I was looking for. I was finding them in
21 abundance, and they weren't that bad.

22 Q. Following up on what you found. In Carlisle where the
23 Army War College is, are you familiar with that War College?

24 A. No.

25 Q. And if I told you that that War College is where

1 lieutenants and colonels go to be trained before they become
2 generals, would it then surprise you that some of those people
3 may be older than maybe the general rank and file military?

4 A. I could see that that's true.

5 Q. You also had been asked some questions about the
6 out-of-state card driver's license exchange program; do you
7 recall those questions?

8 A. Yes, I do.

9 Q. You had testified to the fact that the out-of-state
10 exchange program is something that is discretionary. Is it
11 your understanding that there is no federal law that requires
12 driver's licenses to be exchanged state to state.

13 MR. RUBIN: Objection, Your Honor. She could
14 ask whether the witness has an understanding. I don't think
15 the scenario has any foundation to testify about.

16 BY MS. HICKOK:

17 Q. Are you aware whether there is a federal law that
18 requires it?

19 A. I'm not.

20 Q. And you had said that you have found records going all
21 the way back to the -- that have expired licenses dating all
22 the way back to the 1970s. Do you have any awareness whether
23 in the 1970s there was a policy of exchanging licenses?

24 A. I don't know.

25 Q. Now, you were asked a series of questions about the

1 community correctional centers; is that correct?

2 A. Yes.

3 Q. And if we could pull up -- I don't know if we are
4 capable of pulling up. I guess we are not capable of pulling
5 up. If you could look at the exhibit that you were given,
6 which is Exhibit 2124.

7 A. I have it.

8 Q. If you could look at page two of that exhibit.

9 A. Yes.

10 Q. And about two-thirds of the way down the page, there's a
11 paragraph. Could you read that paragraph?

12 A. The one under mission or the one understood vision?

13 Q. The one that says -- starts with halfway house?

14 A. Well, I'm not on your page. What page is this?

15 Q. Sorry. It's Google page two. You were at that page
16 earlier.

17 A. Okay.

18 Q. About two-thirds of the way down the page. Could you
19 read that paragraph that starts "halfway house"?

20 MR. RUBIN: I'm sorry. I'm not clear where
21 you are.

22 MS. HICKOK: Sorry. Google, page two.

23 MR. RUBIN: Thank you. Perfect. Thank you
24 very much.

25 MS. HICKOK: You were there earlier.

1 BY MS. HICKOK:

2 Q. Go ahead.

3 A. "Our halfway house is a community based residential
4 treatment and rehabilitation facility. All of our clinical
5 and recovery support and case management services are
6 available to our halfway house residents. We emphasize a
7 family atmosphere and encourage independent growth and
8 responsible community living. Our residents continue their
9 individual journey of recovery in a live-in/work-out
10 environment with the support and structure to provide an
11 opportunity for success."

12 Q. Okay. Is it your understanding that a halfway house is
13 associated with the correctional system?

14 A. Yes.

15 Q. You were also asked a question about Hannah's House and
16 you were asked to read into the record a sentence that was
17 talking about people returning to prison; do you recall that?

18 A. No.

19 Q. I'm not -- if a person is going to check themselves into
20 a facility to avoid returning to prison, is it possible that
21 that person is on parole?

22 A. Possible.

23 MR. RUBIN: Objection, Your Honor. Calls for
24 speculation.

25 MS. HICKOK: Simply asked for a possibility.

1 THE COURT: Sustained.

2 BY MS. HICKOK:

3 Q. When you look at the numbers that you put together, as
4 you were assessing Dr. Siskin's report, were those numbers in
5 any way meant to capture the universe of persons on his
6 511,000 who needed further investigation, but were not further
7 investigated?

8 A. No, they weren't intended that way, and they surely do
9 not capture the universe. There were merely examples
10 illustrating the points that I was making that there are
11 people here that need further investigation.

12 Q. And if he were to undertake the further investigation,
13 would the work you did be only an initial step toward that?

14 A. Yes.

15 Q. Okay. You were also asked a series of questions about
16 documents that you said that you had not seen that were
17 talking about whether at a given point in time any of the
18 facilities that were eligible to issue identification were in
19 fact issuing identification.

20 Now, does the fact that a facility that might not have
21 issued identification in 2011 tell you anything about whether
22 that facility is issuing identification in 2013?

23 A. It doesn't answer that question, no. It might start
24 issuing.

25 Q. And if a facility does not issue identification now,

1 does that mean that if its residents or the people that are
2 associated with that facility wanted it to issue
3 identification, that it could not?

4 MR. RUBIN: Objection, Your Honor. We're now
5 into the area of sheer speculation.

6 THE COURT: Come you answer that question?

7 THE WITNESS: That's an easy question to
8 answer, Your Honor. I certainly would have to agree that they
9 could start issuing.

10 MS. HICKOK: Thank you.

11 That's all I have, Your Honor.

12 MR. RUBIN: Your Honor, pursuant to -- we
13 don't have any more questions for Dr. Wecker.

14 MS. HICKOK: Your Honor, at this time, then, I
15 would move into evidence Exhibit 224a, b, c and d.

16 MR. RUBIN: Your Honor, we would object to
17 that under Rule 207.1b, which allows -- that says a party is
18 not required to raise the issue of the admissibility of
19 testimony of an expert witness prior to trial.

20 We believe the testimony of Dr. Wecker and his
21 words were what -- describing what he did as a crude method, a
22 rough first cut, not as good a method, I'm not sure what's
23 smart to do -- it is -- how smart -- I'm not sure how smart
24 it, how there are more refined ways; and just most recently,
25 not terribly refined ways of finding college students and

1 felons.

2 We don't believe that comes close to
3 satisfying the rules for admissibility of expert testimony, so
4 we move to strike and preclude that testimony.

5 THE COURT: Goes to its weight. I must
6 disagree with you.

7 MR. RUBIN: Thank you, Your Honor. May I have
8 an exception?

9 THE COURT: Sure.

10 MR. RUBIN: Thank you.

11 MS. HICKOK: Your Honor, may I release this
12 witness?

13 THE COURT: You want to stay in the box,
14 Mr. Wecker, or do you want to --

15 THE WITNESS: Thank you, Your Honor, but I
16 will be happy to be excused.

17 THE COURT: Very good.

18 MR. RUBIN: Your Honor, we as well would move
19 into evidence, since you're admitting the testimony, and we do
20 so reserving our rights, the maps that we presented, which is
21 Exhibit 2114 along with 2114a, 2113 --

22 MS. HICKOK: Your Honor --

23 MR. RUBIN: 2113a, 2118, 2119.

24 MS. HICKOK: Your Honor, those documents were
25 not produced to us ahead of time; and they have not been

1 verified. There's no foundation to say that those documents
2 are indicative of anything.

3 MR. RUBIN: Your Honor, they were --

4 THE COURT: How could they not be good?

5 MS. HICKOK: Well, they have circles on
6 them that --

7 THE COURT: Everyone relies on Google.

8 MS. HICKOK: Well, but they have said that
9 they took Google and then superimposed circles and we don't --

10 MR. KEATING: No personal -- the only person
11 who authenticated them was Mr. Rubin. That's part of the
12 problem.

13 THE COURT: Well, your witness went along with
14 them, and I'm going to permit them. Okay?

15 MR. KEATING: Okay.

16 THE COURT: He didn't have any problems with
17 it.

18 MS. HICKOK: Okay.

19 THE COURT: Okay. We'll take testimony for 50
20 minutes if you want.

21 MS. HICKOK: Thank you, Your Honor.

22 We call Mr. Marks to the stand.

23 I'm sorry, Your Honor, I may have
24 misunderstood. What was your question to me?

25 THE COURT: I said we'll take testimony until

1 3:00.

2 MS. HICKOK: That's what I thought you said.
3 Thank you, Your Honor.

4 THE BAILIFF: Mr. Marks, you are still under
5 oath.

6 THE WITNESS: Can I do a little housecleaning
7 here?

8 MS. HICKOK: Please.

9 THE WITNESS: I will try to do better with the
10 microphone.

11 JONATHAN MARKS, a witness, having previously
12 been duly sworn, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. HICKOK:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Could you signal to me when I have only five minutes
18 left. Thank you.

19 There has been a lot of testimony flying around over the
20 course of the past several days, and I'm hoping to give some
21 of context; and so, I would like to place your role and the
22 role of the Department of State in a larger perspective for a
23 few minutes.

24 There has been reference to BCEL. Can you tell us what
25 BCEL stands for?

1 A. Sure, the acronym stands for the Bureau of Commissions,
2 Elections and Legislation.

3 Q. And your position is what?

4 A. I'm the Commissioner of the Bureau of Commissions,
5 Elections and Legislation.

6 Q. Okay.

7 A. Bureau director, if that helps.

8 Q. That helps. And what areas do you have responsibility
9 for?

10 A. All of the areas within the umbrella of the Commission
11 of Elections and Legislation, includes obviously elections,
12 voter registration. The division of the State Uniform
13 Registry -- SURE, we'll call it that. I think we have
14 probably established by now what SURE stands for.

15 Elections, voter registration; but also I have the
16 Division of Notaries. We effectively license all of the
17 notaries throughout the Commonwealth.

18 We record legislation that is passed by the General
19 Assembly and signed by the Governor. And there are various
20 other miscellaneous things that we store, including interstate
21 compacts that are entered into by different states.

22 So, we go far beyond elections.

23 Q. And in terms of elections, do you have responsibility
24 for lobbyist disclosure and campaign finance?

25 A. We do, and I apologize if I failed to mention that.

1 Q. That's fine.

2 A. I'm sure my Division Chief will be upset.

3 Q. Now, there has been some testimony about polling places.

4 Do we have R152?

5 Mr. Marks, do you recognize this document?

6 A. I do. It appears to be a complete list of the

7 Commonwealth's polling locations.

8 Q. So, this would be where all of those polling places are
9 that we have been discussing over the past couple of weeks?

10 A. It would, yes.

11 Q. And how do those polling places get established?

12 A. Those -- the polling places are established within the
13 confines of the Pennsylvania Election Code by the various
14 county boards of elections.

15 Q. And does the Pennsylvania Election Code have any
16 provisions that address how polling places are established?

17 A. It does, yes.

18 Q. And what does it say about the priorities in making
19 polling places?

20 A. In terms of selecting polling place?

21 Q. Mm-hmm.

22 A. The selection of polling places is prioritized; and as I
23 recall the Election Code, starts with municipal buildings or
24 public buildings within the municipality; and if a suitable
25 one is not available within the precinct or within the

1 election district, it even allows for the use of a municipal
2 or public building in an adjacent election district.

3 It also talks about -- I think the term may be used
4 schoolhouses or schools, and then it kind of works its way
5 down the list to, I guess, what I would term as private
6 establishments.

7 Q. Now, when you said suitable, what kinds of things go
8 into suitability?

9 A. Suitability would probably, for me, would encompass
10 having the -- having the wherewithal to host a polling
11 location. I think of actually my own borough. We do not use
12 the municipal building within my borough because it's a very
13 small, and it's one room, literally, with another small room
14 attached to it. We're a very small borough, and it only has
15 one entrance. That same entrance is the exit. So, it's not
16 really suitable for voting. So, we use the fire hall which is
17 much more suitable.

18 Larger townships probably, based on my experience, are a
19 lot different. They have multiple entrances. They have large
20 rooms that are suitable. So, I don't know if that answers
21 your question, but that's one part of it.

22 The other part, there are federal laws that have to come
23 into consideration as well, including the ADA, the Americans
24 with Disabilities Act. Polling places have to be accessible.
25 So, that plays a role as well.

1 But within the meaning of the Election Code, suitability
2 really is -- it appears that the General Assembly, based on
3 the language in the Election Code, was driving county boards
4 of elections more towards public buildings and municipal
5 buildings and then working their way down from there.

6 Q. Now, in a rural area, might there be a single -- like a
7 single polling place within a county or within a state --
8 within a township, sorry, or borough, whatever the --

9 A. Within a municipality?

10 Q. Yes.

11 A. Sure. Yes.

12 Q. And would it draw from the rural area around it?

13 A. It would, yes.

14 Q. So, is it possible that people might have to drive some
15 distance in order to get to their polling place?

16 A. It is possible, yes.

17 Q. Do you know for a fact whether that's true about some of
18 the rural counties?

19 A. I do know for a fact that that's true, and -- well, I
20 could use myself, again, as an example. When I lived in
21 Shermans Dale, Perry County, I believe had a mile-and-a-half
22 to two-mile drive to my polling place. It wasn't within
23 walking distance.

24 There are other polling locations, especially up in the
25 top of the state, where you may have to drive several miles.

1 Five, six or seven miles to get to your polling location.

2 Q. Now, if you -- you work here in Harrisburg, but you
3 don't live in Harrisburg. If you decide on Election Day that
4 it's more convenient to vote in Harrisburg because that's
5 where you work, can you do that?

6 A. No.

7 Q. Why not?

8 A. Well, I -- I'm not qualified first of all. I'm not a
9 qualified, registered voter in Dauphin County; and secondly,
10 I'm not assigned to any polling location within the City of
11 Harrisburg.

12 Q. So, the only place that you can vote is at the polling
13 place to which you are assigned within the election district
14 in which you are qualified; is that correct?

15 A. Correct.

16 Q. Now, you had mentioned the counties. Do the counties
17 have a role in elections?

18 A. Yes. They have a very substantial role in elections.

19 Q. What are some of the responsibilities of the counties?

20 A. Aside from selecting polling locations, they are also
21 responsible for training local election officials. They're
22 responsible for voting systems that are deployed in or
23 distributed to polling locations.

24 Basically everything that happens in the local election
25 districts and the polling locations is done by the county

1 boards of election.

2 I mentioned training election officials, and that is --
3 though election officials are primarily elected, some of them
4 are appointed, but they're primarily elected officials. The
5 counties are still required by the Election Code to train
6 them.

7 Q. Are the counties the units that are responsible for
8 actually completing the registration of voters?

9 A. Yes, the voter registrar in each county is responsible
10 for that.

11 Q. And when a person is seeking to be a registered voter,
12 they make application; is that correct?

13 A. Yes, that is correct.

14 Q. And I actually -- I think we have a voter registration
15 application form? It's Exhibit 129.

16 Mr. Marks, I guess for right now while they're getting
17 the copies of it, can you look up on the screen?

18 A. Sure.

19 Q. Does it look like a voter registration form?

20 A. Yes. It does. This is the voter registration mail
21 application, the official form printed by the Department of
22 State.

23 Q. And is this a form that we have been calling the VRMA?

24 A. It is, yes.

25 Q. And is there also an electronic option for people to

1 apply to vote?

2 A. There is an electronic option for people to apply to
3 vote. If you are referring to something that's not purely
4 electronically, that would be the Motor Voter process.

5 Q. And the Motor Voter process is accessible from what
6 locations?

7 A. The Department of Transportation locations.

8 Q. Now, on this registration form, if we can concentrate on
9 the middle section for a moment.

10 A. Sure.

11 Q. I see that there is a map. Can you explain that to me?

12 A. The map that's -- that's enclosed in that text box is,
13 in the event that you're unable to provide a street address,
14 you can identify where you live within the -- within the
15 county by using this map.

16 Q. And when a person applies for a Department of State ID
17 card, can they do the same thing?

18 A. Yes.

19 Q. On the voter registration application, are there data on
20 here that are required by federal law?

21 A. There is data on here that is required by federal law.

22 Q. Can you tell me which of those things are required by
23 federal law?

24 A. Aside from the citizenship question and the -- you know,
25 the citizenship question, the -- in box No. 3, the driver's

1 license, or if you do not have a driver's license, the last
2 four digits of the Social Security number.

3 Q. Okay. So, every person who registers to vote is
4 required to provide those things with their voter registration
5 application; is that correct?

6 A. Correct. One or the other.

7 Q. One or the other. Okay. And that's a requirement of
8 federal law?

9 A. It is. The Help America Vote Act requires that those
10 numbers be collected.

11 Q. And that has been in place since 2002 or am I
12 misremembering?

13 A. I believe I testified before, and I -- I always get them
14 mixed up, some of these requirements went into effect in 2004,
15 some in 2006.

16 I believe this requirement went into effect in January
17 of 2006.

18 Q. Okay. Thank you. Now, you mentioned that there were
19 other federal statutes. Can you tell us about the VAEH.

20 A. The Voting Accessibility for the Elderly and
21 Handicapped, yes. That is a federal law that's intended to
22 protect voters who are 65 years or older, or are disabled, to
23 protect their voting rights.

24 Q. And does it have any implications for the selection of
25 polling place?

1 A. It does have implications on the selection of polling
2 places, that along with the ADA; and counties have to provide
3 either accessible polling place with an accessible voting
4 machine as well.

5 Or they have to provide an alternative means of voting
6 for those individuals.

7 Q. And do you characterize those alternative means as
8 alternate ballots?

9 A. Yes, that is the term.

10 Q. And is an alternate ballot similar to an absentee ballot
11 in some ways?

12 A. It is similar to an absentee ballot in a lot of ways.

13 Q. Does it -- does the alternative ballot come under the
14 identification requirements of Act 18?

15 A. It does not.

16 Q. Okay. I believe there's been a little bit of testimony
17 about UOCAVA, but I don't know that anybody explained that.
18 Can you tell us what UOCAVA is?

19 A. UOCAVA -- and I'll start, if I don't mess it up with the
20 meaning of the acronym. It's the Uniformed Overseas Civilian
21 Absentee Voter Act.

22 Q. Okay. Is that also federal?

23 A. It is a federal law that is intended to protect the
24 voting rights of military voters and their spouses and
25 dependents as well as overseas civilian voters.

1 Q. Is there a way that SURE identifies ballots that have
2 been requested or applied for under UOCAVA?

3 A. Yes, applications for absentee ballots and absentee
4 ballot labels that are generated through the system would be
5 tagged with either an M-I-L for military, or O, I believe it's
6 O-V or O-C-V for overseas civilian voter.

7 Q. Are there also state statutes that impact the voting
8 rights of military voters?

9 A. There are, yes.

10 Q. And is one of those that we talked about a statute
11 called UMOVA? Do you know what I'm talking about?

12 A. I do.

13 Q. And I believe that's 25 P.S. 3502, is that --

14 A. Yeah, I believe that's correct.

15 Q. What is UMOVA designed to add to the UOCAVA protections?

16 A. Well, it's a state law that augments the UOCAVA
17 protections, would be the way I would characterize it.

18 The chief difference is that it includes in the group of
19 covered voters hospitalized or bedridden veterans.

20 Q. Okay. Thank you. And we were a moment ago looking at
21 the voter registration form. Is the voter registration form a
22 form -- that map that we were looking at, is that a way that a
23 homeless person might be able to designate where they could be
24 found?

25 A. Yes. That's true.

1 Q. And is that given credence by the counties?

2 A. It is, yes.

3 Q. Does Act 18 have any provisions that apply to indigent
4 persons?

5 A. Yes. There is a provision that provides for an
6 affirmation that an indigent person could complete, if they're
7 unable to obtain an ID, due to costs associated with obtaining
8 ID.

9 Q. And I believe that Act 18 actually has two indigency
10 provisions; one that talks about an affirmation at the time,
11 and another one that contemplates that a person will affirm
12 that they are the person who actually showed up at the polls,
13 in different sections.

14 How have the counties been instructed to apply that?

15 A. We have instructed the counties to apply that
16 essentially at the polling place. Instead of making an
17 individual deliver after the fact these affirmations to the
18 county board of elections, we have instructed the counties to
19 make them available at the polling location in the event that
20 an individual needs to complete one.

21 And there are instructions at counties to train their
22 poll workers to allow that affirmation to be included inside
23 the provisional ballot, the outer envelope for the provisional
24 ballots, and marked in a special way to -- so that they can
25 identify which ones include those affirmations.

1 Q. And in terms of the indigency requirements, have you
2 given any guidance to the counties as to those indigency
3 requirements?

4 A. We have not -- if you're asking have we defined what the
5 term indigence means?

6 Q. Well, that might be one thing. I mean, you may have
7 given --

8 A. We have given guidance on the treatment of those
9 affirmations. We accept -- to essentially accept them at face
10 value. We have not defined for them what indigence means.

11 Q. So, you have instructed the counties to treat them at
12 face value?

13 A. That's correct, yes.

14 Q. If we could do R 141. Actually, if we could do R 78 at
15 the same time. Mr. Marks, looking first at the -- what's been
16 marked as R 78, which is the poll worker guide.

17 A. Yes.

18 Q. Is that a document that was prepared either by you or
19 under your direction?

20 A. It is, yes.

21 Q. And what is the purpose of this poll worker guide?

22 A. This poll worker guide is intended to provide relevant
23 information directly to the local election officials regarding
24 the requirements of Act 18.

25 Q. And was this circulated to the poll workers?

1 A. It was. It was sent down by mail to the poll workers.
2 We collected a list of poll workers from the county boards of
3 elections and then distributed it directly. We also
4 distributed it to the county boards of elections for their use
5 and training.

6 Q. Now, you had spoken earlier about working with election
7 directors. Was it typical to provide information directly to
8 poll workers?

9 A. No. It's not typical. In fact, it's the first time in
10 my memory that the Department has directly corresponded with
11 poll workers.

12 Q. Why did you do that?

13 A. I think we did it because we wanted to insure that the
14 message got out to each individual poll worker throughout the
15 Commonwealth that we certainly trusted that the county boards
16 of elections would do an effective job training. We wanted
17 them to have materials that they could review prior to
18 Election Day, and even prior to training, to familiarize
19 themselves with the requirements.

20 Q. Okay. Now, were there requirements for proof of
21 identification in effect prior to Act 18?

22 A. There were, yes.

23 Q. And what were those requirements?

24 A. Those requirements were ID requirements for voters
25 who -- they were often referred to as first-time voters, but

1 they're not necessarily voters who are voting for the first
2 time. They're voters who are voting for the first time in a
3 precinct or a polling location.

4 Q. Now, there was testimony here earlier about a person who
5 has recently moved, but whose registration is still at another
6 location. How -- what -- what would happen if the person
7 showed up at one or the other precincts and had not changed
8 the address on their voter registration?

9 A. Well, if the individual showed up at their polling place
10 at their new address, they would likely not appear on the poll
11 book, if they haven't updated their address, in which case
12 they would certainly have to fill out a provisional ballot in
13 order to vote.

14 If they showed up at their old polling place or the
15 polling place in the old location, there is a failsafe
16 provision that would allow them to vote one more time at their
17 old polling location, provided that they completed an
18 affirmation updating their address at the time of voting.

19 Q. Okay. And if a person had filled out a change of
20 address on their registration, and so was on the poll book and
21 then showed up for the first time, that's the person who would
22 have had to show a proof of identification?

23 A. That's correct.

24 Q. Is that correct?

25 A. And if they updated their address and showed up at the

1 new polling place, they would have to provide proof of
2 identification first time voting there.

3 Q. And if they had to provide that proof of identification,
4 do you know what sorts of identification were specified?

5 A. There's a list of both photo identifications and
6 non-photo IDs provided for the Election Code, including
7 driver's license, IDs issued by the Federal Government,
8 non-photo IDs that would include utility bill or voter
9 registration card.

10 Q. If you could turn with me to the exhibit in front of
11 you, which is Respondents 141.

12 Do you recognize this document, Mr. Marks?

13 A. Yes, this is one of our frequently asked question guides
14 that were developed specifically to address questions about
15 the Act 18 requirements.

16 Q. And is this one specifically directed to providing
17 information about homeless voters?

18 A. It is, yes.

19 Q. And if you could look at the highlighted section here.
20 What does it say?

21 A. "If a voter cannot afford to obtain an acceptable ID,
22 including the free PennDOT photo ID discussed below without
23 the payment of a fee, for example, the cost of transportation
24 to a PennDOT driver's license center, the voter can vote
25 provisionally at the polling place and sign an affirmation to

1 this effect."

2 Q. And would that include a person who didn't readily have
3 access to transportation and would have to undertake extreme
4 efforts at a high cost in order to get to PennDOT?

5 A. Yes.

6 Q. Thank you. Now, you were talking about Social Security,
7 the last four digits of the Social Security number, and also
8 the driver's license number. Why does the voter registration
9 application ask for those data?

10 A. Well, aside from the fact that it's a requirement of
11 federal and state law, it asks for that information so, so
12 that those numbers can be checked against the PennDOT database
13 and the federal Social Security Administration database as a
14 means of verifying the identity of an applicant.

15 Q. And is that referred to sometimes as the HAVA
16 verification process?

17 A. It is. It's a term of art that we use. HAVA stands for
18 the Help America Vote Act, verification process describes
19 exactly what's being done.

20 Q. And is that a verification process that each county is
21 required to undertake for each new person applying to vote --
22 applying to register? Sorry.

23 A. It is, yes.

24 Q. And what happens if a person -- if a person at the
25 county processes a HAVA verification and does not find a

1 match?

2 A. If the county does not find a match when they do the
3 HAVA verification, they would send a notification or otherwise
4 contact the applicant, identify the problem -- in this case,
5 that they could not find a match -- and they would place those
6 applications in the pending status.

7 Q. Okay. And have there been recent developments to try to
8 lessen the time spent in pending status?

9 A. There have, yes. We have found over the years that in
10 many cases, applications are left in pending status for months
11 and a few extreme cases for years.

12 So, we have recently inserted through the SURE system
13 functionality that basically puts those applications on a
14 clock. The counties would still -- and it, and it
15 automatically generates correspondence that the counties would
16 send to the voter.

17 Certainly, we can't physically make them send it out in
18 the mail, but we can create the notification that would go out
19 to the voter. If the county does not make a determination
20 after investigation, whether it's through information they
21 collected from the notice or otherwise, the system then will
22 place those -- will effectively reject those applications.

23 Q. The absentee ballots, there was testimony earlier that
24 it -- that the -- that under Act 18, either the last four
25 digits of the Social Security number or the driver's license

1 number need to be included on absentee ballots.

2 Is that the same requirement that is the requirement for
3 voter registration forms?

4 A. It's not -- it's very similar. It's not exactly the
5 same requirement. It's a requirement of Act 18; that is, that
6 is effectively the identification requirement for absentee
7 voters to provide one of those numbers. The process for
8 verifying the information is the same.

9 Q. Now, there's been a lot of discussion about the -- the
10 way in which PennDOT took the data from SURE, and filled in
11 information from the PennDOT database last summer, which
12 sometimes has been referred to as the match.

13 Was that in part so that you could have as much as
14 possible the SSN last four digits and the driver's licenses,
15 because of all of these verification requirements?

16 A. That's correct. That was the primary reason for doing
17 the comparison of the two databases, was to obtain information
18 regarding driver's license numbers and Social Security numbers
19 so that we could backfill or fill in the gaps in the SURE
20 system, so that those numbers would be on the voter records at
21 the time verification of those numbers was done as part of
22 the, the absentee balloting requirements under Act 18.

23 Q. And while we're talking about the SURE database, I think
24 you testified before that the SURE database began in 2006; am
25 I remembering that correctly?

1 A. It actually -- it took several years to finally be
2 deployed in all counties. It was deployed, I think, over the
3 course of almost three years. It started in 2003 at some
4 time; and in December of 2005, the last county, Philadelphia
5 County, went onto the statewide system.

6 Q. When you say that each county was deploying separately,
7 did they bring legacy data and ways of looking at data and
8 recording data into SURE?

9 A. Yes. The data that was maintained in each county's
10 individual system was brought over, and legacy is the term
11 that we have used before. Legacy systems.

12 Each county obviously had their own voter registration
13 system prior to the centralized system, but those voter
14 records that they maintained in those systems had to be
15 brought into the SURE system.

16 Everything that happened at this point forward is done
17 centrally, but we did have to account for bringing in the data
18 that was already on file with those various counties.

19 Q. So, because of that, some of the records in SURE might
20 not be the same as other records, depending upon how the
21 counties were maintaining them?

22 A. Right. It did introduce some, some anomalies due
23 primarily to how each individual county maintained its voter
24 registration records.

25 Q. And you have looked at records in SURE, have you not?

1 A. I have, yes.

2 Q. And have you seen any very old records?

3 A. Yes. Over the years I have.

4 Q. What are we talking about, the '70s, the '60s?

5 A. You're talking --

6 Q. The, the --

7 A. -- in terms of?

8 Q. Like how long a person has been registered to vote, that
9 that record has been brought into SURE?

10 A. You're talking about -- we have records going back into
11 the '50s and into the '40s and even prior to that. Obviously,
12 the amount of records that fits into each of those categories
13 dwindles considerably as you move further back; but there are
14 certainly many records that have been on the SURE system for
15 quite some time, or have been.

16 Q. On the counties' legacy systems which then got brought
17 over to the SURE system?

18 A. Yes.

19 Q. Thank you. And I believe that there was -- a person
20 that was on the exceptions spreadsheet or the SharePoint
21 report that actually took quite a while and a lot of sleuthing
22 to research that you and I have discussed, and if we can talk
23 about her only with first name.

24 There has been mention of a person who had been
25 registered since 1944. Do you recall that?

1 A. I do, yes.

2 Q. And did that person take a while to determine whether
3 that person had been registered since 1944?

4 A. It did, yes.

5 Q. And why did it take time to verify?

6 A. The reason in that particular case is the first name on
7 the voter record was different from the first name that was
8 provided on the application for the DOS ID.

9 Q. And in what way was it different? Was it just a
10 different spelling?

11 A. No, it was actually a different gender name.

12 Q. Well, I mean, can you --

13 A. It was Helen versus Mrs. Carl.

14 Q. So, when she had registered to vote back in 1944, she
15 had actually used her husband's name and Mrs.; but when she
16 filled out her application for a DOS ID, it being many decades
17 since, she used her actual first name. Is that correct?

18 A. She did, yes.

19 Q. And were you eventually able to resolve that?

20 A. We were, yes.

21 Q. And did that, and issues like it, require going either
22 to the voter or to the counties to find those resolutions?

23 A. It did. I don't recall if that specific one did, but
24 there have been instances where we needed to contact the
25 county or certainly the voter, if contact information was

1 provided.

2 Q. Thank you. How am I doing time-wise? I want to be
3 respectful.

4 Now, when the Motor Voter, so called, electronic
5 ballot -- electronic applications are generated, how are those
6 transmitted and to whom are they transmitted?

7 A. The Motor Voter applications are transmitted from
8 PennDOT to the Department of State, and then we distribute
9 them. We parse them out to each individual counties, and then
10 we distribute them as electronic applications through the SURE
11 system, and that -- they literally show up, for lack of a
12 better term, in the county's in-box.

13 When they log in to SURE, they see a count of how many
14 of those are in their work flow waiting for them to be
15 processed.

16 Q. And how about the paper VRMA forms?

17 A. The paper VRMA forms, the large number of them are sent
18 directly to the county boards of elections. Some are sent to
19 the Department, and then the Department forwards them on to
20 the county boards of elections for processing.

21 Q. And in your experience, do counties process one faster
22 than the other?

23 A. Yeah. In my experience, then, the counties process the
24 electronic applications from PennDOT or put them together.

25 Q. Now, there has been testimony about voters who have been

1 active or inactive or cancelled. Can you tell me how those
2 voters are treated in SURE?

3 A. Well, they're treated -- active voters, inactive voters,
4 cancelled voters are treated differently in a variety of ways.

5 Obviously, cancelled voters are -- we have two base
6 groups of voters, valid voters and invalid voters.

7 Valid voters would include active voters and inactive
8 voters. Those are individuals who appear on the poll books.
9 If they vote, if they show up to vote, they're able to vote,
10 provided that they meet the other requirements.

11 Cancelled voters are invalid voters. Those are records
12 that have been cancelled for one reason or another. The
13 individual has been moved out of the county or moved out of
14 the state, or the individual was deceased.

15 So those voters would not show up on any list of valid
16 voters, including the poll books.

17 Q. And can a person be cancelled for not -- for having
18 failed to vote in two presidential elections?

19 A. Eventually, yes. If an individual has no activity on
20 their voter registration, does not show up to vote or
21 otherwise update their voter registration for five years, the
22 county sends out a notification, is required to send out a
23 notification to them; and if they do not reply to that
24 notification, their record will be cancelled after the second
25 federal election from the date the notice was sent.

1 Q. So, it sounds like that could take nine years before
2 that record is updated?

3 A. Yeah, it takes about nine years.

4 Q. And what happens with deceased voters; how are those
5 marked invalid?

6 A. Deceased voters are -- at one level, they're -- they're
7 marked as cancelled voters; but are you asking how -- what's
8 the impetus for marking them --

9 Q. Yes.

10 A. -- invalid?

11 The primary way is information obtained from the
12 Department of Health regarding voters who are deceased, that
13 the local registrars have reported to the Department of Health
14 as being deceased.

15 Q. Now, you know Mr. Myers was testifying yesterday, and I
16 know you weren't here. He was testifying that they have been
17 finding serious lags in the data coming from the Department of
18 Health. Are you aware of that?

19 A. I am.

20 Q. And are you experiencing that as well?

21 A. We are experiencing a backlog with Department of Health
22 data.

23 Q. Do you have any idea of the magnitude of that backlog?

24 A. I don't recall the specific number, but I know in some
25 cases that we're talking about several months of Department of

1 Health files in terms of backlog. So that would be tens of
2 thousands of records.

3 Q. When those records become available, how do they get
4 entered into SURE?

5 A. They're very similar to the application process for
6 Motor Voter. They come through as electronic applications.
7 They're different obviously in that they're not voter
8 registration applications, but they come through in electronic
9 batches that the counties can process.

10 Effectively, they would link using the information
11 available to verify the voter, they would link that Department
12 of Health file to a voter's record and thus mark them as
13 deceased.

14 Q. Okay. So, the information would come, it would go to
15 the county, the county then has to process it, and put it into
16 SURE?

17 A. Correct.

18 Q. Now, how about you mentioned moving. How does the
19 moving information get known or get into SURE?

20 A. If a voter does not contact the county directly, the
21 primary method for data information to be updated is through
22 the National Change of Address Program, which is another -- I
23 testified last week regarding this maintenance mailings, and
24 that is one of the required list maintenance mailings that the
25 counties have to do annually.

1 That, using information provided by the U.S. Postal
2 Service, counties are to send notices out to individuals who
3 appear to have updated their address, whether it be within the
4 county or outside of the county or even outside the state.

5 Q. Now, going back to your federal and state law
6 requirements, are you required to generate and provide certain
7 reports about elections?

8 A. We are, yes.

9 Q. And are you the person who oversees those reports?

10 A. I am.

11 Q. If I could show you Respondents' Exhibit No. 233. Can
12 we pull up the electronic document.

13 Do you recognize, I guess, this web document?

14 A. I do.

15 Q. Can you tell us what this is?

16 A. Yes, this is the report that we send after each federal
17 election to the U.S. Elections Assistance Commission. It's
18 the -- it's a report of voter registration and voting activity
19 for a specific election cycle.

20 Q. And is this data publicly available?

21 A. It is, yes.

22 Q. And what kinds of things are captured on this -- in this
23 data?

24 A. It starts with very high level voter registration
25 information. It goes from there, voter turnouts or number of

1 people who voted, breaks it down by method of voting,
2 including absentee balloting generally as well as absentee
3 balloting among military and overseas voters.

4 It provides data for provisional ballots as well.

5 Q. Thank you. I guess while we're doing that, if you could
6 look at Exhibit 243 which is another electronic document. Do
7 you recognize this document?

8 A. Yes, this is a voter -- these are voter registration
9 statistics that are posted on our website.

10 Q. And so, are those publicly available at well?

11 A. They are, yes.

12 Q. And what kinds of data are captured in those reports?

13 A. This is -- this is purely voter registration data. It
14 starts very high level with the number of registered voters by
15 party, and gets into a little detail about changes among
16 parties.

17 You know, how voters are changing their parties and
18 switching potentially and also gets into some high level
19 demographic information regarding age of registered voters.

20 Q. Okay. If I could do just one more and then we'll recess
21 for the day, if the Court wishes to. Exhibit No. 235.

22 Mr. Marks, do you recognize this document?

23 A. I do, yes.

24 Q. Were you involved in the preparation of it?

25 A. I was, yes.

1 Q. And can you tell us what this document is?

2 A. This is the annual report to the General Assembly
3 regarding voter registration activities in Pennsylvania.

4 Q. Is this document available on the Department of State's
5 website?

6 A. It is, yes.

7 Q. And what kinds of information do you report to the
8 General Assembly?

9 A. We report -- again, this is a voter registration report,
10 so it focuses on voter registration numbers; but it reports
11 many of the same high level statistics that we have already
12 reviewed, but it goes into a little more detail regarding
13 various types of registration.

14 How people register and whether they're registering
15 through voter registration drive, through Motor Voter process,
16 and simply by mail-in application.

17 It also has information regarding voters who register
18 through -- register via other agencies aside from the
19 Department of Transportation. It provides some breakdowns and
20 kind of looks at multiyear trends with voter registration by
21 party, you know, broken down at the county level.

22 Q. Now --

23 THE COURT: Is this a good time to stop?

24 Mr. Marks, I'm afraid we'll have to bring you
25 back Tuesday.

1 THE WITNESS: I will be here.

2 THE COURT: We'll start off at -- let's start
3 off at 9:15 on Tuesday.

4 MS. CLARKE: Your Honor, Your Honor.

5 Petitioners have a question and a request, and
6 that is whether Your Honor is contemplating closing arguments.

7 We think that it would be helpful in order to
8 put our evidence into context of the legal standards.

9 THE COURT: Preliminarily -- and this is
10 subject to change -- but I'm willing to give the Petitioners
11 maybe 45 minutes, 15 minutes rebuttal. One hour, tops.

12 MS. CLARKE: Thank you, Your Honor.

13 MS. HICKOK: Would we have some time as well,
14 Your Honor?

15 THE COURT: You have time. We'll give you the
16 same amount of time.

17 MS. CLARKE: Thank you.

18 MS. HICKOK: Thank you, Your Honor.

19 THE BAILIFF: Commonwealth Court is now
20 adjourned.

21 (THE PROCEEDINGS WERE RECESSED AT 3:00 P.M.)

22

23

24

25

REPORTER'S CERTIFICATE

I, Marjorie Peters, a Registered Merit Reporter,
Certified Realtime Reporter, and Notary Public in and for the
State of Pennsylvania, that the foregoing record was taken at
the time and place stated herein and was recorded
stenographically by me and then reduced to typewriting under
my direction, and constitutes a true record to the best of my
skill and ability.

I certify that I am not a relative or employee of
either counsel, and that I am in no way interested, directly
or indirectly, in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed my seal of office this day of 2013.

Marjorie Peters, RMR, CRR

My commission expires March 13, 2016

Original certification on file at Miller Verbano Reporting.

Adam N. Miller, Custodian



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