that correct?

A. Actually, I want to go back to the font and say I don't recall. I'm not -- I would have to look at it again, but the colors are not there.

Q. The colors are not there?

A. No.

Q. Are the underlines there?

A. The bolds in the underlines?

Q. Yes.

A. I'd have to look at the document again.

Q. It wouldn't really matter if they were or weren't because the Flesch scores don't measure bolds or underlines, do they?

A. Not that I know of.

Q. And the circles, the circled numbers would not be in the document that you fed in; is that correct?

A. I would have to look at the document again.

Q. But the Flesch scores would not measure those either, correct?

A. No. It doesn't measure circles.

Q. Right. And if you flip the page to the second page of that document, how would you have fed in the logo into the program?
A. The vote with photo I.D. logo?
Q. The vote with photo I.D. logo.
A. You can feed in the words, but it doesn't measure the state or the stars or the stripes.
Q. Where there's the symbol of the Georgia voter I.D. card on the left hand of the page, did you actually enter those words on the card?
A. I would have to look at the document again.
Q. But you would not have fed in the image of that card, correct?
A. That's correct.
Q. And, as a matter of fact, had you fed in the words on that card, which are a sample and sample name -- which is a fictitious name. It just shows a symbolic card -- they would have counted those words, the Flesch score would have counted the words on that card in terms of arriving at the reading ease or grade level, correct?
A. I would assume so.
Q. Don't you think the Flesch scores are particularly an imprecise calculation on the understanding of a brochure like this when you've got boxes, colors, symbols, logos?
A. If one assumes that comprehension is
driven by those, that's possible.

Q. Do you know of any studies that indicate that comprehension of documents are driven by the manner in which the documents are presented?

A. I'm not familiar specifically with those. They might exist.

Q. As an academic in this area, would that be a reasonable conclusion that a document's understandability or comprehensibility would depend on the way in which the information is presented?

A. That's not an unreasonable assumption at all.

Q. At the time when you were doing your dissertation about the Grady documents, did you look at that issue in terms of how the documents were presented to the recipients of benefits, or were you just doing the word counting that the Flesch scores discuss?

A. I'm trying to remember. It's been a while.

Q. And I appreciate that. And if you don't, that's --

A. I don't remember.

Q. That's fine. That's fine. Let's turn to Exhibit C. And this is another document that was
provided to you to do a scoring on by Mr. Brackett; is that correct?

A. Yes.

Q. And was this document scanned in, or was it retyped in; do you recall?

A. I don't recall.

Q. It would have been a problem to scan it in because you've got a couple of logos on this page, one, the state seal, and one, the go with photo I.D. logo?

A. Well, you can scan anything.

Q. How would the program read something like that?

A. As a JPEG file.

Q. But, I mean, would it count the words within the logo, or would it just not relate to it at all?

A. No. The words would have to be taken out of the logo to be counted.

Q. So you would have had --

A. I assume. Again, I don't know the inner workings of the program.

Q. And you don't recall whether you retyped this, whether this was retyped in a Word document or not?
A. It was in a Word document.

Q. But was this exact sheet scanned and then a Word document created, or was it like Exhibit 2 where someone retyped it?

A. I don't recall.

Q. If it was retyped, would you have that information in your file?

A. I can look at what I analyzed, and I don't recall that the logos were there, but I would be more comfortable if I looked at it because it could be that I wasn't attending to the logos.

MR. COHEN: And we would request that copy as well, David.

MR. BRACKETT: Okay.

Q. (By Mr. Cohen) Now, you'll notice that there are some fields in this letter.

A. Yes.

Q. Correct?

A. Yes.

Q. That are in red.

A. Yes.

Q. What is your understanding of what those fields were, if any?

A. Those were at the top of the page. It's the inside address.
Q. So actually this particular page would not be sent out; there would be fields, to your understanding, filled in there. Is that correct?
A. That's my assumption.
Q. When the word count was done, did they count the words in those fields?
A. No.
Q. They did not?
A. No.
Q. So that means this document would have had to have been redone to be analyzed; is that correct?
A. I believe so. Yes. Again, I would actually withhold my answer until I looked at the document, just to make sure I'm accurate.
Q. So to the extent that in Exhibit B and Exhibit C the analysis was done not on the specific documents attached here but to documents created from these documents, your report is not completely accurate; is that correct?
A. My assumption was that it was accurate.
Q. But then the exhibits that you attached were not the documents that were read by the computer?
A. I don't -- I have to go back and look. I prefer to look.
Q. But Exhibit A, that document was the
document, is your testimony, or was that redone as
well, the application for absentee ballot?
A. I believe that was not redone. But,
again, I prefer to go back and look.
Q. Let's go back to A for a second because
there are boxes within that document, and I wondered
if it was fed in that form how the program would have
read those boxes.
A. I don't know how the program reads boxes.
I would assume that it doesn't take them into account
given the formulas.
Q. And, of course, it can't tell colors,
correct; so the red highlighted matters --
A. Correct.
Q. -- would not be read any differently --
A. Correct.
Q. -- than the ones in black?
A. Correct.
Q. And the underlines would not be read one
way or the other; is that correct?
A. The lines themselves?
Q. The lines themselves.
A. I suppose you are right.
Q. And, once again, the type or the font
would not be read any differently, one as opposed to another, correct?

    A. I assume not.

    Q. Finally, Exhibit D, what was your understanding that that was when you were given it?

    A. That it was the rules of the State Election Board.

    Q. Did you ever feed in -- well, feed in is a bad word.

    A. That sounds like a paper shredder.

    Q. It does, doesn't it. Did you ever have an occasion to actually analyze the readability or grade level score of any law passed by the Georgia General Assembly or any regulation enacted by any state agency?

    A. No.

    Q. Is it safe to say, knowing what you know about laws and regulations, that it may take Albert Einstein to be able to understand those?

    A. I don't know.

    Q. That's just a fun question. But the serious question is wouldn't you expect that the way laws are drafted and regulations are drafted, you would have a very high reading level and a very difficult reading ease score?
A. It depends. There are laws in place that require ease of reading.

Q. Which laws are those?

A. The protection of human subjects.

Q. Right. What about the typical law passed by the Congress or the General Assembly of Georgia?

A. I don't know.

Q. Are there any requirements for ease of reading of any of those laws?

A. I'm not aware one way or the other. I don't know.

Q. If there were, you could probably do away with a lot of lawyers, don't you think?

Do you view your role and opinion in this case as one of advocacy?

A. No.

Q. In your career have you been an advocate for certain positions?

A. Define what you mean by advocate. I should have asked you first, but define specifically what you mean by advocacy.

Q. What I mean in terms of advocacy is that you are promoting a particular position.

A. In my professional role as a scientist, no.
Q. In your nonprofessional role just as a citizen, perhaps yes?
A. It's possible that one in their personal life is not an advocate of anything. That doesn't seem to be common.
Q. I agree with you there. Why did you accept this engagement?
A. Because David asked me if I would help and I said I would be happy to do the analysis.
Q. Do you know him personally?
A. No.
Q. Did you know him before the engagement?
A. Only through the Stewart Finance case.
Q. Have you done any other engagements where you've performed analyses as an expert and were not paid?
A. No. Well, for what purpose? I mean I do it all the time.
Q. For a court case.
A. Right, no.
Q. I don't mean in your regular working life.
A. No.
Q. I hope you are paid for that too, just in terms of your salary.
A. In my working life?
Q. Yes.
A. I do have a salary.
Q. Yes. And I worked for the State for a while, and it's not enough, I'm sure. Well, I guess back to my question. It's unusual for someone in any field, including your field, to agree to perform an analysis without getting paid for that analysis. So I guess my question is, aside from the fact that Mr. Brackett is a nice-looking guy, and he asked you, is there any other reason you decided to do it without getting paid for it.
A. I didn't say he was nice looking.
Q. Corrected. Very good.
MR. BRACKETT: I object to this entire line of questioning and move to strike.
Q. (By Mr. Cohen) Is there any other reason that you decided to do it?
A. Part of what we are evaluated on every year as professionals in academia is public service.
Q. I see.
A. So one -- yes.
Q. So this would assist you with your public service component that you need to be evaluated on?
A. Yes.
Q. What else have you done in that public
service arena over the past year that would be included in such an evaluation?

A. Nothing.

Q. Is there a certain amount of hours you need to spend?

A. No.

Q. There's no quantifiable amount that you are asked to perform?

A. No.

Q. How are you evaluated based on that, on the public service component in your work?

A. It's not counted. It's on the CV.

Q. I see. Well, where have you learned that it would be beneficial to your continued role at GSU to have a public service component on your CV?

A. It's described in the Board of Regents policy manual.

Q. Is this the first time you'll be able to add something to the CV where you can say you've done that?

A. Public service, probably yes. I do a lot of professional service. Service is a large category.

Q. I understand.

A. And this actually is professional service
if you think about it.

Q. That's true. Do you have a personal opinion about whether there should be a photo I.D. law for voting in person?

A. I think that citizens should be the only ones who vote. I have a problem with noncitizens having privileges that only citizens should have.

Q. So do you think it's important for government to insure that the person actually voting at the polls is the person who's the registered voter?

A. I don't think it requires a picture to do that but yes.

Q. And why don't you think it requires a picture?

A. I would assume there are other ways.

Q. Have you done any studies of that?

A. No. It's not my area.

Q. How did you form the opinion that a picture I.D. is not needed to protect against voter fraud at the polls?

A. When I vote I've never been asked for my picture.

Q. What do you show?

A. I show something that shows my residence.
Q. Do you know of others who show photos when they go to vote?
A. Specific people, I don't know.
Q. Other than the opinions that you express in your report, are there any other opinions that you've been engaged in to testify in this case?
A. I'm not sure I understand your question.
Q. Other than the opinions that you have in your report --
A. I understand that part.
Q. -- is there anything else that you are prepared to testify about?
A. No.
Q. Is there any other analysis that you have done of any other documents related to this case except for the four that we've talked about?
A. No.
Q. And, again, some of those documents may or may not be the documents that are actually attached to your report?
A. The words are the same. The sentences are the same.
Q. But the documents are different, correct?
A. The physical appearance of the documents.
Q. Thank you.
A. Yes.

Q. A couple more questions. On Page 3 of your report, and I think I understand what you said about this but just to be clear, the table that you have got there you took from the Reder study; is that correct?

A. That's correct.

Q. And the percentages in the Reder table are not Flesch scores; is that correct?

A. That's correct.

Q. You haven't done any analysis of what the percentages in any Congressional districts are of readability using the Flesch scoring system, have you?

A. No.

Q. Are there any other additional assignments that you've been asked to complete with respect to this case that you haven't completed already?

A. No.

Q. Are there any other opinions you've reached in this case that I haven't asked you about?

A. Depositions take a long time.

Q. Do you think this is a long time?

A. I'm counting. I'm just counting.

Q. I'm glad you can't fit these words in. I
don't know how I'd come out. Have you had a fair
opportunity during the deposition to state what your
opinions are?
A. I believe so.
Q. Is there anything you wish to add that I
haven't asked you about?
A. Not that I can recall at this time.
MR. COHEN: I don't have any other
questions except that this is a strange
situation because there's additional information
that we need that we haven't been provided. So
I don't want to conclude the deposition yet.
We're a day plus before trial so I don't know
frankly what that means in terms of having her
back.
MR. BRACKETT: Let's take a break and talk
about it, and I'll get right back to you.
MR. COHEN: All right.

(REcess from 12:01 p.m. to 12:02 p.m.)
MR. BRACKETT: I just want to ask one
question to clarify.

EXAMINATION

BY-MR.BRACKETT:
Q. Mr. Cohen asked you about your analysis
and basically asked you whether this report contains
all of your conclusions. You also prepared a
declaration in this action.
   A. Right.
   Q. And that was prepared about a year ago?
   A. Yes.
   Q. And was the application attached to your
report different from the application that you used
in your declaration?
   A. The applications have changed.
   MR. BRACKETT: I just wanted to point that
out.
FURTHER EXAMINATION
BY-MR.COHEN:
   Q. Well, let me ask you. The report that you
prepared for this case that you're prepared to
testify about is what's been marked as Exhibit 2; is
that correct?
   A. I believe so, but let me look.
   Q. I believe it's the one with the exhibit
tabs.
   A. Yes.
   Q. There's nothing, except for the documents
that you're going to now go back and look for,
there's nothing else that you've got that you haven't
produced that is -- well, strike that.
Except for the documents you're going to go back to look for, which may be different attachments to the report, is there anything else that is not in that report that you're going to testify to at this trial?

A. I don't think so, but it would depend on the questions you ask me.

Q. Well, I understand that, but I'm more interested in questions that Mr. Brackett asks you. Are you prepared to testify about anything else other than the information contained in Exhibit 2 and the references in that exhibit?

A. Again, it depends on the questions that are asked me. I am not sure I understand your question.

MR. COHEN: You see where I'm coming from here? And I'm not asking you this question. I'm talking to the lawyer now. If, obviously, she testifies as to anything else that is not in that report, we're going to have a serious objection.

MR. BRACKETT: No. I just wanted to point out, you asked her if she had conducted any other analysis in this case.

MR. COHEN: No. I understand.
MR. BRACKETT: And I wanted to make sure the record is clear. She analyzed the document before that was different. She submitted that declaration, and that's part of the record. In terms of what's going on this week, she's got the report.

MR. COHEN: Right.

MR. BRACKETT: I just wanted to make that clear for you.

MR. COHEN: Right. I understand that. The declaration is not a part of her report.

MR. BRACKETT: No.

THE WITNESS: Now I understand.

MR. COHEN: Thank you, Dr. Gowen. I appreciate it.

THE WITNESS: You're welcome.

MR. BRACKETT: What we propose is it's lunchtime now. We can take a lunch break. She can run back to her office and get that stuff, either bring it back with her or fax it to me, and I can fax it to you, and you can look at it. And we can take a long lunch break, and if you want to reconvene at 2:00, we can do that.

MR. COHEN: I've got a conference call I need to be on at 2:00, but I think the easiest
thing to do is once you get the documents, you can PDF them to me, let me take a look at them and see if there's any additional questions I need to ask her about them. Hopefully not because I've tried to get enough answers related to those documents. But, without seeing them, I can't be certain, quite frankly. So I may need to trouble you again for a few more questions.

MR. BRACKETT: She can be available today.

THE WITNESS: Today. I'm not available tomorrow however.

(Whereupon, the deposition was concluded at 12:06 p.m.)

(It was stipulated and agreed by and between counsel and the witness that the signature of the witness be waived.)
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(Original exhibits attached to the original transcript.)
CERTIFICATE

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 96 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in anywise interested in the result of said case.

This, the 20th day of August 2007.

PENNY McPHERSON WALKER, CCR-B-914
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