

SUPREME COURT  
STATE OF OHIO

- - -

REVEREND WILLIAM :  
MOSS, ET AL., :  
 :  
 CONTESTERS, :  
 :  
 vs. : CASE NO. 04-2088  
 :  
 PRESIDENT GEORGE W. :  
 BUSH, ET AL., :  
 : Original Action to  
 CONTESTEES. Contest Election

- - -

Deposition of RICHARD HAYES PHILLIPS, a Witness  
herein, called by the Contesters for direct  
examination under the applicable Ohio Rules of Civil  
Procedure, taken before Sylvia A. Fraley, a  
Registered Diplomate Reporter, Certified Realtime  
Reporter and Notary Public in and for the State of  
Ohio, pursuant to notice at the Columbus Athletic  
Club, 136 East Broad Street, 2nd Floor, Columbus,  
Ohio 43215 commencing on Thursday, December 30, 2004  
at 10:45 a.m.

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DEPOSITION OF RICHARD HAYES PHILLIPS

APPEARANCES

- - -

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On behalf of the Contesters.

ALSO PRESENT:

DR. ROBERT FITRAKIS

- - -

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1 RICHARD HAYES PHILLIPS  
2 being by me first duly sworn, as hereinafter certified,  
3 deposes and says as follows:

4 DIRECT EXAMINATION

5 BY MR. PECKARSKY:

6 Q. What is your name?

7 A. Richard Hayes Phillips.

8 Q. And what is your date of birth?

9 A. September 17, 1951.

10 Q. Okay. Where do you live?

11 A. Canton, New York.

12 Q. Did you graduate from high school?

13 A. Yes.

14 Q. Do you have any education after high school?

15 A. Yes. I have four college degrees.

16 Q. What are those college degrees?

17 What are the college degrees?

18 A. I have a Bachelor's Degree in politics from  
19 State University of New York at Potsdam; a Master's  
20 Degree in geography from the University of Oklahoma; a  
21 second Master's Degree in history from the University  
22 of Oklahoma; and a doctorate in geomorphology from the  
23 University of Oregon.

24 Q. Did you do any post-doctoral study?

25 A. Certainly.

1 Q. And what was your post-doctoral -- what were  
2 your post-doctoral academic positions? I am not  
3 talking about a professorship but any -- you usually  
4 call them post-doc. What was your post-doctoral work?

5 A. I wrote or coauthored at least a dozen  
6 professional papers on the hydrology of southeastern  
7 New Mexico concerning a proposed nuclear waste disposal  
8 site.

9 Q. When you did that work, were you affiliated  
10 with an academic institution?

11 A. I was teaching college during part of that  
12 time, but the research was not done at the behest of  
13 any academic institution.

14 Q. Okay. Were you ever on a college faculty?

15 A. I taught at seven different colleges. I  
16 taught 12 different courses, an average of three times  
17 each.

18 Q. Did you do any teaching in the field of  
19 geomorphology?

20 A. Yes.

21 Q. Tell us about, what was the first position  
22 you have where you were teaching in the field of  
23 geomorphology?

24 A. I was a graduate teaching fellow at the  
25 University of Oregon while I was still a graduate

1 student.

2 Q. What was the next position you had teaching  
3 geomorphology?

4 A. Well, I taught geology courses and physical  
5 geography courses at a number of institutions. I  
6 didn't teach a full course in geomorphology at any of  
7 them, but probably one quarter of the introductory  
8 earth science course and the introductory physical  
9 geography course consists of geomorphology. So I  
10 taught one or the other of those courses at Albuquerque  
11 Technical Vocational Institute and the State University  
12 of New York at Canton.

13 Q. After your position as a graduate teaching  
14 assistant at the University of Oregon, what was your  
15 next academic position?

16 A. I taught geology and geography at Keene State  
17 College in New Hampshire, and yes, I taught earth  
18 science there, as well.

19 Q. And what was your title at Keene State  
20 University in New Hampshire?

21 A. I was an adjunct professor there.

22 Q. What was your next academic position after  
23 Keene State?

24 A. I taught history at New Mexico Tech in  
25 Socorro, New Mexico.



1 Q. Did you have any other academic positions  
2 after Keene State in which you were teaching geology or  
3 any of its variations?

4 A. Yes, I taught climatology at the University  
5 of Oregon and I taught earth science at the State  
6 University of New York at Canton, as I said earlier.

7 Q. What was your title at the University of  
8 Oregon when you were teaching climatology?

9 A. That was at the University of New Mexico.

10 Q. Oh.

11 A. There, I was a visiting professor.

12 Q. Okay. Is it correct, then, that you were  
13 teaching climatology as a visiting professor at the  
14 University of New Mexico?

15 A. Yes.

16 Q. And --

17 A. And I taught United States history there, as  
18 well.

19 Q. Now, with respect to your academic  
20 involvement in climatology, geology, earth sciences  
21 field, did you have another position after that  
22 position as a visiting professor at the University of  
23 New Mexico.

24 A. Those were the only two courses I taught at  
25 the University of New Mexico. I taught many courses at

1 Albuquerque Technical Vocational Institute during the  
2 same period. In fact, I was the founder of the  
3 geography program at Albuquerque TVI.

4 Q. After you left the University of New Mexico,  
5 did you then go to the State University of New York at  
6 Canton?

7 A. After I was done with my stints at the three  
8 colleges in New Mexico, the next college at which I  
9 taught was, indeed, the State University of New York at  
10 Canton where I was their only geology professor.

11 Q. I may have missed one of them. Can I get  
12 just the names of those three colleges in New Mexico  
13 again?

14 A. New Mexico Tech, University of New Mexico,  
15 and Albuquerque Technical Vocational Institute.

16 Q. Okay.

17 Okay. And let's go ahead to your experience  
18 at the State University of New York at Canton. What  
19 was your position there, or academic title?

20 A. I believe they called me an adjunct  
21 professor.

22 Q. Did you have any other academic positions  
23 after the position at the State University of New York  
24 in Canton?

25 A. One more. I taught human geography at North

1 Country Community College in Saranac Lake, New York.  
2 S-A-R-A-N-A-C. I had taught that course many times in  
3 Albuquerque.

4 Q. All right. Did you also have work  
5 experience, for example, in industry or some other way  
6 in the field of geology and earth sciences?

7 A. I was employed for several years as a  
8 geologic consultant for a citizen group in Albuquerque,  
9 New Mexico paid to conduct fieldwork and review  
10 publications and write reports and testify at public  
11 hearings and under oath in judicial proceedings about a  
12 then-proposed, and now-open, nuclear dump site near  
13 Carlsbad, New Mexico.

14 Q. And what work did you do for the group in  
15 Albuquerque, New Mexico?

16 A. Primarily, I was investigating the Rustler  
17 formation, the extent to which it is cavernous, and its  
18 ability to transmit contaminated water from the  
19 proposed waste site to the accessible environment.

20 Q. Let's go back a second to your Ph.D. Did you  
21 write a dissertation?

22 A. I certainly did.

23 Q. What was the title of the dissertation?

24 A. "Prospects for regional groundwater  
25 contamination due to karst," K-A-R-S-T, "land-forms in

1 Mescalero," M-E-S-C-A-L-E-R-O, "Caliche,"  
2 C-A-L-I-C-H-E, "at the WIPP," W-I-P-P capital letters,  
3 "site near Carlsbad, New Mexico."

4 Q. Is "WIPP," W-I-P-P, an acronym?

5 A. It is an acronym.

6 Q. What does that acronym, WIPP, W-I-P-P, stand  
7 for?

8 A. Waste Isolation Pilot Plant.

9 Q. What are karst land-forms?

10 A. "Karst" refers both to a set of land-forms  
11 and a type of groundwater hydrology. Karst forms in  
12 soluble rocks, such as limestone, and is characterized  
13 by sinkholes, disappearing streams, lack of surface  
14 drainage, underground caverns.

15 Q. And --

16 A. And the way that it differs from other types  
17 of groundwater hydrology is that the anomalous test  
18 wells with the fastest groundwater transmissivity are  
19 representative. They tell you the rate at which  
20 groundwater is effectively transported through  
21 discrete, defined underground caverns rather than  
22 through the surrounding rock.

23 So, unlike some other fields of research  
24 where anomalous data is discarded as being bad data  
25 points, a karst geologist is looking for such data

1 because these are what are truly representative of  
2 conditions in the field.

3 Q. Would it be fair to say that your study  
4 leading to the dissertation or the writing the  
5 dissertation included the study of anomalous data?

6 A. Absolutely.

7 Q. After you concluded work on your  
8 dissertation, did you continue research in the field of  
9 karst land-forms?

10 A. Yes.

11 Q. And did that work also include the study of  
12 anomalous data?

13 A. Even more so than did my dissertation.

14 Q. Okay. And for approximately how many years  
15 from the time you started your study of karst  
16 land-forms up to the present, or whenever you finished  
17 it, were you involved in the study of anomalous data  
18 with respect to karst land-forms?

19 A. I spent three-and-a-half years as a doctoral  
20 student. Much of that time was spent investigating  
21 karst hydrology. I also testified three years after  
22 getting my doctorate at public hearings before the  
23 Environmental Protection Agency and actually led EPA  
24 officials on a tour of the WIPP site and vicinity.  
25 That was in 1990.

1           In 1997, I was hired as a geologic consultant  
2 to resume my investigations of the site, and by that  
3 time, many government documents had been released that  
4 I had not previously seen and I needed to examine reams  
5 of hydrologic data looking for evidence that would  
6 truly represent conditions in the field --

7           Q.   How long did --

8           A.   -- and --

9           Q.   I'm sorry, go ahead.

10          A.   -- I worked extensively, off and on from 1997  
11 until 2000, on this project and have continued as a  
12 consultant, on occasion, up until the present.

13          Q.   When did you start the work on your karst  
14 land-forms with respect to your dissertation?

15          A.   My first preliminary visit to the site was in  
16 the summer of 1983 and my first planned, organized  
17 fieldwork was in the summer of 1984. I received my  
18 doctorate in February of 1987 -- or I should say I  
19 defended my dissertation in February of 1987.

20          Q.   And when did you receive your doctorate?

21          A.   Later that spring.

22          Q.   Okay. Is it fair to say, then, you received  
23 your doctorate sometime in 1987?

24          A.   Oh, yes.

25          Q.   Okay.

1           So, is it fair to say, then, that you were  
2 involved in the study of land-forms -- karst land-forms  
3 and anomalous data, at a minimum, from 1983 through  
4 1990, and from 1997 up to the present?

5           A.   Off and on.  Not all the time during those  
6 periods.

7           Q.   Okay.  Was one of your principal professional  
8 endeavors during the period 1983 to 1990 the study of  
9 karst land-forms?

10          A.   Yes.

11          Q.   And would it be fair to say that one of your  
12 principal professional endeavors from the period of  
13 1997 to 2004 was also the study of karst land-forms?

14          A.   Yes.

15          Q.   Were you involved in the study of karst  
16 land-forms in the period from 1990 to 1997?

17          A.   Not that I recall.

18          Q.   So is it fair, then, to say that, at a  
19 minimum, you have about 14 -- at least 14 years of  
20 experience, not necessarily every minute of that time  
21 but roughly 14 years of experience in the analysis of  
22 anomalous data as it relates to karst land-forms and  
23 other geological structures?

24          A.   Yes.

25          Q.   Do you consider yourself an expert in the

1 study of anomalous data with respect to karst  
2 land-forms?

3 A. Absolutely.

4 Q. In the study, when you are studying karst  
5 land-forms, do you have occasion to rely upon official  
6 government data?

7 A. Often, I rely on official government  
8 documents. I relied on them when I worked on my  
9 dissertation and even more extensively when I worked as  
10 a geologic consultant, for I had many years of  
11 government publications to catch up on at that time and  
12 I looked at everything I could find that had been  
13 published on the Rustler formation and every  
14 publication I could find with actual original measured  
15 data.

16 Q. Do you also have occasion to rely on -- and  
17 this may somewhat duplicate your answer, but when you  
18 were studying karst land-forms and anomalous data with  
19 respect to those land-forms, did you also have occasion  
20 to rely on data which was not official government data  
21 but was gathered by private citizens, private entities,  
22 or in some other manner? For example, drillers?

23 A. Of course, I was familiar with the  
24 professional geologic publications. I had access to  
25 some logs from private drillers, and I collected my own



1 data in the field.

2 Q. When you were studying anomalous data from  
3 whatever source, how did you decide what data to use --  
4 Let me back up a second.

5 Did you reach conclusions with respect to,  
6 for example, the prospects for groundwater  
7 contamination when you were studying karst land-forms  
8 in the southwestern United States?

9 A. Yes, I concluded that all the geologic  
10 mechanisms necessary for a catastrophic breach of the  
11 site existed, and therefore, this could not have been  
12 the least-bad site, which is in reality what we were  
13 looking for.

14 Q. Is it fair to say that you have experience in  
15 determining what data you should use in making a study,  
16 as to anomalies in that data to make determinations  
17 about karst land-forms and the passage of groundwater  
18 through those land-forms?

19 A. Yes. I would go where the evidence led me,  
20 and I think that any honest and earnest scientist  
21 begins with multiple hypotheses and may find something  
22 totally unexpected in the field or in the published  
23 data. But, if you are asking me was I able to not only  
24 recognize anomalous data but draw conclusions from it,  
25 the answer is yes.

1 Q. And is it fair to say that you also had to  
2 reach a determination as to what weight to give various  
3 pieces of data?

4 A. Yes.

5 Q. Moving forward in time, have you had occasion  
6 to study the election returns with respect to the 2004  
7 election, that is, the election of presidential  
8 electors or electors to select a President and  
9 Vice President in Ohio?

10 A. Yes.

11 Q. Okay. Have you prepared any reports as a  
12 result of your study of the data for the elections?

13 A. I have prepared more than 20 such reports.

14 Q. Okay.

15 MR. PECKARSKY: Let's mark a document called  
16 "John Kerry Conceded Too Soon" as Phillips Exhibit 1  
17 and hand a copy to the witness, please.

18 - - -

19 A SIX-PAGE DOCUMENT ENTITLED, "JOHN  
20 KERRY CONCEDED TOO SOON," WAS  
21 MARKED AS PHILLIPS EXHIBIT 1.

22 - - -

23 BY MR. PECKARSKY:

24 Q. Dr. Phillips, I've handed you a document  
25 marked as Phillips Exhibit 1. Did you prepare that

1 document?

2 A. Yes, I did.

3 Q. Now, with respect to the reports you've done  
4 on the 2004 election in Ohio, did you reach any  
5 conclusions with respect to each of your reports?

6 A. In most cases, yes.

7 Q. Did you prepare a summary of each of your  
8 reports?

9 A. Yes.

10 MR. PECKARSKY: Let's go off the record just  
11 a second.

12 (Discussion off the record.)

13 All right. Can you mark as Phillips Exhibit  
14 2 a document titled, "Certifiable Election Results,"  
15 please, and hand a copy to the witness.

16 - - -

17 A FIVE-PAGE DOCUMENT ENTITLED,  
18 "CERTIFIABLE ELECTION RESULTS," WAS  
19 MARKED AS PHILLIPS EXHIBIT 2.

20 - - -

21 BY MR. PECKARSKY:

22 Q. Dr. Phillips, drawing your attention to  
23 Phillips Exhibit 1, how many pages are in it?

24 A. Six.

25 Q. Okay.

1 Drawing your attention to Phillips Exhibit 2,  
2 how many pages are in it?

3 A. Five.

4 MR. PECKARSKY: I'd like you to mark as  
5 Phillips Exhibit 3 a document called "Cuyahoga County  
6 Canvass" --

7 THE WITNESS: No, that's not the title.

8 MR. PECKARSKY: Okay. Let's go off the  
9 record a second.

10 (Discussion off the record.)

11 BY MR. PECKARSKY:

12 Q. Dr. Phillips, I want to hand you a document.  
13 The top line of the front page says, "Cuyahoga County  
14 Canvass Sheet - 2004 Presidential Election." Can you  
15 take a look at that document, please?

16 A. Yes, sir.

17 Q. Does that document represent one of the  
18 reports that you prepared?

19 A. Yes. It's entitled, "Stealing Votes in  
20 Cleveland."

21 Q. Okay. Does that title appear on the  
22 document?

23 A. No, it does not.

24 Q. Okay.

25 A. That's an oversight.

1 Q. That's okay.

2 All right, fine. Can I have that back?

3 MR. PECKARSKY: Can you please mark this  
4 document, the top line of which says, "Cuyahoga County  
5 Canvass Sheet - 2004 Presidential Election," with 12  
6 pages, as Phillips Exhibit 3 and hand a copy to the  
7 witness, please.

8 - - -  
9 A 12-PAGE DOCUMENT BEGINNING  
10 "CUYAHOGA COUNTY CANVASS SHEET -  
11 2004 PRESIDENTIAL ELECTION," WAS  
12 MARKED AS PHILLIPS EXHIBIT 3.

13 - - -  
14 BY MR. PECKARSKY:

15 Q. And again, did you prepare the document which  
16 has been marked as Phillips Exhibit 3, Dr. Phillips?

17 A. Yes, sir.

18 MR. PECKARSKY: Could you mark as Phillips  
19 Exhibit 4 a six-page document bearing the title,  
20 "Provisional Ballots in Cuyahoga County," and this is  
21 going to be marked as Phillips Exhibit 4, and hand a  
22 copy to Dr. Phillips, please.

23 - - -  
24 A SIX-PAGE DOCUMENT ENTITLED,  
25 "PROVISIONAL BALLOTS IN CUYAHOGA

1 COUNTY," WAS MARKED AS PHILLIPS  
2 EXHIBIT 4.

3 - - -

4 BY MR. PECKARSKY:

5 Q. Dr. Phillips, did you prepare the document  
6 which has been marked as Phillips Exhibit 4?

7 A. Yes, I did.

8 Q. Okay.

9 MR. PECKARSKY: Please mark as Phillips  
10 Exhibit 5 a document bearing the title, "Uncounted  
11 Votes In Cuyahoga County," consisting of four pages,  
12 and hand a copy to Dr. Phillips.

13 - - -

14 A FOUR-PAGE DOCUMENT ENTITLED,  
15 "UNCOUNTED VOTES IN CUYAHOGA  
16 COUNTY," WAS MARKED AS PHILLIPS  
17 EXHIBIT 5.

18 - - -

19 BY MR. PECKARSKY:

20 Q. Dr. Phillips, did you prepare the document  
21 which has been marked as Phillips Exhibit 5?

22 A. Yes.

23 MR. PECKARSKY: I am going to mark a  
24 four-page document bearing the title, "Uncounted Votes  
25 in Hamilton County," as Phillips Exhibit 6, and hand a

1 copy to the witness, please.

2 - - -

3 A FOUR-PAGE DOCUMENT ENTITLED,  
4 "UNCOUNTED VOTES IN HAMILTON  
5 COUNTY," WAS MARKED AS PHILLIPS  
6 EXHIBIT 6.

7 - - -

8 BY MR. PECKARSKY:

9 Q. Dr. Phillips, did you prepare the document  
10 which has been marked as Phillips Exhibit 6?

11 A. Yes, I did.

12 Q. Okay.

13 MR. PECKARSKY: I'd like you to mark as  
14 Phillips Exhibit 7 a four-page document titled,  
15 "Uncounted Votes in Montgomery County," as Phillips  
16 Exhibit 7, and hand a copy to the witness, please.

17 - - -

18 A FOUR-PAGE DOCUMENT TITLED,  
19 "UNCOUNTED VOTES IN MONTGOMERY  
20 COUNTY," WAS MARKED AS PHILLIPS  
21 EXHIBIT 7.

22 - - -

23 MR. PECKARSKY: Would you please mark as  
24 Phillips Exhibit 8 a four-page document bearing the  
25 title, "Uncounted Votes in Summit County," and hand the

1 marked copy to Dr. Phillips, please.

2 - - -

3 A FOUR-PAGE DOCUMENT ENTITLED,  
4 "UNCOUNTED VOTES IN SUMMIT COUNTY,"  
5 WAS MARKED AS PHILLIPS EXHIBIT 8.

6 - - -

7 MR. PECKARSKY: Please mark as Phillips  
8 Exhibit 9, a four-page document bearing the title,  
9 "Uncounted Votes in Stark County," and hand a copy to  
10 the witness, please.

11 - - -

12 A FOUR-PAGE DOCUMENT ENTITLED,  
13 "UNCOUNTED VOTES IN STARK COUNTY,"  
14 WAS MARKED AS PHILLIPS EXHIBIT 9.

15 - - -

16 BY MR. PECKARSKY:

17 Q. Dr. Phillips, did you prepare Phillips  
18 Exhibit 9?

19 A. Yes, I did.

20 MR. PECKARSKY: Would you please mark as  
21 Phillips Exhibit 10 a three-page document bearing the  
22 title, "Getting Out The Vote In Lorain County," and  
23 hand a copy to Dr. Phillips, please.

24 - - -

25 A THREE-PAGE DOCUMENT ENTITLED,



1 "GETTING OUT THE VOTE IN LORAIN  
2 COUNTY," WAS MARKED AS PHILLIPS  
3 EXHIBIT 10.

4 - - -

5 BY MR. PECKARSKY:

6 Q. Dr. Phillips, did you prepare the document  
7 which has been marked as Phillips Exhibit 10?

8 A. Yes.

9 Q. Okay.

10 MR. PECKARSKY: Would you please mark as  
11 Phillips Exhibit 11 a four-page document bearing the  
12 title, "Uncounted Votes in Trumbull County," and hand  
13 the marked exhibit to Dr. Phillips, please.

14 - - -

15 A FOUR-PAGE DOCUMENT ENTITLED,  
16 "UNCOUNTED VOTES IN TRUMBULL  
17 COUNTY," WAS MARKED AS PHILLIPS  
18 EXHIBIT 11.

19 - - -

20 BY MR. PECKARSKY:

21 Q. Dr. Phillips, did you prepare the document  
22 which has been marked as Phillips Exhibit 11?

23 A. Yes.

24 MR. PECKARSKY: Would you please mark as  
25 Phillips Exhibit 12 a 10-page document bearing the

1 title, "Stealing Votes in Columbus," and hand a copy to  
2 Dr. Phillips, please.

3 - - -  
4 A 10-PAGE DOCUMENT ENTITLED,  
5 "STEALING VOTES IN COLUMBUS," WAS  
6 MARKED AS PHILLIPS EXHIBIT 12.

7 - - -  
8 BY MR. PECKARSKY:

9 Q. Dr. Phillips, did you prepare the document  
10 which has been marked as Phillips Exhibit 12?

11 A. Yes.

12 MR. PECKARSKY: Could we mark as Phillips  
13 Exhibit 13 a five-page document bearing the title,  
14 "Favoritism in the Suburbs," and hand a copy to Dr.  
15 Phillips, please.

16 - - -  
17 A FIVE-PAGE DOCUMENT ENTITLED,  
18 "FAVORITISM IN THE SUBURBS," WAS  
19 MARKED AS PHILLIPS EXHIBIT 13.

20 - - -  
21 MR. PECKARSKY: Let's go off the record.  
22 (Discussion off the record.)

23 BY MR. PECKARSKY:

24 Q. Dr. Phillips, did you prepare the document  
25 which has been marked as Phillips Exhibit 13?

1           A.    Yes.

2                   MR. PECKARSKY:  I would like to mark as  
3 Phillips Exhibit 14 a three-page document bearing the  
4 title, "Hacking the Vote in Miami County," and hand a  
5 copy to Dr. Phillips, please.

6   - - -

7                   A THREE-PAGE DOCUMENT ENTITLED,  
8                   "HACKING THE VOTE IN MIAMI COUNTY,"  
9                   WAS MARKED AS PHILLIPS EXHIBIT 14.

10   - - -

11 BY MR. PECKARSKY:

12           Q.    Dr. Phillips, did you prepare the document  
13 which has been marked as Phillips Exhibit 14?

14           A.    Yes.

15                   MR. PECKARSKY:  Please mark as Phillips  
16 Exhibit 15 a six-page document bearing the title,  
17 "Rigging the Vote in Lucas County," and hand a copy to  
18 Dr. Phillips, please.

19   - - -

20                   A SIX-PAGE DOCUMENT ENTITLED,  
21                   "RIGGING THE VOTE IN LUCAS COUNTY,"  
22                   WAS MARKED AS PHILLIPS EXHIBIT 15.

23   - - -

24 BY MR. PECKARSKY:

25           Q.    Dr. Phillips, did you prepare the document

1 which has been marked as Phillips Exhibit 15?

2 A. Yes, I did.

3 MR. PECKARSKY: Would you please mark as  
4 Phillips Exhibit 16 a document which has five pages and  
5 bears the title, "Another Third Rate Burglary," as  
6 Phillips Exhibit 16.

7 - - -

8 A DOCUMENT ENTITLED, "ANOTHER THIRD  
9 RATE BURGLARY," WAS MARKED AS  
10 PHILLIPS EXHIBIT 16.

11 - - -

12 BY MR. PECKARSKY:

13 Q. Dr. Phillips, did you prepare the document  
14 which has been marked as Phillips Exhibit 16?

15 A. Yes, sir.

16 MR. PECKARSKY: Would you please mark as  
17 Phillips Exhibit 17 a two-page document bearing the  
18 title, "Anomalous Precincts in Delaware City."

19 - - -

20 A TWO-PAGE DOCUMENT ENTITLED,  
21 "ANOMALOUS PRECINCTS IN DELAWARE  
22 CITY," WAS MARKED AS PHILLIPS  
23 EXHIBIT 17.

24 - - -

25 BY MR. PECKARSKY:

1 Q. Dr. Phillips, did you prepare the document  
2 which has been marked as Phillips Exhibit 17?

3 A. Yes.

4 MR. PECKARSKY: Would you please mark as  
5 Phillips Exhibit 18 an eight-page document bearing the  
6 title, "Default Settings in Mahoning County."

7 - - -  
8 AN EIGHT-PAGE DOCUMENT ENTITLED,  
9 "DEFAULT SETTINGS IN MAHONING  
10 COUNTY," WAS MARKED AS PHILLIPS  
11 EXHIBIT 18.

12 - - -  
13 BY MR. PECKARSKY:

14 Q. Dr. Phillips, did you prepare the document  
15 which has been marked as Phillips Exhibit 18?

16 A. Yes.

17 MR. PECKARSKY: Would you please mark as  
18 Phillips Exhibit 19 a document containing six pages and  
19 bearing the title, "Voter Turnout in Warren County"?

20 - - -  
21 A SIX-PAGE DOCUMENT ENTITLED,  
22 "VOTER TURNOUT IN WARREN COUNTY,"  
23 WAS MARKED AS PHILLIPS EXHIBIT 19.

24 - - -  
25 BY MR. PECKARSKY:

1 Q. Dr. Phillips, did you prepare the document  
2 which has been marked as Phillips Exhibit 19?

3 A. Yes.

4 MR. PECKARSKY: Please mark as Phillips  
5 Exhibit 20 a nine-page document bearing the title,  
6 "Election Results in Southwestern Ohio."

7 - - -  
8 A NINE-PAGE DOCUMENT ENTITLED,  
9 "ELECTION RESULTS IN SOUTHWESTERN  
10 OHIO," WAS MARKED AS PHILLIPS  
11 EXHIBIT 20.

12 - - -  
13 BY MR. PECKARSKY:

14 Q. Dr. Phillips, did you prepare the document  
15 which has been marked as Phillips Exhibit 20?

16 A. Yes, I did.

17 MR. PECKARSKY: Would you please mark as  
18 Phillips Exhibit 21 a nine-page document bearing the  
19 title, "One More Look at Southwestern Ohio."

20 - - -  
21 A NINE-PAGE DOCUMENT ENTITLED, "ONE  
22 MORE LOOK AT SOUTHWESTERN OHIO,"  
23 WAS MARKED AS PHILLIPS EXHIBIT 21.

24 - - -  
25 BY MR. PECKARSKY:

1 Q. Dr. Phillips, did you prepare the document  
2 which has been marked as Phillips Exhibit 21?

3 A. Yes, I did. And for the record, I prepared  
4 all 21 documents that have been handed to me.

5 Q. All right.

6 MR. PECKARSKY: Would you please mark as  
7 Phillips Exhibit 22 a seven-page document bearing the  
8 title, "Summary Paragraphs."

9 - - -

10 A SEVEN-PAGE DOCUMENT ENTITLED,  
11 "SUMMARY PARAGRAPHS," WAS MARKED AS  
12 PHILLIPS EXHIBIT 22.

13 - - -

14 BY MR. PECKARSKY:

15 Q. Dr. Phillips, did you prepare the document  
16 which has been marked as Phillips Exhibit 22?

17 A. Yes, sir.

18 Q. And is it fair to say that Phillips Exhibit  
19 22 contains a summary, a one-paragraph summary per  
20 exhibit for each of the documents which have been  
21 marked as Phillips Exhibits 1 through 21?

22 A. That is the intention, yes, sir.

23 Q. Okay.

24 MR. PECKARSKY: Let's take a break.

25 (Recess taken.)

1 BY MR. PECKARSKY:

2 Q. Drawing your attention to Phillips Exhibit 1,  
3 Dr. Phillips, --

4 A. Yes.

5 Q. -- what data did you review -- Let me back  
6 up.

7 Drawing your attention to Phillips Exhibit 1,  
8 did you review any data as part of the process of  
9 preparing Phillips Exhibit 1?

10 A. I used data formerly available on the Web  
11 Site of J. Kenneth Blackwell, Ohio Secretary of State,  
12 and I calculated for each of the 88 counties in Ohio  
13 the number of uncounted ballots for President.

14 Q. What information did you take from Secretary  
15 Blackwell's Web Site?

16 A. I downloaded from his Web Site tables that  
17 showed on a county-by-county basis the number of  
18 registered voters, the total votes cast that had been  
19 counted as of election day. The percentage turnout was  
20 calculated as votes cast divided by registered voters.  
21 I, frankly, don't remember if those percentages were on  
22 the Web Site or if I calculated them, myself.

23 The number of provisional ballots issued in  
24 each county came directly from the Secretary of State's  
25 Web Site. The number of votes counted for the



1 presidential candidates as of shortly after the  
2 election came directly from the Secretary's Web Site.  
3 And I derived the number of uncounted ballots for  
4 President by deriving -- or by subtracting the number  
5 of votes counted for President from the total ballots  
6 cast.

7 Q. I'm sorry. Could you repeat that?

8 A. Yes. I derived the number of uncounted  
9 ballots for President by subtracting the number of  
10 votes counted for President for all the candidates  
11 combined from the total ballots cast. The votes not  
12 counted were uncounted.

13 Q. Did the number of votes counted per county  
14 also come from Secretary Blackwell's Web Site?

15 A. Yes. He posted unofficial returns for all  
16 the candidates on a county-by-county basis.

17 Q. Okay, and --

18 A. And subsequently, those results were taken  
19 down from the Web Site when I have them.

20 Q. By that, you mean that, at some point, the  
21 unofficial results were taken down from the Web Site  
22 and replaced by official results?

23 A. For quite sometime, they were replaced by  
24 nothing.

25 Q. Okay.

1           A.    Now, the official results are posted --  
2           Q.    Are they posted --  
3           A.    -- on a county-by-county basis.  
4           Q.    Are those official results posted on a  
5 county-by-county basis on Secretary Blackwell's Web  
6 Site?  
7           A.    Last time I checked, yes.  
8           Q.    Okay, fine.  
9                    Have you prepared sort of a verbal or written  
10 summary of the Phillips Exhibit 1 titled, "John Kerry  
11 Conceded Too Soon"?  
12          A.    Yes.  
13          Q.    What is your summary of this study of  
14 Phillips Exhibit 1 document?  
15          A.    There were, and still are, 92,672 regular  
16 ballots cast with no vote counted for President. This  
17 does not include persons who grew weary of waiting in  
18 line or were turned away at the polls or were denied  
19 provisional ballots or were discouraged from going to  
20 the polls. These are people who cast ballots, and for  
21 whatever reason, did not have their ballots counted as  
22 votes for President.  
23          Q.    Fine.  
24                    Drawing your attention to Phillips Exhibit  
25 Number 2, did you review any data in preparing Phillips

1 Exhibit Number 2, titled, "Certifiable Election  
2 Results"?

3 A. Yes, I compared the unofficial and official  
4 statewide results for the State of Ohio on a  
5 county-by-county basis. I got the official results  
6 from the Secretary of State's Web Site and they still  
7 retained the unofficial results that I had downloaded  
8 weeks earlier.

9 Q. And again, those unofficial results were --  
10 again, were the unofficial results downloaded from  
11 Secretary of State Blackwell's Web Site?

12 A. Yes, both sets of returns came from the same  
13 Web Site.

14 Q. Did you have occasion to summarize Phillips  
15 Exhibit 2?

16 A. Yes.

17 Q. And what is your summary of Phillips Exhibit  
18 2?

19 A. I found that John Kerry's percentage of the  
20 newly-counted votes, which were mostly provisional  
21 ballots and some absentee ballots, was 54.46 percent,  
22 much higher than his percentage on election night. In  
23 the 10 largest counties in Ohio, accounting for 61.3  
24 percent of the statewide vote, Kerry's share of the  
25 newly-counted votes was 4.24 percent to 8.93 percent

1 higher than the unofficial results. In 22 smaller  
2 counties, Kerry's share was more than four percent  
3 higher. This indicates an underreporting of the Kerry  
4 vote on election night. Either the discrepancy must be  
5 entirely attributable to absentee ballots and  
6 provisional ballots coming disproportionately from  
7 Democratic precincts or else the electronic vote counts  
8 were not correct.

9 Q. Drawing your attention to the phrase, "newly  
10 counted votes," in your response to the last  
11 question --

12 A. Yes.

13 Q. -- what do you mean by "newly counted votes"?

14 A. Votes that had been counted and added to the  
15 tallies after the publication of the unofficial results  
16 shortly after election day. That would include all  
17 provisional ballots that had been ruled valid and found  
18 to contain votes for a given office -- in this case,  
19 President -- and some absentee ballots that arrived  
20 after election day but were still counted because they  
21 met the legal requirements. Probably that means they  
22 were postmarked before election day. I also compared  
23 the unofficial and official precinct results for  
24 certain counties if I had both sets of returns from  
25 Board of Elections. And I also reviewed some

1 correspondence from public officials, and I found that  
2 J. Kenneth Blackwell had certified the following  
3 results: Decreases in vote totals in Sandusky and  
4 Harrison Counties; voter turnout of 124.4 percent and  
5 124.0 percent in two precincts in Perry County; turnout  
6 of zero in one precinct in Van~Wert County; and 2,563  
7 newly-counted votes, nearly all of them provisional  
8 ballots, amounting to 8.59 percent of total ballots  
9 cast in Athens County, home of the Ohio University main  
10 campus. That was far more than the usual rate of  
11 provisional ballots issued. I thought a high number of  
12 provisional ballots might suggest relentless  
13 challenging of college students to vote.

14 Q. With respect to your finding that Kerry's  
15 share of the newly-counted votes in at least one county  
16 was 8.93 percent higher than the unofficial results --

17 A. Yes, that would be --

18 Q. -- which county was that?

19 A. Hamilton County.

20 The listing of the percentage difference in  
21 the 10 counties is at the top paragraph of Page 4 in  
22 Exhibit 2.

23 Q. Okay. So ....

24 A. Those numbers refer to the table on Page 3  
25 where the percent for Kerry is shown for each of these

1 counties. The top line is the official, certified  
2 percentage. The second line is the unofficial  
3 percentage shortly after election day. And the third  
4 line is the percent of the newly-counted ballots.

5 Q. Okay. And is it fair to say that 8.93  
6 percent represents the difference between 46.78 on Page  
7 3 as the unofficial vote for Kerry in Hamilton County  
8 and the 55.71 percent just below that on Page 3,  
9 Hamilton County, being Kerry's share of the newly  
10 counted votes?

11 A. Yes, that is where the figure comes from --

12 Q. Okay.

13 A. -- and similarly for the other nine-largest  
14 counties in the state.

15 Q. Okay. Drawing your attention to Phillips  
16 Exhibit 3, what data, if any, did you study and/or  
17 analyze to come to the conclusions and facts stated in  
18 Phillips Exhibit 3?

19 A. At that time, I was using unofficial precinct  
20 canvass records for the 2004 election and official  
21 precinct canvass records for the 2000 election, for the  
22 2004 results had not yet been certified.

23 MR. PECKARSKY: Let's just take a break here.

24 (Discussion off the record.)

25 (Answer read.)

1 BY MR. PECKARSKY:

2 Q. Is it fair to say that you used information  
3 from the Secretary of State of Ohio both for 2000 and  
4 2004?

5 A. No, it is not.

6 Q. Okay.

7 A. The information came from the Board of  
8 Elections Web Site of Cuyahoga County. Precinct  
9 canvass records are not available on the Secretary of  
10 State's Web Site.

11 Q. Okay. Fine. So is it fair to say that the  
12 records you looked at were data from Cuyahoga County  
13 both for 2000 and 2004?

14 A. Correct, from the Board of Elections public  
15 records.

16 Q. Fine.

17 And aside from the official data for 2000 and  
18 the unofficial data for 2004 from Cuyahoga County, did  
19 you look at any other data or review any other data in  
20 preparing Phillips Exhibit 3?

21 A. No.

22 Q. Okay. Great.

23 Did you prepare a summary of your findings in  
24 Phillips Exhibit 3?

25 A. Yes, I did.

1 Q. And what is that summary?

2 A. I discovered numerous examples of incorrect  
3 presidential vote tallies in Cleveland, Cuyahoga  
4 County. I found at least 16 precincts where votes  
5 intended to be cast for Kerry were apparently shifted  
6 to other candidates' columns. At least 30 precincts  
7 with inexplicably low voter turnout, including 7.10  
8 percent, 13.05 percent, 19.60 percent, 21.01 percent,  
9 21.80 percent, 24.72 percent, 28.83 percent, 28.97  
10 percent, and 29.25 percent; and seven entire wards  
11 where voter turnout was reportedly below 50 percent,  
12 even as low as 39.35 percent. Conservatively, adopting  
13 50 percent as an estimate of true voter turnout for  
14 underreported wards and precincts, I concluded that  
15 Kerry had lost more than 6,000 votes. If voter turnout  
16 was really 60 percent of registered voters, as seems  
17 likely based upon turnout in other major cities of  
18 Ohio, Kerry's margin of victory in Cleveland as  
19 reported in the unofficial canvass records was wrongly  
20 reduced by 22,000 votes.

21 Q. On what do you base the conclusion that there  
22 was vote-shifting from Kerry to other candidates'  
23 columns?

24 A. I will give two examples --

25 Q. Are you --



1           A.    -- from Cleveland Ward 3.

2           Q.    Could you tell us what page you are referring  
3 to, if any, in Exhibit 3?

4           A.    Well, the pages are not numbered in the  
5 document, Exhibit 3, called, "Stealing Votes In  
6 Cleveland," because these are reprints of the actual  
7 canvass records. This would be the fourth page. In  
8 about the middle of the page, you will see Precinct  
9 Cleveland 4F, the unofficial returns reported show 21  
10 votes for Bush, 290 votes for Kerry, and 215 votes for  
11 Michael Peroutka, the Constitution Party candidate.  
12 This represents 86 percent of the total vote awarded to  
13 Peroutka, P-E-R-O-U-T-K-A. In all of Ward 4 -- there  
14 are 19 precincts in Ward 4. His second-highest record  
15 total is seven votes.

16                   Farther down the page, you will see Cleveland  
17 Precinct 4N where the reported unofficial returns show  
18 11 votes for Bush, 318 votes for Kerry, seven votes for  
19 Peroutka, and 163 votes for Michael Badnarik,  
20 B-A-D-N-A-R-I-K, the Libertarian candidate for  
21 President. This represents 93 percent of the total  
22 vote that Badnarik received in all of Ward 4, his  
23 second-highest record total being four votes in  
24 Precinct 4R.

25                   I compared these results with the official

1 returns from 2000 and concluded that these strikingly  
2 anomalous numbers were votes intended to be cast for  
3 John Kerry, because in these same precincts in 2000, in  
4 Precinct 4F, Al Gore received 92 percent of the vote;  
5 in Precinct 4N, Al Gore received 98 percent of the  
6 vote.

7 Q. Okay.

8 A. There are many more such examples in the  
9 Cuyahoga County canvass sheet.

10 Q. And are those examples set forth in Phillips  
11 Exhibit 3?

12 A. Correct.

13 Q. Okay. And are the two examples you just gave  
14 with respect to the precincts in Ward 4 an example of  
15 what you meant by an incorrect presidential vote tally  
16 in Cleveland?

17 A. Yes, they are.

18 Q. Drawing your attention to Phillips Exhibit 4,  
19 what data, if any, did you review in preparing Phillips  
20 Exhibit 4?

21 A. I compared the unofficial and official  
22 precinct canvass records for Cuyahoga County as posted  
23 on the Web Site of the Board of Elections and I  
24 referred to data from the Secretary of State's Web Site  
25 that I had previously accumulated and written up in

1 Exhibit 1.

2 Q. Going back just a second to Phillips Exhibit  
3 3, what, if anything, was the title on Phillips Exhibit  
4 3?

5 A. "Stealing Votes In Cleveland," that's the  
6 title as it appears on my Web Site and on the Free  
7 Press Web Site and I simply forgot to add it to the  
8 page when I printed these out in the last 24 hours.

9 MR. PECKARSKY: Let's go off the record a  
10 second.

11 (Discussion off the record.)

12 BY MR. PECKARSKY:

13 Q. Let's go ahead to Phillips Exhibit 4. Is it  
14 fair to say that the data you studied to prepare  
15 Phillips Exhibit 4 came either from the Web Site of the  
16 Cuyahoga County Board of Elections or the Web Site of  
17 the Secretary of State of the State of Ohio?

18 A. Yes.

19 Q. Okay. And was all of that data either  
20 election returns or registration data, voter  
21 registration data?

22 A. Yes.

23 Q. Did you prepare a summary of -- if any, of  
24 your findings in Phillips Exhibit 4?

25 A. Yes, I did.

1 Q. What is that summary?

2 A. According to the Ohio Secretary of State,  
3 there were 24,788 provisional ballots issued in  
4 Cuyahoga County. Comparing the unofficial and official  
5 precinct canvass records, I found that only 69.95  
6 percent were ruled valid. Only 68.70 percent, 16,872  
7 ballots in all, were counted as votes for President;  
8 that the percentage of spoiled ballots was 5.91 percent  
9 in Cleveland and only 0.7 percent in the suburbs; and  
10 that 7,450 provisional ballots were ruled invalid for  
11 undisclosed reasons and remain uncounted. The official  
12 canvass records show that since the unofficial returns  
13 were issued, Kerry has gained 15,224 votes, 71.62  
14 percent, to 5,892 votes, 27.72 percent, for Bush. A  
15 net gain of 9,332 votes. At that rate, if all  
16 provisional ballots were counted in Cuyahoga County,  
17 Kerry could expect a net gain of another 3,270 votes.

18 I found that, in Precinct 10L in Cleveland,  
19 there were 279 persons forced to fill out provisional  
20 ballots, more than the 219 persons who were allowed to  
21 vote unchallenged on election day.

22 I found that, in all other Cleveland  
23 precincts with less than 40 percent turnout in the  
24 unofficial returns, provisional ballots had increased  
25 the turnout very little, if at all. In 18 of these

1 precincts, fewer than 10 provisional ballots were  
2 issued. In two, there were only four. In two, there  
3 were only three. In two, there were only two. In  
4 three, there were only one. And in three, there were  
5 none at all. No provisional ballots were issued.  
6 Voters were apparently turned away at the polls,  
7 although it is conceivable, though not likely, given  
8 such low turnout, that everybody who showed up at these  
9 polling places was allowed to vote.

10 Q. By "allowed to vote," do you mean allowed to  
11 vote a regular ballot as opposed to a provisional  
12 ballot?

13 A. Well, in those three precincts, no  
14 provisional ballots were issued so we would have to be  
15 talking about regular ballots, yes.

16 MR. PECKARSKY: Let's go off the record.

17 (Discussion off the record.)

18 BY MR. PECKARSKY:

19 Q. Is it fair to say that with respect to  
20 Phillips Exhibit 4, that if the 7,450 provisional  
21 ballots which were ruled invalid were counted, your  
22 estimate is that, given Kerry's rate of gain since the  
23 unofficial returns were issued, that he would get  
24 another -- a net gain of 3,270 votes in Cuyahoga  
25 County?

1           A.    If all those uncounted provisional ballots  
2 were ruled valid and counted for President, that would  
3 be a fair statement.

4           Q.    Thank you.

5                    Drawing your attention to Phillips Exhibit  
6 5 -- and let me just ask: Did you prepare Phillips  
7 Exhibit 5?

8           A.    Yes, I did.

9           Q.    Okay. What data, if any, did you review or  
10 analyze to prepare Phillips Exhibit 5?

11          A.    Using the unofficial precinct canvass records  
12 from Cuyahoga County and data from the Ohio Secretary  
13 of State, I examined the distribution of uncounted  
14 regular ballots in Cuyahoga County. That would mean  
15 not provisional ballots, not absentee ballots: Ballots  
16 cast on election day at the polls.

17          Q.    And is one of the results of your study that,  
18 for some reason, there were ballots which were not  
19 absentee and not provisional and they were not counted?

20          A.    That is correct. They are among the 92,672  
21 regular ballots cast but still uncounted that I refer  
22 to in Exhibit 1.

23                   MR. PECKARSKY: Excuse me just a second.

24                   (Discussion off the record.)

25 BY MR. PECKARSKY:

1 Q. Just one general question: Did you prepare  
2 all of the documents which have been marked as Phillips  
3 Exhibits 1 through 22?

4 A. Yes.

5 Q. Did you reach any conclusion or summary of  
6 Phillips Exhibit 5?

7 A. Yes.

8 Q. And what is that summary?

9 A. I examined the distribution of uncounted  
10 regular ballots in Cuyahoga County. I found that  
11 4,708, or 44 percent, are from Cleveland, which Kerry  
12 won with 83.36 percent of the vote to 15.79 percent for  
13 Bush. I found 65 precincts in Cleveland with four  
14 percent or more of the regular ballots uncounted, 1,366  
15 ballots in all, 29.01 percent of the citywide total.  
16 John Kerry won all 65 precincts overwhelmingly by a  
17 margin of 12 to one in the aggregate. Elsewhere in  
18 Cuyahoga County, there are 19 precincts with more than  
19 four percent of the regular ballots uncounted, 383  
20 ballots in all. John Kerry won 16 of those precincts  
21 overwhelmingly by a margin of eight to one in the  
22 aggregate and ran nearly even with Bush in the other  
23 three.

24 Q. All right. Is it fair to say that all the  
25 data you analyzed which contributed to Phillips Exhibit

1 5 was from either election data compiled by the Ohio  
2 Secretary of State or election data compiled by  
3 Cuyahoga County?

4 A. Actually, no. There is a concluding  
5 paragraph written by Brian Julin who prepared  
6 spreadsheets and tables of data that enabled me to  
7 write this report in a timely manner. I felt his  
8 conclusion should be printed, as well, and he actually  
9 concluded that Kerry would pick up a net gain, if all  
10 the undervotes were counted, of 5,260 votes. So, my  
11 estimate might be conservative.

12 Q. Going back to the issue of what kind of data  
13 was used, did you review the data which Mr. Julin  
14 reviewed?

15 A. I'm not certain how he arrived at that  
16 number.

17 Q. Was Mr. Julin working under your direction  
18 when he prepared his analysis?

19 A. Not when he prepared the analysis. When he  
20 prepared the spreadsheets and the tables of data, he  
21 did what I asked him to do.

22 Q. Did you ask him to prepare spreadsheets and  
23 tables of data in a certain manner?

24 A. Yes, I did.

25 Q. And as far as you can tell, did he do that?



1 A. Yes, he did.

2 Q. And when you asked Mr. Julin to prepare the  
3 spreadsheets and tables of data, did you ask him to use  
4 anything other than election data from either the  
5 Secretary of State or Cuyahoga County?

6 A. No.

7 Q. So is it correct that, as far as you know,  
8 all the data which went into his spreadsheets and data  
9 analysis was election data either from the Ohio  
10 Secretary of State or from the Cuyahoga County Board of  
11 Elections?

12 A. So far as I know.

13 Q. Okay. Do you have any reason to believe that  
14 he used any data other than -- Start that again.

15 Do you have any reason to believe that  
16 Mr. Julin used data in his analysis from any source  
17 other than the Secretary of State and the Cuyahoga  
18 County Board of Elections?

19 A. No.

20 Q. Drawing your attention to the bottom of Page  
21 4, Phillips Exhibit 5, is it your conclusion also that  
22 Kerry would pick up approximately 7,935 votes and Bush  
23 would pick up approximately 2,675 if the undervotes  
24 were allocated in proportion to the votes validly  
25 counted?

1 A. No, I stated my conclusion.

2 Q. Okay. And this is a separate conclusion of  
3 Mr. Julin; correct?

4 A. Yes.

5 Q. Fine.

6 Aside from this paragraph of Mr. Julin, is it  
7 fair to say that you prepared the rest of Phillips  
8 Exhibit 5?

9 A. Yes. I included the paragraph as a courtesy  
10 to a man who had done a lot to help me.

11 Q. Right.

12 Drawing your attention to Phillips Exhibit 6,  
13 what data did you use to prepare -- what data, if any,  
14 did you use to prepare Phillips Exhibit 6?

15 A. I used the unofficial precinct canvass  
16 records from the Hamilton County Board of Elections and  
17 data from the Ohio Secretary of State.

18 Q. Did you use any other data?

19 A. No, although there is -- there are references  
20 in Exhibit 6 to findings from Exhibit 7 that we will  
21 get to shortly.

22 These papers were written in the reverse  
23 order.

24 Q. Okay. Referring --

25 A. Other than that, all the data came from the

1 sources I cited.

2 Q. Okay. Is there any data in Exhibit 7 --  
3 Well, what data, if any, did you review in preparing  
4 Exhibit 7?

5 A. I reviewed unofficial precinct canvass  
6 records from Montgomery County Board of Elections and  
7 data from the Ohio Secretary of State. These were two  
8 of several studies that I conducted on uncounted,  
9 regular ballots in various counties of Ohio.

10 Q. Okay. Is there a reference at the top,  
11 second paragraph of Phillips Exhibit 7, to a letter  
12 from four members of Congress to Secretary Blackwell?

13 A. Yes, there is.

14 Q. Okay. Did you rely on anything in that  
15 letter to produce the analysis in Phillips Exhibit 7?

16 A. No.

17 Q. Okay.

18 Let's go back to Phillips Exhibit 6. Is it  
19 fair to state, then, that Phillips Exhibit 6 relies on  
20 information either from the Hamilton County Board of  
21 Elections or the Secretary of State plus the data in --  
22 relied upon in Phillips Exhibit 7 which is data either  
23 from the Montgomery County Board of Elections or the  
24 Secretary of State?

25 A. I'm sorry. You lost -- Let's repeat the

1 question.

2 Q. As I understand it, is it correct that  
3 Phillips Exhibit 6 is based on data referred to in  
4 Phillips Exhibit 6 plus certain data referred to in  
5 Phillips Exhibit 7?

6 A. There is a comparative paragraph on the first  
7 page that refers to findings from Exhibit 7, yes.

8 Q. Okay. And is it correct to state that the  
9 conclusions in Phillips Exhibit 7 were based on your  
10 analysis of data from either the Montgomery County  
11 Board of Elections or the Secretary of State?

12 A. Yes.

13 Q. And is it fair to say that, in addition to  
14 that data and this reference to -- comparative  
15 reference in Phillips Exhibit 6 going over to 7, that  
16 the data you analyzed to prepare Phillips Exhibit 6  
17 came from either the Hamilton County Board of Elections  
18 or the Ohio Secretary of State?

19 A. Yes.

20 Q. Okay, fine.

21 Now, did you summarize your findings as a  
22 result of Phillips Exhibit 6?

23 A. Yes, I did.

24 Q. What is that summary?

25 A. I examined the distribution of uncounted

1 regular ballots in Hamilton County. I found that 4,515  
2 or 51.64 percent are from Cincinnati, which Kerry won  
3 with 67.98 percent of the vote to 31.54 percent for  
4 Bush. I found 86 precincts in Cincinnati with more  
5 than four percent of the regular ballots uncounted;  
6 2,042 ballots in all; 45.23 percent of the citywide  
7 total; 23.36 percent of the countywide total. John  
8 Kerry won 85 of these 86 precincts and his margin in  
9 all 86 precincts was five to one in the aggregate.

10 Q. Did you reach any conclusions with respect to  
11 your study set forth in Phillips Exhibit 7?

12 A. Yes, I did.

13 Q. What were those conclusions?

14 A. I examined the distribution of uncounted  
15 regular ballots in Montgomery County. I found 47  
16 precincts, 41 of them in Dayton, with more than four  
17 percent of the regular ballots uncounted, 920 ballots  
18 in all, 20.97 percent of the countywide total. John  
19 Kerry won all 47 precincts by a margin of seven to one  
20 in the aggregate. In these 47 precincts, the rate of  
21 spoilage, meaning regular ballots that had gone  
22 uncounted, was 5.16 percent compared to only 1.31  
23 percent for the rest of the county.

24 I should point out, as a matter of  
25 clarification for anyone who wishes to review this

1 record, that in some places in some of these studies of  
2 uncounted regular ballots in various Ohio counties, I  
3 present those numbers as a percentage of all uncounted  
4 ballots, which would include absentee ballots in the  
5 denominator, as well; but the figures I am giving here,  
6 I think are more appropriate. But any perceived  
7 discrepancies will derive from that.

8 Q. How did you calculate the percentages in the  
9 Phillips Exhibit 7 that you just referred to in the  
10 summary? That is --

11 A. Everything -- all such calculations in the  
12 summary paragraphs use uncounted regular ballots as the  
13 numerator and total -- total uncounted regular ballots  
14 either for a city or countywide as the denominator.

15 MR. PECKARSKY: Could I have that answer  
16 back, please.

17 (Answer read.)

18 BY MR. PECKARSKY:

19 Q. Let me go back over that Dr. Phillips, if I  
20 could.

21 Referring, for example, to this number of  
22 5.16 percent, which I think is a rate of spoilage for  
23 47 precincts in Montgomery County, to get the 5.16  
24 percent, what was the numerator?

25 A. Well, that's the percentage of uncounted

1 regular ballots in the 47 precincts referred to divided  
2 by the total ballots cast in the county.

3 I am simply stating for the record that, in  
4 the summary paragraphs, if I present a percentage of  
5 uncounted, regular ballots as a percentage of a county  
6 or citywide total, I am using regular ballots only in  
7 the denominator, I am not including absentee ballots  
8 because it is not as appropriate to do so.

9 Q. Okay. So the point is: When you calculated  
10 these percentages in both numerator and denominator --

11 A. They are regular ballots.

12 Q. -- they are regular ballots?

13 A. In the summary paragraphs, correct.

14 Some of these reports were written so early  
15 in my investigation that I may not have had data broken  
16 down in that manner.

17 So, I am, in the summary paragraphs,  
18 presenting calculations in the same way in one county  
19 after another, except, as we will shortly find out, in  
20 Exhibit 8 where I have no separate data for absentee  
21 ballots.

22 Q. Let me try and clarify a few things.

23 I had understood you to say -- I probably  
24 misunderstood you, but with respect to the 5. -- the  
25 statement that, in 47 precincts in Montgomery County,

1 the rate of spoilage was 5.16 percent, I understood you  
2 to say that that was the uncounted ballots in those 47  
3 precincts divided by the total uncounted ballots in the  
4 county?

5 A. No.

6 Q. That's what -- I'm trying to clarify this.  
7 In fact, that number is -- to get the 5.16 percent, you  
8 would take -- is it correct that you would take the  
9 uncounted ballots in those 47 precincts divided by  
10 total regular ballots cast in those 47 precincts?

11 A. Yes.

12 Q. Okay.

13 A. Yes.

14 Q. Let's go on to Phillips Exhibit 8.

15 A. Yes.

16 Q. What data did you use in preparing Phillips  
17 Exhibit 8?

18 A. I used the unofficial precinct canvass  
19 records from Summit County and data from the Ohio  
20 Secretary of State, but nowhere in this paper is there  
21 a separate, distinct count for absentee ballots, which  
22 is why I attempted to make that clarification.

23 Q. Okay. I notice a reference to ballots cast  
24 and provisional ballots. Does that mean the absentee  
25 ballots were just blended in with the total ballots



1 cast?

2 A. Sometimes, they are blended in with the  
3 provisional ballots. It varies from county to county,  
4 and that's one of the difficulties in doing these  
5 analyses. It appears to be up to each county as to how  
6 they wish to present their election data and it makes  
7 it very difficult to present several studies of several  
8 counties that are directly comparable, which is the  
9 cause for all of this discussion.

10 Q. Okay.

11 A. I used the best data available to me.

12 Q. Okay. Aside from -- You mentioned data that  
13 you obtained from the Ohio Secretary of State and the  
14 Summit County Board of Elections. Is there any other  
15 data you used in preparing Phillips Exhibit 8?

16 A. No, sir.

17 Q. Did you come to any conclusions or summary of  
18 the study set forth in Phillips Exhibit 8?

19 A. Yes.

20 Q. And what is that summary?

21 A. I examined the distribution of uncounted  
22 ballots in Summit County and I found that 2,650, or  
23 48.72 percent, are from Akron, which Kerry won with  
24 68.75 percent of the vote to 28.00 percent for Bush. I  
25 found 54 precincts in Akron with more than three

1 percent of the ballots uncounted, 1,628 ballots in all,  
2 29.93 percent of the countywide total. John Kerry won  
3 all 54 precincts by a margin of 4.5 to one in the  
4 aggregate.

5           Elsewhere in Summit County, there are 17  
6 precincts with more than three percent of the ballots  
7 uncounted, 406 ballots in all. John Kerry won all but  
8 one of these 17 precincts, even though Bush narrowly  
9 carried the suburbs by 423 votes over Kerry. This  
10 seems highly suspicious to me, defying statistical  
11 probability.

12           Q. Okay.

13           A. How could, in the precincts outside of Akron  
14 where the two candidates run neck-and-neck, how could  
15 almost all of the precincts with the highest proportion  
16 of uncounted ballots just happen to be precincts that  
17 were won by Kerry? In my professional opinion, there  
18 should be an examination of the uncounted punch cards  
19 and the machines that failed to count them.

20           Q. Going ahead to Phillips Exhibit 9, what data,  
21 if any, did you rely upon to prepare Phillips Exhibit  
22 9?

23           A. I used the unofficial precinct canvass  
24 records from the Stark County Board of Elections and  
25 data from the Ohio Secretary of State.

1 Q. Did you use any other data in preparing  
2 Phillips Exhibit 9?

3 A. No.

4 Q. There is a reference there to a Mr. O'Hara.

5 A. Yes.

6 Q. Was Mr. O'Hara doing that work under your  
7 direction?

8 A. Yes.

9 Q. And did he also use just data from either the  
10 Stark County Board of Elections or the Secretary of  
11 State of Ohio in producing these spreadsheets and  
12 tables of data referred to in your report?

13 A. Yes.

14 Q. Did you reach a conclusion with respect to  
15 the information set forth in Phillips Exhibit 9 or a  
16 summary thereof?

17 A. Yes.

18 Q. And what is that summary?

19 A. I noticed from the records on the Secretary  
20 of State's Web Site that Stark County was the only  
21 county in Ohio that Al Gore lost but John Kerry won. I  
22 found that there are 2,901 uncounted regular ballots in  
23 Stark County. I found that 873, or 30.09 percent, are  
24 from Canton, which Kerry won with 67.16 percent of the  
25 vote to 32.30 percent for Bush. And that 1,367, or

1 47.12 percent, are from the three largest cities, all  
2 Democratic strongholds.

3 I found 28 precincts in Stark County with  
4 3.33 percent or more of the regular ballots uncounted,  
5 604 ballots in all, 20.82 percent of the countywide  
6 total. John Kerry won all 28 precincts by a margin of  
7 2.7 to one in the aggregate.

8 Q. Going ahead to Phillips Exhibit 10, what  
9 data, if any, did you use to prepare Phillips Exhibit  
10 10?

11 A. I used the unofficial precinct canvass  
12 records from the Lorain County Board of Elections and  
13 data from the Ohio Secretary of State.

14 Q. Did you use any other data in preparing  
15 Phillips Exhibit 10?

16 A. No.

17 Q. Did you reach a conclusion with respect to  
18 the study set forth in Phillips Exhibit 10?

19 A. Yes, I did.

20 Q. And what is that conclusion or summary of  
21 your findings with respect to Phillips Exhibit 10?

22 A. I noticed that Al Gore won Lorain County by  
23 11,852 votes in 2000 and John Kerry won Lorain County  
24 by 17,769 votes in 2004, a net gain of 5,917 votes for  
25 the Democrats. Still, I found 39 precincts in Lorain

1 County with more than 2.5 percent of the ballots  
2 uncounted, 710 ballots in all, 30.74 percent of the  
3 countywide total in precincts that accounted for only  
4 13.25 percent of the countywide vote, and John Kerry  
5 won all 39 precincts by a margin of three to one in the  
6 aggregate.

7 Q. Okay. Drawing your attention to Phillips  
8 Exhibit 11 --

9 A. Yes.

10 Q. -- what data, if any, did you study to  
11 produce Phillips Exhibit 11?

12 A. I used the official precinct canvass records  
13 from the Trumbull County Board of Elections, for this  
14 was after the vote was certified, and data from the  
15 Ohio Secretary of State. I also considered a study of  
16 absentee ballots in Trumbull County by Dr. Werner  
17 Lange, W-E-R-N-E-R, L-A-N-G-E.

18 Q. Did you get a written copy of a report from  
19 Dr. Lange?

20 A. Yes, I did --

21 Q. Okay.

22 A. -- and I consulted with him to be certain  
23 that the data presented was precisely as he had  
24 collected it.

25 Q. And did he confirm to you that the data

1 presented was precisely as he had collected it?

2 A. Yes, he did.

3 Q. All right. Did you -- aside from the data  
4 from -- election data from Trumbull County, the  
5 election data from the Ohio Secretary of State and the  
6 information from Dr. Lange, did you review any other  
7 data or consider any other data in producing Phillips  
8 Exhibit 11?

9 A. I made a comparison to -- between the way  
10 that absentee ballots are reported in other counties  
11 and the way they are reported in Trumbull County based  
12 upon my experience investigating other counties in  
13 Ohio.

14 Q. Okay. Where does that comparison appear in  
15 Phillips Exhibit 11?

16 A. Page 4, Paragraphs 3 and 4.

17 Q. In reporting that information in Paragraphs 3  
18 and 4 on Page 4 of Phillips Exhibit 11, is the  
19 information you reviewed from these other Ohio counties  
20 information that came from the Board of Elections of  
21 each of those counties?

22 A. Yes, sir.

23 Q. And is that information, information they  
24 collected with respect to either the voting in 2000 or  
25 the voting in 2004?

1 A. Yes, sir.

2 Q. Okay.

3 A. Again, it appears to be up to the county  
4 Boards of Elections as to how they choose to present  
5 their election returns.

6 Q. Okay. So other than information that you  
7 obtained from the Trumbull County Board of Elections,  
8 the election information you obtained from the  
9 Secretary of State of the State of Ohio and the  
10 election return information you obtained from various  
11 other county Boards of Election in Ohio, is there any  
12 other information you considered in preparing Phillips  
13 Exhibit 11?

14 A. Only Dr. Lange's report.

15 Q. Fine.

16 So, the full set of -- is it fair to say,  
17 then, that the full set of information which led to  
18 Phillips Exhibit 11 are the election returns from the  
19 Trumbull County Board of Elections, various Ohio county  
20 Boards of Elections, the Secretary of State and Dr.  
21 Werner Lange?

22 A. Yes.

23 Q. Okay, fine.

24 Did you summarize your study set forth in  
25 Phillips Exhibit 11?

1 A. Yes, I did.

2 Q. What is that summary?

3 A. I examined the distribution of uncounted  
4 regular ballots in Trumbull County. I found 65  
5 precincts with more than three percent of the regular  
6 ballots uncounted, 1,053 ballots in all, 40.4 percent  
7 of the countywide total. John Kerry won 62 of these 65  
8 precincts by a margin of 2.3 to one in the aggregate.  
9 I also considered Dr. Werner Lange's study in which he  
10 found 580 more absentee ballots cast than the number of  
11 absentee voters identified in precinct pollbooks in  
12 five communities in Trumbull County.

13 I found that, unlike every other Ohio county  
14 I have studied in which absentee ballots are reported  
15 separately on an at-large basis countywide, in Trumbull  
16 County, absentee ballots have no distinction at all.  
17 They are included in the precinct totals along with all  
18 other types of ballots cast, and their numbers and  
19 legitimacy can only be determined by inspection of the  
20 precinct pollbooks.

21 Q. Okay.

22 A. I also wrote a summary paragraph regarding  
23 all the aforementioned studies of uncounted regular  
24 ballots. I have now examined seven of the eight  
25 counties with the highest number of uncounted regular



1 ballots according to the Secretary of State's figures.  
2 In every case, I have found them to be highly  
3 concentrated in precincts that voted overwhelmingly for  
4 Kerry by margins in the aggregate of 12 to one, seven  
5 to one, five to one, 4.5 to one, three to one, 2.7 to  
6 one, and 2.3 to one. There are 92,672 uncounted  
7 regular ballots in the State of Ohio. If these were  
8 examined and all were found to cast a valid vote for  
9 President, and if these ballots were to break for John  
10 Kerry at a rate of 2.3 to one, there would be a net  
11 gain of 36,508 votes for Kerry. Similarly, if half  
12 were found to be valid, at a rate of 2.3 to one, the  
13 net gain would be 18,254 votes for Kerry.

14 MR. PECKARSKY: Let's go off the record just  
15 a second.

16 (Discussion off the record.)

17 BY MR. PECKARSKY:

18 Q. Drawing your attention to Phillips Exhibit  
19 12, what data did you consider in preparing Phillips  
20 Exhibit 12?

21 A. I used unofficial precinct canvass records  
22 from the Franklin County Board of Elections and data on  
23 the number of voting machines provided to each precinct  
24 in Franklin County by the close of the polls, also  
25 provided by the Franklin County Board of Elections.

1 And that is all. I used no other data.

2 Q. Okay. Did you prepare a summary of the study  
3 set forth in Phillips Exhibit 12?

4 A. Yes.

5 Q. What is that summary?

6 A. I meticulously compared election results with  
7 the number of registered voters per voting machine in  
8 each precinct in Columbus. Kerry won 346 precincts in  
9 Columbus and Bush won 125. The median Kerry precinct  
10 had 50.78 percent turnout and the median Bush precinct  
11 had 60.56 percent turnout. I calculated the number of  
12 registered voters per voting machine in each ward and  
13 ordered them from lowest to highest. There are 74  
14 wards in Columbus. I found that all 12 of the wards  
15 won by Bush were in the top half of the list and that  
16 all but three enjoyed a turnout above 50 percent  
17 regardless of which candidate won the ward. I found  
18 that all but seven wards in the bottom half of the list  
19 suffered turnout below 50 percent and that these were  
20 Kerry's strongholds, as in all but seven wards, his  
21 percentage of the vote was above his citywide  
22 percentage. In my professional opinion, the lower  
23 turnout in the wards won by Kerry was due directly to a  
24 shortage of voting machines. I calculated what the  
25 citywide vote totals would have been if all wards had

1 enjoyed a turnout of 60 percent or more. It is my  
2 conclusion that John Kerry's margin of victory in the  
3 City of Columbus was wrongly reduced by 17,000 votes.

4 Q. Drawing your attention to Phillips Exhibit  
5 13, what data did you review to prepare Phillips  
6 Exhibit 13, if any data were reviewed?

7 A. I used the same sources of data as in the  
8 previous study because Exhibit 13 is intended as a  
9 companion to Exhibit 12 and should be read in that  
10 context.

11 Q. Okay. Did you prepare a summary of results  
12 of your study as set forth in Exhibit 13?

13 A. Yes, I did.

14 Q. What is that summary?

15 A. I calculated the number of registered voters  
16 per voting machine for each ward in the Columbus  
17 suburbs and ordered them from lowest to highest. There  
18 are 72 wards in the Columbus suburbs. I found that, of  
19 the 15 wards won by Kerry, five of the six were at the  
20 very bottom of the list and that voter turnout was  
21 below 50 percent in all of them.

22 Of the top 27 wards, 25 were won by Bush, and  
23 that -- and voter turnout was above 60 percent in all  
24 of them.

25 Voter turnout was below 60 percent in 16 of

1 the 19 wards at the bottom of the list. Of these, Bush  
2 won 11 and Kerry won eight, showing that fewer voting  
3 machines depresses the turnout no matter whom the  
4 candidate.

5 Countywide, Bush enjoyed disproportionate  
6 favoritism. There are 146 wards in Franklin County.  
7 Of the 73 wards with the fewest number of registered  
8 voters per voting machine, 58 were in the suburbs and  
9 54 were won by Bush. It is important to note that  
10 these data are for machines placed by the close of the  
11 polls, not at the opening, and that there were 68  
12 machines available that were not provided to any  
13 polling station anywhere.

14 Q. What is the source of the data for the  
15 statement about the 68 machines available that were not  
16 provided to any polling station anywhere?

17 A. The Franklin County Board of Elections.

18 Q. Did you get this information from a  
19 document --

20 A. I certainly did.

21 Q. -- prepared by the Franklin County Board of  
22 Elections?

23 A. I certainly did. They provided a document  
24 that gave, among other things, the number of registered  
25 voters in each precinct, the number of voting machines

1 provided by the close of the polls in each precinct,  
2 and at the very bottom of the last page, it stated the  
3 number of machines available, the number of machines  
4 deployed, and the number of machines kept in a van for  
5 replacement purposes in the event of breakdown, and  
6 simple subtraction gives the remainder of 68 machines  
7 that were available --

8 Q. By --

9 A. -- and not in the van as replacement machines  
10 and not deployed anywhere in the county.

11 Q. In your last answer, you referred to the last  
12 page. Are you talking about the last page of a  
13 document which came from the Franklin County Board of  
14 Elections and referred to the availability and  
15 deployment of voting machines?

16 A. Correct.

17 Q. Okay.

18 A. It was a matter of simple subtraction. They  
19 said the number of voting machines available, the  
20 number of voting machines deployed and the number of  
21 voting machines in a van for possible use in the event  
22 of breakdown, and there were 68 machines besides those  
23 that were never brought to any polling place in  
24 Franklin County, despite numerous calls from many  
25 polling places pleading for more machines.

1 Q. Okay. Is the point that the Franklin County  
2 document to which you refer indicated the total number  
3 of machines available and then it had a somewhat  
4 smaller number for machines deployed and then another  
5 number for machines on the van and when you subtracted  
6 the number deployed plus the number on the van from the  
7 total number of machines --

8 A. The remainder is 68.

9 Q. -- the remainder is 68; correct?

10 A. Correct. Simple subtraction.

11 Q. Let me just try and say this clearly.

12 Is it correct, then, that when you looked at  
13 the document from the Franklin County Board of  
14 Elections and took the total number of machines  
15 available and subtracted the number of machines in the  
16 precincts and the number of machines on the van, that  
17 you were left with 68 machines which were available but  
18 not deployed anywhere?

19 A. Correct.

20 Q. Okay.

21 Going on to Phillips Exhibit 14, what  
22 information, if any, did you consider in preparing  
23 Phillips Exhibit 14?

24 A. I used United States census data from 2000  
25 and 2003, official and unofficial precinct canvass

1 results for 2004, official precinct canvass results for  
2 2000, and data on vote totals posted for Miami County  
3 on election night according to the Columbus Free Press.

4 Q. Did you use any other data in preparing  
5 Phillips Exhibit 14, Dr. Phillips?

6 A. No, I did not.

7 Q. Okay. Great.

8 Did you prepare a summary of your findings in  
9 Phillips Exhibit 14?

10 A. Yes, I did.

11 Q. What is that summary?

12 A. On election night, Miami County reported two  
13 sets of election returns. After 18,615 additional  
14 votes had been counted, the percentage for Bush had  
15 dropped by only 0.03 percent, the percentage for Kerry  
16 was exactly the same, and the final margin for Bush was  
17 exactly 16,000 votes, giving cause to question the  
18 integrity of the central counting machines. Comparing  
19 the official and unofficial results for 2004 and the  
20 official results for 2000 and the census data for 2000  
21 and 2003, I discovered that Miami County had reported a  
22 20.86 percent increase in turnout, highly unlikely for  
23 a county that had gained only 1.38 percent in  
24 population. Voter turnout of 98.55 percent and 94.27  
25 of registered voters was reported for two precincts in

1 Concord, numbers almost impossible to achieve.

2 Voter turnout was reported to have increased  
3 by 194.58 percent and 152.78 percent in two precincts  
4 in Troy as compared to the 2000 election, and by 30.49  
5 percent to 67.19 percent in 10 other precincts. It is  
6 my professional opinion that these numbers are  
7 fraudulent and that the true election results have been  
8 altered. Given that Bush officially carried Miami  
9 County in 2004 by 16,394 votes and in 2000 by 10,453  
10 votes, the net loss to John Kerry could be as high as  
11 6,000 votes.

12 Q. Okay.

13 MR. PECKARSKY: We have got to take a break  
14 for a few minutes.

15 (Recess taken.)

16 BY MR. PECKARSKY:

17 Q. Dr. Phillips, what information, if any, did  
18 you review in preparing the document which has been  
19 marked as Phillips Exhibit 15?

20 A. I used official precinct canvass results for  
21 2004 in Lucas County.

22 Q. Did you use anything else?

23 A. I used information from a map posted on the  
24 Web at [verifiedvoting.org](http://verifiedvoting.org) which shows what sort of  
25 voting machine is used in each county in Ohio, but I



1 also verified by a telephone call to a precinct worker  
2 that optical scanning counting machines were used in  
3 Lucas County.

4 Q. Any other information?

5 Did you use any other information or consider  
6 any other information in preparing Phillips Exhibit 15?

7 A. Yes, when -- Right. I subsequently obtained  
8 2000 official precinct data for Lucas County and  
9 revised my paper and added that on the last page, so I  
10 had 2004 and 2000 official data for the paper you hold  
11 in your hand.

12 Q. Did you consider any other information in  
13 preparing Phillips Exhibit 15?

14 A. No other data, no.

15 Q. Did you prepare a summary of the results of  
16 your study set forth in Phillips Exhibit 15?

17 A. Yes, I did.

18 Q. What is that summary?

19 A. I found 63 precincts, all in Toledo, with  
20 less than 60 percent turnout. All were won  
21 overwhelmingly by John Kerry by a margin of 4.5 to one  
22 in the aggregate. There were 45 precincts with more  
23 than 80 percent reported turnout. 12 were won by Bush,  
24 33 were won by Kerry and most were competitive. So I  
25 combined the precinct data for Toledo into wards and

1 found that the 14 wards with the highest reported  
2 turnout were won by John Kerry by a margin of 11 to  
3 seven in the aggregate, but the 10 wards with the  
4 lowest reported turnout were won by John Kerry by a  
5 margin of six to one in the aggregate. The general  
6 pattern was: The more competitive the ward, the higher  
7 the turnout, or conversely, the less competitive the  
8 ward, the lower the turnout.

9 I subsequently obtained the official precinct  
10 canvass reports for 2000 and found a similar pattern.  
11 It is my professional opinion that both elections in  
12 Lucas County were rigged by suppression of turnout in  
13 targeted wards. If the turnout in Toledo had been as  
14 high as that reported elsewhere in Lucas County, John  
15 Kerry's plurality would have been 7,000 votes larger.

16 Q. Drawing your attention to Phillips Exhibit  
17 16 --

18 A. Yes.

19 Q. -- Let me just go back a second to Phillips  
20 Exhibit 15.

21 In your work analyzing anomalous data, is a  
22 conversation with somebody of knowledge of a  
23 situation -- for example, the poll worker who knew that  
24 optical scanning machines were used in Lucas County --  
25 the type of data you would rely upon in impounding all

1 the data necessary to make a study of anomalous data?

2 A. She is an eyewitness who verified what had  
3 been reported on the Web Site. I thought it was a good  
4 idea to verify that because information on the Web,  
5 if ....

6 It is always a good idea to seek verification  
7 of information received on the Web because one always  
8 feels more certain of its veracity if it comes from  
9 more than one source.

10 Q. Okay.

11 Drawing your attention to Phillips Exhibit  
12 16, what information, if any, did you consider in  
13 preparing Phillips Exhibit 16?

14 A. Acting upon a tip from the precinct worker in  
15 Lucas County, I downloaded a newspaper article from the  
16 Toledo Blade. I also searched the election protection  
17 Web Site, [voteprotect.org](http://voteprotect.org), where election incidents  
18 across the country are logged, where specific polling  
19 places were identified in the polling incidents  
20 reported.

21 I then retained from the Board of Elections  
22 in Lucas County, either from the Web Site or from  
23 e-mail communications, the numbers of the precincts  
24 that voted at those polling places and I correlated all  
25 of that information with the precinct polling data.

1 Q. From what source did you get the precinct  
2 polling data?

3 A. From the Board of Elections, Lucas County.

4 Q. By "polling data," do you mean the results --

5 A. I'm sorry. Election. Yeah, yeah, precinct  
6 election canvass results, yes.

7 Q. Is it correct that, by "polling data," you  
8 meant the canvass reports from each of the precincts in  
9 Lucas County?

10 A. Right, the precinct canvass reports.

11 Q. You mentioned some e-mail communication.  
12 With whom did you have this e-mail communication?

13 Let me ask you a separate question --

14 A. The former chairman of the Democratic party  
15 for Lucas County, who now is employed at the Board of  
16 Elections.

17 Q. And what did that person advise you?

18 A. She e-mailed to me a complete list of where  
19 the polling places are for every precinct in Lucas  
20 County.

21 Q. Okay.

22 Is there any other information you considered  
23 in preparing Phillips Exhibit 16?

24 A. No.

25 Q. Did you summarize your work in Phillips

1 Exhibit 16 or come to any conclusions as a result of  
2 the studies set forth in Phillips 16?

3 A. Yes.

4 Q. What is that summary?

5 A. Three weeks before election day, as reported  
6 in the Toledo Blade, thieves broke into the Lucas  
7 County Democratic headquarters in Toledo and stole  
8 computers containing e-mails discussing campaign  
9 strategy, candidates' schedules, financial information  
10 and phone numbers of party members, candidates, donors  
11 and volunteers, thus affecting the entire  
12 get-out-the-vote operation.

13 The main computer had not been backed up for  
14 two months, giving the thieves exclusive possession of  
15 much of this information. I examined the election  
16 Incident Reports for Toledo, compared them to the Lucas  
17 County precinct canvass records and I found that the 88  
18 precincts with the lowest turnout, all in Toledo, were  
19 all won by John Kerry, and that 31 of these precincts  
20 are identified in the Incident Reports. Among the  
21 complaints were: Very dangerous polling locations;  
22 broken voting machines; long-time residents removed  
23 from the voting rolls; observers telling people to vote  
24 with a pen that might not be read by an optical  
25 scanner; polling stations running out of ballots and

1 turning people away; poll workers not placing completed  
2 ballots in secure locations; long lines not designated  
3 by precinct so that voters waited in the wrong line;  
4 voters being sent back and forth between polling  
5 locations; lack of privacy for voting; and ballots with  
6 no paper sleeves so that poll workers could view the  
7 ballots.

8 Q. Drawing your attention to Phillips Exhibit  
9 17, what information, if any, did you consider in  
10 preparing that report?

11 A. I compared the unofficial precinct canvass  
12 results for 2004 with the unofficial precinct canvass  
13 results for 2000 in Delaware County.

14 Q. From whom did you obtain the information for  
15 2000?

16 A. For both years, I obtained them from the  
17 Delaware County Board of Elections.

18 Q. As far as you know, was this data prepared by  
19 the Delaware County Board of Elections?

20 A. As far as I know.

21 Q. Okay.

22 Did you reach any conclusion or make a  
23 summary of your findings in Phillips Exhibit 17?

24 A. Yes.

25 Q. And what is that summary?

1           A.    I found that 12 of the 24 precincts in  
2 Delaware City were John Kerry's best precincts in  
3 Delaware County.  In other words, his highest  
4 percentage of the vote.  He ran well ahead of Al Gore  
5 in all but one, in which he ran only 1.8 percent  
6 behind, and in seven other Delaware City precincts  
7 Kerry ran well ahead of Gore or only slightly behind.  
8 The other five precincts are clearly anomalous.  Kerry  
9 ran behind Gore by 27.4 percent, 14.7 percent, 7.8  
10 percent, 7.3 percent and 6.8 percent, respectively.  
11 These are all precincts in the same small city.  It is  
12 my professional opinion that these numbers are  
13 fraudulent and that the true election returns have been  
14 altered, depriving John Kerry of about 600 votes.

15           Q.    Drawing your attention to Phillips Exhibit  
16 18, what information, if any, did you consider in  
17 preparing the Phillips Exhibit 18?

18           A.    I considered a newspaper story published by  
19 the Youngstown Vindicator.  I searched the Election  
20 Protection Web Site for election incidents reported in  
21 Mahoning County.  Where the reported incidents involved  
22 voting machines, and if they were specific to a polling  
23 place, I then obtained from the Mahoning County Board  
24 of Elections, either from their Web Site or by  
25 telephone, the numbers of the precincts that voted at

1 those polling places and I then correlated that  
2 evidence with the official precinct canvass reports for  
3 2004 for Mahoning County and also with the official  
4 precinct canvass records for 2000 in Mahoning County.

5 Q. Did you consider any other data in preparing  
6 Phillips Exhibit 18?

7 A. No other data, no.

8 Q. Did you prepare a summary of your conclusions  
9 with respect to Phillips Exhibit 18?

10 A. Yes, I did.

11 Q. What is that summary?

12 A. The Chairman of the Mahoning County Board of  
13 Elections, according to the Youngstown Vindicator,  
14 reported that 20 to 30 touch-screen voting machines  
15 needed to be recalibrated during the voting process  
16 because some votes for a candidate were being counted  
17 for that candidate's opponent and that about a dozen  
18 others needed to be reset because they essentially  
19 froze. I searched the Election Incident Reports for  
20 Mahoning County and found 28 similar complaints, all of  
21 them in Youngstown, 23 of them specifying a polling  
22 place. Six voters specifically stated that when they  
23 pressed Kerry's name, the screen went blank or Bush's  
24 name came up instead. I ascertained which precincts  
25 voted at these polling places and compared the



1 complaints to the official precinct canvass records. I  
2 found that Bush made his biggest percentage gain in  
3 Ward 2 where 14 of the 28 complaints were filed. I  
4 found only seven precincts with 2.5 percent or more  
5 uncounted votes. These would all be undervotes as  
6 touch-screens do not allow overvotes. In Youngstown,  
7 5G, there were 44 undervotes, 13.92 percent, more than  
8 three times as many as any other precinct in the  
9 county. Here, the complaint was that, when the voter  
10 pressed Kerry, the screen went blank. In my  
11 professional opinion, the 44 undervotes were due to a  
12 malfunctioning machine failing to record votes for  
13 Kerry and defaulting to no candidate for President. In  
14 Youngstown 2E, according to the Incident Reports, two  
15 voters selected Kerry and Bush's name appeared on the  
16 screen. A third voter had to scroll through five times  
17 before his vote was finally recorded. And two voters  
18 said that the presidential option never appeared at all  
19 while they were trying to vote and that this happened  
20 to a third voter on a second machine. Yet, there were  
21 zero undervotes in Youngstown 2E. In my professional  
22 opinion, the evidence clearly indicates that these  
23 touch-screen machines were programmed to default to  
24 Bush unless the voter successfully overrode the default  
25 choice.

1 Q. You mentioned Election Incident Reports in  
2 that answer. Were these Election Incident Reports on  
3 the Election Protection Web Site?

4 A. Yes, they are.

5 Q. Drawing your attention to Phillips Exhibit  
6 19, what information, if any, did you consider in  
7 preparing Phillips Exhibit 19?

8 A. I used census data for 2000 and 2003,  
9 unofficial precinct canvass records for 2004 and  
10 official voter registration data for every primary and  
11 general election from 2000 onward, all provided on the  
12 Web Site of the Warren County Board of Elections.

13 Q. Did you consider any other data in preparing  
14 Phillips Exhibit 19?

15 A. No other data, but I did consider a newspaper  
16 article published online by the Cincinnati Inquirer.

17 Q. Did you consider any other data aside from  
18 that in preparing Phillips Exhibit 19?

19 A. No.

20 MR. PECKARSKY: Off the record.

21 (Discussion off the record.)

22 BY MR. PECKARSKY:

23 Q. You mentioned census data. Who prepared the  
24 census data?

25 A. United States Census Bureau.

1 Q. Great.

2 Did you reach any conclusions or prepare a  
3 summary of your findings with respect to Phillips  
4 Exhibit 19?

5 A. Yes, I did.

6 Q. What is that summary?

7 A. George W. Bush carried Warren County by  
8 29,176 votes in 2000 and by 41,992 votes in 2004,  
9 according to unofficial records. I discovered that the  
10 increase in Bush's margin of victory was attributable  
11 mainly to a dramatic increase in voter registration.  
12 Since 2000, countywide, the population rose by 14.75  
13 percent, but voter registration rose by 29.66 percent,  
14 including 15.51 percent in the eight months preceding  
15 the election. While 87 of 157 precincts had shown  
16 declines in voter registration at other times since the  
17 2000 election, every single precinct, 157 of 157,  
18 showed increases since March 2nd, 2004, by more than 10  
19 percent in 115 precincts, more than 15 percent in 44  
20 precincts, and more than 20 percent in 25 precincts.

21 Q. Let me just go back to an issue you mentioned  
22 frequently. You talk about voter turnout. How do you  
23 define "voter turnout"?

24 A. "Voter turnout" is defined as the number of  
25 ballots cast divided by the number of registered

1 voters.

2 Q. Is it correct that you apply that for a given  
3 area --

4 A. Yes.

5 Q. -- whether it's a precinct or a county?

6 A. I was, I thought, saying that. Right,  
7 whether it's a precinct or a ward or a county or a  
8 state or a nation.

9 Q. Okay. So it's the number of votes cast for a  
10 given constituency divided by the number of registered  
11 voters for that constituency?

12 A. Correct.

13 Q. Turning your attention to Phillips Exhibit  
14 20, what information, if any, did you consider in  
15 preparing Phillips Exhibit 20?

16 A. I examined census data for 2000 and 2003,  
17 unofficial canvass records -- that is, precinct canvass  
18 records -- for 2004, and official precinct canvass  
19 records for 2000 for Butler, Clermont, C-L-E-R-M-O-N-T,  
20 and Warren Counties.

21 Q. Okay. You mentioned "census data." Who  
22 prepared the census data?

23 A. United States Census Bureau.

24 Q. Okay. And you mentioned "precinct canvass  
25 records." From what body did you obtain -- from what

1 body, if any, did you obtain the precinct canvass  
2 records?

3 A. The precinct canvass records for 2004, in all  
4 three counties, are online. And for Butler and Warren  
5 County, the precinct canvass records are also online.  
6 In all these cases, on the official Web Sites of the  
7 Boards of Elections for the respective counties. For  
8 Clermont County, I had to call them and have them --  
9 have the Board of Elections fax me the 2000 results.

10 Q. Okay. Did you reach any conclusions or make  
11 a summary of your conclusions with respect to Phillips  
12 Exhibit 20?

13 A. Yes, I did.

14 Q. What are those conclusions?

15 A. In Butler county, I found two cities and four  
16 townships where the election results, in my  
17 professional opinion, are suspect. In St.-Clair,  
18 C-L-A-I-R, Township, voter turnout was up by 8.27  
19 percent, but Kerry got exactly 10 percent fewer votes  
20 than Gore. In Liberty Township, voter registration  
21 reportedly increased by 177.9 percent and 143.5 percent  
22 in two precincts, and by 33.8 percent to 64.5 percent  
23 in six other precincts. In Monroe City, voter  
24 registration reportedly increased by 38.8 percent to  
25 69.3 percent in four precincts. In one precinct in

1 Trenton City, 30 votes appear in the column of Michael  
2 Badnarik, the Libertarian candidate for President, much  
3 as happened in Cuyahoga County.

4 In three precincts in Ross Township, Bush  
5 gained 313 votes compared to 2000, while Kerry got 15  
6 fewer votes than Gore. In Hanover Township, Bush  
7 gained 510 votes, while Kerry got 45 fewer votes than  
8 Gore.

9 I should add here that this is in a county,  
10 Butler County, where the population had increased by  
11 only 3.12 percent.

12 In Clermont County, where the population has  
13 grown by 4.39 percent since 2000, voter registration  
14 was reportedly up by 85.4 percent and 67.6 percent in  
15 two precincts and down by 49.4 percent in another  
16 precinct, all in the same township.

17 There were 24 precincts where turnout was up  
18 but Kerry got fewer votes than Gore.

19 In Warren County where the names of the  
20 precincts appear in code in the canvass records, I  
21 rearranged them into cities and into townships. I  
22 found that voter registration was reportedly up by 79.0  
23 percent, 38.3 percent, 32.4 percent, 31.0 percent, 29.7  
24 percent, and 28.4 percent, in six townships that  
25 provided 68.75 percent of Bush's margin of victory in

1 Warren County.

2 All these are indications that votes may have  
3 been shifted from Kerry to Bush. According to the  
4 certified results, these three counties combined  
5 provided Bush with a margin of 132,685 votes, which is  
6 13,910 votes more than his statewide plurality of  
7 118,775 votes. In other words, these three counties  
8 provided George Bush with his entire margin of victory.

9 Given that George Bush carried these counties  
10 by 95,575 votes in 2000, the net loss for John Kerry  
11 could be 37,000 votes.

12 Q. Drawing your attention to Phillips Exhibit  
13 21, what information, if any, did you consider in  
14 preparing Phillips Exhibit 21?

15 A. I compared the official precinct canvass  
16 results for the 2004 presidential race with the 2004  
17 race for Chief Justice of the State of Ohio, and that  
18 is all.

19 Q. Did you --

20 A. I also compared my findings with those  
21 previously stated in Exhibit 20.

22 Q. You mentioned official precinct canvass  
23 results. What body, if any, provided you with the  
24 precinct canvass results?

25 A. In all three counties, they came from the

1 official Web Sites of the Boards of Elections.

2 Q. Okay. Going back to Exhibit 20 for a second,  
3 you mentioned that -- well, in what county is Liberty  
4 Township?

5 A. Butler County.

6 Q. And in what county is St. Clair Township?

7 A. Butler County.

8 Q. In what county is Monroe City?

9 A. Butler County.

10 Q. In what county is Trenton City?

11 A. Butler County.

12 Q. In what county is Ross Township?

13 A. Butler County.

14 Q. In what county is Hanover Township?

15 A. Butler County.

16 Q. Okay. In your summary, you mentioned a  
17 precinct in Trenton City where 30 votes appear in the  
18 column of "Michael Badnarik." Which precinct was that,  
19 sir? And if you could supplement that answer by  
20 indicating where we could find that in Exhibit 20, if  
21 that information appears in Exhibit 20, I would  
22 appreciate it.

23 A. Yes, it is on Page 4 in the table between the  
24 first and second paragraphs. The precinct is Trenton  
25 City, 5EA, and the results were 30 votes for Badnarik,



1 B-A-D-N-A-R-I-K, 284 votes for Bush, 115 votes for  
2 Kerry. There are seven precincts in Trenton City.  
3 Badnarik received 41 votes in the entire city, 30 of  
4 them appearing in his column in this one precinct.  
5 Clearly, that is anomalous data.

6 Q. Okay.

7 Going ahead to Exhibit 21, is it fair to say  
8 that all of the data you reviewed in preparing Exhibit  
9 21 came from a county Board of Elections?

10 A. It came from three county Boards of Elections  
11 in their entirety, yes, sir.

12 MR. PECKARSKY: Let's go off the record.

13 (Discussion off the record.)

14 BY MR. PECKARSKY:

15 Q. Did you prepare a summary of your conclusions  
16 with respect to Phillips Exhibit 21?

17 A. I certainly did.

18 Q. What is that summary?

19 A. Many observers have questioned how C. Ellen  
20 Connally, a little-known, underfunded African-American  
21 Municipal Judge from Cleveland running for Chief  
22 Justice against a well-financed incumbent could have  
23 received more votes than John Kerry in Butler, Clermont  
24 and Warren counties in a race that attracted far fewer  
25 voters than did the presidential race.

1 I compared the official precinct canvass  
2 results for both races in all three counties and  
3 concluded that she could not have. In the race for  
4 Chief Justice, there were only three options: Ellen  
5 Connally, Thomas Moyer, M-O-Y-E-R, or none of these.  
6 There were no third parties and no write-ins. The  
7 votes not cast for Connally were not sufficient to  
8 account for all the votes awarded to Bush. When the  
9 results are examined precinct by precinct, it is  
10 revealed that 13,577 of Connally's supporters must have  
11 voted for Bush in order for the official results to be  
12 true and correct: 7,440 people in Butler County, 3,580  
13 people in Clermont County, and 2,557 people in Warren  
14 County, and these numbers are an absolute minimum. For  
15 every person who did not cast a vote for Chief Justice  
16 but did vote for John Kerry, there would have to be yet  
17 another person who voted for both Connally and Bush.  
18 These certified results defy credibility and should be  
19 rescinded. In my professional opinion, the only  
20 explanation for these numbers is election fraud.

21 MR. PECKARSKY: Okay. We were notified by  
22 counsel for the Contestees, Richard Coglianesse and Kurt  
23 Tunnell, that they would not be appearing at this  
24 deposition. They have not appeared. We spoke with  
25 Mr. Coglianesse in person this morning, or in person on

1 the phone, and advised him that the deposition would be  
2 starting somewhat later, and we left a message for Mr.  
3 Tunnell this morning before the noticed start time  
4 indicating that the start would be somewhat later,  
5 around 10:30, but that in any case, it would occur at  
6 the noticed location.

7 The court reporter has been here since  
8 roughly 8:30, and as I understand it, neither of these  
9 gentlemen have shown up. I am now offering them both  
10 an opportunity to cross-examine Dr. Phillips.

11 Hearing nothing from either of them, which is  
12 perhaps unsurprising given that they are not here, they  
13 have been offered the opportunity to cross-examine Dr.  
14 Phillips, that concludes the deposition.

15 Thank you very much, Dr. Phillips.

16 THE WITNESS: Thank you very much.

17 THE REPORTER: What about signature?

18 MR. PECKARSKY: Do you want to waive  
19 signature on this?

20 Let's just go off the record a second.

21 (Discussion off the record.)

22 Let's go back on the record.

23 Dr. Phillips, do you waive signature with  
24 respect to the -- waive the opportunity to review the  
25 transcript and correct it?

1 THE WITNESS: Yes, I do. The court reporter  
2 seems thorough, diligent and professional, and I trust  
3 her ability.

4 MR. PECKARSKY: Okay. Thank you very much.  
5 That concludes the deposition.

6 - - -  
7 (Signature waived.)

8 Thereupon, at 3:30 p.m., on Thursday,  
9 December 30, 2004, the deposition was concluded.  
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1 CERTIFICATE

2 STATE OF OHIO :  
3 COUNTY OF FRANKLIN : SS:

4 I, Sylvia A. Fraley, a Registered Diplomate  
5 Reporter, Certified Realtime Reporter and Notary Public  
6 in and for the State of Ohio, duly commissioned and  
7 qualified, do hereby certify that the within-named  
8 RICHARD HAYES PHILLIPS was by me first duly sworn to  
9 testify to the truth, the whole truth, and nothing but  
10 the truth in the cause aforesaid; that the deposition  
11 then given by him was by me reduced to stenotype in the  
12 presence of said witness; that the foregoing is a true  
13 and correct transcript of the deposition so given by  
14 him; that the deposition was taken at the time and  
15 place in the caption specified and was completed  
16 without adjournment; and that I am in no way related to  
17 or employed by any attorney or party hereto or  
18 financially interested in the action; and I am not, nor  
19 is the court reporting firm with which I am affiliated,  
20 under a contract as defined in Civil Rule 28(D).

21 IN WITNESS WHEREOF, I have hereunto set my  
22 hand and affixed my seal of office at Columbus, Ohio on  
23 this 30th day of December, 2004.

24

25 \_\_\_\_\_  
SYLVIA A. FRALEY, RDR, CRR  
NOTARY PUBLIC - STATE OF OHIO

My Commission Expires: May 5, 2008.

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