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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMES RODRIGUEZ, et al .
vs. . H-11-CV-2907
. HOUSTON, TEXAS
. NOVEMBER 14, 2012
. 1:07 P.M.
HARRIS COUNTY, TEXAS .
.

TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE VANESSA GILMORE
UNITED STATES DISTRICT JUDGE
VOLUME 2 OF 4

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1 P R O C E E D I N G S

2 THE COURT: Good afternoon, everybody. Please be
3 seated.

4 Who's our first witness today?

01:07 5 MR. DUNN: I'm sorry, Judge. I didn't hear.

6 THE COURT: Who's our first witness today, please.

7 MR. DUNN: Plaintiffs call George Korbel.

8 THE COURT: Pardon me? Say it again.

9 MR. DUNN: George Korbel, K-O-R-B-E-L.

01:07 10 THE COURT: Okay. Got it. Thank you.

11 THE CLERK OF COURT: Do you solemnly swear the
12 testimony you will give in the case now before the Court will
13 be the truth, the whole truth, and nothing but the truth, so
14 help you God?

01:07 15 THE WITNESS: Yes.

16 THE COURT: Go ahead, sir.

17 MR. DUNN: I just need the screen on and switched to
18 me.

19 THE CLERK OF COURT: The screen is on.

01:08 20 THE WITNESS: Judge, may I put this book up here?

21 THE COURT: Sure. Is that something in your way?

22 THE WITNESS: Well, it is.

23 THE COURT: Okay.

24 - - - - -

1 **GEORGE KORBEL, PLAINTIFFS' WITNESS, TESTIFIED:**

2 **DIRECT EXAMINATION**

3 BY MR. DUNN:

4 Q. Please state your name, sir.

01:08 5 A. George Korbel, K-O-R-B-E-L.

6 Q. And, Mr. Korbel, give us the benefit of your educational
7 background, please.

8 A. I graduated from a small college in Minnesota, a liberal
9 arts college in Minnesota, called St. John's. And I graduated
01:08 10 from the University of Minnesota Law School.

11 I came to Texas in 1971, and have been involved
12 in civil rights cases and primarily represented Hispanics and
13 African-Americans since that time. And I have operated as a
14 witness, dealing with redistricting and the process of
01:08 15 redistricting.

16 Q. Is it true, then, that you are licensed to practice law
17 today?

18 A. Yes. In Minnesota.

19 Q. Okay.

01:09 20 A. But I'm not in the active practice in Minnesota.

21 Q. What type of work do you do?

22 A. I work for -- I have a part-time practice with Legal Aid in
23 San Antonio, dealing with issues of intellectual disability and
24 Spanish-language issues and sometimes Section 5.

01:09 25 Q. Do you also have an organization called "Korbel Research"?

01:09 1 A. Yes. My wife, Susan Korbel, has a PhD from the University
2 of Michigan; and she operates a research firm called Core
3 Research, C-O-R-E, Research. And she does surveys and focus
4 groups, literally, all over the world. And as part of her
01:09 5 company, Korbel Research exists.

6 Q. When did you first get started in redistricting?

7 A. In November of 1971.

8 Q. What did that involve?

9 A. That involved litigation against the at-large election for
01:10 10 state house members in the -- for the Texas legislature.

11 Q. And have you also handled redistricting matters at the
12 Supreme Court?

13 A. Yes.

14 Q. Which cases are those?

01:10 15 A. *White versus Regester*. And it was tried as *Graves versus*
16 *Barnes* and affirmed as *White versus Regester*.

17 Q. And did you argue one of the *White versus Regester*
18 arguments at the Supreme Court?

19 A. No, I didn't.

01:10 20 Q. Have you argued to the Supreme Court or in any court on
21 these cases?

22 A. Yes. Oh, yes, of course.

23 Q. Okay. Now, have you been involved in a state-wide
24 redistricting at any time in Texas?

01:10 25 A. Yes. Every decade since 1971, I have been involved in the

01:10 1 redistricting, state-wide redistricting in Texas.

2 Q. Does that include house, senate, and congressional plans?

3 A. Yes.

4 Q. Have there been decades of redistricting where plans that
01:11 5 you drew were ultimately adopted and put into effect?

6 A. Yes.

7 Q. And in which cases?

8 A. Well, in the Seventies and in the Eighties and into the
9 Nineties.

01:11 10 Q. Have you also done some redistricting specifically in
11 Harris County?

12 A. Yes. One of the things that Korb Research does is we're
13 involved in local redistricting, representing school boards and
14 city councils and county commissions and water districts and
01:11 15 helping them redistrict after every census. And I have done
16 that in Harris County.

17 Ten years ago I worked on and actually drafted
18 the Houston Independent School District plan and the Houston
19 Community College district plan.

01:12 20 Q. So, list off for us the types of offices, be it state,
21 senate, or HCC, or whatever, that you have handled in Harris
22 County over your career.

23 A. The state senate districts are essentially -- and the
24 congressional districts are still essentially the constructs
01:12 25 that we put together in the Eighties and the Nineties in Harris

01:12 1 County. And I also handled the litigation against the City of
2 Houston on single-member districts. Mr. Washington and I were
3 involved in that litigation, and I handled the Section 5 issues
4 before the Department of Justice and -- which led to the voting
01:12 5 rights objection which led to the single-member districts in
6 Houston. And we drew a number of proposed city council
7 districts involved with that litigation.

8 Q. Have you also worked on the community college districts?

9 A. Yes, on community college districts in several parts of the
01:13 10 state, including Harris County.

11 Q. Have you had occasion to work with Mr. Locke?

12 A. Yes. Ten years ago Senator Gallegos had asked me to work
13 on the Houston Independent School District plan and the
14 community college district plan; and Mr. Locke was going to
01:13 15 take the lead. And then there was this awful hurricane and
16 flood, and everybody's computers in the basement got flooded.
17 So we ended up using our computers to help with the
18 redistricting of the school district and the community college
19 district.

01:13 20 Q. Do you have access to software that you use to draw
21 districts?

22 A. Yes.

23 Q. Do you also work with the legislative council in Austin?

24 A. Yes. I have an account there, and I also use the late
01:13 25 Senator Gallegos' account.

01:13 1 Q. Have you been recognized by a federal Court as an expert in
2 map drawing?

3 A. Yes.

4 Q. Which courts could you list for us today?

01:14 5 A. Well, the most recent one was the three-judge court in
6 San Antonio and in the District of Columbia, dealing with the
7 state legislative and congressional redistricting.

8 And before -- and goes all the way back to the
9 early Eighties, when I testified in -- actually, in 1971 I
01:14 10 testified in *White versus Register*. I appeared as both a
11 lawyer and a witness in that case, because of the shortness of
12 time. I testified in the state court litigation dealing with
13 the state house redistricting after the 1980 census, and the
14 state house plan was thrown out as a result of a state
01:14 15 constitutional issue that they used me to prove up.

16 Q. Have there been federal Court opinions that specifically
17 name you by name and recognize you as an expert?

18 A. Yes, several, including two citations by the -- three
19 citations by the US Supreme Court in the interpretation of
01:15 20 Section 5 and the interpretation of Section 2.

21 Q. All right. Now, I would like to turn to this case. You
22 were retained by the plaintiffs to draw some maps in this case.
23 Is that true?

24 A. That's correct.

01:15 25 Q. We'll get to those, obviously, in a moment; but you've also

01:15 1 developed some exhibits and slides about population and
2 population trends and income and other factors in Harris
3 County. Is that correct?

4 A. That's correct.

01:15 5 Q. I'm going to take you first to Exhibit 49, Plaintiffs'
6 Exhibit 49, that you have there on your screen and also in the
7 binders in front of you.

8 A. Yes. Yes.

9 Q. Starting with Page 1, can you tell us what this is?

01:15 10 A. Page 1 is a -- is a graph showing the minority breakdown in
11 Harris County from 1970 through 2040.

12 Q. Why is it that the graph starts at 1970?

13 A. 1970 was the first census that the -- that Hispanics were
14 actually counted and enumerated separately as Hispanics.

01:16 15 Q. And this -- let me go to Page 2. What is it that you are
16 depicting on Page 2 of Exhibit 49?

17 A. That is the growth in Harris County from 2000 through 2010.
18 There is a negative Anglo growth and a minority growth of
19 700 -- almost 800 -- 775,000; and, of those, Hispanics are
01:16 20 550,000.

21 Q. And just for our written record, what was the negative
22 Anglo growth number?

23 A. 82,618.

24 Q. What is the African-American growth number?

01:16 25 A. 134,564.

01:16 1 Q. And what is the other population growth number?

2 A. 551,789.

3 Q. And to be clear, that is the growth of population in Harris
4 County according to the census from 2000 to 2010?

01:17 5 A. That's correct.

6 Q. The next slide, on Page 3, what is, again, depicted here?

7 A. This shows another way of looking at the overall population
8 of Houston 2000 and 2010, showing it -- it indicates the growth
9 of Hispanics and the decline of Anglos.

01:17 10 Q. Now, I turn to Page 4. What are you showing here?

11 A. This is the poverty -- this is from the 2010 American
12 Community Survey. And all of the data supporting these slides
13 is in one of the later exhibits. What this shows is the
14 percentage of persons below poverty. White below poverty in

01:17 15 Harris County was 6.9 percent; the African-American, 24.1
16 percent; and the Hispanic, 26 percent. That's been a fairly
17 common and -- that's been a fairly stable percentage since
18 1970, actually.

19 Q. You heard Dr. Barreto's testimony yesterday that the
01:18 20 poverty level can sometimes depict activity in registration and
21 in voting. Is that fair?

22 A. Absolutely.

23 Q. Do you agree with that opinion?

24 A. I do. In fact, I think that poverty is the most important,
01:18 25 next to education and income.

01:18 1 Q. Now I go to Page 5 of the exhibit. What do you have here?

2 A. This is the "Persons Below 150 Percent of Poverty." The
3 work I do for Legal Aid, it's really clear that if someone is
4 at poverty they're absolutely destitute. So that really a
01:18 5 better figure looking at with the real poor is below
6 150 percent of poverty.

7 Q. And that's what you show here in Page 5?

8 A. Yes. They're still eligible for legal services.

9 Q. Now to Page 6, what is shown here?

01:19 10 A. This is the "Mean Per Capita Income by Race and Ethnic
11 Origin," and you can see that the white is 40 -- more than
12 45,000 and the African-American is just under 19,000 and the
13 Hispanic is 14,500.

14 Q. Now I'm going to turn to Page 7 of Exhibit 49. What do you
01:19 15 show here?

16 A. Yes. This is from the 2000 census. These are the VTD's,
17 or precincts; and they're colored by the indication in the
18 lower left-hand corner. The hotter the color is, the higher
19 the concentration of Hispanics and African-Americans. This is
01:19 20 Hispanics and African-Americans together.

21 Q. And your opinion that the area that's hot and has more
22 African-Americans and Hispanics, is that from a redistricting
23 standpoint, a compact area?

24 MR. GEORGE: Objection, your Honor. I'm going to jump
01:19 25 in with leading a little earlier today.

01:20 1 THE COURT: Okay. Objection sustained.

2 BY MR. DUNN:

3 Q. What is your opinion, if any, about the compactness --

4 THE COURT: I'm sorry. Give me a second.

01:20 5 What's your name?

6 MR. GEORGE: Wiley George.

7 THE COURT: You're sitting someplace different than
8 you were yesterday.

9 MR. GEORGE: I was a little bit around the corner
01:20 10 yesterday. Today I need a better line of sight.

11 THE COURT: Okay. Okay. No. I was looking at my
12 chart to see your name; and I was, like -- I had nobody sitting
13 in that seat; so, I didn't have a name for you.

14 Good deal. Thank you.

01:20 15 BY MR. DUNN:

16 Q. What is your opinion, if any, about the compactness of
17 African-Americans and Latinos in Harris County?

18 A. Well, the contiguous area in the center of that includes
19 more than 70 percent of the African-Americans and the Hispanics
01:20 20 in the City of Houston; and it is what I would consider a
21 fairly compact area.

22 THE COURT: Are you talking about the area in orange
23 now?

24 THE WITNESS: Yeah. It was -- the hotter the
01:20 25 colors --

01:21 1 THE COURT: Okay.

2 THE WITNESS: Orange is more than 70 percent and light
3 orange is 60 to 70 percent and so on.

4 THE COURT: Okay.

01:21 5 BY MR. DUNN:

6 Q. Now turn to Page 8 of this exhibit. What does this show?

7 A. This shows the -- it's the same color scheme, except it's
8 the African-American population in Harris County by VTD.

9 THE COURT: Can you go back to that previous map for a
01:21 10 second, please, the one before that?

11 MR. DUNN: (Complies).

12 THE COURT: Mr. Korbelt, you said that the orange area
13 represented the highest concentration, more than 70 percent
14 concentration of African-Americans and Hispanics. Is there a
01:21 15 map that just shows the concentration of Hispanics or
16 African-Americans as opposed to kind of all lumped together?

17 THE WITNESS: Yes, Judge. That's the next two maps.

18 THE COURT: Another map. Okay. Good deal.

19 THE WITNESS: Next two maps.

01:21 20 THE COURT: Okay.

21 BY MR. DUNN:

22 Q. I'll move to Page 8. What is this map?

23 A. This is the -- Harris County, as the judge asked, by
24 African-American concentration.

01:22 25 THE COURT: Which colors would that be?

01:22 1 THE WITNESS: Again, the same colors. The hotter the
2 colors, the higher the concentration of black population.

3 THE COURT: Okay.

4 BY MR. DUNN:

01:22 5 Q. Now, on Page 9 what is depicted?

6 A. This depicts the Hispanic population, again, in Harris
7 County. The hotter the color, the higher the concentration.

8 Q. Now the next slide on Exhibit 49 is Page 10. What is --
9 and this is a group of slides. So, what are these groups of
01:22 10 slides from?

11 A. These are slides from the Harris County website. And
12 they're based on the 2000 census, but these sorts of data are
13 fairly stable over long periods of time. And what it shows
14 is -- this one shows median income, and you can see where the
01:22 15 lowest median income is located. Again, here the lowest income
16 is the hottest color, the dark red.

17 Q. And what can we see -- for our written record, what can we
18 see, if any, a correlation between the areas in Harris County
19 with the lowest income and the areas in the county with the
01:23 20 Latino and African-American population?

21 A. They're the same.

22 Q. Now I'll move to Page 11. What is depicted here?

23 A. "Median Household Income." And it, again, shows the hotter
24 the color the lower the median income.

01:23 25 Q. Now to Page 12.

01:23 1 A. This is an educational slide, deals with college graduates.
2 And this graph is backwards, so that the red ought to be less
3 than 10 percent and the blue ought to be above 40 percent.

4 Q. Okay. But how -- what is depicted here?

01:23 5 A. It shows that Hispanics and African-Americans have a much
6 lower incident of having college degrees than --

7 THE COURT: Wait, wait, wait. Okay. I'm confused
8 now. I want to make sure that I understand.

9 THE WITNESS: Sure.

01:24 10 THE COURT: You say that the legend is wrong?

11 THE WITNESS: Yes, the legend is wrong.

12 THE COURT: Okay. How should the legend read, then?

13 THE WITNESS: The legend, the red ought to be at the
14 top and the lighter red the next and the lighter blue is
01:24 15 correct and then the other two blues --

16 THE COURT: So, if the red is at the top, then that
17 means that the areas that are red on the map have 40 percent of
18 regular people with college degrees?

19 THE WITNESS: No. The areas that are blue on the map
01:24 20 have 40 percent or more college degrees.

21 THE COURT: Oh, just the colors are switched wrong.

22 THE WITNESS: Yeah, on the legends.

23 THE COURT: Okay. The colors are wrong.

24 THE WITNESS: Yes, Judge. I didn't change it because
01:24 25 that's the way it was on the website.

01:24 1 THE COURT: On whose website?

2 THE WITNESS: County's website. These all come from
3 the county.

4 THE COURT: Oh. So, then, that red in the middle
01:24 5 should be next to the less than 10 percent?

6 THE WITNESS: Yes, Judge. Yes, Judge.

7 THE COURT: Okay. I got it.

8 MR. DUNN: Shall I proceed, your Honor?

9 THE COURT: Yes. I'm sorry. I was just trying to
01:25 10 follow where he was going.

11 BY MR. DUNN:

12 Q. Then to Page 13 of Exhibit 49. What is shown here?

13 A. This is shown as the "Percentage of Persons with" -- they
14 refer to it as "no diploma," and I think that's not having
01:25 15 graduated from high school.

16 Q. I see. Is the legend correct on this map?

17 A. The legend is correct on this.

18 Q. And, again, what parts of the county are the areas with --
19 the least likely to have folks in it with a diploma?

01:25 20 A. For the most part, it is the areas that include the
21 minority population of the city -- of the county.

22 THE COURT: I'm sorry. Can you go back to this --
23 that can't be right. The percentage of persons with no
24 diploma -- less than 5 percent of the people in the red area
01:25 25 have no diploma and the blue area 30 percent of the people have

01:25 1 no diploma?

2 THE WITNESS: I'm sorry. If I said "high school," I
3 was wrong, Judge. It's college.

4 THE COURT: I know, but it doesn't seem like it makes
01:25 5 sense. Because that shows that in the red area, the black and
6 Hispanic areas, less than 5 percent of the people don't have a
7 college degree but in the blue area 30 percent or more of the
8 people don't have a college degree. That doesn't make any
9 sense based on what we know about the neighborhoods that are
01:26 10 depicted by the blue area. Seems like it's wrong again.

11 THE WITNESS: The blue area is -- no, Judge. I think
12 the blue area here is the heavily Anglo -- more heavily Anglo
13 part --

14 THE COURT: Right. It says 30 percent of those people
01:26 15 have no diploma, no college degree, though. So, it's wrong
16 again.

17 THE WITNESS: It's stated backwards. What they mean
18 there is --

19 MR. WASHINGTON: The word "no" should come out.

01:26 20 THE COURT: The word "no" should come out?

21 MR. WASHINGTON: Yes.

22 THE COURT: I gotcha. If we took out the word "no,"
23 then it would be right.

24 THE WITNESS: Yes. Yes.

01:26 25 THE COURT: I gotcha.

01:26 1 Thank you, Mr. Washington.

2 BY MR. DUNN:

3 Q. Now, Page 14, what is depicted here?

4 A. This was another slide from the county, and it shows
01:26 5 housing containing lead-based paint. And, again, the interior
6 hotter color, 75 percent or greater of that housing contains
7 lead-based paint; and the blue colors are very low or no
8 reported units at all.

9 Q. Now, to Page 15, what is shown here?

01:27 10 A. This is, "Housing, Percent Owner Occupied in 2000." And it
11 shows that the least -- the area of the least owner-occupied
12 housing is in -- generally in the minority areas of the county.

13 Q. All right. Now, we'll turn to Exhibit 54. And Page 1 of
14 it, what is depicted here?

01:27 15 A. Well, this is just another poverty number; and it's the
16 "Percentage of Families in Poverty" by percent.

17 Q. And what are the races with the highest degree of poverty?

18 A. The highest degree of poverty are blacks and Hispanics.

19 Q. Now, Page 2, what is depicted?

01:28 20 A. It's a mean [sic] per capita income.

21 Q. And what does it show for the various races depicted?

22 A. Again, it shows that the whites have the highest mean [sic]
23 per capita income -- median per capita income, I should say,
24 and Hispanics and African-Americans have the lowest.

01:28 25 Q. What is shown on Page 3?

01:28 1 A. The median income for households, and it shows that whites'
2 median income for households is essentially twice that of
3 African-Americans and Hispanics.

4 Q. Now, turning to Page 4, what is shown?

01:28 5 A. It's "Mean Household Income"; and, again, this is -- Anglos
6 have significantly more mean household income than Hispanics or
7 African-Americans.

8 Q. Next, Page 5, what is shown?

9 A. This is persons over 25 who have completed nine years or
01:29 10 fewer of education. And this is sometimes referred to as
11 "functional illiteracy." And it shows that Hispanics are at
12 28 percent and African-Americans at 3.4 percent and whites at
13 1.8 percent.

14 Q. Now, to Page 6, what is shown?

01:29 15 A. College graduates. Hispanics at 10.8, African-Americans at
16 20.8, and whites at 43.3 percent.

17 Q. And Page 7, what is shown?

18 A. Household incomes over a hundred thousand dollars. Anglos
19 make up more than three-fourths of the household incomes in
01:29 20 Harris County over a hundred thousand dollars.

21 Q. And how do the minority populations fare?

22 A. Hispanics make up 13 percent, and African-Americans make up
23 9 percent.

24 Q. Now we'll turn to Exhibit 52. What do you show on Page 1
01:30 25 of Exhibit 52?

01:30 1 A. Well, this is the -- Number 1 is the plan that was in
2 effect for Harris County redistricting in -- from 2002 through
3 2010. And this shading is by Hispanics.

4 Q. And so the redder the color means what?

01:30 5 A. The hotter the color is the higher the percentage of
6 Hispanics.

7 Q. And, now, what is shown on Page 2?

8 A. This is the same a plan, the 2002 through 2010 plan, except
9 it's being shaded by African-Americans. Essentially, what
01:30 10 we're doing is we're putting that map over the minority
11 concentration in the city.

12 Q. What is shown on Page 3?

13 A. Same map. I -- must have been put in twice.

14 Q. Is this the plan that was precleared, that is at issue in
01:31 15 this case?

16 A. Oh, I'm sorry. You're right. This is the -- I'm sorry.
17 This is the plan that is the Harris County plan; and, again,
18 it's shaded by African-American concentration.

19 Q. And what is Page 4?

01:31 20 A. This is the African-American concentration, also.

21 Q. Now I want to jump down to Page 6. And tell us what you
22 see here.

23 A. What this depicts is the current or the -- the Harris
24 County plan, and it shows where three of the commissioners
01:31 25 live. And they all live in a close proximity to each other.

01:32 1 Q. And why is this an issue?

2 A. Well, it's an issue because it -- if you are going to
3 maintain each one of the commissioners in a separate district,
4 it becomes real difficult because they live so close together.

01:32 5 Q. Does the fact they live so close together have anything to
6 do with the shape or the outline of a district?

7 A. It makes the shape, requires the shape.

8 Q. Does it also have any effect with compactness?

9 A. Yes. It makes it very difficult to have compact districts
01:32 10 this way.

11 Q. (Indicating)

12 A. This is the --

13 Q. Just a minute. For our record, this is Page 7 of Exhibit
14 52. What is shown here?

01:32 15 A. Page 7 is the Harris County plan shaded by African-American
16 concentration again.

17 Q. And this is the plan that was adopted recently and
18 precleared. Is that right?

19 A. That's correct.

01:33 20 THE COURT: Can I ask you a question?

21 I'm sorry, Mr. Dunn.

22 Two of your pages seem to show the same thing.

23 THE WITNESS: That's correct, Judge.

24 THE COURT: Okay. And when it says, "Currently in
01:33 25 Effect," which one -- which currently in effect map are you

01:33 1 talking about?

2 THE WITNESS: The map that was precleared.

3 THE COURT: Okay. I just wanted to make sure I
4 understood.

01:33 5 THE WITNESS: Well, I'm not sure what to call it,
6 because the election wasn't held under it; but it's the Harris
7 County map.

8 THE COURT: Okay. I just wanted to make sure I knew
9 which map you were referring to.

01:33 10 What page were you on, again, Mr. Dunn?

11 MR. DUNN: Oh, Page 7 of Exhibit 52.

12 THE COURT: Okay.

13 BY MR. DUNN:

14 Q. All right. Mr. Korbelt, what is shown on this map?

01:33 15 A. This is the African-American concentration in the -- in
16 Commissioner's Precinct Number 1.

17 Q. Is that not the Hispanic there at the bottom?

18 I changed screens. You might have missed it.

19 A. Oh, I'm sorry. It's the Hispanic concentration in
01:34 20 Commissioner's Precinct 1, yes. Sorry.

21 Q. On Page 8, what is shown?

22 A. This shows the Hispanic concentration in Commissioner's
23 District 2.

24 Q. And, again, so that we're clear, the color coding, is it
01:34 25 the same on this chart as in the earlier? The hotter means

01:34 1 what?

2 A. The hotter is the higher concentration.

3 Q. Is that the same as the other maps we've been looking at,
4 generally?

01:34 5 A. Exactly the same as the other maps. The dark orange is
6 above 70 percent and the light blue is between 0 percent and
7 30 percent Hispanic.

8 Q. And what do you show, then, on Page 9?

9 A. This shows the Commissioner's Precinct Number 1 and
01:34 10 Commissioner's Precinct Number 2 unplugged from each other, but
11 it shows by Hispanic concentration.

12 Q. And while we're on this slide, what is your -- I mean, what
13 do you observe about the compactness and the district lines in
14 those two districts?

01:35 15 A. Well, there are -- they are not circular. They're compact,
16 but they're not very compact.

17 Q. Now, we have some other slides in here that I will save
18 some time on. Typically, I mean, is it fair to say that they
19 are shaded by race in different ways of presenting it?

01:35 20 A. They're all shaded the same way; and sometimes, as in this
21 slide, we don't have the legend because the slide is blown
22 apart. I think it would have been confusing. But the legend
23 is the same, consistent on all the slides.

24 Q. Okay. Next we'll go to Exhibit 51.

01:36 25 A. Yes.

01:36 1 Q. What is it that you are showing in Exhibit 51?

2 A. In 51 I'm showing how the Commissioner's Precinct Number 2
3 was created.

4 Q. And when you say "created," in the latest 2011 plan, the --

01:36 5 A. That is correct.

6 Q. So, just kind of walk us through the numbers here and tell
7 us what sections of the --

8 A. Well, what essentially happened was the county took a
9 commissioner's precinct, which is Number 2, which was

01:36 10 underpopulated, then -- Hispanic underpop -- dominated but

11 underpopulated, and then removed an area of Hispanic

12 concentration, a large area of Hispanic concentration and --

13 Q. Let me stop you there. What number is that on Exhibit 51,
14 Page 1?

01:37 15 A. It is Number 11. That area was cut out and placed with
16 Commissioner's Precinct Number 1.

17 Q. And, then, go forward with your explanation.

18 A. And then it adds a large area, 22, which is very heavily
19 Hispanic, and also an area, 21, which is heavily Anglo. And

01:37 20 they're both about the same population but the -- Number 21 has

21 turnout that is almost twice as high, and minority preferred
22 candidates in that area lose as much as three to one.

23 Q. Now, turning to Page 2, what is shown on Page 2 of
24 Exhibit 51?

01:37 25 A. This is just looking at the votes by each one of those

01:37 1 areas that were identified in the previous map.

2 Q. So, then, each number down the side corresponds with the
3 number on the previous map. Is that right?

4 A. That's correct.

01:38 5 Q. And, then, these are election outcomes just in those
6 sections of the map?

7 A. That's correct, reconstituted elections that they were
8 talking about yesterday.

9 Q. Okay. And, then, what is shown on Page 3?

01:38 10 A. It's the same thing.

11 Q. And, then, what do we have on Page 4?

12 A. It continues to be the same thing. This is 2008; and the
13 others were 2010, I think.

14 Q. All right. Now, I'll turn to Page -- or excuse me --
01:38 15 Exhibit 48. What is shown here on Page 1 of Exhibit 48?

16 A. 48 is the plan that the county had in effect for 2002
17 through 2010, and it was taken from the overlays that the Texas
18 Legislative Council has. I just laid on those overlays and put
19 the map together.

01:38 20 The state -- all counties are required to provide
21 the legislative council and the secretary of state's office
22 with an up-to-date map.

23 MR. DUNN: And, your Honor, if I might state --
24 because we're going to look at a number of maps that have
01:39 25 "GALME299" and "293" on it. And just so our record is clear,

01:39 1 293 is the A1 plan that was just precleared.

2 THE COURT: Okay. Good. Thank you.

3 MR. DUNN: And 299 is the county's 2002 to 2010 plan.

4 THE COURT: Okay. Great.

01:39 5 BY MR. DUNN:

6 Q. So, here we are on Page 2. What are you showing, again, on
7 Page 2?

8 A. This is the plan that -- this is the Harris County plan,
9 the plan that was precleared. Again, it's not shaded by
01:39 10 minority, just shaded by color.

11 Q. Okay. Now, on Page 3 of Exhibit 48, talk to us -- before
12 you get into the details of what this says, what is that report
13 and where did you get it?

14 A. This comes from the Texas Legislative Council, and it's a
01:40 15 report that they do on three of the several dozen ways that
16 compactness can be looked at.

17 Q. These reports on compactness, are these the reports you use
18 typically in your testimony?

19 A. Well, they're -- they're used in the redistricting process;
01:40 20 and, yes, they show up in the testimony.

21 Q. So, start with the "Area Rubber Band" compactness score.
22 First, tell us what that is.

23 A. Well, a rubber band -- if you think about an area with a
24 rubber band around it, it's how close a round rubber band would
01:40 25 be to the shape of the district. And each one of these numbers

01:40 1 is based on a total of one so that if four -- .442 would be
2 somewhat less than half of one. It's -- these are not -- I
3 don't think these are very helpful in urban areas, but these
4 are the -- this is what academics -- the way academics look at
01:41 5 redistricting.

6 Q. Now, what is the "Perimeter to Area" for?

7 A. Well, that measures how many miles around the district is
8 compared to the number square miles within the district, or
9 square meters or -- depending on the size of the district. But
01:41 10 it measures perimeter -- it compares perimeter to area that's
11 contained within the perimeter.

12 Q. And, again, the ideal score, a number one?

13 A. Yes.

14 Q. Now, what is "Population Rubber Band"?

01:41 15 A. Well, the other one -- the first one was "Area Rubber
16 Band." The second one is "Population Rubber Band." And I
17 don't completely understand this. They have a procedure where
18 they -- we have a procedure -- for example, every 10 years we
19 identify where the center point in population is in the United
01:42 20 States. And I think that that's the same sort of procedure
21 that they use for this.

22 Q. So, now looking at the compactness scores for the GALME299
23 plan, which is the 2001 to 2010 plan the county used, tell us
24 what you see in these scores.

01:42 25 A. Actually, what I see in the scores is fairly consistent. I

01:42 1 mean, this is about what urban districts look like, somewhere
2 between -- some were slightly less than this and slightly --
3 some were slightly more than this.

4 Q. Now, I'm going to go to Page 6 of Exhibit 48. This is the
01:42 5 same compactness table for GALME293, which is the A1 precleared
6 plan. Is that right?

7 A. Yes.

8 Q. What do you see here?

9 A. It's, again, similar patterns to the first one. The
01:43 10 numbers are about the same. The other one slightly more --
11 299, I think is slightly more compact than 293 but not by any
12 significant amount.

13 Q. Again, 299 was the old 2002 to 2010 plan?

14 A. That's correct.

01:43 15 Q. Now, on page 7 of Exhibit 48, what have you here?

16 A. This is a chart that compares the population concentration
17 and the registration and turnout -- Spanish-surname
18 registration and turnout for these two plans. This is a
19 standard report that's put out by the legislative council. And
01:43 20 in this particular case, I just put them one on top of the
21 other.

22 Q. And you have some things highlighted here. What is it that
23 caught your attention?

24 A. Well, what it generally shows is that there is a decrease
01:44 25 in Spanish-surname registration population and in -- in the

01:44 1 district that's currently in effect, compared to the district
2 that was in effect from 2000 through 2010. And there is a
3 slight increase in the black population in District Number 1
4 from the 2002 through 2010. Anglo population, I think,
01:44 5 slightly increases in district -- Precinct 2.

6 Q. Now, turning to Exhibit 50.

7 A. These are a series of slides that show, I think, the past
8 30 years of congressional and senate redistricting in Harris
9 County. This is what the districts have looked like over the
01:44 10 past 30 years, I think.

11 Q. And do you see some irregular shapes in this map?

12 A. Yes.

13 Q. What --

14 A. The shapes are very irregular, but they're being drawn to
01:45 15 fit the minority population.

16 Q. So, if you look at -- the first Page 1 is what plan?

17 A. The first Page 1 is the court-ordered plan for -- I don't
18 know. All the rest of them have the actual numbers. I think
19 this is the --

01:45 20 Q. It says "C235"?

21 A. Yes, that's the current plan.

22 Q. Okay. That the San Antonio court-ordered?

23 A. Yes, that's the court-ordered plan.

24 Q. Now, on Page 2, what is shown?

01:45 25 A. Page 2 is shown -- this -- the court-ordered senate plan

01:45 1 from the San Antonio Court. And, again, you can see the --
2 this -- District Number 6, of course, is the district that
3 elected Senator Gallegos. And you can see the -- it goes
4 around District 13, goes over the top of District 13.

01:46 5 Q. What is shown on Page 3?

6 A. This is the plan that was in effect from 2003, I think,
7 through -- the congressional plan in Harris County in effect
8 from 2003 through 2010. This is the Tom Delay plan.

9 Q. And which one of the districts is the Latino opportunity
01:46 10 congressional district?

11 A. Twenty-nine.

12 Q. And, again, how is it in orientation --

13 A. Again, it goes around the top of the two black
14 congressional districts.

01:47 15 Q. Just for our record, what numbers are those?

16 A. Those are 9 and 18.

17 Q. Now, on Page 4, what is shown?

18 A. Page 4 is showing the senate districts that were in effect
19 from 2001 through 2010 in Harris County.

01:47 20 Q. And, again, which one of these senate districts is the
21 Latino opportunity district?

22 A. Six.

23 Q. And how is it in relation to the African-American
24 opportunity district?

01:47 25 A. It goes around the outside of the African-American

01:47 1 district.

2 Q. Now to Page 5. What is shown?

3 A. I'm having a hard time reading this. This is --

01:47 4 Q. I'll just read the upper right-hand corner. It's
5 congressional -- it's plan "C185, Congressional Districts
6 Enacted by 82nd Legislature."

7 A. Yes.

8 Q. What plan is this?

9 A. The one enacted by the 87th legislature.

01:48 10 Q. And is this the one that was challenged in court and
11 redrawn by the San Antonio Court in some respects?

12 A. That's correct.

13 Q. Again, what's the orientation of 29 in relation to 18?

01:48 14 A. Again, the -- District 29 goes around the outside of
15 District 18.

16 Q. Now, on Page 6, it says, "Plan 148, senate Districts
17 Enacted by 82nd Legislature."

01:48 18 A. That's what it is. And, again, District Number 6 is the
19 senate district; and it goes around the outside of District 13,
20 which is the black senatorial district.

21 Q. And we're on to Page 9. What were you showing here?

22 A. This is a congressional plan that was put into effect by
23 the district Court in *LULAC versus Perry* in 2006.

01:49 24 Q. That's the case that went to the United States Supreme
25 Court?

01:49 1 A. Yes. That's the case that was -- that was the Tom Delay
2 case that the Supreme Court reversed and sent back. And this
3 is the plan that was put into effect after that.

4 Q. You have a number of different districts here; and to save
01:49 5 time, I won't go through each one of them. But what is the
6 point for each one of these slides?

7 A. The point of the slides is that the black population and
8 the Hispanic population in Harris County sit like an X and they
9 pass each other right in downtown. And they sit like an X.

01:49 10 And in order to -- in order to not dilute one population,
11 you've either got to go around the -- the Hispanic population
12 has traditionally gone around the black population in the
13 congressional and senate districts. And all of these just show
14 the solution that large districts have used in Harris County.

01:50 15 Q. Now we'll turn to Exhibit 46. What is this?

16 A. Exhibit 46 is a plan that we identify as GALME257. And
17 what that is, is a *Gingles* plan that you asked me to draw,
18 showing that it's possible to create a district that is more
19 than 50 percent Spanish citizen voting age population.

01:50 20 Q. And in addition to considering the 50 percent CVAP, what
21 other issues did you keep in mind?

22 A. I tried to avoid cutting as many cities and census
23 designated places, CDPs, as I could.

24 Q. Now, was there concern -- let me back up. In the plan that
01:51 25 the county adopted, the A1 plan that was precleared, were there

01:51 1 any precinct splits in that plan?

2 A. Yes.

3 Q. How many?

4 A. Fourteen, I think.

01:51 5 Q. And you've drawn a number of plans. You have some that
6 split precincts and some that don't. Is that correct?

7 A. That's correct.

8 Q. What effect, if any, does it have when you are trying to
9 draw a plan, as somebody in your position, on a *Gingles* plan,
01:51 10 of not cutting precincts?

11 A. It's harder to bring the deviation very low.

12 Q. So, if you were to cut the same number of precincts that
13 the county cut in their plan, the 14, what effect would that
14 have?

01:51 15 A. I probably could bring the deviation down to zero.

16 Q. And just for our record, what's the deviation?

17 A. On this plan, I think it's about 90 percent.

18 Q. You're answering my question, but I meant a different
19 question. What does "deviation" mean?

01:51 20 A. Oh. "Deviation" is how large -- the difference between the
21 actual population of the district and the ideal population.
22 And, normally, it's expressed as top to bottom deviation; in
23 other words, the distance from the smallest to the largest.

24 Q. And did the county adopt a resolution as to what they
01:52 25 wanted to keep their deviation at?

01:52 1 A. Yes.

2 Q. What was that number?

3 A. Under 10 percent.

4 Q. In drawing your *Gingles* plan, did you stay within that
01:52 5 10 percent?

6 A. Yes.

7 Q. So, turning -- and just to be clear, Page 1 of Exhibit 46,
8 who drew this map?

9 A. I did.

01:52 10 Q. Taking us to Page 2, what is shown here?

11 A. It's a report from the Texas Legislative Council,
12 confirming that there are no voting tabulation districts or
13 precincts that are cut by the plan.

14 Q. And, then, what is shown in 3?

01:52 15 A. Again, this is the compactness scores for this *Gingles*
16 plan.

17 Q. And recalling back to 293 and 299's compactness scores, how
18 are the compactness scores for Exhibit 46 in relation?

19 A. The compactness scores for 257 are better on -- than on the
01:53 20 other two plans, than on the former plan and on the current
21 plan. The compactness scores for the other three districts are
22 slightly worse, but they're all -- they're all in the same --
23 essentially the same range that you would see in an urban area.

24 Q. All right. Now, what is shown here on Page 6 of
01:53 25 Exhibit 46?

01:54 1 A. This is the citizenship data that is aggregated by the
2 Texas Legislative Council.

3 Q. All right.

4 A. And it's for District -- it's for plan 257, which is the
01:54 5 *Gingles* plan in this case.

6 Q. And, so, let's start with Precinct 1. What is the
7 citizenship Hispanic population in Precinct 1?

8 A. In Precinct 1? The Hispanic citizen voting age population
9 is 17.7 percent.

01:54 10 THE COURT: Okay. Stop for a second. I'm just
11 confused about which plan this relates to.

12 MR. DUNN: This is the *Gingles* plan that he's
13 offering, which we're calling Exhibit 46. And its number is
14 257 on the state computer.

01:54 15 THE COURT: On the state computer?

16 MR. DUNN: On the legislative council --

17 THE COURT: Okay. Can I just stick with my numbers
18 that I got in my book?

19 MR. DUNN: Okay.

01:55 20 THE COURT: Help me out. I'm lost. I don't know
21 which -- this is Exhibit Number --

22 MR. DUNN: 46.

23 THE COURT: Let's see what it is. It's 46, right?

24 MR. DUNN: Plaintiffs' Exhibit 46. And this is a plan
01:55 25 that Mr. Korbelt drew.

01:55 1 THE COURT: Okay. That's what I was just trying to
2 make sure. Because you switched back and forth and then I
3 lost -- I lost track of which one we were on.

4 MR. DUNN: All right.

01:55 5 THE COURT: So, Mr. Korbel, you drew this plan when?

6 THE WITNESS: Well, sometime in -- sometime, I
7 suppose, in the summer, after Mr. --

8 THE COURT: Just this --

9 THE WITNESS: This summer, yes.

01:55 10 THE COURT: -- year? Okay.

11 THE WITNESS: I drew a similar plan back when the
12 county was redistricting for *LULAC*.

13 THE COURT: Okay. So, you say in the summer. This is
14 just something you drew in the summer of 2012, then?

01:55 15 THE WITNESS: Yes, that's correct, Judge.

16 THE COURT: Okay. I was lost where we were in time.

17 THE WITNESS: I apologize, Judge. I'll try to be
18 clearer.

19 THE COURT: No, no. Things move fast, and I missed
01:56 20 one of the plays.

21 Where is -- Mr. Dunn, the -- what you just had up
22 on the screen -- okay. You're still in Exhibit Number 46,
23 then, right?

24 MR. DUNN: Yes. I'm sorry. My PDF's are broken down
01:56 25 by 46.1 and .2, but in your binder they're all 46.

01:56 1 THE COURT: They're all 46 in the binder. Okay. This
2 on one of the pages in 46?

3 MR. DUNN: Yes.

4 THE COURT: Where is that page that you were on?
01:56 5 That's number --

6 MR. DUNN: Right now I'm on Page 1.

7 THE COURT: Two.

8 MR. DUNN: This is 2. This is 3.

9 THE COURT: Three. I gotcha. Okay.

01:56 10 BY MR. DUNN:

11 Q. So, let me just back up, because this is, you know,
12 obviously very important to what we're trying to present here.
13 So, Page 1 of Exhibit 46 is what?

14 A. This is the *Gingles* plan, 257.

01:56 15 Q. Okay. And, then, you testified about Page 2, which was --
16 what does this show?

17 A. No split precincts or VTD's, voting tabulation districts.

18 Q. And, again, the adopted plan that's been precleared, A1,
19 how many splits does it have?

01:57 20 A. I think it's 14.

21 Q. And, again, if you could split 14 precincts, how would that
22 help you, if at all?

23 A. I could keep the population the way it is and go to zero
24 deviation. It would be --

01:57 25 Q. And, then, Page 3, was what, again?

01:57 1 A. These are the compactness numbers for this *Gingles* plan.

2 Q. And, again, these compactness numbers, how do they compare
3 to the compactness numbers you showed us for the A1 precleared
4 plan and the plan in effect from 2002 to 2010?

01:57 5 A. Well, all of the numbers for District 1 are more compact
6 than the current plan that Harris County has or the plan that
7 they had in effect from 2002 through 2010.

8 THE COURT: Why?

9 THE WITNESS: Well, they just are, Judge. And the
01:57 10 measurements come out better in -- slightly better, but they
11 are better. And the -- most of the measurements for 2, 3, and
12 4 are not quite as compact in this 257 *Gingles* plan as they are
13 in the other two county plans.

14 BY MR. DUNN:

01:58 15 Q. And to be clear, who did these calculations on compactness?

16 A. The Texas Legislative Council.

17 Q. Now, I'm going to --

18 THE COURT: I'm sorry. Back up.

19 THE WITNESS: Sure.

01:58 20 THE COURT: That's not an answer.

21 THE WITNESS: I'm sorry, Judge?

22 THE COURT: That's not an answer. I'm sorry. I'm not
23 following you. I said why -- can you show me how these
24 plans --

01:58 25 THE WITNESS: We have an -- there is an exhibit,

01:58 1 Judge, that compares the plans, on the same page there.

2 MR. DUNN: Here's all three compactness on one page.

3 THE COURT: Okay. What page is that?

4 MR. DUNN: It's actually something he put together
01:58 5 last night; but I can tell you where it is in each of the other
6 pages, where each one of these tables is in our exhibits.

7 THE COURT: Okay. You just compressed it to one page.

8 MR. DUNN: Yes. Why don't I do that for our record?

9 The top one on this demonstrative is in
01:58 10 Exhibit 46. The middle one is Exhibit 48, Page 6. And the
11 bottom one is Exhibit 48, Page 3.

12 MR. GEORGE: Your Honor, just to be clear, this is a
13 demonstrative that's in the --

14 MR. DUNN: Yes.

01:59 15 MR. GEORGE: Do you have a paper copy, by any chance?

16 MR. DUNN: You have one, don't you?

17 THE WITNESS: I think so, yes.

18 THE COURT: So, it's just out of these three exhibits;
19 but you put it on one page so I could see it all together.

01:59 20 MR. DUNN: Yes.

21 THE WITNESS: Yes, Judge.

22 THE COURT: I tell you what, I'll take a copy, too.

23 MR. GEORGE: I've done these calculations myself; so,
24 I get to check the math.

01:59 25 THE WITNESS: Here's one. I'm sure I have another

01:59 1 one.

2 THE COURT: Is that all three?

3 MR. DUNN: Yes.

4 THE WITNESS: That's all three.

01:59 5 THE COURT: Give me a copy. He needs a copy.

6 We'll just put that in as an additional exhibit
7 at the end of your list. And you are up to Exhibit Number --

8 MR. DUNN: I believe it should be --

9 THE COURT: You're up to Exhibit Number 57. So, that
01:59 10 will be 58. Okay?

11 MR. DUNN: Okay.

12 THE COURT: What do you want to call that?

13 MR. DUNN: We were calling it --

14 THE COURT: "Compactness comparison"?

02:00 15 MR. DUNN: Yes.

16 THE COURT: And it's really -- it comes from three
17 exhibits that are already in evidence, which are going to be
18 46 --

19 MR. DUNN: One of them is in Exhibit 46 and the other
02:00 20 two are in Exhibit 48.

21 THE COURT: In 48.

22 THE WITNESS: I'm sorry. It looks like I don't
23 have --

24 THE COURT: Hold on. She's going to bring us copies.
02:00 25 Hold on just two seconds. Can you just use the one on the

02:00 1 screen for now?

2 THE WITNESS: Sure. Sure.

3 THE COURT: Okay.

4 BY MR. DUNN:

02:00 5 Q. So, why don't you walk us through what this is showing?

6 A. This compares the compactness of 257, which is the
7 plaintiffs' *Gingles* -- one of the plaintiffs' *Gingles* plans,
8 with the compactness of 293, which is the current Harris County
9 plan, and with 299, which is the Harris County plan that was in
10 effect from 2002 through 2010.

11 And the data that I -- the way that we drew the
12 current Houston plan was they sent the -- the county sent me a
13 computer file called the CSV file, and that CSV file causes the
14 districts to draw themselves.

02:01 15 Q. When you say that, what do you do with that CSV file?

16 A. You pick it up into the state's software, and the districts
17 then draw themselves.

18 Q. And, then, how do you get this compactness score?

19 A. There is a utility that the state has in the computer
02:01 20 system that creates the compactness scores. And they're based
21 on -- there have been some academic studies on trying to
22 evaluate redistrictings, and these are three of the measures
23 that are sometimes used.

24 Q. So, in the top chart is your *Gingles* plan that is
02:02 25 Exhibit 46. Is that correct?

02:02 1 A. That's correct.

2 Q. And the middle chart is Plan A1 that's been precleared,
3 that's challenged in this litigation?

4 A. That's correct.

02:02 5 THE COURT: Which is exhibit what?

6 MR. DUNN: Which is Exhibit 7, Plaintiffs' Exhibit 7.

7 THE COURT: Plaintiffs' 7. Okay.

8 MR. DUNN: Then, the bottom plan is the 2002 to 2010
9 plan that was in effect; and that is also at Plaintiffs'

02:02 10 Exhibit 6.

11 THE WITNESS: Yes. This is, again -- the plan data
12 all comes from the Texas Legislative Council.

13 THE COURT: The 2001 to 2010 plan?

14 MR. DUNN: Is the bottom one, yes.

02:02 15 THE COURT: Okay. Okay. I thought you said something
16 else. Okay.

17 BY MR. DUNN:

18 Q. Okay. So --

19 THE COURT: One second.

02:03 20 This is not the same thing that's on the screen.
21 You gave me the wrong thing.

22 THE WITNESS: I'm sorry, Judge. I gave you the wrong
23 thing. It's my fault.

24 MR. GEORGE: I was becoming very confused myself.

02:03 25 MR. DUNN: I didn't have the paper copy. So --

02:03 1 THE COURT: Do you happen to have a paper copy there?

2 THE WITNESS: I believe I do, Judge. It may take me a
3 second to find it.

4 THE COURT: I've got the wrong one, then.

02:03 5 THE WITNESS: I've got a bad habit of not throwing
6 things away.

7 MR. DUNN: I have it on a thumb drive.

8 THE COURT: We can go print it out.

9 THE WITNESS: I'm sorry, Judge. I should --

02:04 10 MR. DUNN: Would you like me to hand over the thumb
11 drive?

12 THE COURT: Esthela, can you print that out?

13 THE CLERK OF COURT: Yes.

14 MR. DUNN: It's called "Concentration Exhibit.pdf."

02:04 15 THE COURT: So, do we need this at all? What is this?

16 MR. DUNN: No. That's something else he did for his
17 own analysis.

18 THE WITNESS: Excuse me, Judge. I was trying to put
19 them together, and I put the wrong ones together.

02:04 20 THE COURT: Okay. So, this is just garbage.

21 THE WITNESS: Just garbage.

22 THE COURT: Okay. Throw that out.

23 *(Mr. Dunn confers with clerk of court)*

24 MR. DUNN: If you like, your Honor, I could move on to
02:08 25 something else and come back to this. Or I can sit here and,

02:08 1 obviously, wait.

2 THE COURT: It doesn't matter. I mean, do you have
3 something -- that's okay. I mean, we can switch gears and go
4 to something else if you want. Now, she'll only be a second.

02:09 5 MR. DUNN: I'll wait just a couple of seconds.

6 THE COURT: All right. Mr. Dunn, it's still going to
7 be -- when we get the right three charts on here, it's still
8 going to be from the same exhibits, just like you've given it
9 to me before --

02:09 10 MR. DUNN: Yes.

11 THE COURT: -- 46, and then one from Plaintiffs'
12 Exhibits 7 and then the old plan from Plaintiffs' Exhibits 6,
13 correct?

14 MR. DUNN: Well, that's kind of true. We have -- the
02:10 15 depiction of the map, the 2001 map is at Exhibit 6. Okay? The
16 2010 adopted map that's been precleared, the graphical
17 depiction is at Exhibit 7.

18 But Mr. Korbelt had pulled the compactness scores
19 for those maps because they weren't provided by the county. He
02:10 20 got that. So, those compactness scores are in Exhibit 48.

21 THE COURT: Okay. I just need the order. That's all
22 I care about. I don't care. So, now I've got the right one.
23 The first one comes from Plaintiffs' Exhibit Number 46.

24 MR. DUNN: Yes.

02:10 25 THE COURT: The second one comes from where?

02:10 1 MR. DUNN: Exhibit 48, Page 6.

2 THE COURT: 48, Page 6.

3 The third one comes from where?

4 MR. DUNN: Exhibit 48, Page 3.

02:10 5 THE COURT: Plaintiffs' Exhibit 48?

6 MR. DUNN: Yes.

7 THE COURT: Plaintiffs' Exhibit 48, Page 3.

8 And, then, the second page is?

9 MR. DUNN: The second page just got in this PDF by
02:10 10 accident.

11 THE COURT: Doesn't have anything to do with --

12 MR. DUNN: No.

13 THE WITNESS: Oh, yes.

14 MR. DUNN: Oh, it does? I'm sorry.

02:11 15 THE COURT: Oh, it does? Well, all right. Tell me
16 what it is. What is that second page? I'm sorry.

17 THE WITNESS: Judge --

18 THE COURT: Mr. Korbelt, what's the second page?

19 THE WITNESS: Yes. The second page shows the number
02:11 20 of -- 293 is the current plan for Harris County. It shows the
21 split precincts and split VTD's. And below it, the 257, which
22 is the *Gingles* plan, shows no split VTD's. This is a product
23 of the legislative council. It shows which voting precincts
24 were split in each of the two plans.

02:11 25 BY MR. DUNN:

02:11 1 Q. And 293, again, is the A1 precleared plan the county
2 adopted?

3 A. Yes.

4 THE COURT: The A1 plan.

02:11 5 THE WITNESS: Yes.

6 BY MR. DUNN:

7 Q. And 257 is our *Gingles* plan, which is at Plaintiffs'
8 Exhibit 46?

9 THE COURT: When did the Texas Legislative Council get
02:11 10 a copy of that, quote, "plan"?

11 MR. DUNN: The *Gingles* plan or the plan -- the A1
12 precinct --

13 THE COURT: The one that he just did this summer.

14 MR. DUNN: He drew it -- well, Mr. Korb, tell the
02:11 15 Court.

16 THE WITNESS: Judge, I asked that the county send me a
17 computer file on their plan. So, they sent me a computer file.
18 It's referred to as a "CSV" file. And I put the computer --
19 the computer file into the software, and the software drew the
02:12 20 districts.

21 THE COURT: Okay. What's the answer to my question?

22 THE WITNESS: It came from the county, Judge.

23 THE COURT: No. That wasn't my question.

24 When did the legislative council get a copy of
02:12 25 this plaintiffs' proposed plan? Did you give a copy of that to

0 2 : 1 2 1 the legislative council?

2 THE WITNESS: Yes, Judge.

3 THE COURT: When did that happen?

4 THE WITNESS: Probably a couple of days after they
0 2 : 1 2 5 sent me this plan.

6 THE COURT: Okay. I don't know when that was.

7 THE WITNESS: Well, Judge, I'm not sure either. It
8 was -- my deposition was on September 11th, and it was sometime
9 after the 1st of September.

0 2 : 1 2 10 THE COURT: All right. So, your plan that you are
11 calling 257 is the plaintiffs' current proposed plan?

12 MR. DUNN: It is a *Gingles* plan. If you recall from
13 my opening statement, we have to demonstrate we can draw --

14 THE COURT: I know what you have to demonstrate. Cut
0 2 : 1 3 15 it out. Stop it.

16 Is this your proposed plan?

17 MR. DUNN: It is for a *Gingles* plan. We're not asking
18 for this plan to be put into effect. We're just showing that
19 we can draw a 50 percent CVAP district.

0 2 : 1 3 20 THE COURT: I'm just trying to figure out what it is.
21 This is the plaintiffs'-- all right, sir.

22 All right. So, this first thing we got is just
23 garbage, right? We can throw that out.

24 All right. Continue, please.

0 2 : 1 3 25 BY MR. DUNN:

0 2 : 1 3 1 Q. So, now, Mr. Korbel, we all have copies of Plaintiffs'
2 Exhibit 58; and we've identified what's on the first page.
3 Tell us what your impressions and opinions are of what is
4 depicted on the first page.

0 2 : 1 4 5 A. What's depicted on the first page are the compactness
6 scores for the current -- the top number is for the *Gingles*
7 plan. The top plan is for the *Gingles* plan. The middle plan
8 is for 293, which is the current Harris County plan. And the
9 bottom plan is for 299, which is the plan in effect for Harris
0 2 : 1 4 10 County from 2002 through 2010.

11 Q. And how do the compactness scores compare?

12 A. On District Number 1, the *Gingles* plan, the District 1 is
13 more compact.

14 THE COURT: What's the basis of that --

0 2 : 1 4 15 THE WITNESS: Well, these studies that they do based
16 on putting a rubber band around the district and on comparing
17 the perimeter to the area and the population, putting a rubber
18 band around the population. [sic]

19 BY MR. DUNN:

0 2 : 1 5 20 Q. So, what numbers are you looking at?

21 A. I'm looking at the District Number 1. And that is slightly
22 more compact --

23 THE COURT: Which number are you looking at? I don't
24 know which number you're looking at. Are you looking at the
0 2 : 1 5 25 "Area Rubber Band" or "Perimeter to Area" or "Population Rubber

02:15 1 Band"?

2 THE WITNESS: All three, Judge. Each one of the three
3 numbers are higher than the other two plans.

4 MR. DUNN: Can you point them out on the screen, by
02:15 5 pushing this green button here?

6 THE WITNESS: Yes.

7 THE COURT: So, the goal, again, you're saying, is
8 closer to one or closer to -- I guess, the closer to one it is
9 the more compact it is?

02:15 10 THE WITNESS: That's the measurement. So, it's the
11 top line.

12 BY MR. DUNN:

13 Q. And, so, in the *Gingles* plan that you have drawn, how are
14 Districts 2, 3, and 4?

02:16 15 A. On some of the tests, they're slightly better and, on most
16 of the tests, they're not quite as good but they're all within
17 a fairly narrow range so that essentially -- what I am saying
18 is, essentially, the three plans are about the same in terms of
19 compactness.

02:16 20 Q. And the compactness scores that you have drawn in
21 Exhibit 46, the *Gingles* Plan, Number 257, are those compactness
22 scores that you typically see in districts drawn in Harris
23 County for other races?

24 MR. GEORGE: Objection, leading.

02:16 25 THE COURT: Overruled.

02:16 1 THE WITNESS: Yes. These would be -- in an urban
2 area, these plans would often look like this.

3 MR. DUNN: And he's described Page 2; so, I was going
4 to move on, your Honor, unless you had more questions about --

02:16 5 THE COURT: Hold on just one second. Just give me a
6 second.

7 So, in the plan you drew, you drew 1 more compact
8 and 2, 3, and 4 less compact.

9 THE WITNESS: That's right, Judge. But the
02:17 10 measurements are so close that I wouldn't judge them to be
11 really very different.

12 THE COURT: I was asking you based on the numbers that
13 you just --

14 THE WITNESS: Yes, the numbers are slightly more
02:17 15 compact for District 1 and slightly less compact for the other
16 districts in the *Gingles* plan.

17 THE COURT: And is there any basis, or need, to make a
18 comparison between any of the three means of analysis, either
19 the "Area Rubber Band," the "Perimeter to Area," or the
02:18 20 "Population Rubber Band"? Is there any need to make some sort
21 of comparison between those three?

22 Or why do we have three measures reflected, I
23 guess, maybe is my question. Is there any need to make a
24 comparison, or is one basis of comparison just as good as the
02:18 25 other?

02:18 1 THE WITNESS: I think that -- I think that they're --
2 one is as good as the other. And these are just three plans
3 that the state's consultant evidently proposed. They're --
4 these compactness scores are all -- all look about the same,
02:18 5 actually.

6 BY MR. DUNN:

7 Q. When you just said the "state consultant," are you talking
8 about the consultant that helped the state set up their
9 software?

02:18 10 A. Yes, that helped the legislative council --

11 THE COURT: You mean in terms of the three ways of
12 doing the -- "Area Rubber Band," "Perimeter to Area," and
13 "Population Rubber Band"?

14 THE WITNESS: That's right.

02:18 15 THE COURT: I see. When they did the software,
16 developed the software in the first place, right?

17 THE WITNESS: That's correct, judge.

18 THE COURT: Okay. Okay. I'm sorry. You said you
19 were on Page 2, going on to Page 2?

02:19 20 MR. DUNN: Well, actually, I was going to move past
21 this exhibit because he explained Page 2 already; but I can do
22 it again if you missed it.

23 THE COURT: No. Okay. I gotcha.

24 MR. DUNN: Okay.

02:19 25 BY MR. DUNN:

02:20 1 Q. All right. Now, if we go to Exhibit 46, which would be
2 Page 6 of the exhibit, what is shown here?

3 A. Well, this is Plan 257, GALME257, which is the plan that is
4 the *Gingles* plan, the plan that's the *Gingles* plan. And what
02:20 5 this does is it shows the concentration of citizen voting age
6 population for several groups: whites, Hispanics,
7 African-Americans; and, then, combination of African-Americans
8 and whites and Asians.

9 Q. Did this come from the legislative council?

02:20 10 A. Yes, this comes from the legislative council, also.

11 Q. So, with respect to Commissioners Precinct 1, District 1 on
12 this, what is the Hispanic CVAP in the *Gingles* plan you had
13 drawn?

14 A. 52 percent.

02:21 15 Q. Okay. The Hispanic CVAP in District 1? Not 2, in 1?

16 A. Oh, Number 1? 16.9 percent.

17 Q. What is the African-American, or black, CVAP as it's shown
18 here, shown in Precinct 1?

19 A. 47.5 percent.

02:21 20 Q. Now, moving to Precinct 2, the proposed Latino opportunity
21 district, what is the CVAP in the *Gingles* plan that you have
22 drawn for Precinct 2 for Hispanics?

23 A. Is 52 percent.

24 Q. And what is the black population in Precinct 2 CVAP in the
02:21 25 *Gingles* plan you've drawn?

02:21 1 A. 16 percent.

2 Q. All right.

3 THE COURT: What column are you in?

4 THE WITNESS: The Hispanic population is in the fifth
02:21 5 column, including "District," "Total," "VAP," "CVAP," and then
6 "Hispanic CVAP."

7 THE COURT: I see that.

8 THE WITNESS: And the black alone CVAP would be the
9 next column.

02:22 10 THE COURT: Oh, one, two, three, four, five. Okay. I
11 see what you are saying. Okay.

12 MR. DUNN: And, then, the next one past that is the
13 black CVAP.

14 THE COURT: And this is -- which plan is this?

02:23 15 Oh, this is 257, right?

16 MR. DUNN: This is our first *Gingles* plan, Exhibit 46.

17 THE COURT: Right. Okay. Good.

18 MR. DUNN: And maybe just to help the Court, what
19 we're trying -- one of the things I have to prove is that we
02:23 20 can draw 50 percent Hispanic CVAP map --

21 THE COURT: Stop, stop, stop. Cut it out.

22 MR. DUNN: Okay.

23 THE COURT: Did you think I forgot the law? Just tell
24 me what I am looking at.

02:23 25 MR. DUNN: This is us showing that that map has a

0 2 : 2 3 1 50 percent Spanish CVAP for Precinct 2.

2 THE COURT: Okay. Which column are you counting as
3 Column 5? Where you have the districts, you're counting that
4 as the first column?

0 2 : 2 3 5 THE WITNESS: Yes, Judge.

6 THE COURT: So, that's one, two, three, four; and the
7 Hispanic is under the column that says "Hispanic CVAP."

8 THE WITNESS: Yes, Judge.

9 THE COURT: This is on your plan, right?

0 2 : 2 3 10 THE WITNESS: Yes, that's correct, Judge. And to make
11 it even more complicated, the top of the chart is for the
12 estimate using the census information from 2005 through 2009
13 and the bottom is from 2006 through 2010.

14 MR. DUNN: Is that the --

0 2 : 2 4 15 THE COURT: Why does it say -- it says "2010" on the
16 side. Why does it say "2010"? Am I on the right page?

17 THE WITNESS: No. You're the right page. This is the
18 same graph but for two different years.

19 Judge, the census stopped counting Hispanic
0 2 : 2 4 20 citizens --

21 THE COURT: No. I know that. I just want to make
22 sure I'm on the right page. Because what I am looking at is --
23 it shows Precinct 1.

24 THE WITNESS: Uh-huh.

0 2 : 2 4 25 THE COURT: Total population one million forty-five --

02:24 1 right? Am I on the right line?

2 THE WITNESS: Yes, Judge.

3 THE COURT: And Hispanic voting age population,
4 16 percent.

02:24 5 THE WITNESS: Hispanic citizen voting --

6 THE COURT: Citizen voting age population --

7 THE WITNESS: 16.9 percent.

8 THE COURT: -- 16.9 percent.

9 THE WITNESS: And the black is 47.5 percent.

02:25 10 THE COURT: In Precinct 1.

11 THE WITNESS: In Precinct 1. And that's for the
12 earlier data.

13 The later data, which is the second chart below
14 it, increases the black to 48.6 percent and the -- in number --
02:25 15 Precinct Number 1 and the --

16 THE COURT: When you say "chart below it," what chart
17 are you talking about?

18 THE WITNESS: There are two charts on this -- there's
19 a chart at the top of this page --

02:25 20 THE COURT: You know what? I'm not on the same page
21 as you.

22 THE WITNESS: Oh, sorry, Judge.

23 THE COURT: That's what the problem is. Hold up the
24 one that you're looking at. Because the one -- I couldn't read
02:25 25 it one on the screen. It was too small.

02:25 1 THE WITNESS: Yes.

2 THE COURT: No, no, no, not on the screen. I
3 thought -- I just meant in your book. I'm on a different chart
4 than you guys.

02:25 5 What page are you on, Mr. Dunn?

6 MR. DUNN: Let me look in the binders here.

7 THE COURT: Yeah, just tell me what page you're on. I
8 wasn't following you because I'm looking at the wrong page.
9 You're on Page -- 1, 2, 3, 4 -- 5?

02:25 10 MR. DUNN: It's Page 3. Or excuse me. Four --
11 three -- four. And it looks like -- (Indicating).

12 THE COURT: Okay. So then he said the chart below.
13 So I must be --

14 MR. DUNN: This is the chart on top, and he's talking
02:26 15 about the below. And I really think I can clear this up. The
16 2010 census that you see shown there, that only reflects the
17 voting age population, which the census does collect. So,
18 that's why you get that data from the census. On the middle
19 part of each of these charts, it says the "ACS tabulation." Do
02:26 20 you see that?

21 THE COURT: Yes, I do.

22 MR. DUNN: And so that's where that's coming from, is
23 that ACS.

24 THE COURT: Okay. But the reason that I thought I
02:26 25 was -- come here. Let me show you what chart I'm on. Let me

02:26 1 make sure I'm on the right page. I think I'm on a different
2 page than you guys are.

3 See, I'm not on the same page. That's not
4 Page 3. This is Page 4.

02:26 5 MR. DUNN: I'm sorry, Judge.

6 THE COURT: Okay. This is the page that you guys are
7 on. That's why -- I was on Page 3 because you kept saying
8 Page 3. This is Page 4 in my book.

9 MR. DUNN: Okay.

02:27 10 THE COURT: Okay. That's why I didn't have the same
11 thing that you guys had at all.

12 MR. DUNN: So, what he was saying, if you look -- may
13 I point, your Honor?

14 THE COURT: This is 16.9 percent.

02:27 15 MR. DUNN: And then it's '05, '09 --

16 THE COURT: This is Page 4.

17 MR. DUNN: Yes. Okay.

18 THE COURT: Okay. Great. Thank you.

19 MR. DUNN: So if you need this, there it is.

02:27 20 BY MR. DUNN:

21 Q. So, again, let's start at the top. The '05 to '09 ACS
22 data, what does it show Precinct 1 on the *Gingles* plan you've
23 drawn, 257, which is Exhibit 46?

24 A. It shows that the black citizen voting age population is
02:27 25 47.5 percent.

02:27 1 Q. And what does it show is the Hispanic CVAP for Precinct 1?

2 A. 16.9 percent.

3 Q. Now, move down to Precinct 2. What does it show for
4 Hispanic CVAP?

02:28 5 A. Number 2 -- Precinct Number 2 has a 52.0 percent Spanish
6 surname citizen voting age population.

7 Q. And what does it show for black CVAP in Precinct 2?

8 A. It shows 16.0 percent.

9 Q. And that was the 2005 to 2009 ACS data?

02:28 10 A. That's correct.

11 Q. Is that the data that the county had available to it when
12 it drew its map for the cycle?

13 A. Yes, that's correct.

14 Q. The 2005 -- or 2006 to 2010, data did that come after the
02:28 15 maps were drawn by the county?

16 A. Yes.

17 Q. Okay. And is that depicted in the bottom chart?

18 A. Yes.

19 Q. Then, what are the -- what is the Hispanic CVAP for
02:28 20 Precinct 1 and the newer CVAP data?

21 A. 17.7 percent.

22 Q. And what is it for the black citizen voting age population?

23 A. 48.6 percent.

24 Q. Then, on Precinct 2, what is the Hispanic CVAP?

02:29 25 A. 53.8 percent.

02:29 1 Q. And what is the black CVAP for Precinct 2?

2 A. 16.4 percent.

3 The Hispanic and black numbers increase slightly
4 between the two years.

02:29 5 Q. Okay. Now, you have drawn another *Gingles* plan which is
6 at --

7 THE COURT: I'm sorry. Can I stop you for a second?
8 Where is the actual map that goes with this?

9 MR. DUNN: It's the first page of Exhibit 46.

02:29 10 THE COURT: Okay.

11 MR. DUNN: And it's also -- the last page is one -- is
12 another graphical representation showing the voting precincts.
13 And just so the Court knows, I also gave the PDF to the Court
14 staff so you can open it and zoom in and see individual voting
02:29 15 precincts in a detailed map, if that's necessary.

16 THE COURT: Okay.

17 MR. DUNN: This is the last page of the Exhibit 46
18 that shows all the voting precincts, as well.

19 BY MR. DUNN:

02:30 20 Q. All right. Now you have drawn another *Gingles* district
21 that's at Exhibit 57. Is that true, Mr. Korbel?

22 A. 47 or 57?

23 Q. 57.

24 A. Yes, 57.

02:30 25 Q. All right. What was it that you were trying to do

02:30 1 differently, if anything, on Exhibit 57 from 46?

2 A. This makes -- this cuts fewer cities and census designated
3 places, and it makes sure that none of the four commissioners
4 are paired.

02:31 5 THE COURT: I don't understand what you just said.

6 THE WITNESS: All right, Judge. Judge, there are
7 cities in -- and in a city -- in a county like Harris County,
8 where we --

9 THE COURT: No. I know that. I meant to say I
02:31 10 didn't -- really didn't hear what you said. The first part you
11 said was it cuts fewer cities. And then the next part?

12 THE WITNESS: Or census designated places, CDP's.

13 THE COURT: And what else? Did you say something
14 else?

02:31 15 THE WITNESS: And it -- and none of the commissioners
16 are paired, so that there's separate -- there's a commissioner
17 for each one of the four -- the current commissioners, there is
18 one current commissioner --

19 THE COURT: You mean you didn't redraw them.

02:31 20 THE WITNESS: Yeah. They're not paired.

21 THE COURT: Okay.

22 BY MR. DUNN:

23 Q. By "paired" you mean you didn't have two commissioners
24 residing in the same commissioner precinct?

02:32 25 A. No.

0 2 : 3 2 1 Q. You fixed that in this one. Is that it?

2 A. Yes.

3 THE COURT: Okay. Well, wait a minute. Fixed it from
4 what? Where was that a problem? I didn't know where it was a
0 2 : 3 2 5 problem before.

6 THE WITNESS: Judge, well, first of all these are
7 *Gingles* plans. So we're not expecting elections to be held
8 under them.

9 THE COURT: I know. But where was that before, where
0 2 : 3 2 10 you had --

11 THE WITNESS: 257 has two of the commissioners in one
12 precinct.

13 THE COURT: Which one?

14 MR. DUNN: Exhibit 46, the last one we just finished.

0 2 : 3 2 15 THE COURT: Which one?

16 THE WITNESS: Which commissioners?

17 THE COURT: Yes.

18 THE WITNESS: Commissioner Lee and Commissioner
19 Morman. I think it's Lee and Morman.

0 2 : 3 2 20 THE COURT: They drew both of them into what precinct?

21 THE WITNESS: They both were drawn into Commissioner's
22 Precinct 1. They live very close to each other, Judge. And
23 when I do *Gingles* plans --

24 THE COURT: Stop, stop, stop. That's all I want to
0 2 : 3 2 25 know.

0 2 : 3 2 1 THE WITNESS: Okay.

2 THE COURT: So you drew El Franco Lee and Morman,
3 Commissioner Morman, both, into Precinct 1?

4 THE WITNESS: Yes, Judge.

0 2 : 3 2 5 THE COURT: Instead of having Commissioner Morman in
6 Precinct 2?

7 THE WITNESS: Yes, Judge.

8 THE COURT: Okay.

9 THE WITNESS: And this just corrects that.

0 2 : 3 3 10 THE COURT: You drew him out of 2, in the map that's
11 Exhibit Number 46.

12 THE WITNESS: I drew him -- yes. I draw him out --
13 out of --

14 THE COURT: His own precinct.

0 2 : 3 3 15 THE WITNESS: Put him back in the precinct that he
16 currently -- the number that he currently lives in.

17 THE COURT: In 46?

18 No. I mean -- I'm on the 46 map now. In the 46
19 map, the first plan that we went over, you drew Commissioner
0 2 : 3 3 20 Morman out of the precinct --

21 THE WITNESS: Yes, Judge.

22 THE COURT: -- that he's in now.

23 THE WITNESS: Yes, Judge.

24 THE COURT: Okay.

0 2 : 3 3 25 THE WITNESS: They live very close to each other, and

0 2 : 3 3 1 he ended up in Commissioner's Precinct Number 1.

2 BY MR. DUNN:

3 Q. And how did that happen when you were drawing 46?

4 A. Well, when you draw a *Gingles* plan, you're only looking
0 2 : 3 3 5 at -- you don't look at anything other than the numbers. And
6 so, I didn't -- I specifically didn't know where the
7 commissioners lived, and I just drew the plan to demonstrate
8 that it was possible.

9 THE COURT: You think the only thing I have to be
0 2 : 3 4 10 concerned about is the numbers and that's it?

11 THE WITNESS: No. Just for the *Gingles* plan, Judge.

12 THE COURT: That's what I am asking. You think that
13 that's the only thing that you need to look at and the Court
14 should consider, is just the numbers and that's all?

0 2 : 3 4 15 THE WITNESS: No, Judge. If I said that, that's not
16 what I meant. When we draw a *Gingles* plan -- I always get
17 criticized for saying you're trying to take care of somebody.
18 And, so, when I draw a *Gingles* plan, I try not to pay attention
19 to where anybody lives.

0 2 : 3 4 20 THE COURT: Okay.

21 THE WITNESS: But what this does is it demonstrates
22 that it's also possible to draw a *Gingles* plan in which none of
23 them -- none of the commissioners are paired.

24 BY MR. DUNN:

0 2 : 3 4 25 Q. And that exhibit you're talking about is 57?

02:34 1 THE COURT: "Pairs," that's a nice way of saying
2 kicked out of their own precinct.

3 THE WITNESS: That's the way Congressman Delay said
4 it.

02:35 5 THE COURT: Oh, okay.

6 BY MR. DUNN:

7 Q. So, in Exhibit 57, are there any commissioners paired?

8 A. No.

9 THE COURT: I thought we were on 47. Did you say 57
02:35 10 now?

11 MR. DUNN: 57. All I've talked about is 46 and 57.
12 Those are the two that we're discussing.

13 THE COURT: Okay. 57. I was on 47. Sorry. So, this
14 is an alternative plan?

02:35 15 MR. DUNN: Yes.

16 THE WITNESS: An alternative *Gingles* plan, yes, Judge.

17 BY MR. DUNN:

18 Q. When you went about drawing a *Gingles* plan that didn't pair
19 any incumbents, what effect did that have, if any, on the shape
02:35 20 of the district?

21 A. Well, the shape looks almost -- almost the same. It makes
22 it just slightly less compact but, again, not very different
23 than any of the other plans.

24 Q. So, for Exhibit 57, I want to go to the citizenship data.

02:36 25 Well, actually, first, let's go to Page 3 of the exhibit. What

02:36 1 is shown here on Page 3 of Exhibit 57?

2 A. Page 3 of Exhibit 57 shows the Hispanic concentration by
3 *Gingles* Plan 325.

4 Q. All right. And, then, what is Page 4 of the exhibit?

02:36 5 A. This is the black concentration for the Hispanic population
6 of 325.

7 Q. Now we get to Page 6. What is shown here?

8 A. This is the same chart that we looked at on the previous
9 plan, and it shows the citizen -- the citizenship by race and
02:36 10 ethnic origin for the two periods under plan two -- 350 -- 325.

11 Q. All right. So, in the chart at the top, what is the
12 Hispanic CVAP for Precinct 1 in this *Gingles* plan?

13 A. Excuse me. This chart has -- this is two separate charts.
14 The top one is District 325 --

02:37 15 Q. Okay. And is that --

16 A. -- the top map.

17 Q. Which one of these should we be looking at for your second
18 *Gingles* plan?

19 A. The top map.

02:37 20 Q. All right. So tell us, for Commissioner's Precinct Number
21 1, what is the Hispanic CVAP in the second *Gingles* plan you've
22 drawn?

23 A. 17.8 percent.

24 Q. And what is the black CVAP in Precinct 1 for the second
02:38 25 *Gingles* plan you've drawn?

02:38 1 A. 51.2 percent.

2 Q. What is the Hispanic CVAP in Precinct 2 in the second
3 *Gingles* plan you've drawn?

4 A. 51.6 percent.

02:38 5 Q. And what is the black CVAP in Precinct 2?

6 A. 16.1 percent.

7 Q. All right. Now, if you will go with me to Page 7 of the
8 exhibit, what is it that you are showing here?

9 A. That shows the cities and the census designated places in
02:38 10 Harris County. And it overlays this 325 on top, plan 325 on
11 top of the -- of cities and census designated places.

12 Q. What's the key fact you're trying to demonstrate here?

13 A. Well, we're looking at how many cities and neighborhoods
14 are being split, census neighborhoods that are being split by
02:39 15 the plans.

16 THE COURT: Where is that reflected on that chart?

17 THE WITNESS: Well, for example, Judge, in the lower
18 right-hand corner Pasadena is split. And on the --

19 THE COURT: Can you point to what you are talking
02:39 20 about, please?

21 THE WITNESS: Sure. Pasadena is split here
22 (indicating). And then, of course, Houston is split because
23 it's so large. But the City of Pasadena is split, and census
24 designated place Channelview is also split. And that's right
02:39 25 there, Judge.

02:39 1 THE COURT: Okay. Can you tell me why you -- in
2 making this chart that's on the previous page, why are you
3 using only 2005 -- or 2006 to 2010 data? Why aren't you using
4 the data for -- I mean, why are you just using 2006 to 2010?

02:40 5 THE WITNESS: Well, it could be that's all they sent
6 me. Normally, they only send out the most current data.

7 BY MR. DUNN:

8 Q. So can you request the '05 to '09 data?

9 A. You can request the '05 to '09 data.

02:40 10 Q. Could you get that before the end of this week?

11 A. I could, yes.

12 THE COURT: I mean, did you --

13 MR. DUNN: We just missed it, your Honor. I went
14 through these exhibits and I thought the bottom was '05 to '09,
02:40 15 like the other one was, and I just realized --

16 THE COURT: Why is it split, I guess, is what I am
17 trying to figure out. The tabulation is split even on the
18 previous one. What's the reason to have it split like that?

19 MR. DUNN: That's how the ACS issues its data. They
02:41 20 always do it in five-year intervals. And so, when
21 redistricting was done, everywhere in the state, all we had was
22 '05 to '09. Now we have '06 to '10. And, frankly, the case
23 law is not clear. When a Court considers it, should it be
24 looking at the ACS data that the office holders had at the time
02:41 25 or can it look at newer data. So, we've trying to provide

02:41 1 both.

2 But the takeaway is that, in both of these
3 *Gingles* plans, under either of the data, they get over 50.
4 Except he's got full '05 to '09 for this one, which he will do.

02:41 5 THE COURT: Where is the chart like you did for the
6 other exhibit, showing how many cities or precincts are split?

7 BY MR. DUNN:

8 Q. Is that it there on Page 5 of the exhibit?

9 A. (No audible response).

02:41 10 Q. It's on your scene, George.

11 A. The cities are split?

12 Q. I thought you were saying VTD's.

13 A. The voting precincts are -- it shows the voting
14 precincts -- two voting precincts are split.

02:42 15 THE COURT: Where is that? Is it on one of these?

16 THE WITNESS: It's on Page 5.

17 MR. DUNN: It's Page 5 of Exhibit 57.

18 THE COURT: Okay. I see it.

19 THE WITNESS: And can I say, Judge, that these two
02:42 20 voting precincts are split to maintain the boundary lines of
21 one city and one census designated place. The voting precincts
22 cut small cities. And in order to keep the -- excuse me -- the
23 city lines are cut by voting precincts. And in order to keep
24 the cities together, you sometimes have to cut voting
02:42 25 precincts. And that's what this does.

02:42 1 THE COURT: Okay.

2 BY MR. DUNN:

3 Q. And, so, is another way to say that: If you had cut the
4 city, then you wouldn't have cut the VTD?

02:42 5 A. That's correct.

6 Q. It was an either/or?

7 A. It was an either/or. In these particular cases, there's no
8 population in one of the cuts of the city. That's La Porte.

9 And I think there's one person that lives in the cut of the
02:43 10 city in Sheldon.

11 Q. Now, while we're still here on Page 5, what is that chart
12 there on the top?

13 A. Oh, this is the concentration numbers for 325, the same
14 data that we looked at for those other three plans, for the
02:43 15 current plan and the former plan.

16 Q. So, when we were looking at Exhibit 58, the three
17 together --

18 A. Yes.

19 Q. -- we can take that and lay it with this Page 5 of
02:43 20 Exhibit 57, and we would see the compactness scores for all
21 four of these plans?

22 A. That's correct. And, again, they're on --

23 THE COURT: What page? I'm sorry. Say it again.

24 MR. DUNN: On Page 5 of Exhibit 57.

02:44 25 THE COURT: Five, right.

0 2 : 4 4 1 MR. DUNN: And at the top of that is the compactness
2 scores for the -- for this *Gingles* plan. And we --

3 THE COURT: I must be on a different page than you.
4 I'm on Page -- I'm in Exhibit 57. I'm on Page -- one, two,
0 2 : 4 4 5 three, four. There it is. Okay.

6 MR. DUNN: And, so, earlier, in Exhibit 58, we had
7 shown the three compactness scores on one page. We couldn't
8 fit four in one page. So --

9 BY MR. DUNN:

0 2 : 4 4 10 Q. All right. So, again, in comparing the compactness scores
11 of your two *Gingles* plan with the one the county had in effect
12 in the last decade, the one they've adopted for this decade,
13 that's been precleared, what is your opinion of it?

14 A. Again, Precinct Number 1, I think is better than the other
0 2 : 4 5 15 three, the other three plans. And Precincts 2, 3, and 4 are
16 about the same compactness as the current plan of the county.

17 Q. Okay.

18 A. So, the plans are all essentially the same in terms of
19 compactness.

0 2 : 4 5 20 MR. DUNN: Now, I'm going to -- I'm going to move to a
21 new exhibit if that's appropriate, your Honor.

22 THE COURT: Hang on just one second, please. I'm
23 sorry.

24 So what's your thoughts with respect to the
0 2 : 4 6 25 compactness issue in each of the two plans that you drew? Was

02:46 1 it to draw District 1 more compact, even at the expense of the
2 other three?

3 THE WITNESS: No, Judge. I didn't -- I didn't pay
4 attention to the compactness scores until after the plan was
02:46 5 drawn. It just ended up that one was more compact in these
6 plans. But the difference is so slight that it really
7 doesn't -- to say it's a difference is probably wrong. But the
8 numbers are slightly more compact.

9 THE COURT: Okay.

02:46 10 All right. Mr. Dunn?

11 BY MR. DUNN:

12 Q. I'm going to turn your attention to Exhibit 3.

13 A. Yes.

14 Q. Now, did you draw this plan?

02:47 15 A. I did not.

16 Q. Okay. But you've had a chance to look it over?

17 A. I have, yes.

18 Q. Okay. And your opinion, as somebody that testifies in this
19 field, is this also a *Gingles* plan?

02:47 20 A. Yes, this is also a *Gingles* plan.

21 Q. All right. And this third *Gingles* plan, what are the -- on
22 Page 2 of Exhibit 3, what are the Hispanic CVAP numbers for
23 Precinct 1?

24 A. Hispanic CVAP numbers for Precinct 1 is 16.5.

02:47 25 Q. And what is it for the black population CVAP in Precinct 1?

02:47 1 A. The black citizen voting age population is 51.1 percent.

2 Q. And in Precinct 2, what is the Hispanic CVAP?

3 A. 50.9 percent.

4 Q. And the -- for Precinct 2 what is the black CVAP?

02:47 5 A. 15.3 percent.

6 Q. Again, and going back to the picture, is this -- or I'm
7 sorry -- the map, is this sort of a different way of going
8 about drawing a *Gingles* plan than the two that you have drawn?

9 A. Yes. This plan resembles more the current and former
02:48 10 precinct plans for Harris County.

11 Q. Mr. Korb, have you tried to draw a remedial plan, or a
12 plan the Court would put into effect?

13 A. Yes.

14 Q. And what does that plan, more or less, look like?

02:48 15 MR. GEORGE: Your Honor --

16 THE COURT: Give me one second, please. I beg your
17 pardon.

18 Can I just get some clarification? I'm sure you
19 guys are all on the same page. I'm the only one lost. What's
02:49 20 the date of this plan? In September 3, I don't know where this
21 plan fits in chronologically.

22 MR. DUNN: Well, this plan was drawn by some community
23 members here in Houston back when redistricting was being
24 debated in Harris County, when they were having the meeting.

02:49 25 So, I guess, that would be, like, August --

02:49 1 THE COURT: Well, that's the same Harris County plan.

2 MR. DUNN: Well, it says, "Harris County
3 Commissioner's Court Proposed Demonstration Plan."

4 THE COURT: Right. So, I don't know where -- I don't
02:49 5 know anything about where this falls, chronologically. What's
6 the date of this plan and when was this done?

7 MR. DUNN: This was drawn in about August of 2011.

8 MR. GEORGE: And, your Honor, I didn't object to it.
9 This witness didn't draw this map. We permitted this map in as
02:49 10 an exhibit. But, you know, to get further testimony from this
11 witness about this plan that he didn't draw --

12 THE COURT: Well, he was finished. I was the one that
13 was still stuck on this one. He had moved on to something
14 else.

02:49 15 MR. GEORGE: I actually am responding to the testimony
16 from Mr. Dunn.

17 THE COURT: All he did was read me two numbers off of
18 it. It's in evidence. That's not a problem.

19 I just didn't know where -- you guys all knew
02:50 20 what this was. I'm the only one in the dark. He had moved on
21 to another issue; and I'm still stuck trying to figure out
22 whose plan this is, when did this come up.

23 So, this doesn't have anything to do with
24 anything, right? It was just put in so that I could be, like,
02:50 25 a little more confused, right?

02:50 1 MR. DUNN: That may have been the effect, but it was
2 not the intent. The intent was to show you yet another way to
3 draw a *Gingles* plan, that was 50 percent Latino CVAP in
4 Precinct 2.

02:50 5 THE COURT: Okay. Not your plan. You're not
6 proposing it. Okay. Good deal. I got it.

7 Where have you moved on to from there? What was
8 your next question?

9 I missed the next question, because I was too
02:50 10 busy still looking at this one. So, he has an objection to a
11 question that I didn't hear. So, what was the next question?

12 BY MR. DUNN:

13 Q. So, based upon your experience in the field and in your
14 experience drawing these plans, do you have an opinion as to
02:50 15 whether or not there is a sufficiently large and geographically
16 compact Latino group in Harris County that, if placed into a
17 single member district, would constitute a majority?

18 A. Yes.

19 Q. What is that opinion?

02:51 20 A. That opinion is that there is a significant -- sufficient
21 number of sufficiently compact Hispanics that you could draw a
22 district that is more than 50 percent Hispanic citizen voting
23 age population, in other words, a *Gingles* one plan.

24 MR. DUNN: And, your Honor, just to clean up a little
02:51 25 bit, I didn't know if I need to offer 58 or was it admitted

02:51 1 already.

2 THE COURT: Oh, I'll admit 58. I mean, I know you
3 didn't offer it; but, obviously, it's just from the other
4 exhibits. So, yes, 58 is admitted. Let me mark that on my
02:51 5 list, as a matter of fact.

6 Got it.

7 MR. DUNN: And we pass the witness.

8 THE COURT: All right. Mr. George?

9 MR. GEORGE: Yes, your Honor.

10 **CROSS-EXAMINATION**

11 BY MR. GEORGE:

12 Q. Mr. Korbelt, we met in your deposition, did we not?

13 A. Yes, sir.

14 Q. All right. I'm intrigued by what you paid attention to
02:52 15 when you drew the two *Gingles* maps that you provided to this
16 Court, so that's where I am going to start. The two *Gingles*
17 maps, as I understand it, that you presented to the Court today
18 are exhibits 47 and 57. Is that correct, sir?

19 MR. DUNN: It's 46 and 57.

02:52 20 MR. GEORGE: 46 and 57. Got it.

21 BY MR. GEORGE:

22 Q. And these are both *Gingles* maps, in your view. Is that
23 right, sir?

24 A. That's correct.

02:52 25 Q. You're not drawing these maps and asking the Court to

02:52 1 implement them. You're drawing them as hypotheticals. Is that
2 fair?

3 A. I think that they refer to them as a "demonstration
4 district."

02:53 5 Q. And you also refer to them as "*Gingles* maps," do you not?

6 A. That's correct.

7 Q. And as the map drawer, your perspective -- as far as things
8 you have to pay attention to, your perspective is that a
9 *Gingles* map can be unconstitutional. Is that right, sir?

02:53 10 A. Well, if you -- if you pack Hispanics or African-Americans
11 into a single district to form a *Gingles* plan, it might -- it
12 could possibly be unconstitutional, yes.

13 Q. And so -- and, actually, your view is that most *Gingles*
14 maps pack minorities into a district, making the map
02:53 15 unconstitutional. Isn't that right, sir?

16 A. I don't know of "most"; but it does happen, yes.

17 Q. Happens "usually," I think is a word you've used before.

18 A. It could be. I mean, it happens, yes.

19 Q. So, when you are drawing these *Gingles* maps that, in your
02:54 20 view, can pack minorities into a district so much so that the
21 map is unconstitutional, you don't pay attention, do you, to
22 how many of the constituents are actually moved to a different
23 incumbent precinct, true?

24 A. Not initially, no.

02:54 25 Q. Well, do you ever consider how much population actually

02:54 1 moves from precinct to precinct?

2 A. In order to compute the deviation, I have to consider that.

3 Q. Did you in this case consider what percentage of people
4 under your maps move from one precinct to another?

02:54 5 A. I look -- we looked at that data, yes.

6 Q. And do you know, under your two proposed *Gingles* maps, how
7 many constituents would actually move to a new precinct?

8 A. I don't have that information.

9 Q. Would you be surprised to learn that more than 40 percent
02:55 10 of the population would have to move?

11 A. No, I wouldn't be surprised.

12 Q. Is that a consideration that you make when you draw a
13 *Gingles* map?

14 A. Well, these are *Gingles* maps just to demonstrate that it's
02:55 15 possible to draw a district that has a concentration of
16 Hispanics or African-Americans that are sufficient to meet the
17 test in *Gingles*.

18 Q. So, in your view, when you draw a *Gingles* map, you don't
19 consider the number of constituents that move precincts; that's
02:55 20 not one of your considerations?

21 A. Not initially, no.

22 Q. All right. Do you think that 40 percent of Harris County
23 population having to move precincts, 40 percent of the
24 constituents having to move into a new incumbent precinct --

02:56 25 THE COURT: 40 percent of the entire county or -- you

02:56 1 said 40 percent of Harris County.

2 MR. GEORGE: 40 percent of the population of Harris
3 County, that's absolutely my question, your Honor.

4 THE COURT: Okay.

02:56 5 BY MR. GEORGE:

6 Q. Do you think that, under your maps, if 40 percent of the
7 Harris County population would have to move, that's quite a
8 shake up of the incumbent/constituent relationships in Harris
9 County?

02:56 10 A. Again, this is a *Gingles* plan. It's only meant to indicate
11 that it's possible to meet the *Gingles* test. It -- as the
12 remedy plans show, there are a number of different ways you can
13 do it that wouldn't -- wouldn't move quite as many people.

14 Q. We're not here today talking about remedy plans, are we?
02:56 15 We're talking about your *Gingles* plan?

16 A. *Gingles* plan.

17 Q. And, sir, do you remember my question?

18 A. Sure. The *Gingles* plans are only for the purpose of
19 showing that it's possible to draw a district that has more
02:57 20 than 50 percent citizen voting age population.

21 Q. And those two *Gingles* plans that you drew shake up the
22 population quite a bit, don't they?

23 A. They make changes, yes.

24 Q. Significant changes?

02:57 25 A. They make significant changes, but they're consistent with

02:57 1 changes in other redistrictings and other plans.

2 Q. Let me move on to another consideration and ask if you made
3 it. In drawing your two *Gingles* maps, did you consider at all
4 where Harris County has its various facilities?

02:57 5 A. No, I didn't.

6 Q. Did you do any exploration into where Harris County and
7 these precincts and these commissioners have their community
8 centers?

9 A. No. Again, these are *Gingles* plans. They're just to
02:57 10 demonstrate it's possible to draw a district that has more than
11 a 50 percent Hispanic citizen voting age population.

12 Q. Yes, sir. Because they're *Gingles* plans, you don't think
13 it's important to take a look at local contingencies that
14 relate to the county. Is that right, sir?

02:58 15 A. If we were looking at remedy plans and you had suggestions
16 as to what -- as to those and they didn't violate the 14th
17 Amendment, that wouldn't be a problem.

18 Q. Well, as a matter of fact, if you were hired by the county
19 in this case to draw a map, you would have paid attention to
02:58 20 some of those sort of things, would you not have?

21 A. Had I been hired by the county, I would have sat -- with
22 the counties I do work for, I sit down with each one of the
23 commissioners and county judge and ask them separately how
24 they -- how they feel their commissioner's precincts should be
02:58 25 drawn and the reasons for it and we go into great detail.

02:58 1 And sometimes I tell them that I don't think it's
2 a good idea, that there may be some constitutional or statutory
3 problems with the way the districts are going to be drawn. And
4 then I -- after meeting with all of them, I put it together and
02:59 5 propose one or more plans to the parties.

6 Q. And you had none of those kinds of conversations in this
7 case, because you were drawing *Gingles* maps. Is that right,
8 sir?

9 A. I didn't think it was appropriate for me to go over and
02:59 10 meet with the commissioners in a matter that's in litigation.

11 Q. You didn't think it was important to find out where
12 community centers were and other county facilities, because
13 these are *Gingles* maps, in your view, correct?

14 A. These are *Gingles* maps, that's correct.

02:59 15 Q. Would you be surprised to learn that under your two *Gingles*
16 maps -- or at least under most of the maps that you proposed --
17 and I will have these numbers later -- more than half of the
18 community centers in Harris County would change from one
19 commissioner to another?

02:59 20 A. Again, these are *Gingles* maps.

21 THE COURT: So, is that a "no"?

22 THE WITNESS: That's a "no."

23 BY MR. GEORGE:

24 Q. Well, let's talk about a redistricting principle that I
03:00 25 hope -- I wonder if you did consider. Because I think it

03:00 1 relates to what we've just been talking about.

2 It is a redistricting principle, is it not, to
3 follow, to pattern your maps after the map, the last legal
4 lines in the county?

03:00 5 A. That happens sometimes, and sometimes it doesn't.

6 Q. Well, is a distinction that maybe you're going to make here
7 you didn't have to this time, it's not a principle at this time
8 because these are *Gingles* maps?

9 A. No. No. You asked --

03:00 10 Q. All right. So, for a *Gingles* map, even you would agree
11 with me that a traditional redistricting principle is to try to
12 deviate as little as possible from your last legal lines?

13 A. Can you ask that again? I'm sorry.

14 Q. Yes, sir. Is following the county's or whatever
03:01 15 jurisdiction's map you're drawing, is it a redistricting
16 principle for you to deviate as little as possible from those
17 last legal lines?

18 A. Not in drawing the *Gingles* plan. Although, in this
19 particular case, we did come back and draw plans that look very
03:01 20 much like the current plan and deviate less from the current
21 plan.

22 Q. You drew those maps that you were showing Judge Gilmore
23 today?

24 A. I'm sorry?

03:01 25 Q. You're not talking about the two maps that you have shown,

03:01 1 Judge Gilmore today, are you?

2 A. No.

3 Q. All right. The two maps you're showing Judge Gilmore
4 today, those don't stick to -- or you didn't start with the
03:01 5 county's legal lines, correct?

6 A. No. But the -- but the last plan that was -- that was
7 discussed, that's in evidence, does start that way. And I have
8 this week drawn some that are that way.

9 THE COURT: When you say the "last" plan, are you
03:02 10 talking about that Exhibit Number 3?

11 THE WITNESS: Yes, Judge.

12 THE COURT: Okay.

13 THE WITNESS: Yes, Judge.

14 BY MR. GEORGE:

03:02 15 Q. I want to talk about your plans. So I want to make clear,
16 when you drew your two *Gingles* plans, you started over, you
17 didn't use existing county lines, correct?

18 A. No, I didn't.

19 Q. All right.

03:02 20 A. I started -- I started from scratch because I think that's
21 a better way to draw a *Gingles* plan.

22 MR. GEORGE: Can we take a look at --

23 THE COURT: Oh, I'm sorry.

24 MR. GEORGE: Let's take a look at Exhibit 46.

03:02 25 BY MR. GEORGE:

03:02 1 Q. All right. Now, this is, I think, the first of your two
2 *Gingles* plans.

3 THE COURT: I don't know what exhibit number you're
4 on.

03:03 5 BY MR. GEORGE:

6 Q. It is Exhibit 46, is it not, sir? It's Exhibit 46?

7 THE COURT: Plaintiffs' 46?

8 MR. GEORGE: Yes, your Honor.

9 THE COURT: Okay.

03:03 10 BY MR. GEORGE:

11 Q. All right. So, we're at Plaintiffs' -- Plaintiffs'
12 Exhibit 46. This is one of your proposed *Gingles* plans, is it
13 not?

14 A. This is one of the demonstration plans, yes.

03:03 15 Q. That you testified about earlier today?

16 A. Yes.

17 Q. All right. And this is one of those plans where you didn't
18 start from the existing lines. This is one of those plans you
19 drew starting from scratch, correct?

03:03 20 A. Yes.

21 Q. All right. And in this plan, Precinct 2 has -- I sort of
22 call it "bunny ears." Do you see that?

23 I'm sorry. Precinct 1 has sort of bunny ears.

24 Is that a fair characterization of what Precinct 1 does there?

03:03 25 A. This plan looks like the congressional and the senate

03:04 1 plans. It's -- the black population live in those two arms of
2 that district.

3 Q. And those two arms, that's what I was referring to as
4 "ears." Those are like bunny ears, correct?

03:04 5 A. Well, they're arms. They're parts of the district.

6 Q. All right. Two arms. Precinct 1 has two arms sticking up,
7 does it not?

8 A. Yes, it does.

9 Q. All right. And Precinct 2 wraps all the way around those
03:04 10 two arms, does it not?

11 A. Yes.

12 Q. All right.

13 A. In exactly the same pattern as the congressional and the
14 senate plans.

03:04 15 Q. And in your Precinct 2, it reaches all the way over to
16 Baytown, does it not?

17 A. Yes.

18 Q. All right. And it reaches all the way over to the west, to
19 Spring Branch.

03:04 20 A. Yes.

21 Q. Do you have --

22 A. Well, it goes by Spring Branch, yes.

23 Q. Do you happen to know the distance between Baytown and
24 Spring Branch --

03:05 25 A. How far it is --

03:05 1 Q. Yes, sir.

2 A. -- from one to the other?

3 I suppose about 18 or 20 miles.

4 Q. How about 40? Would that surprise you?

03:05 5 A. That could be, yes.

6 Q. Fair to say that both your two plans that you proposed
7 today share variations on these same two themes, where you have
8 two arms for Precinct 1 and Precinct 2 wraps all the way around
9 it, correct?

03:05 10 A. That's correct.

11 Q. Now, when you first drew these *Gingles* maps, you didn't pay
12 attention to where the incumbents lived, correct?

13 A. No, I didn't. Because when you draw a *Gingles* plan you
14 don't look at where the incumbents are. Because, in some
03:05 15 cases, there's some fudging going on, some cheating going on.

16 Q. But after you -- after you drew the maps, you came back and
17 you found, at least for one of them, you had taken Commissioner
18 Morman out of his precinct, correct?

19 A. Yes. I believe that's Commissioner Morman. If I am
03:06 20 using -- if I'm saying the wrong name or mispronouncing it,
21 please tell me.

22 Q. Let me ask you about how you actually drew these maps. Did
23 you use the software called "Red Apple"?

24 A. Yes.

03:06 25 Q. And when you were drawing the maps on Red Apple, it has a

03:06 1 feature so that you can look at demographic information on a
2 block-by-block basis, correct?

3 A. Yes, uh-huh.

4 Q. All right. So when you are drawing your map, you could
03:06 5 actually see on the computer how many, for example, Hispanics,
6 or Latinos, live in a particular block?

7 A. Or in a precinct or a census tract or any of the census
8 geography, yes.

9 Q. And then you can make your decisions on whether to include
03:07 10 that particular block in your Precinct 2.

11 A. Yes. On this plan, of course, there were no decisions on
12 the basis of blocks, because there are no voting precincts cut.

13 Q. But you did make decisions on whether or not to put a
14 particular population into Precinct 2 based on the fact that
03:07 15 they were Latino?

16 A. That was one of the considerations, yes.

17 Q. And you can watch that, when you are drawing these maps on
18 Red Apple, you can watch that by the shading feature that Red
19 Apple has?

03:07 20 A. That's correct. And I -- again, I used as a model the
21 congressional and the senate maps that are currently in effect
22 for Harris County.

23 THE COURT: When you say "currently," which ones do
24 you mean?

03:08 25 THE WITNESS: The ones that the congressmen and the

03:08 1 senators are currently being elected under.

2 THE COURT: Okay.

3 BY MR. GEORGE:

4 Q. Do all of those particular congressional districts go
03:08 5 outside of Harris County?

6 A. Not all of them, no.

7 Q. Some of them don't? Do you know which one doesn't?

8 A. Yeah. Six, senate District 6 doesn't go outside the
9 county.

03:08 10 Q. And is that one of the ones that you patterned this after?

11 A. Yes. The district -- District Number 2 is in similar
12 geography to District 6, which was a court drawn plan.

13 Q. Did you --

14 A. I'm sorry.

03:08 15 Q. I'm sorry, sir. I thought you were finished.

16 A. No. I said, which was a court drawn plan.

17 Q. Did you do anything to study the growth rate, the
18 African-American growth rate, in any particular segment of this
19 map?

03:09 20 A. Well, I have a project underway in which we're trying to do
21 that for all of the urban areas in Texas. And to that extent,
22 yes, I paid attention to that.

23 Q. So, can you tell me where on this map you believe that the
24 African-American population is either growing or retracting?

03:09 25 A. The African-American population is growing in a very slow

03:09 1 manner in Harris County.

2 Q. Well, as a matter of fact, it is retracting on the edges of
3 the Hispanic community, is it not?

4 A. For the past three decades, the Hispanic population has
03:09 5 been moving into areas that were formerly occupied by
6 African-Americans, yes.

7 Q. Fair to say that if you look at the boundary lines between
8 1 and 2, the Hispanic growth is really accelerating whereas the
9 African-American growth is retracting?

03:10 10 A. Well, I don't think that's fair to say that.
11 African-American population is still growing. The Anglo
12 population is declining.

13 Q. How about Alief? Is Alief a fast growing area for
14 Hispanics or for African-Americans; do you know?

03:10 15 A. It has been a fast growing area for Hispanics for some
16 time.

17 Q. All right. Now, you would agree with me, would you not,
18 that trying not to split a city is a traditional redistricting
19 principle?

03:10 20 A. Well, it depends on who's in charge of the redistricting.
21 In the state redistricting and in some of the counties and
22 cities -- excuse me -- and school districts that I have dealt
23 with there's been interest in splitting cities. And so, it
24 just depends on what the jurisdiction wants.

03:11 25 Q. As a general proposition, would you agree with me that

03:11 1 trying not to cut jurisdictional boundaries of a city is a
2 traditional redistricting principle?

3 A. When I draw plans that are going to be used in an election,
4 I try to do that, yes.

03:11 5 Q. Okay. And here I believe your testimony was that you drew
6 these *Gingles* plans without looking at the cities and then you
7 went back to see what cities you cut. Is that fair?

8 A. Well, almost. I'm somewhat familiar, obviously, with
9 Harris County. And so, to the extent that I had an idea where
03:11 10 the census designated places are and the cities are, yes, I --
11 I tried to pay attention to those.

12 Q. All right. Let's take a look at --

13 A. But as I said, your voting precincts cut many lines of
14 cities and census designated places.

03:12 15 Q. Let's take a look at Exhibit -- Plaintiffs' Exhibit 57.

16 A. All right.

17 Q. We're going to go toward the end. I think it's the second
18 to the last page. We were on it earlier. And I just want to
19 be clear --

03:12 20 MR. GEORGE: It's the city map, Exhibit 57.

21 There we go.

22 BY MR. GEORGE:

23 Q. Now, looking at that map, sir, I think you testified
24 earlier that you split Pasadena, correct?

03:12 25 A. Pasadena is split in this plan, yes.

03:12 1 Q. How about Baytown?

2 A. Baytown is also split in this plan.

3 Q. All right. Cloverleaf?

4 A. That says -- Cloverleaf? No. Cloverleaf, which is a CDP,

03:12 5 is not split.

6 Q. How about Channelview?

7 A. Channelview is split, yes.

8 Q. So, just those three. So, I guess, when you went back, you

9 saw that those towns were split but you chose not to put them

03:13 10 back together, correct?

11 A. Those -- those three?

12 Q. Yes, sir.

13 A. Yes, this does split three -- does split three cities

14 and -- excuse me -- splits two cities and one CDP.

03:13 15 Q. And it -- for example, Baytown and Pasadena, those two

16 cities are split in this map so that you could put Latino

17 population from those cities into Precinct 2, correct?

18 A. I think what I was -- I think what I was looking at when I

19 went into there were either school board or city council

03:13 20 districts in Baytown.

21 Q. Sir, is it your testimony that the reason you -- that a

22 reason you decided not to put Baytown back together, that had

23 nothing to do with Hispanic population? Is that your

24 testimony?

03:14 25 A. Well, if I put Baytown back together, then there's no way

03:14 1 to get through to the rest of the less urban areas in Harris
2 County.

3 Q. So, that was your reason for Baytown. What was your reason
4 for Pasadena?

03:14 5 Well, let me ask a better question.

6 When you looked back at the map, you saw Pasadena
7 was split up, why didn't you put it back together?

8 A. I didn't need to. The population was sufficient. I --
9 this only cuts three -- two cities and one CDP, I think. And
03:14 10 your plan actually cuts more than that.

11 Q. So, let me make sure I understand. You didn't put it back
12 together because you didn't need to?

13 A. In terms of population, I didn't need to, no.

14 Q. Under both of your proposed *Gingles* maps, which of the four
03:15 15 precincts has the least amount of population?

16 A. Precinct 2.

17 Q. Yeah. Precinct 2 is underpopulated in each of your two
18 *Gingles* maps. Is that correct?

19 A. That's correct.

03:15 20 Q. And a reason for underpopulation can be to maximize the
21 minority population, correct?

22 A. That's correct. Although, the traditional redistricting
23 principle that the state has followed is to underpopulate
24 Hispanic and African-American districts to a lesser extent
03:15 25 because of the admitted undercount in the census.

03:16 1 Q. Let's talk about compactness.

2 THE COURT: You know what? Let's take a break here.
3 I was looking at you to see what you were getting ready to do
4 here next. Can we take a short break, like maybe 10 minutes or
03:16 5 so, you guys? Okay?

6 *(Recess was taken from 3:16 to 3:40 p.m.)*

7 THE COURT: Please be seated, everybody.

8 Mr. George.

9 MR. GEORGE: Yes, your Honor. Thank you.

03:40 10 THE COURT: Yes.

11 BY MR. GEORGE:

12 Q. Let's talk about compactness.

13 A. Yes, sir.

14 Q. Whether or not a precinct is compact is something that is
03:40 15 in the eyes of the beholder. Would you agree with that?

16 A. That's often said, yes.

17 Q. Often said by -- you've said that, right?

18 A. I've said that, yes.

19 Q. And, so, since the beholder here is the judge, we better
03:40 20 show the judge what she needs to behold.

21 MR. GEORGE: So if we could get the silhouette for
22 Exhibit 46.

23 BY MR. GEORGE:

24 Q. Now, this is just a demonstrative that we've done today and
03:41 25 that we've pulled out. This is the shape of Precinct 2 under

03:41 1 one of your proposed *Gingles* maps. And is it your testimony
2 today that that shape, that that precinct is compact?

3 A. It's reasonably compact, and the numbers indicate that it's
4 almost as compact as your plan.

03:41 5 Q. Well, we'll get to those numbers in a minute. Shape
6 matters, though, does it not?

7 A. Everything matters.

8 Q. Shape is one of the criteria that you look at to judge
9 compactness, correct?

03:41 10 A. Those compactness measures all use shape, yes.

11 Q. Well, you're tying it back to those compactness measures;
12 and we'll get there in a minute. But separate and apart from
13 those compactness measures, those numbers, shape matters, does
14 it not?

03:42 15 A. Yes, it matters --

16 Q. And --

17 A. But elections aren't held under shape. Elections are held
18 under neighborhoods and under patterns of voting and those
19 sorts of things.

03:42 20 Q. And when a district looks odd, that can be an indication
21 that it's not a compact district, correct?

22 A. No. I looked at your District Number 1, and that also
23 looks odd.

24 MR. GEORGE: Your Honor, he's not answering my
03:42 25 question. I ask you to direct him to answer the question.

03:42 1 THE WITNESS: I'm sorry.

2 THE COURT: Which exhibit number is the A1 map,
3 somebody?

4 MR. DUNN: A1 is Plaintiffs' Exhibit 7.

03:42 5 THE COURT: Okay.

6 BY MR. GEORGE:

7 Q. If a district is odd shaped, it can be criticized as a
8 district that's not compact. You've made that criticism
9 before, correct?

03:43 10 A. Of odd shaped districts?

11 Q. Yes.

12 A. I don't know that I have criticized districts for being odd
13 shaped. The state has criticized its own districts for being
14 odd shaped.

03:43 15 Q. And you have never criticized a district in a state case,
16 for example, for being odd shaped?

17 A. Yes. Yes. Oh, I see what you are saying. Yes, I have.

18 Q. Would you agree with me that that's an odd shaped district?

19 A. No, I don't think so. I think it's reasonably compact.

03:43 20 Q. Let's get to these compactness measures that you have been
21 talking about today. The fact of the matter is those
22 compactness measures from the Texas Legislative Council, none
23 of those measures were attached to your report in this case,
24 correct?

03:43 25 A. I don't recall, no.

03:43 1 Q. Well, those are not measures that you paid attention to
2 until after you drew these maps, correct?

3 A. Well, you really can't -- the way the software works is you
4 have to come to a stopping point in order apply the program
03:44 5 that makes those measurements. So, really, the only effective
6 way you can do that is to come to the end or come to a stopping
7 point and then check the compactness.

8 Q. Fact of the matter is these compactness measures that you
9 have touted today, you know, they are compactness measures come
03:44 10 up by academicians, correct?

11 A. Yes. I'm not criticizing academicians. I'm just saying
12 that's --

13 Q. And there may be 60 academicians that come up with maybe 60
14 of those kinds of measures?

03:44 15 A. I think some have come up with more. So, I'm not sure.

16 Q. So, these are just three, correct? Is that right?

17 Three --

18 A. Yes. They're the plans that are used by the legislative
19 council.

03:45 20 Q. And the comparison -- I want to be clear about this. The
21 comparison that you made is between your Map 257 -- and you did
22 the same thing with your Exhibit 57 -- and, by the way, 257 is
23 Exhibit 46, for the record. So, you've taken your two
24 demonstration *Gingles* maps, 46 and 57, and you have compared
03:45 25 those to --

03:45 1 THE COURT: No, no, no, no. That's not what this is.
2 It's 46 and then the current plan and then the 2001 to 2010.

3 MR. GEORGE: Yes, your Honor. And I think he said he
4 has made this same comparison. I wasn't just tying it to
03:45 5 Exhibit 58.

6 THE COURT: Oh, okay. I see what you are saying.

7 MR. GEORGE: I'm sure you're exactly right about that.
8 I don't believe he's given us the comparison; but he testified
9 about 57, as well.

03:45 10 THE COURT: Well, no. It is in here. I actually
11 pulled it out and stuck it on the back of the same exhibit.
12 But it was a whole -- it's from Plaintiffs' Exhibit 57.

13 BY MR. GEORGE:

14 Q. Okay. I just want to make sure that -- this -- there's
03:46 15 three different measures. Here one of is called "Area Rubber
16 Band," is that correct?

17 A. Yes.

18 Q. That's the one that you said was not very helpful in urban
19 areas?

03:46 20 A. I don't think, really, any of them are very, really,
21 helpful in urban areas.

22 Q. All right. And as far as the Population Rubber Band, is
23 that the one you confessed you didn't really understand?

24 A. Well, it identifies whether or not the -- whether you
03:46 25 can -- whether the population fits within a rubber band.

03:46 1 Q. Is it true, sir, that under all three of these measures
2 they show that your two maps are less compact than -- and I am
3 talking about Precincts 2, 3, and 4 -- your maps are less
4 compact than the existing lines?

03:46 5 A. Slightly. In most cases it's --

6 Q. Well, all right --

7 THE COURT: That's not right. That's not even what it
8 the says. Two, three, and four?

9 MR. GEORGE: Yes, your Honor. His -- let's just --

03:47 10 BY MR. GEORGE:

11 Q. Let's take a look at -- let's just take a look at
12 Plaintiffs' 46 -- well, let's look at your comparison,
13 Exhibit 58, which we can't show, I guess, on the -- all right.
14 So --

03:47 15 A. I'm sorry. I don't have a copy.

16 Q. Of your own Exhibit 58?

17 A. Well, I was using the screen.

18 THE COURT: So, can we put Plaintiffs' Exhibit 58 up?

19 Oh, we don't have it.

03:47 20 Mr. Dunn, do you mind putting Exhibit 58 up?

21 MR. DUNN: Absolutely.

22 MR. GEORGE: Thank you, sir.

23 I may have asked a bad question, your Honor, so
24 I'm going to ask it again. Mr. Korbelt agreed with me but I
03:47 25 want to ask it again and I will limit it down to Precinct 2.

03:47 1 BY MR. GEORGE:

2 Q. It's true, is it not, sir, that your compactness numbers
3 for Precinct 2, in all three measures, are -- show that your
4 Precinct 2's are less compact than the existing lines or
03:48 5 revised A1, the county's plan, that has been precleared?

6 A. Yes, they're slightly less compact.

7 Q. You're saying "slight." I guess it can be for the Court to
8 decide whether or not these numbers are slight. But I want to
9 make sure I am clear about this. The closer to one, the better
03:48 10 the number, the more compact, correct?

11 A. Well, the more -- the more they fit these models, these
12 three models.

13 Q. All right.

14 MR. DUNN: Mr. Wiley, may I take this down, please?

03:49 15 MR. GEORGE: Yes.

16 THE COURT: Oh, you want yours back on?

17 MR. GEORGE: The last thing I want to do, that's the
18 silhouette for your Exhibit 46. Let's go look at the
19 silhouette for your Exhibit 57.

03:49 20 BY MR. GEORGE:

21 Q. This is your District 2 under your second proposed *Gingles*
22 map, correct?

23 A. Yes.

24 Q. Do you believe that that is an odd shaped district?

03:49 25 A. It's a district that is reasonably compact. And I say that

03:49 1 after drawing these districts for 40 years.

2 MR. GEORGE: Your Honor, I don't have any further
3 questions at this time.

4 THE COURT: Oh, anything else from anyone?

03:50 5 MR. WASHINGTON: I do.

6 THE COURT: Oh, I'm so sorry, you guys.

7 MR. SIEGEL: Not for me, your Honor.

8 THE COURT: Mr. Washington?

9 MR. WASHINGTON: May I inquire, your Honor?

03:50 10 THE COURT: Yes, please.

11 THE WITNESS: Before he starts, Judge, may I say that
12 I've never been cross-examined by a client before.

13 THE COURT: There's a first time for everything.

14 MR. WASHINGTON: And you will never be able to say
03:50 15 that again after today.

16 THE WITNESS: I will never be able to say that again.

17 **CROSS-EXAMINATION**

18 BY MR. WASHINGTON:

19 Q. Good afternoon, my good friend.

03:50 20 A. Good afternoon.

21 Q. You and I have traveled a long way together?

22 A. Long way, yes, sir.

23 Q. Without wasting the Court's time or unduly imposing on her
24 generosity, I want to ask you some things. Ordinarily, I try
03:50 25 to pin you in to get where I am going; but I respect you enough

03:50 1 to think that you'll answer my questions directly without
2 trying to wiggle out. Am I right?

3 A. Of course. Of course.

4 Q. Okay. You're very modest in telling the Court that you
03:50 5 have been in Harris County a time or two. You've been here and
6 your fingerprint has been here for a very long time, hasn't it?

7 A. In with the police department and elsewhere, yes. Yes,
8 that's correct.

9 Q. No, I don't mean that fingerprint. I wasn't intending to
03:51 10 go there.

11 THE COURT: See, he asked a question he didn't know
12 the answer to.

13 BY MR. WASHINGTON:

14 Q. Back in the land before time, the city council in Houston,
03:51 15 which is, of course, in Harris County, was elected in what they
16 call "at large" by district, was it not?

17 A. (No audible response).

18 Q. Justin Robinson was an African-American city councilmember.
19 He was, quote, in a district in which he had to live but he was
03:52 20 voted on city wide?

21 A. That's not my recollection, but you may be right. It was
22 at large elections, in any event.

23 Q. Yeah. I was one of the lawyers in *Moses Leroy versus the*
24 *City of Houston*.

03:52 25 A. I do recall that.

03:52 1 Q. You were with us.

2 A. No. I was a lawyer.

3 Q. All right. One of the problems -- in fact, this is pre
4 Voting Rights Act, right?

03:52 5 A. Actually, the *Leroy* case was lost before the Voting Rights
6 Act was extended. And in order to win the *Leroy* case -- that
7 was one of the reasons why we -- and the same thing in
8 San Antonio -- why we went to try and get the Voting Rights Act
9 extended to Texas --

03:52 10 Q. Right.

11 A. -- is because we were concerned about not winning those two
12 cases.

13 Q. Right. In fact, the ruling by the district court and --
14 may he rest in peace -- and the court of appeals in the *Leroy*
03:53 15 case demonstrated, Exhibit 1, as to why the Voting Rights Act
16 needed to be extended to Texas.

17 A. Well, actually, the Fifth Circuit never did rule on that.
18 They sat on it while the Voting Rights Act was extended to
19 Texas and then waited to see what the Department of Justice
03:53 20 would do.

21 Q. Right.

22 A. So, they never -- as you know, clerks call and inquire
23 about status of things.

24 Q. I didn't know that.

03:53 25 A. Oh.

03:53 1 Q. The touchstone of all of that, then and now, is for the
2 benefit of the people who live in the community, isn't it?

3 A. The single-member districts?

4 Q. Elections in general. Elections have consequences.

03:53 5 A. Elections have consequences.

6 Q. In the single-member district case that we first lost and
7 then won on behalf of the City of Houston, the problem was we
8 were able to establish that all of the city services were
9 niggardly at best, in east -- east of Main Street in Houston
03:54 10 right?

11 The pipes, the water pipes were smaller, the
12 sewer system was dilapidated. As a result of all the voices,
13 the people who were elected to represent Houston, lived west of
14 Main Street, right?

03:54 15 A. I'm not sure all of them lived west of Main Street but most
16 of them did.

17 Q. Well, Homer Ford maybe lived -- you're right. Homer Ford
18 lived on the east side, but most of them -- I think there
19 were -- how many -- nine -- it doesn't matter but --

03:54 20 A. But you're right. Although, the evidence that Houston
21 offered was that the services were better distributed in the
22 minority areas than not in the minority areas. I mean, they
23 offered -- remember, they offered evidence that the roads were
24 smoother in the minority neighborhoods driving on shells --

03:55 25 Q. Right.

03:55 1 A. -- than they were in River Oaks.

2 Q. Right.

3 A. Remember, they had that wheel that they -- they had driven
4 behind a car -- or put behind a car.

03:55 5 Q. Right. Even though they had bar ditches over there and
6 didn't have any curbs and gutters.

7 A. No. But the drainage was better, they said, because there
8 was bigger --

9 Q. Because of the bar ditches.

03:55 10 A. -- bigger capacity, that's right.

11 Q. Now, you have observed the pattern, since you've been in
12 and out of Houston and Harris County since at least 1971, of
13 the population, growth, and the demography of the neighborhoods
14 when, under certain circumstances, for legal purposes and
03:56 15 otherwise, we have been called upon to divide God's children
16 down into Hispanic and African-American from time to time, have
17 you not? Or did you forget my question?

18 A. I mean, I don't know -- if you would ask it again, I would
19 appreciate it.

03:56 20 Q. You mentioned -- I was trying to shortcut.

21 You mentioned earlier, I believe in response to a
22 question from Mr. George, that there -- you had noticed a
23 pattern in some of the communities where -- you didn't say
24 where they were -- but a general pattern that -- in some of the
03:56 25 less affluent communities, there's been almost a checkerboard

03:57 1 pattern between blacks and Hispanics, where white people move
2 out, blacks and Hispanics move in, and there is an overlap for
3 a period, and then the increased population of Hispanic persons
4 in the community demonstrate that the -- there's a tipping
03:57 5 point where the black population starts to go down, the
6 Hispanic population starts to come up in the same census tract,
7 right?

8 A. Sure.

9 Q. And that had to do with --

03:57 10 A. Excuse me. I don't think it happens quite overnight; but
11 it does, yeah.

12 Q. No. I'm drawing the 30 year arc.

13 A. Oh, the arc, yes.

14 Q. And it continues, does it not?

03:57 15 A. Yes, it continues. As you know, in 1971, what were there?
16 74,000 Hispanics in Harris County. And now there's -- and
17 there were -- 1.7 million in Texas, and now there's almost as
18 many Hispanics in Harris County as there were Hispanics in
19 Texas in 1971.

03:58 20 Q. Exactly.

21 A. Yes.

22 Q. Right.

23 A. And almost the same thing can be said about blacks. Black
24 population has also grown.

03:58 25 Q. Right, but not at the same rate.

03:58 1 A. Not at the same rate, no.

2 Q. I didn't identify myself properly. My interest in this
3 lawsuit is that I am an advocate for people who live in
4 Commissioner's Precinct Number 1, Mr. Korbel, and who have been
03:58 5 allowed by this Court to intervene in this lawsuit. And my
6 questions to you, such as they are, are attempting to flesh out
7 for the Court their specific interests, you understand. And I
8 am concerned about the way you've drawn the district for the
9 people in Commissioner's Precinct Number 1, where you -- in
03:59 10 your so-called demonstration plan, you take them to an area
11 that you and I -- especially you, being the excellent expert in
12 demography that you are, surely do know that with a high
13 concentration of apartments on the southwest side, out near
14 what they call Alief, that those -- the concentration of black
03:59 15 people out there is going to go down, isn't it?

16 A. Concentration of black people is changing. But as you say,
17 it's over -- it's over an arc of time.

18 Q. Right.

19 A. It doesn't change overnight.

03:59 20 Q. I didn't -- I didn't include that in my sentence.

21 A. Yes.

22 Q. The Constitution -- Texas Constitution requires these
23 redistricting efforts to take place every decennial census,
24 right?

04:00 25 A. Usually it's the -- the federal -- the 14th Amendment, but

04:00 1 I suppose that the Texas Constitution could be read to require
2 that, also.

3 Q. I'm not speaking of when the census is taken. I'm speaking
4 of the Texas Constitution provision regarding redistricting.

04:00 5 A. Uh-huh.

6 Q. You're familiar with *White versus Regester*. You were one
7 of the lawyers with *Reynolds versus Sims*, *Baker versus Carr* --

8 A. Yes. Yes.

9 Q. -- right?

04:00 10 A. Yes.

11 Q. Okay. So, I'm speaking of not just today and tomorrow.
12 I'm speaking of over the course of the next 10 or 20 years,
13 right?

14 A. Yes. The districts are much different today than they were
04:00 15 30 years ago.

16 Q. Right. And these districts don't belong to the people who
17 are -- by virtue of the generosity of the people who elect
18 them, they don't belong to the elected officials, do they?

19 A. They do not.

04:00 20 Q. They belong to the people who live there, don't they?

21 A. People who live there, that's right.

22 Q. And that's a long-term interest that's sought to be
23 protected by the Voting Rights Act, isn't it, the community of
24 interest?

04:01 25 A. Well, an opportunity to participate in the process.

04:01 1 Q. Right.

2 A. Yes.

3 Q. And to the extent that the law permits and demography
4 shares that process, to be able to elect someone of their
04:01 5 choice to represent them, right?

6 A. That's correct.

7 Q. Regardless of the race, ethnicity, color, whatever
8 divisions we make between human beings, right?

9 A. That's correct.

04:01 10 Q. To choose for themselves someone that they think will best
11 represent their interests?

12 A. As long as their choice doesn't violate the 14th Amendment.

13 Q. Right. And, so, how do you justify what you have drawn for
14 the people in Precinct 1?

04:02 15 A. Mr. Washington, this is a *Gingles* plan. It's a
16 demonstration that Hispanics are sufficiently large and compact
17 so that a district can be drawn in which they are more than
18 50 percent of the citizen voting age population. A plan that
19 an election would be held under might very well look very
04:02 20 different. We have some potential remedy plans that that issue
21 came up that actually look much, much like the current plan.

22 Q. What question are you answering?

23 A. The question you asked, I think.

24 Q. Let me ask it again.

04:02 25 A. Yes, sir.

04:02 1 Q. I thought my question was -- and if it wasn't, let me make
2 it this time -- how do you justify for the people in
3 Commissioner's Precinct Number 1, whether you call it a *Gingles*
4 plan, demonstration plan, as you say in East Texas, ever what
04:02 5 name you want to call it, to -- to draw a plan that you know
6 projects a diminution in their ability to elect the person of
7 their choice for the next 10 years or the next 20 years? How
8 do you justify that?

9 A. Well, first of all, this is a *Gingles* plan. It's not
04:03 10 intended to be a plan that an election is held under. But as
11 you saw you from the data that we offered, the black citizen
12 voting age population is actually, in some of our *Gingles*
13 plans, higher than the black citizen voting age population in
14 the existing plan. Different, yes, but the -- the potential is
04:03 15 higher.

16 Q. Right. In some of the plans. But when you speak of
17 exhibits -- you're not speaking of Plaintiffs' Exhibits 46 and
18 57 when you say that, though, are you?

19 A. Two -- District 257, I think, is -- is 48.6 percent or so
04:04 20 black citizen voting age population; and the current district
21 is 48.7.

22 Q. Right.

23 A. So, they're almost exactly the same.

24 Q. But if the current housing patterns and -- continue, that
04:04 25 number will drop, won't it?

04:04 1 A. Yes. But it doesn't drop overnight. It will drop fairly
2 slowly. And if the patterns change, which I'm sure that they
3 will, every 10 years the redistricting comes up and the
4 districts change.

04:04 5 Q. Right. That's going to happen?

6 A. It's going to happen, yes.

7 Q. But the reason I visit with you, Mr. Korbel, about how long
8 you've been studying Harris County is you can look back upon
9 what has happened in the past and, with some degree of

04:04 10 assurance, if current trends continue, if immigration
11 continues, if more people become citizens, have children, live
12 in this country, they generally start out in -- excuse me -- as
13 apartment dwellers for the most part, aren't they? People of
14 moderate means, black, white, Asian, whomever, right, that
04:05 15 start out on the lower socioeconomic ladders that this country
16 has available, they generally live in apartments, right?

17 A. Unfortunately, that's correct, yes.

18 Q. Unfortunately. Not your or my desire; but that's the way
19 it happens, right?

04:05 20 A. In many cases, that's right.

21 Q. So, you can look at all those apartments out there in Alief
22 that you put in Precinct 1 and, with almost the certainty that
23 you would want to put down a bet on a poker table, you can tell
24 10, 15, 20 years from now what the demography is going to look
04:05 25 like out there if the present pattern continues, can't you?

04:05 1 A. Yes, in 10, 15, 20 years, you can project that, yes, of
2 course.

3 Q. So, what you are doing for Precinct 1 is you're -- you're
4 changing the district from an opportunity district to -- what's
04:06 5 that other name, starts with a C -- coalition district, aren't
6 you?

7 THE COURT: Which district are you talking about?

8 MR. WASHINGTON: Precinct 1.

9 THE COURT: Precinct 1.

04:06 10 THE WITNESS: I think in -- I don't think it's a
11 coalition district. I think the measurements that we do of the
12 *Gingles* districts -- and again, these are *Gingles* districts,
13 not intended for elections to be held under.

14 BY MR. WASHINGTON:

04:06 15 Q. Gotcha.

16 A. Just demonstration districts. But even there the black
17 citizen voting age population is at -- just at or above
18 50 percent. And --

19 Q. Now.

04:06 20 A. And as you -- now, yes. In 30 years, maybe not. But as
21 you know, that's probably a very black district if you had --
22 if you had 50 percent of the citizen voting age population.

23 Q. Right. But even shorter than 30 years, 10 years it's going
24 to be different with all those apartments out there in Alief,
04:07 25 isn't it, unless they tear the apartments down and build homes?

04:07 1 A. In 10 years there will be a change and, in 10 years there
2 will be a redistricting.

3 Q. Right. But for the period -- so that -- that people who
4 live in Precinct 1 will see an erosion of their ability to
04:07 5 elect someone of their choosing without a coalition. Is that
6 right?

7 A. If the elections were being held under a *Gingles* district,
8 if you look at those numbers, the numbers indicate that the
9 black citizen voting age population is very similar to the
04:08 10 current black citizen voting age population. And I think in
11 any district that is drawn, one by the -- the one by the county
12 or any district that's drawn, there's going to be a demographic
13 change over a period.

14 Q. Right.

04:08 15 A. But it's not -- I can't see that it would make a difference
16 in terms of electability in the short term, no.

17 Q. Well, I'm going to leave -- put a period in there because
18 I'm beating a dead horse. You're not going to change your
19 mind.

04:08 20 A. I think we've had this discussion before.

21 Q. We've had it lo these many years?

22 A. Yes, sir.

23 Q. The -- nothing in the Voting Rights Act requires or even
24 allows for the substitution of the protection of one group of
04:09 25 rights at the expense of another who -- group who's also --

04:09 1 whose rights are also protected by the Voting Rights Act, does
2 it?

3 A. I can't imagine a situation where you would ever have to do
4 that. It would be inconceivable to me, where you would adopt a
04:09 5 plan that an election is going to be held under, that couldn't
6 protect both Hispanics and African-Americans. And that is the
7 thing that you and I have been working on for 40 years.

8 Q. Right. But that doesn't answer the question about whether
9 it's allowable under the law, though, does it?

04:09 10 A. No. If -- if, for example, there was a great exodus of
11 Hispanics, when the next -- when the next census came around,
12 probably there would be fewer Hispanic city council districts
13 or fewer Hispanic state representative districts, yes. I think
14 that the Voting Rights Act wouldn't get in the way of reducing
04:10 15 the number of minority elected officials if the minority
16 population declines substantially, no.

17 Q. Okay. I wasn't asking that question. That's a good
18 answer, but let me kind of zero in a little bit more.

19 A. Yes.

04:10 20 Q. The Constitution and the Voting Rights Act would both stand
21 in the way of a need to protect the groups of one -- to
22 enhance, let's say, that the rights of one group that has not
23 been afforded the protection at the expense of one that already
24 has been afforded the protection. Metaphysically, is what I am
04:10 25 asking.

04:10 1 If you had blue people in one district and you
2 had green people in another district, there's no law that --
3 and the blue people are entitled to protection, you don't take
4 away their right in order to create a district for the green
04:11 5 people, is what I am saying.

6 A. You would not. But if it was a possibility of protecting
7 both, I think that's the -- I think that's what the intention
8 of the Voting Rights Act is, is to set up a situation where
9 everyone has the opportunity to elect the candidate of their
04:11 10 choice.

11 Q. Precisely. But one not at the expense of the other, is my
12 point.

13 A. Mr. Washington, in 40 years I've never seen a situation
14 where that actually was a problem.

04:11 15 Q. Right. Except for your map.

16 A. This map is a *Gingles* map. There are remedy maps. The
17 Court map, for example, is very similar to what I would have
18 drawn in terms of a remedy.

19 Q. Okay.

04:11 20 A. It protects both -- both parties, which I think is your
21 goal and my goal.

22 Q. Right. But this old boy from East Texas and Longview, what
23 I am really asking you is, to the extent that some may perceive
24 that you're doing harm -- you don't wish to do any harm to the
04:12 25 citizens in Precinct 1, do you? You don't wish to diminish

04:12 1 their ability -- certainly with your long record and history --
2 to diminish their right to elect the candidate of their choice,
3 right?

04:12 4 A. No. No, I don't think -- I can't imagine that I have ever
5 done something like that.

6 Q. Right. And to the extent that the so-called *Gingles* map of
7 ever what -- like I say, from Longview -- you're doing with
8 your map, to the extent that someone could interpret it as
9 doing that, then it would need correcting, wouldn't it? If
04:12 10 someone logically came to the conclusion that that was not the
11 intent but the effect, then it would need to be corrected,
12 wouldn't it?

13 A. (No audible response).

14 Q. Did you hear me?

04:13 15 A. If that were --

16 Q. If that were the effect, even if it's not the intent, then
17 it's wrong, isn't it?

18 A. The way this is drawn is based on the congressional plans
19 and on the senate plans, and this is traditionally the way
04:13 20 Harris County has been redistricted.

21 Q. Mr. Korb, you know the difference between a congressional
22 plan and senate plan and the county commissioner's plan is that
23 you can't cross a county line with a commissioner's plan, can
24 you?

04:13 25 A. No, of course, not.

04:13 1 Q. Senate District 13 goes into Fort Bend County, doesn't it?

2 A. It does slightly.

3 Q. So, to the extent that you're trying to compare them,
4 you're comparing apples and oranges, aren't you?

04:13 5 A. No. The -- there are -- there are congressional districts
6 that are -- no sense arguing about this, but there are
7 congressional districts that are contained within Harris County
8 that fit that sort of a pattern.

9 Q. But --

04:13 10 A. But, again, these are *Gingles* districts. They're not
11 intended for elections. They're intended to demonstrate that
12 it's possible to draw a district that has more than 50 percent
13 Spanish surname registered voters, and we've done that.

14 Q. I promise I gotcha. You said that a bunch of times, and I
04:14 15 understand it. I got that.

16 But you're not answering my question. Senate
17 District 13 goes into Fort Bend County, doesn't it?

18 A. Probably.

19 Q. You don't know that?

04:14 20 A. Well, I would have to look at the map.

21 Q. It's Rodney Ellis' district.

22 A. Yes.

23 Q. Okay. If you take my word for it since I represented the
24 people there for a number of years, it goes into Fort Bend
04:14 25 County. Okay?

04:14 1 A. Yes, slightly goes into Fort Bend County.

2 Q. To that extent, it's impossible to use that as an analogy,
3 is it not? Because Precinct 1 can't go into Fort Bend County,
4 can it? Can it?

04:14 5 A. No, it can't.

6 Q. Okay.

7 A. But the congressional --

8 Q. Let's just stay on the one that I am asking you about.

9 A. Okay.

04:15 10 Q. You used "senate" and "congressional," didn't you? Right?

11 A. I'm sorry?

12 Q. You used those both as an analogy, the congressional
13 district -- you have actually -- was it projecting
14 Congressional District 18, as well?

04:15 15 A. Senate District 6 is the -- follows the pattern of 325,
16 yes, and 257.

17 Q. I'm speaking of Senate District 13, sir, and Congressional
18 District 18, sir. They can both -- they don't suffer the
19 limitation of not being able to cross a county line, do they?

04:15 20 A. No. They can cross county lines.

21 Q. Right. So, to the extent that -- to the extent that you
22 take population changes that you can project based upon your
23 40-year history in Harris County into consideration, in terms
24 of whether an area is going to increase -- whether it's going
04:16 25 to stay the same in minority population or whether Hispanics as

04:16 1 opposed to blacks will increase in that area, there's --
2 there's no way to make a comparison between a county
3 commissioner's precinct and the state senate district and the
4 congressional district that overlay those same areas, is there?

04:16 5 A. You know, I think we disagree on that. District 29 is
6 located entirely within Harris County. District 2 is located
7 entirely within Harris County, and District 18 is located
8 entirely within Harris County. And these plans follow that --
9 those models, yes. And a small part of 9 is located outside
04:16 10 the county. But what -- what, in effect, this plan does is
11 puts the Harris County portion of 9 together with the District
12 18, which is entirely within Harris County. And that's the way
13 the plan is drawn.

14 Q. Okay. Now, what about Senate District 13?

04:17 15 A. Yes. Senate District 13 also goes, to a limited extent,
16 into Fort Bend County.

17 Q. Yes.

18 A. District 6 is entirely within the county. District 15 is
19 entirely within the county, as is District 7.

04:17 20 Q. I'm not concerned about those. I'm concerned about the
21 people who are joint constituents in precinct -- County
22 Commissioner Precinct 1 and Senate District 13, sir. Right?
23 And --

24 A. I'm sorry.

04:18 25 Q. You don't understand my --

04:18 1 A. I didn't get your question. I'm sorry.

2 Q. I'm just about finished. I'm really just trying to get you
3 to -- doesn't matter.

4 Senate District 13, you're familiar with that,
04:18 5 right?

6 A. Yes.

7 Q. Commissioner's Precinct Number 1, you're familiar with it?

8 A. Yes.

9 Q. Since there's a prohibition in being able to alter or to
04:18 10 accommodate for what you and I, I think, have agreed upon as to
11 the -- what's likely to be the population growth, based upon
12 the last 40 years of history, in part of Precinct 1 that you
13 have put in this district that's not in the county plan or
14 anything other than the *Gingles* plan -- you with me so far?

04:19 15 A. Yes.

16 Q. Okay. Since you have put that in Precinct 1, in your
17 proposed *Gingles* district for Commissioner's Precinct 1, you
18 certainly recognize that the ability to accommodate Senate
19 District 13 is different than the ability to accommodate
04:19 20 Precinct 1, because Senate District 13 can go anywhere, right?

21 A. It can, yes. And it does extend slightly into Fort Bend
22 County.

23 Q. And Precinct 1 can't, right?

24 A. It can't, no.

04:19 25 Q. So, whatever people end up there, if it turns out that it's

04:19 1 an oops 10 years from now and the migration pattern that you
2 and I have I think agreed on for the last 30 or 40 years, going
3 all the way over to Harrisburg and Clinton Park and
4 Pleasantville and all those areas over these years, have
04:20 5 changed and become more Hispanic and would likely to continue
6 to become more Hispanic, then Precinct 1 is going to become
7 more Hispanic, isn't it?

8 A. Over a spread of years, that is right. And in Longview,
9 too.

04:20 10 Q. You're probably right.

11 MR. WASHINGTON: No further questions. Thank you,
12 your Honor.

13 MR. DUNN: Just a little bit of redirect.

14 THE COURT: Okay. Give me one second. I just want
04:20 15 to -- something Mr. Washington asked.

16 Okay. Go ahead.

17 **REDIRECT EXAMINATION**

18 BY MR. DUNN:

19 Q. Mr. Korb, you testified in the state-wide redistricting
04:20 20 case, did you not?

21 A. Yes, I did.

22 Q. And you have done that over the decades?

23 A. Yes, I have.

24 Q. Well, in the discussion we're having about shape here --

04:21 25 MR. DUNN: May I have the screen back, your Honor?

04:21 1 THE COURT: I know all the shapes are messed up. Pass
2 over that. Go to something else.

3 MR. DUNN: Okay. That's -- that's the only point I
4 was going to make. So, no other questions.

04:21 5 THE COURT: I was, like, that's like the pot calling
6 the kettle black. Let's go.

7 All right. Anything else for this witness?

8 Nothing else. Thank you, sir. Step down.

9 MR. DUNN: We have some witnesses; but to make sure I
04:21 10 have plenty here, how late do you plan to go today?

11 THE COURT: 5:00 o'clock.

12 MR. DUNN: Okay. So, now plaintiffs call Ed Gonzalez.

13 THE CLERK OF COURT: Do you solemnly swear the
14 testimony in the case now before the Court will be the truth,
04:21 15 the whole truth and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 MR. BRAZIL: May I proceed, your Honor?

18 THE COURT: Yes, sir.

19 **ED GONZALEZ, PLAINTIFFS' WITNESS, TESTIFIED:**

20 **DIRECT EXAMINATION**

21 BY MR. BRAZIL:

22 Q. Please state your name.

23 A. Ed Gonzalez.

24 Q. Would you give the Court a brief background of your
04:22 25 education?

04:22 1 A. Yes. I'm a graduate of the Houston Independent School
2 District. I received an undergraduate degree from the
3 University of Houston Downtown and a Master's degree from the
4 University of St. Thomas.

04:22 5 Q. And do you currently serve in a public office?

6 A. I do. I'm a district councilmember. I serve Council
7 District H.

8 Q. For the City of Houston?

9 A. I do.

04:23 10 Q. Before serving in that capacity, what did you do?

11 A. I was employed as a police officer with the Houston Police
12 Department.

13 Q. And how long were you employed in that capacity?

14 A. Eighteen years.

04:23 15 Q. Are you retired?

16 A. Yes.

17 Q. And you retired at what position?

18 A. At the rank of sergeant.

19 Q. Have you lived in Harris County all your life?

04:23 20 A. Yes.

21 Q. You currently live in what precinct?

22 A. Precinct 2.

23 Q. How long have you lived in Precinct 2?

24 A. Most of my adult life. I moved to different places; but I
04:23 25 would say -- over my life, I would say probably 10 years for

04:23 1 sure.

2 Q. And did you grow up in -- what precinct?

3 A. Just outside of what would be considered Precinct 2 at
4 times but always around Precinct 2 and in 2, as well.

04:23 5 Q. What year were you elected to city council?

6 A. 2009.

7 Q. And you serve District H?

8 A. Correct.

9 Q. And that's a single-member district?

04:24 10 A. Yes.

11 Q. Was that designed as an opportunity district?

12 A. Yes.

13 Q. And, so, when you were elected in 2009, that was an
14 opportunity district?

04:24 15 A. Yes.

16 Q. You will be up for reelection in what year?

17 A. Next year, in 2013.

18 Q. Before -- is that the first public office that you have
19 held?

04:24 20 A. Yes.

21 Q. Before running for city council in 2009, did you assist any
22 other candidates that ran for office?

23 A. I did. I assisted then Councilmember Adrian Garcia, state
24 Representative Jessica Farrar, state Representative Aramando
04:24 25 Walle.

04:24 1 Q. Were you a volunteer?

2 A. Yes, I was a volunteer.

3 Q. When you ran in 2009, did you have an opponent?

4 A. I did.

04:24 5 Q. Were they Anglo, Hispanic?

6 A. The majority of my opponents were Hispanic; and there were
7 some Anglo candidates, as well.

8 Q. Your district, District H, is primarily what? What's the
9 makeup of your district?

04:25 10 A. It's primarily Hispanic.

11 Q. Do you currently serve on any boards or a member of any
12 organizations in the Harris County area?

13 A. I do.

14 Q. Can you give us an idea of some of those?

04:25 15 A. Yes. I've been a member of LULAC. I've been a member of
16 the Houston Livestock Show and Rodeo, the Go Tejano committee,
17 as well, and also for Target Hunger, a food pantry group.

18 Q. Do you serve on any boards of companies or other type of
19 charitable organizations?

04:25 20 A. Nothing -- no. No.

21 Q. In your position as city council, do you have an
22 opportunity to speak to different community groups on various
23 topics?

24 A. Yes. Often.

04:26 25 Q. And what type of topics and what type of groups?

04:26 1 A. Many are civic clubs. Others are different banquets for
2 different causes, a lot of social type of issues, like, it
3 could be human trafficking or -- or public safety related.

4 Q. And do you serve on any committees there at the city
04:26 5 council?

6 A. I do. I chair the public safety committee, and I sit on
7 the majority of council committees ranging from infrastructure
8 to quality of life, the full spectrum of council committees.

9 Q. In 2011 there was a redistricting of the City of Houston
04:26 10 City Council?

11 A. Yes.

12 Q. And there was a creation of what we have heard called
13 District J. Is that correct?

14 A. Yes.

04:26 15 Q. Were you involved in that in any respect?

16 A. Yes.

17 Q. How so?

18 A. I joined several colleagues or -- on council that saw the
19 need to work towards creating Hispanic opportunity districts to
04:27 20 make sure that those that were already in existence that --

21 that remained as much as possible but also to look at the rest
22 of the city and to try to create additional Hispanic

23 opportunity districts because we felt that it was still

24 lacking. And, so, we worked towards that effort, worked with

04:27 25 the mayor, worked with community groups, as well, and came up

04:27 1 with some additional plans.

2 Q. Okay. Were you involved in the map drawing aspect of the
3 boundaries, things of that sort?

4 A. Not to any great extent, other than just the generalities
04:27 5 of how the districts were being shaped. But not the actual
6 drawing or -- or --

7 Q. But you're familiar with how the process works, aren't you?

8 A. Yes.

9 Q. From drawing or from the implementation of District J?

04:28 10 A. Yes.

11 Q. Okay. And ultimately an election was held?

12 A. Yes.

13 Q. Okay. And did the Hispanic candidate of choice win that
14 election?

04:28 15 A. No.

16 Q. Who won that election; do you recall?

17 A. Yes, it was now Councilmember Lassiter.

18 Q. And when will he be up for reelection?

19 A. He'll be up for reelection, as well, next year, 2013.

04:28 20 Q. Based on your 18 years in the Houston Police Department and
21 your years of public service and helping with various
22 campaigns, do you feel that you are familiar with the common
23 interests and the needs of the Latinos in the Harris County
24 area?

04:28 25 A. Yes.

04:28 1 Q. Is that something that you have run on? I mean, when you
2 run for city council, have you proposed certain plans and
3 things of common interest that you believe the Latinos are
4 interested in?

04:29 5 A. Yes.

6 Q. Do you believe that the Latinos in Harris County vote in a
7 bloc?

8 A. Yes, I do.

9 Q. And do you believe that the Latinos vote in Harris County
04:29 10 in a cohesive manner?

11 A. Yes.

12 Q. Can you describe why you have that belief?

13 A. Well, in talking to many residents throughout the years and
14 through campaigns, I think that they prefer someone that,
04:29 15 frankly, many times looks like them, that comes from the
16 communities that they come from, that have -- that are
17 sensitive to the culture, sensitive to the language, and -- and
18 also tend to be drawn to Hispanic surnames, as well. That's
19 always -- they try to vote for the Hispanic surnames and to
04:30 20 capture as much of those as possible when they vote.

21 Q. Has it been your experience that the majority population
22 vote in a sufficient bloc to and in sufficient numbers to
23 defeat the minority candidates of choice?

24 A. Yes.

04:30 25 Q. Can you give us an example?

04:30 1 A. Well, when you have a more mature vote, a more dominant
2 vote, it's very likely to be -- be dominant towards a more
3 younger vote that's not as consistent. And so, the dominant --
4 the majority vote tends to be much higher usually. And so, to
04:30 5 be able to be competitive, especially in a contested type race,
6 it becomes very difficult.

7 Q. Do you believe that the Latino community is sufficiently
8 large and compact enough to exercise the minority opportunity
9 district?

04:31 10 A. Yes.

11 Q. Have you seen or experienced discrimination in the Latino
12 community?

13 A. Yes.

14 Q. Can you give us some examples of that, whether it be what
04:31 15 you experienced personally or what you've observed?

16 A. In terms of elections or --

17 Q. Let's start with elections, yes.

18 A. Elections? One of the situations that comes to mind is
19 the -- sometimes the changing of polling locations, for
04:31 20 example, with not sufficient or enough information that's been
21 given to voters, especially in minority communities many times,
22 because there is a digital divide out there where that
23 information is not readily accessible on the Internet. We at
24 the City of Houston are really trying to bridge some of that
04:32 25 digital divide. So, we know it's out there. And, so, making

0 4 : 3 2 1 sure that information is accessible sometimes is very
2 discouraging to voters.

3 Language barriers, there's a lack of proficiency.
4 And I know firsthand from my own family, when asking for
0 4 : 3 2 5 someone -- which they have a right to be able to ask for the
6 person of their choice to help them with translation -- and
7 them feeling very uncomfortable because of looks that they got
8 when they were told, "Well, they can't really help you," or
9 "Why do you want help?" And being questioned in that manner
0 4 : 3 2 10 was very demeaning to them when they were trying to vote.

11 And also a very real example of phone banking and
12 being told, "I'm not going to -- I'm not going to vote for that
13 wetback," you know, and, "Tell them to go back to Mexico." I
14 mean, that's very demeaning. I've heard it said of me and also
0 4 : 3 3 15 other candidates that I have helped. And not only me, but it's
16 demeaning to volunteers, to get a man to phone bank for a
17 candidate and then to hear those kind of words and that kind of
18 ignorance still going on in this present age and time.

19 Q. Do you believe that kind of conduct suppresses the minority
0 4 : 3 3 20 votes?

21 A. Yes.

22 Q. And is it a generational thing, in your opinion?

23 A. Can you explain that?

24 Q. Well, does it affect more than just one person?

0 4 : 3 3 25 A. Yes.

0 4 : 3 3 1 Q. Have you, yourself, ever experienced discrimination in your
2 campaign?

3 A. Yes. I remember a push cart -- I don't remember -- I don't
4 remember which campaign or -- you know, or -- but I was
0 4 : 3 3 5 involved with and it -- one of the mailers that went out had
6 a -- said, "This is what will happen if he's elected," and
7 showed a street that we were pretty -- just saddened by because
8 it depicted a street that was pretty much -- we recognize as
9 streets very similar to Mexico. It was kind of like a dirt
0 4 : 3 4 10 rock paved street. You could see by the architecture and the
11 design and some of the language on some of the buildings, that
12 basically that's what we -- if we were elected, that's what the
13 infrastructure would start looking like, that's the conditions
14 that we would want to live in. And that was very demeaning.

0 4 : 3 4 15 Q. So, they're depicting what the community would look like if
16 they elected someone of Hispanic descent?

17 A. Yeah, being a Hispanic candidate. That's the message
18 that -- to me, it was --

19 Q. Have you witnessed or observed or experienced
0 4 : 3 4 20 discrimination in other areas of Harris County, whether it be
21 healthcare, parks, community centers?

22 A. Well, when you look at, for example, the district that I
23 represent, it's very -- very high numbers of people without
24 even a high school diploma. So, the odds are very difficult,
0 4 : 3 5 25 you know, against them, to begin with, high levels of literacy,

04:35 1 high levels of dropouts, high levels of -- ZIP Codes that have
2 high, high levels of roaming loose dogs. I've seen ZIP Codes,
3 the high propensity ZIP Codes for this type of activity. And a
4 lot of these issues are out there in our communities and
04:35 5 desperately need to be addressed.

6 We're trying to deal with a growing, growing
7 number -- especially in the Latino community, for a growing
8 number of HIV and H cases that are coming forward that need to
9 be corrected and better advocacy to try to resolve those
04:35 10 situations. So, those are some issues that are alive and well
11 in some of -- in a lot of Latino communities.

12 Q. And do you feel those areas are being addressed differently
13 than with regard to Anglos?

14 A. I believe that if you look at certain strategies, an
04:36 15 above -- a general strategy to say, "We believe simply in --
16 for example, abstinence, might not always get at the heart of
17 the matter in a Latino community, where we need to be more
18 aggressive in our outreach and not simply use our own personal
19 philosophy on the issue.

04:36 20 But if there's -- if there's -- the numbers
21 indicate that there's serious issues in those communities, then
22 we need to do what's best for that community, not necessarily
23 what I think is best. But I'm not addressing the problem. If
24 I have teenagers that are having one, two, and three children
04:36 25 before they're 19 years of age, someone is not conveying a very

04:37 1 serious message to them. And I think that more culturally
2 sensitive approaches need to be taken into account rather than
3 just a broad stroke.

4 Q. Have you experienced a racially polarized pattern of voting
04:37 5 in Harris County?

6 A. Can you explain that?

7 Q. Latinos vote for Latinos, Anglos for Anglos.

8 A. Yes.

9 Q. Now, to be fair, do some of the common interests that the
04:37 10 Hispanic community have also will the African-Americans have
11 the same problems with the same community interests?

12 A. Absolutely.

13 MR. BRAZIL: Thank you. I'll pass the witness, your
14 Honor.

04:37 15 THE COURT: All right.

16 **CROSS-EXAMINATION**

17 BY MS. SANDILL:

18 Q. Good afternoon, councilman.

19 A. Good afternoon.

04:37 20 Q. You're aware that the county had five different public
21 hearings on its redistricting plan, are you not?

22 A. Yes.

23 Q. You didn't attend any of those hearings, did you?

24 A. I did not.

04:38 25 Q. You're aware that at all of those hearings the county had

04:38 1 interpreters to speak the Spanish language, are you not?

2 A. Yes.

3 Q. Okay. And you are aware that the materials that were
4 handed out at those hearings about the county's plan were

04:38 5 published in English and Spanish?

6 A. Yes.

7 Q. Are you aware of that?

8 A. Yes.

9 Q. Were you aware that the Commissioner's Court invited public
04:38 10 comment on the day that it voted on its final plan?

11 A. Yes.

12 Q. You were aware of that?

13 A. I heard of it, yes.

14 Q. You didn't appear and make any comment at that public
04:38 15 hearing, did you?

16 A. I did not.

17 MS. SANDILL: I'll pass the witness, your Honor.

18 THE COURT: You have anything else?

19 MR. BRAZIL: One question, your Honor.

04:38 20 **REDIRECT EXAMINATION**

21 BY MR. BRAZIL:

22 Q. Are you aware of any Hispanic leaders speaking at any of
23 those public forums?

24 A. Yes. It was my understanding that there was going to be

04:38 25 Hispanic leaders with ideas on maps and that they were not --

04:39 1 encouraging some other -- other maps and experts on
2 demographics and all of that. That was my understanding, they
3 were going to be there.

4 Q. Offered by Hispanic community leaders?

04:39 5 A. Correct, yes.

6 MR. BRAZIL: Thank you, your Honor.

7 THE COURT: Okay. Thank you, sir. Step down. Thank
8 you, sir.

9 THE WITNESS: Thank you, your Honor.

04:39 10 THE COURT: Who's the next witness, please?

11 MR. DUNN: Plaintiffs call James Rodriguez.

12 THE CLERK OF COURT: Raise your right hand, please.

13 Do you solemnly swear the testimony you will give
14 in the case now before the Court will be the truth, the whole
04:39 15 truth and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 **JAMES G. RODRIGUEZ, PLAINTIFFS' WITNESS, TESTIFIED:**

18 **DIRECT EXAMINATION**

19 BY MR. BARON:

04:39 20 Q. State your name.

21 A. James G. Rodriguez.

22 Q. Where do you live?

23 A. 7515 Santa Fe Drive, Houston, Texas 77061.

24 Q. You having some trouble with your voice today?

04:40 25 THE WITNESS: I apologize, Judge. Allergies some --

04:40 1 these allergies are --

2 BY MR. BARON:

3 Q. We'll make sure and keep your testimony brief, then.

4 A. Thank you.

04:40 5 Q. What precinct, what county commissioner's precinct is that
6 in?

7 A. I currently reside in Commissioner's Precinct Number 1.

8 Q. And how long have you lived there?

9 A. Six years.

04:40 10 Q. And have you previously lived in Precinct 2?

11 A. Yes.

12 Q. And how long did you live there?

13 A. About 31 years.

14 Q. And you're currently an elected official?

04:40 15 A. Yes, sir. I represent -- I'm a Houston city councilmember
16 representing District I.

17 Q. And this is your third term?

18 A. Yes.

19 Q. You're about ready to be termed out?

04:40 20 A. Fourteen months or so, yes, sir.

21 Q. Prior to being a city councilmember, what did you do?

22 A. I was chief of staff for my predecessor councilmember,
23 Carol Alvarado, for about four years.

24 Q. How many campaigns have you run personally for yourself?

04:41 25 A. Myself? Three.

04:41 1 Q. And what about other campaigns, have you worked on
2 county-wide campaigns?

3 A. I volunteered on some county-wide campaigns, Commissioner
4 Garcia's campaign back in -- I believe it was 2000.

04:41 5 Q. When she ran for comptroller?

6 A. When she ran for commissioner the first time. And I
7 volunteered on Sheriff Adrian Garcia's campaign -- previous
8 campaign.

9 Q. How many city council seats are there in Houston?

04:41 10 A. Now 16. Eleven district and five at large.

11 Q. How many were there before this last redistricting?

12 A. Nine district and five at large.

13 Q. So, it increased from 14 to 16?

14 A. Yes.

04:41 15 Q. How many Hispanics currently hold elected office in Houston
16 City Council?

17 A. Two.

18 Q. Are any of those -- well, obviously not. Because one would
19 be the man that just testified before you, right?

04:42 20 A. Yes, sir.

21 Q. So, the five at large positions are all held by
22 non-Hispanics?

23 A. Correct.

24 Q. Can you recall the last time a Hispanic held an at large
04:42 25 position even in Houston City Council?

04:42 1 A. I believe that's Ms. Gracie Saenz and Orlando Sanchez, and
2 that was probably the late Nineties, early 2000.

3 Q. It's City Council Position J that was just created last
4 year?

04:42 5 A. Yes.

6 Q. Do you believe that was created to be a Hispanic
7 opportunity district?

8 A. Yes.

9 Q. Mike Lassiter won that seat?

04:42 10 A. Yes.

11 Q. Why do you think he won?

12 A. Well, I've had the pleasure of serving with Mike now for a
13 few months. And I think he ran -- obviously, ran a good
14 campaign. He's very well known in the district, a civic club
04:42 15 leader, was active with the management district out there.

16 Q. Do you think J will eventually elect a Hispanic?

17 A. Yes.

18 Q. Do you think there's any other council seats at large, or
19 districts, that have any reasonable opportunity of electing an
04:43 20 Hispanic in the near future?

21 A. Well, I know District H and District I, for sure. I would
22 think District J would -- would possibly -- and I remember
23 during the city's redistricting process that people think maybe
24 District A down the road could possibly.

04:43 25 Q. Any others?

04:43 1 A. No, sir.

2 Q. What about county-wide races? Are you familiar with
3 Hispanics who have run in non-partisan races city wide or
4 county wide?

04:44 5 A. I'm sorry?

6 Q. Are you familiar with Hispanics who have run in
7 non-partisan races city wide or county wide?

8 A. I know Leo Vasquez ran county wide -- that was a partisan
9 race -- and didn't make it out of the Republican primary.

04:44 10 Q. Any other Hispanics you can think of that attempted to run
11 as Republicans?

12 A. Orlando Sanchez ran for mayor city wide and fell short.

13 Q. Any experiences that you have had with state-wide
14 candidates?

04:44 15 A. I know Justice Medina recently lost the Republican primary
16 to Judge Devine.

17 Q. Do you know how he did in Harris County in that race?

18 A. I believe he -- well, not so well, obviously. He lost.

19 But I think Judge Devine pulled about 50 percent, 51 percent of
04:44 20 the vote.

21 Q. Do you recall any public comments made by Justice Devine in
22 that race?

23 A. Yes. I remember reading an article about Justice Devine
24 stating that he thought he could -- well, the reason why he was
04:45 25 running for this particular position was because he could beat

04:45 1 an Hispanic surname easier.

2 Q. All right, sir. And is that what happened at least in
3 Harris County?

4 A. It sounds like it, yes, sir.

04:45 5 Q. What was your relationship with Commissioner Garcia like?

6 A. I had a pretty good working relationship while she was
7 commissioner. I helped out her first campaign. And when I
8 first went into office, we worked together on a few projects.

9 Q. What's the ethnic composition of your district?

04:45 10 A. It's about 77 percent Hispanic now and the remainder are
11 African-American, Anglo, and Asian.

12 Q. How much of it is in Precinct 2?

13 A. A good majority in Precinct 2, and I do have some overlap
14 in Precinct 1.

04:45 15 Q. Can you describe the activities that former Commissioner
16 Garcia had in your district?

17 A. The commissioner was very good about reaching out to our
18 office to -- any time she had a town hall meeting. I saw her
19 at civic clubs, community events in the neighborhood, in the
04:46 20 district. We worked on some infrastructure projects together,
21 mostly drainage ditches, Harris County flood control and City
22 of Houston, maintain city right of ways -- or public right of
23 way spaces.

24 Q. How would you describe her responsiveness?

04:46 25 A. Pretty good response. We had a good working relationship.

04:46 1 I could pick up the cell phone and call her if I needed to.

2 Q. Has that changed since Commissioner Morman was elected?

3 A. Yes.

4 Q. In what way?

04:46 5 A. Well, I don't -- I guess I don't have that type of
6 relationship with the new commissioner. He hasn't been on the
7 job very long, and we don't have that relationship.

8 Q. Have you had any face-to-face meetings with him since he's
9 been elected?

04:46 10 A. I had lunch with him a few days after he was sworn in, but
11 that's about it.

12 Q. Do you know his chief of staff?

13 A. Yes. I've known Dave Walden for a good number of years.

14 Q. What kind of relationship or response do you get with his
04:47 15 staff?

16 A. Dave, it's more of a social relationship with Dave. I've
17 known him for a good number of years. I would say it's fair.

18 Q. Any specific projects that you are concerned about in terms
19 of your ability to get response from the county since
04:47 20 Commissioner Morman has been elected?

21 A. I think that the biggest -- or the one that stands out the
22 most, there was a proposed park project that Commissioner
23 Garcia was working on in the east end, near the Lawndale area.
24 And a lot of my constituents were involved in that project.

04:47 25 And I don't know if it's been constructed. I haven't seen any

04:47 1 movement on that project. The other thing that I hear is from
2 folks on the north side that were working on a community
3 center, and I don't think that's been constructed yet either.

4 Q. When it comes to elections, do you experience any problems
04:47 5 in your district?

6 A. Personally, no. Personally, no. But I do hear from time
7 to time that constituents would want more access to early
8 voting locations that -- especially when I represented the
9 Denver Harbor community. Denver Harbor really has a low
04:48 10 turnout in early voting. And so -- because there's just not a
11 county -- or the county doesn't provide a facility that's
12 nearby to the Denver Harbor community. So, they have to go to
13 Kashmere or to HCC Southeast. It's just not very convenient
14 for them. So, I'll hear things like that.

04:48 15 Sometimes we don't get returns fast enough from
16 the county. And, I guess, the other thing is just that
17 sometimes we have the voting machines breaking down, things
18 like that.

19 Q. Denver Harbor is not in your district anymore?

04:48 20 A. No, sir. I lost it after the past redistricting.

21 Q. Do you know if those problems have been resolved?

22 A. Not that I am aware of, no.

23 MR. BARON: Thank you. Pass the witness.

24 THE COURT: Ms. Sandill?

04:49 25 - - - - -

CROSS-EXAMINATION

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BY MS. SANDILL:

Q. Good afternoon, councilman.

A. Good afternoon.

Q. I have the same question for you that I had for Councilman Gonzalez. Did you attend any of the public hearings that the county held in connection with its redistricting plan?

A. No, ma'am.

Q. And you didn't attend -- also, you didn't attend the commissioner's court hearing on which the commissioners were accepting public comments before it voted on the plan, did you?

A. No, ma'am.

Q. With respect to the community center, I think the park project that you identified as being something that -- I think you said you weren't sure, maybe, what happened to it once Commissioner Morman came into place. Have you ever contacted Commissioner Morman's office to find out what happened to those projects?

A. I personally, no.

Q. You never directed any of your staff to contact Commissioner Morman about what happened to those projects, have you?

A. No, ma'am.

Q. You ever been refused a meeting with Commissioner Morman?

A. I don't think I've ever requested one. So, no.

04:50 1 MS. SANDILL: I don't have any further questions at
2 this time, your Honor.

3 THE COURT: Okay. Anything else? Anybody else?

4 MR. BARON: Nothing further of this witness.

04:50 5 THE COURT: Thank you very much.

6 THE WITNESS: Thank you, Judge. Sorry about my voice.

7 THE COURT: Who's the next witness?

8 MR. DUNN: We've exhausted who we have here today. So
9 we'll come back in the morning if that's acceptable to the
04:50 10 Court.

11 THE COURT: Well, it is 4:50, I guess. My usual rule
12 is when you're out of witnesses, you're out of case. But it's
13 4:50.

14 How many more witnesses you got?

04:50 15 MR. DUNN: Four.

16 THE COURT: See you guys at 8:00 in the morning.

17 *(Proceedings recessed for evening)*

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19 COURT REPORTER'S CERTIFICATION

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

22 Date: October 29, 2013

23 /s/ Cheryll K. Barron
24 Cheryll K. Barron, CSR, CMR, FCRR
25 Official Court Reporter